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Notices of Rulemaking Intent

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

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

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

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

[OAR Docket #17-674]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 3. Incorporation by Reference

252:205-3-1 [AMENDED]

252:205-3-2 [AMENDED]

252:205-3-4 [AMENDED]

Subchapter 13. Miscellaneous

252:205-13-1 [AMENDED]

Subchapter 15. Transfer Stations

252:205-15-2 [AMENDED]

Subchapter 17. Tax Credits

Part 1. Tax Credits

252:205-17-1 [REVOKED]

252:205-17-2 [REVOKED]

252:205-17-3 [REVOKED]

252:205-17-4 [REVOKED]

252:205-17-5 [REVOKED]

252:205-17-6 [REVOKED]

SUMMARY:

The purpose of the proposed amendments is to incorporate by reference the federal hazardous waste regulations found in 40 CFR Parts 124 and 260-279 revised as of July 1, 2017. Significant rule changes during this time period include the revisions to the hazardous waste generator rules. The generator rule revisions will require amendments to several subchapters of the 252:205 rules due to federal citation changes. In some cases language must be added or deleted to the state rules to ensure equivalency with the federal rules. In addition, this rulemaking proposes to revoke the applicable parts of subchapter 17, which are no longer supported by statute since 27A O.S. § 2-11-303 was revoked in 2013.

AUTHORITY:

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

COMMENT PERIOD:

Deliver or mail written comments on the proposed rules to the contact person from September 1, 2017 through October 12, 2017.

PUBLIC HEARINGS:

Before the Hazardous Waste Management Advisory Council on October 12, 2017 at 10:00 a.m. at the Department of Environmental Quality offices, First Floor, 707 N. Robinson, Oklahoma City, OK 74103.

Before the Environmental Quality Board on November 7, 2017 at 9:30 am at the NSU Event Center, 1041 N. Grand Ave., Tahlequah, OK 74464.

REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:

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

COPIES OF PROPOSED RULES:

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

RULE IMPACT STATEMENT:

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

CONTACT PERSON:

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

ADDITIONAL INFORMATION:

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

[OAR Docket #17-674; filed 8-8-17]

Emergency Adoptions

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

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

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

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

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

TITLE 218. OFFICE OF EDUCATIONAL QUALITY AND ACCOUNTABILITY CHAPTER 10. EDUCATIONAL QUALITY

[OAR Docket #17-671]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 5. Educator Preparation Program Accreditation
218:10-5-1 [AMENDED]

AUTHORITY:

Office of Educational Quality and Accountability; 70 O.S. Supp. 1998, §6-180 et seq.;

COMMENT PERIOD:

n/a

PUBLIC HEARING:

n/a

ADOPTION:

June 23, 2017

APPROVED BY GOVERNOR:

July 19, 2017

EFFECTIVE:

Immediately upon Governor's approval

EXPIRATION:

September 14, 2018 unless superseded by another rule or disapproved by the Legislature

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

FINDING OF EMERGENCY:

The Commission for Educational Quality and Accountability adopted emergency rules due to a compelling public interest regarding the severe teacher shortage in the state of Oklahoma.

GIST/ANALYSIS:

Emergency rules allow for an educator preparation program to apply for reaccreditation within one year following revocation when meeting certain requirements.

CONTACT PERSON:

Renee Launey-Rodolf, Director of Educational Quality, OEQA, 840 Research Parkway, Suite 455, Oklahoma City, Ok 73104, 405-521-5399, Renee.Launey-Rodolf@oeqa.ok.gov

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

218:10-5-1. Educator preparation program accreditation and review process

(a) Oklahoma educator preparation institutions function under an 'accreditation program' system which requires the evaluation of teacher education units and programs on a periodic basis.

(b) Effective July 1, 2014 the Commission of Educational Quality and Accountability, hereafter referred to as the CEQA, shall assume responsibility for accrediting educator preparation programs in Oklahoma's public and private institutions of higher education.

(c) The program accreditation system shall be a multifaceted system based on:

- (1) A competency-based educator preparation program built around the standards for Oklahoma educator preparation programs (See 218:10-5-3 and 218:10-5-4);
- (2) Self-studies as outlined in the standards for state accreditation;
- (3) On-site accreditation review team visits to the campuses of the institutions of higher education;
- (4) Analysis of data related to student success rates on the general education, professional education, and subject matter assessments;
- (5) Analysis of student satisfaction data;
- (6) Analysis of student/teacher candidate portfolios.

(d) Prior to being accredited each institution must meet the Council for Accreditation of Educator Preparation, hereafter referred to as CAEP, preconditions for accreditation and all requirements of the CEQA, and/or receive the approval of the Oklahoma State Regents for Higher Education, Hereafter referred to as the OSRHE, when applicable, and provide required documentation for each precondition.

- (1) All initial plans will be reviewed by the Office of Educational Quality and Accountability, hereafter referred to as OEQA. OEQA will determine accreditation eligibility and CEQA will determine candidacy for accreditation status.
- (2) Performance-based training will be conducted by the CAEP and/or their designee.
- (3) Any CEQA member or OEQA appointee who is involved in any evaluation and/or accreditation decision related to any educator preparation unit and/or program

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must complete the performance-based training related to the review and accreditation of educator preparation units and/or programs prior to voting and/or participating on any accreditation decisions.

(e) The OEQA is a performance-based partner with the OSRHE and CAEP. All educator preparation programs shall be expected to meet all CAEP unit and program standards, State Department of Education competencies, OSRHE teacher education policies as well as all additional standards established by the CEQA.

(1) Application form. The application form containing the required information will be completed by the director of educator preparation at the institution seeking CEQA accreditation for the educator preparation certificate programs.

(2) Self-study. The self-study shall be utilized by the CEQA for state accreditation, OSRHE program review, and CAEP accreditation as stipulated in OS 70 sections 6-180.

(3) Records to be kept on file at the institution. The following items and records shall be kept on file at the institution with the director/dean of teacher education.

- (A) Copy of the self-study;
- (B) Copy of annual report to the CEQA;
- (C) Syllabi for courses in the areas of specialization, general education, and professional education will be kept on file with the institution; and
- (D) Full faculty resumes will be on file for review. All levels of teaching personnel will be indicated.
- (E) Copies of program review reports.
- (F) Candidate CEOE scores.

(4) OEQA personnel will establish an accreditation visit schedule that will adhere to CAEP accreditation timelines.

(5) Selection of accreditation review team. Selection of the accreditation review team will be coordinated by the OEQA staff after the visitation dates are set. Selection of the accreditation review team shall be based on the following:

(A) All team members must have been trained by CAEP staff and/or their designee in the application of CAEP standards and on the process for evaluating programs for the CEQA.

(B) Accreditation team for first accreditation. The membership of a first accreditation review team shall be as follows:

- (i) Three to six CAEP site visitors (for institutions seeking national accreditation)
- (ii) State site visitors appointed by the OEQA including: One P-12 site visitor; One site visitor from higher education who is a member of an educator preparation unit. For accreditation of private institutions the site visitor shall be from a private institution; for public institutions this site visitor shall be from a public institution; One site visitor from the OEQA serving as State Consultant; One additional at-large site visitor;

(iii) For any institution requesting accreditation of a career technology program(s) an additional site visitor may be recommended by the State Director of Career and Technology Education.

(iv) The OEQA may invite observers representing the Oklahoma State Regents for Higher Education, Oklahoma State Department of Education, Oklahoma Department for Career and Technology Education, professional organizations, and the community-at-large.

(v) Observers shall be actively involved in the data collection process, participate in the accreditation review team meetings, and assist the accreditation review team to understand state nuances. They may assist, but shall not be required to write any sections of the team report. They shall not be a voting member of the team.

(vi) Observers are expected to participate in the entire visit and all assigned meetings and activities.

(vii) The chair of the accreditation review team has the authority to dismiss any observer from the accreditation visit who does not participate in the entire site review and assigned activities.

(viii) The OEQA shall collaborate with the director of educator preparation at the institution requesting state accreditation regarding the team representation.

(ix) State site visitors will number one less than the CAEP site visitors.

(C) Accreditation team for continuing accreditation. The membership of a continuing accreditation review team shall be as follows:

(i) CAEP site visitors as determined by CAEP (for CAEP accredited institutions);

(ii) State site visitors which will number one less than the CAEP representatives;

(iii) The OEQA shall collaborate with the director of educator preparation at the institution being reviewed regarding the state team representation;

(iv) The OEQA may invite observers representing Oklahoma State Regents for Higher Education, State Department of Education, and the community-at-large. If a Career and Technology program is offered at the institution the State Director of Career and Technology Education may nominate a site visitor for any institution requesting accreditation of career and technology program(s);

(v) Observers shall be actively involved in the data collection process, participate in the accreditation review team meetings, and assist the accreditation review team with understanding state nuances. They may assist but shall not be required to write any sections of the team report. They shall not be a voting member of the team.

(vi) Observers are expected to participate in the entire visit and all assigned meetings and activities.

- (vii) The chair of the accreditation review team has the authority to dismiss any observer from the accreditation visit who does not participate in the entire site review and assigned activities.
- (D) Accreditation teams for non-CAEP accredited institutions shall be composed of state site visitors.
- (6) Logistics for CAEP/State accreditation visits shall adhere to the CAEP and State guidelines.
 - (A) The completed accreditation review team report will be presented to the CEQA and CAEP (as applicable).
 - (B) Visiting team members will be reimbursed for expenses incurred according to state guidelines. Reimbursement forms must be completed by team members on the last day of the visit.
- (7) Preparation of the team report. The accreditation review team work will culminate in preparation of a report outlining the findings of the team following CAEP guidelines. The report will reflect the team consensus on the review.
 - (A) At the exit report, representatives of the accreditation review team will present a summary of its evaluation of the program. The summary will include an evaluation of the completeness, quality, and strength of evidence for each standard and state requirement.
 - (B) The completed CAEP and OEQA reports will follow the CAEP timelines for submission; and
 - (C) The summary evaluation will be presented to the CEQA for determination of final state accreditation decision. For CAEP accredited institutions, final accreditation decisions will be made after CAEP has forwarded its accreditation decision to the CEQA.
- (8) Final action on the reports and institutional accreditation will proceed according to CAEP and state guidelines.
 - (A) Final action by the CEQA may include the following actions:
 - (i) Initial Accreditation. This accreditation action accredits an educator preparation program initially for a period of seven years with all standards met.
 - (I) Educator preparation programs are denied accreditation if they fail to meet one or more of the standards.
 - (II) Educator preparation programs for which a stipulation(s) (critical deficiency related to one or more components of a standard) has been cited must remove the stipulation(s) within two years to maintain its accreditation for an additional five years. Educator preparation programs must provide documented evidence in order for a stipulation(s) to be removed.
 - (III) Identified areas for improvement (a weakness in evidence for a component or a standard) shall be addressed in the educator preparation program's annual report. When the

CEQA has determined that an education unit is not making progress toward the removal of the areas for improvements cited during their visit, the institution will be notified that the unit will be required to submit a plan and timeline for addressing the areas for improvement. If at the end of six (6) months the CEQA determines the education unit has not submitted sufficient data documenting adequate progress toward the removal of the areas for improvement, a state-level Focus Visit will be warranted within 18 months. After such Focus Visit the CEQA will have the option of granting continuing accreditation or revoking accreditation. This progress will be reviewed, annually, by the OEQA.

(ii) Continuing Accreditation. This accreditation action reaccredits an educator preparation program that was previously accredited by CAEP, NCATE or the state, for a period of seven years with all standards met.

(I) Educator preparation programs for which a stipulation(s) has been cited must remove the stipulation(s) within two years to maintain its accreditation for an additional five years. Educator preparation programs must provide documented evidence in order for a stipulation(s) to be removed.

(II) Identified areas for improvement shall be addressed in the educator preparation program's annual report. When the CEQA has determined that an education unit is not making progress toward the removal of the areas for improvement, the institution will be notified that the unit is required to submit a plan and timeline for addressing the areas for improvement. If at the end of six (6) months the CEQA determines the education unit has not submitted sufficient data documenting adequate progress toward the removal of the areas for improvement, a state-level Focus Visit will be warranted within 18 months. After such Focus Visit the CEQA will have the option of granting continuing accreditation or revoking accreditation. This progress will be annually reviewed by the OEQA.

(iii) Probationary Accreditation. This accreditation action reaccredits an educator preparation program for a period of two years when the program was previously accredited by CAEP, NCATE, or State but now failing to meet no more than one CAEP standard.

(I) To extend accreditation beyond the two-year period, an educator preparation program is required to submit a self-study report addressing the identified stipulations, followed by a focused site visit and subsequent CAEP/CEQA decision. The decision can be

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to accredit for five additional years or to return the educator preparation program to candidate status.

(II) Identified areas for improvement shall be addressed in the determined that an education unit is not making progress toward the removal of the area for improvement, the institution will be notified that the unit is required to submit a plan and timeline for addressing the areas for improvement. If at the end of six (6) months the CEQA determines the education unit has not submitted sufficient data documenting adequate progress toward the removal of the areas of improvement, a state-level Focus Visit will be warranted within 18 months. After such Focus Visit the CEQA will have the option of granting continuing accreditation or revoking accreditation. This progress will be annually reviewed by the OEQA.

(iv) Denial. This accreditation action denies accreditation for an educator preparation program applying for First Accreditation whereby one or more standards were deemed not met.

(I) All students who have been admitted to the program must be notified by mail, within 30 days of receipt of the CAEP or CEQA decision, as to the denial of program accreditation of the unit and programs.

(II) Institutions that are denied accreditation may recommend candidates for certification for one year from the end of the semester in which accreditation is denied.

(III) In the event that accreditation is denied, an institution may reapply for initial accreditation following a two year waiting period. All procedures for initial accreditation will be followed during the reapplication process.

(v) Revocation. This accreditation action revokes a previous accreditation decision following submission of documented evidence on stipulations and/or focus visit whereby stipulations and/or areas for improvement were determined not corrected. Accreditation will be terminated at the end of the semester in which the CEQA ~~or CAEP~~ revokes accreditation.

(I) All students who have been admitted to the program must be notified by mail, within 30 days of receipt of the ~~CAEP or~~ CEQA decision, as to the revocation of accreditation of the unit and programs.

(II) Within 30 days of receipt of the CEQA decision, the institution provides to the OEQA the names, admission dates, and majors of all student admitted to their program at the time of the decision.

(~~III~~) Institutions that lose their state accreditation may recommend candidates for certification for one year from the end of the semester in which accreditation is revoked.

(~~III~~IV) In the event that state accreditation is revoked, an institution may reapply for ~~first~~initial accreditation following a two-year waiting period from the date of revocation. Reapplication shall occur based on the state accreditation standards. All procedures for ~~first~~initial accreditation will be followed during the reapplication process.

(V) On or after January 1, 2017, CEQA may approve application for state initial accreditation following a one-year waiting period after revocation under the following conditions: Institution submits application for initial accreditation to OEQA articulating assessments, processes, and systems in place to address current standards and state requirements. A site visitor team, consisting of a state consultant and representation from higher education, conducts an on-site review interviewing faculty, administration, candidates and stakeholders and reports to CEQA on institution's readiness for seeking reaccreditation based on standards and requirements and compliance with terms of revocation described in this subsection. All costs related to on-site review will be at the expense of the institution. CEQA approves application for initial accreditation following a one-year waiting period.

(VI) An institution seeking state initial accreditation and whose application has been approved by CEQA may admit candidates into certification programs that have state program approval, and must undergo a full accreditation visit within two years from application approval. State team membership and logistics will adhere to state guidelines. Final action on the team report and institutional accreditation will proceed according to state guidelines.

[OAR Docket #17-671; filed 8-4-17]

TITLE 715. TEACHERS' RETIREMENT SYSTEM

CHAPTER 10. GENERAL OPERATIONS

[OAR Docket #17-670]

RULEMAKING ACTION:
EMERGENCY adoption

RULES:

Subchapter 1. Membership Provisions

715:10-1-15. Salary limitations for certain returning classroom teachers
[NEW]

Subchapter 7. Membership Vesting and Termination

715-10-7-1. Vesting of membership in TRS

AUTHORITY:

70 O.S. Section 17-101, et seq., especially Section 17-106(10); Board of Trustees

ADOPTION:

June 21, 2017

APPROVED BY GOVERNOR:

July 28, 2017

EFFECTIVE:

Immediately upon Governor's approval

EXPIRATION:

Effective through September 14, 2018, unless superseded by another rule or disapproved by the Legislature

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

FINDING OF EMERGENCY:

These emergency rule promulgations are necessary to provide a process and clarity regarding recent statutory changes. Without providing a clear process there would be serious prejudice to the public interest.

GIST/ANALYSIS:

This rule is being permanently promulgated to comply with the statutory responsibility of the Board of Trustees in establishing rules and regulations for the administration of the System and the transaction of its business [70 O.S. Section 17-101 et seq., especially 70 O.S. Section 17 106(10)]. This rule is necessary to provide a more efficient administration of the System and ensure that the rules for the Teachers' Retirement System of Oklahoma continue to best serve the System's members.

715:10-1-15 is being promulgated to provide a process and eligibility for retirees returning to work as classroom teachers.

715:10-7-1 is being amended to provide clarity regarding statutory changes in retirement vesting.

CONTACT PERSON:

Julie Ezell (405) 521-4746, julie.ezell@trs.ok.gov

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

SUBCHAPTER 1. MEMBERSHIP PROVISIONS

715:10-1-15. Salary limitations for certain returning classroom teachers

Legislation enacted during the 2017 legislative session allows members who retired on or before July 1, 2017 to return to employment as a classroom teacher for a public school or career technology district with no earnings limitations in certain circumstances. Members seeking to return to employment as a classroom teacher under this provision must meet all of the following requirements:

- (1) The member must have been employed as an active classroom teacher as is defined in 70 O.S. § 17-101(27) for at least one full school year immediately prior to their date

of retirement. Members employed as superintendents, administrators, or in other non-classroom teacher positions during the school year immediately preceding retirement are ineligible;

(2) The member can only be employed as an active classroom teacher as defined in 70 O.S. § 17-101(27) when they return to employment;

(3) The member must have been retired and drawing a TRS retirement benefit and not be employed by any public school or career technology district in any capacity for the twelve (12) consecutive months immediately following the last day of employment prior to their retirement date; and

(4) Prior to the member's return to employment the member must provide to TRS on forms prescribed by TRS, documentation establishing their eligibility under this provision. This documentation must be accepted by and approved by TRS prior to the member commencing employment under this provision.

SUBCHAPTER 7. MEMBERSHIP VESTING AND TERMINATION

715:10-7-1. Vesting of membership in TRS

Members who have accumulated five (5) or more years of creditable service in the public schools of Oklahoma, in which retirement contributions have been remitted, and whose account had not closed prior to July 1, 2003, in accordance with 70 O.S. § 17-103(6) or OAC 715:10-7-3, shall be granted an indefinite extension of membership in TRS. Such membership is vested and shall remain open until the member retires or the contributions are voluntarily withdrawn. Military and out-of-state service shall not be included in the five (5) years required for vesting. Any year of service obtained by the use of accumulated unused sick leave cannot be included in the five (5) years required for vesting. Any member who joins TRS after July 1, 1991, shall be required to have five (5) full years of service credit awarded pursuant to OAC 715:10-3-1 et seq. as a contributing member of the System. Any member who joins TRS after November 1, 2017, shall be required to have seven (7) full years of service credit awarded pursuant to OAC 715:10-3-1 et seq. as a contributing member of the System. For members who join after July 1, 1991, Oklahoma service purchased after membership will not be counted for "vesting" purposes.

[OAR Docket #17-670; filed 8-3-17]

Permanent Final Adoptions

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

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

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

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

TITLE 15. STATE ACCREDITING AGENCY CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #17-609]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 7. Hearing Procedures

15:1-7-1 [AMENDED]

15:1-7-2 [NEW]

AUTHORITY:

State Accrediting Agency; 72 O.S., §§ 241-242.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

January 25, 2017

COMMENT PERIOD:

February 15, 2017 through March 28, 2017

PUBLIC HEARING:

March 28, 2017

ADOPTION:

March 28, 2017

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

March 30, 2017

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 13, 2017

FINAL ADOPTION:

June 13, 2017

EFFECTIVE:

September 11, 2017

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The revisions to Subchapter 7 serve to clarify the purpose of administrative hearings provided for in O.A.C. 15:1-7-1. Additionally, the proposed revisions provide guidance to the agency and to approved institutions regarding the due process required for approved institutions with respect to suspension and withdrawal of approval permitted under 38 C.F.R. § 21.4259.

CONTACT PERSON:

Gina Wekke, Executive Director, (405) 879-9743,
gwekke@odva.state.ok.us

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,
THE FOLLOWING RULES ARE CONSIDERED
FINALLY ADOPTED AS SET FORTH IN 75 O.S.,
SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE
DATE OF SEPTEMBER 11, 2017:**

SUBCHAPTER 7. HEARING PROCEDURES

15:1-7-1. Hearing Procedures

Once an ~~inspection visit is made~~ and it has been determined that an establishment is in violation of appropriate VA Regulations, the following procedures in accordance with VA Regulations shall apply:

- (1) Written notice. A written notice of hearing is sent to the party by a certified letter with a return receipt secured which shall include the following:
 - (A) a statement of the time, place and nature of hearing;
 - (B) a statement of the legal authority and jurisdiction under which the hearing is to be held;
 - (C) a reference to the particular laws and rules involved;
 - (D) a short and plain statement of the issues involved;
 - (E) a statement that all parties are afforded the opportunity to respond and present evidence and argument on all issues involved.
- (2) Hearing procedures before agency.
 - (A) Agency representative presents statement of issues with supportive documentary evidence.
 - (B) The party and authorized representatives shall have the right to challenge through oral proceedings and presentation of documentary evidence.
- (3) Final notification.
 - (A) The final decision shall be a matter of record and the party notified personally or by mail.
 - (B) The final decision shall include findings of fact and conclusions of law, separately stated.
- (4) Appeal procedures.
 - (A) A decision in the individual proceedings shall be subject to rehearing, reopening or reconsideration by the Agency within ten days from the date of its entry.
 - (B) The grounds of such action shall be contained in 75 O.S. 1971, Section 317.

15:1-7-2. Suspension or withdrawal of approval

Continuing approval of a course or courses is contingent upon maintaining prescribed standards and conformance with standards and provisions of Title 38, U.S. Code and V.A. Regulations under Chapters 32, 34, 35, and 36.

- (1) After approving any course or licensing or certification test, the agency may suspend the approval of a course for new enrollments, or approval of a licensing or certification test, for a period not to exceed 60 days to allow the institution to correct any deficiencies, if the evidence of

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record establishes that a course or licensing or certification test fails to meet any of the requirements for approval.

[38 CFR 21.4259(a)(1)]

(2) If an institution has not corrected discrepancies at the time the suspension of approval expires, or if the deficiency cannot be corrected within the 60 day time period, the agency shall immediately withdraw approval from the institution. [38 CFR 21.4259(a)(2)]

(3) Prior to withdrawing approval, the agency shall notify the institution by certified mail with return receipt requested of its intended action and shall include a statement of the institution's right to a hearing to respond to the agency's intended action. If the institution has failed to correct discrepancies, the hearing will serve as the institution's opportunity to show it is in compliance with the appropriate VA regulations.

(4) Hearings under this section will take place according to the procedures set forth in OAC 15:1-7-1 and the Oklahoma Administrative Procedures Act.

[OAR Docket #17-609; filed 7-11-17]

TITLE 25. OKLAHOMA AERONAUTICS COMMISSION CHAPTER 25. AEROSPACE AND AVIATION EDUCATION GRANT PROGRAM

[OAR Docket #17-530]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

25:25-1-2. Requirements for receiving funding for an Aerospace and Aviation Education Grant Program [AMENDED]

25:25-1-3. Criteria selection for applicants [AMENDED]

AUTHORITY:

Oklahoma Aeronautics Commission; 3 O.S. Section 85 (L)

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SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The adopted rule allows the Oklahoma Aeronautics Commission to have clearly defined requirements and selection criteria for the Aviation Education Grant Program so that grant applicants know exactly what documentation is required on their application. The rule also provides a clear framework for how

much funding the Commission is allowed to award, based upon a percentage of the program cost.

CONTACT PERSON:

Jane Mitchell, Chief Operations Officer, Oklahoma Aeronautics Commission, 110 N. Robinson, Suite 200, Oklahoma City, OK 73120, (405) 604-6901

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,
THE FOLLOWING RULES ARE CONSIDERED
FINALLY ADOPTED AS SET FORTH IN 75 O.S.,
SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE
DATE OF SEPTEMBER 11, 2017:**

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

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

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

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

(d) Applications must be submitted or postmarked no later than May 31st in order to be considered for the following fiscal year which starts July 1st. If May 31st occurs on a weekend or holiday, applications may be submitted on the next business day following the weekend or holiday.

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

(f) If the Financial Report, corresponding receipts, final invoice and the Completion Report are not turned in within the sixty (60) day period, the applicant forfeits the remaining twenty percent (20%) or any outstanding balances.

(g) If an applicant forfeits money, the applicant is prohibited from applying for a grant the following year.

(h) Applicants may request a thirty (30) day extension if they are unable to submit the Financial Report, corresponding receipts, final invoice and the Completion Report within the sixty (60) day period.

(i) The thirty (30) day extension request must be received within sixty (60) days of the completion of the program.

(j) The maximum cost share of any grant or contract awarded by the Commission shall not exceed 50% of the total program cost unless the funding request by the applicant is

less than \$3,000 in which case the maximum cost share shall be 90%.

(k) For start-up or new programs, Commission funding cannot be provided until all other funding sources necessary to complete the program have been identified.

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

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

(b) Applications will be rated based on, but not limited to, information provided in the application packet, information obtained from an organization's readily available public information, website, or social media, and past history of administering any aviation education grants the organization may have received from the Commission. according to the following criteria listed in the application will be utilized to rate an applicant:

- (1) Program description to include the ability of the program to energize students into joining the aviation/aerospace workforce.
- (2) Grade levels served
- (3) Number of students involved
- (4) Program goals and objectives, (items to be funded by the Commission must be directly linked to aviation).
- (4) Program relevance to current aviation/aerospace industry issues and workforce demands.
- (5) Curriculum/subject areas covered
- (6) Desired learning outcomes, (items to be funded by the Commission must be directly linked to aviation)
- (7) Student benefits
- (8) Ability of the program to determine Measurements measurements of success for students who complete the program. Ability of the program to track students' successes, career path, level of education, or similar measure after completing the program.
- (9) Justification of need for the funding
- (9) Ability of the program to achieve geographic/demographic diversity among the students who participate in the program.

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

- (1) Total budget of the organization
- (2) Total budget of the program
- (3) Other contributors and the amount contributed
- (4) Percentage of the program that the Oklahoma Aero-nautics commission is being asked to fund
- (5) Cost of the program per student or for fixed, one-time expenditures, projected benefit and estimated longevity of the program.

[OAR Docket #17-530; filed 6-28-17]

**TITLE 35. OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY
CHAPTER 2. FEES**

[OAR Docket #17-574A]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 3. Fee Schedules

35:2-3-9 [AMENDED]

35:2-3-29 [AMENDED]

AUTHORITY:

Okla. Const., Art. 6, § 31; 2 O.S. § 2-4(A)(2) and 2-4(A)(20); 2 O.S. § 6-2; 2 O.S. § 6-91 et seq.; 2 O.S. § 6-121 et seq.; 2 O.S. § 6-131 et seq.; 2 O.S. § 6-141 et seq.; 2 O.S. § 6-150 et seq.; 2 O.S. § 6-400 et seq.; and 2 O.S. § 6-501 et seq.; State Board of Agriculture

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

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n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The proposed rule amendments revise fee structures to reflect the increased cost of labor and supplies required to manage the Poultry Health and Animal Disease Traceability programs. The continuing administration of the Poultry Health and Animal Disease Traceability programs by the Department are necessary to secure federal funding for related animal disease programs.

CONTACT PERSON:

Bennett Abbott, Assistant General Counsel, Oklahoma Department of Agriculture, Food, and Forestry, Office of General Counsel, P.O. Box 528804, Oklahoma City, OK 73152-8804, phone: (405) 522-5803, email: bennett.abbott@ag.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 3. FEE SCHEDULES

35:2-3-9. Schedule of fees for poultry programs

The fee schedule for poultry programs is as follows:

- (1) Permitted tester's certificates shall be \$30.00 and valid for 3 years.
- (2) Permitted tester certification school shall be a \$25.00 non-refundable registration fee for each application.

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(3) Flock fee for independent flockowners shall be ~~\$5.00/Yr~~ \$25.00/Yr.

(4) Charges for diagnostic testing services for reportable diseases when conducted by state inspectors shall be:

- (A) For a flock size of:
 - (i) 1 to 49 birds: \$1.00/bird plus mileage
 - (ii) 50 to 99 birds: \$.75/bird plus mileage
 - (iii) 100 to 499 birds: \$.50/bird plus mileage
 - (iv) 500 to 999 birds: \$.40/bird plus mileage
 - (v) 1,000 and up birds: \$.25/bird plus mileage
- (B) Mileage shall be charged at current State Motor Pool rates.

35:2-3-29. General animal industry supply fees

(a) ~~Livestock Health~~ Certificates of Veterinary Inspection (Health Certificates) - ~~\$7.00~~ \$25.00 per pad of 25.

(b) Poultry tester supplies:

- (1) Large or small wing bands - ~~\$5.25~~ \$12.00 per 100.
- (2) Small wing band plier - \$11.00 each.
- (3) Leg bands - ~~\$5.60~~ \$8.50 per 100.
- (4) Leg band pliers - ~~\$16.40~~ \$25.00 each.
- (5) Pullorum Test Plate - \$8.00 each.
- (6) 1,000 tests Pullorum Typhoid Antigen - ~~\$52.00~~ \$150.00 per 1,000 doses or ~~\$11.00~~ \$35.00 per 200 doses.
- (7) Shipping fee per order - ~~\$5.00~~ \$6.00.
- (8) Cash On Delivery (C.O.D.) shipping fee per order - actual cost.
- (9) Large wing band plier - ~~\$18.50~~ \$25.00 each.
- (10) Bleeder loop - ~~\$8.50~~ \$12.00 each.

[OAR Docket #17-574A; filed 7-7-17]

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

[OAR Docket #17-573A]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 1. General Provisions
35:10-1-3 [AMENDED]

AUTHORITY:
Okla. Const., Art. 6, § 31; State Board of Agriculture; 2 O.S. § 2-4(A)(2); and 2 O.S. § 14-31 et seq.

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INCORPORATIONS BY REFERENCE:
Incorporated Standards:

Handbook 44 "Specifications, Tolerances and Other Technical Requirements for Commercial Weighing & Measuring Devices" (2017 Edition), Handbook 130 "Uniform Laws and Regulations" (2017 Edition), excluding Section G "Uniform Engine Fuels and Automotive Lubricants Regulation, and Handbook 133 "Checking the Net Contents of Packaged Goods" (2017 Edition).

Incorporating Rules:
35:10-1-3

Availability:
See contact person below.

GIST/ANALYSIS:
The proposed amendments update references to publications and reference materials.

CONTACT PERSON:
Bennett Abbott, Assistant General Counsel, Oklahoma Department of Agriculture, Food, and Forestry, Office of General Counsel, P.O. Box 528804, Oklahoma City, OK 73152-8804, phone: (405) 522-5803, email: bennett.abbott@ag.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 1. GENERAL PROVISIONS

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

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

- (1) Handbook 44 "Specifications, Tolerances and Other Technical Requirements for Commercial Weighing & Measuring Devices" (~~2016~~ 2017 Edition).
- (2) Handbook 130 "Uniform Laws and Regulations" (~~2016~~ 2017 Edition), excluding Section G "Uniform Engine Fuels and Automotive Lubricants Regulation."
- (3) Handbook 133 "Checking the Net Contents of Packaged Goods" (~~2016~~ 2017 Edition).
- (4) Handbook 105-1 "Specifications and Tolerances for Field Standard Weights" (1990 Edition).
- (5) Handbook 105-2 "Specifications and Tolerances for Field Standard Measuring Flasks" (1996 Edition).
- (6) Handbook 105-3 "Specifications and Tolerances for Graduated Neck Type Volumetric Field Standards" (2004 Edition).
- (7) Publication 14 (2009 Edition).
- (8) Publication 12 (1991 Edition).
- (9) Federal Grain Inspection Service Moisture Handbook (2006 Edition).

[OAR Docket #17-573A; filed 7-7-17]

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

[OAR Docket #17-572A]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

35:13-1-1 [AMENDED]
35:13-1-2 [AMENDED]

AUTHORITY:

Okla. Const., Art. 6, § 31; State Board of Agriculture; 2 O.S. §2-4(A)(2); and 2 O.S. § 11-20 et seq.

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Incorporated Standards:

27 CFR (2016 Revision) Part 19.661 et seq. excluding §§ 19.669, 19.670, 19.699, and 19.700.

Incorporating Rules:

35:13-1-1 and 35:13-1-2.

Availability:

See contact person below.

GIST/ANALYSIS:

The proposed amendments update references to publications and reference materials.

CONTACT PERSON:

Bennett Abbott, Assistant General Counsel, Oklahoma Department of Agriculture, Food, and Forestry, Office of General Counsel, P.O. Box 528804, Oklahoma City, OK 73152-8804, phone: (405) 522-5803, email: bennett.abbott@ag.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

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

The Distilled Spirits for Fuel Use regulations found in Title 27 of the Code of Federal Regulations (CFR) (~~2015~~2016 Revision), Part 19.661 et seq. for the United States Department of the Treasury, Alcohol and Tobacco Tax and Trade Bureau, as promulgated and amended in the Federal Register, are hereby adopted in their entirety with the exception of the deleted regulations specified in 35:13-1-2.

35:13-1-2. Deleted regulations

The following sections of the Code of Federal Regulations governing distilled spirits for fuel use of the United States Department of the Treasury, Alcohol and Tobacco Tax and Trade Bureau incorporated by reference under 35:13-1-1 are deleted and are not rules of the Oklahoma Department of Agriculture, Food, and Forestry: 27 CFR §§ 19.669, 19.670, 19.699, and 19.700 (~~2015~~2016 Revision).

[OAR Docket #17-572A; filed 7-7-17]

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

[OAR Docket #17-571A]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 5. Biological Products and Laboratories
35:15-5-2. Laboratories [AMENDED]
Subchapter 11. Importation of Livestock, Poultry, and Pets
Part 1. General
35:15-11-1. General import requirements [AMENDED]
Subchapter 13. Testing and Inspection for Disease and Release of Livestock at Auction Markets
35:15-13-1. Definitions [AMENDED]
35:15-13-3. General requirements for a livestock auction market [AMENDED]
35:15-13-5. Approval and responsibilities of veterinarians in livestock auction markets [AMENDED]
35:15-13-6. Movement of livestock through livestock auction markets [AMENDED]
Subchapter 15. Equine Infectious Anemia (EIA)
Part 3. Procedures
35:15-15-34. Requirements for approved EIA testing laboratories [AMENDED]
Subchapter 16. Contagious Equine Metritis
35:15-16-1. Incorporation by reference [AMENDED]
Subchapter 17. Bovine and Bison Brucellosis
Part 3. Rules Adopted from USDA Uniform Methods and Rules (UM&R) for Brucellosis Eradication
35:15-17-52. Heifers to be spayed [AMENDED]
Subchapter 34. Feral Swine
35:15-34-2. Definitions [AMENDED]
35:15-34-5. Transporter license [AMENDED]
35:15-34-5.1. 24 hour permit [AMENDED]
35:15-34-6. Sporting facilities [AMENDED]
35:15-34-7. Handling facilities [AMENDED]
35:15-34-13. License fees [AMENDED]
35:15-34-14. Modify, suspend, cancel, or revoke licenses [AMENDED]
35:15-34-15. Holding pens [REVOKED]
Subchapter 36. Scrapie
35:15-36-1. Incorporation by reference of federal regulations [AMENDED]
35:15-36-2. Deleted regulations [AMENDED]
Subchapter 38. Bovine Trichomoniasis
35:15-38-1. Definitions [AMENDED]
35:15-38-2.1. Intrastate change of ownership requirements for bulls [AMENDED]
35:15-38-3.2. Exposed bulls [NEW]
35:15-38-4. Oklahoma trichomoniasis free herd certification [NEW]
Subchapter 40. Bovine Tuberculosis
Part 1. Definitions
35:15-40-1. Definitions [AMENDED]
Part 3. General Tuberculosis Rules
35:15-40-46. Quarantine procedures [AMENDED]
35:15-40-49.1. Dairy cattle change of ownership [AMENDED]

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Part 7. Import Requirements

35:15-40-90. Requirements for cattle entering Oklahoma from a tuberculosis free state or zone [AMENDED]

35:15-40-90.1. Requirements for cattle entering Oklahoma from a modified accredited advanced state or zone [AMENDED]

35:15-40-91. International importation of sexually intact cattle or bison [AMENDED]

35:15-40-92. Mexican origin cattle [AMENDED]

35:15-40-92.1. Diversion or separation of Mexican origin cattle [AMENDED]

Subchapter 47. Chronic Wasting Disease (CWD) in Cervids

Part 3. Herd Certification Standards

35:15-47-6. Minimum requirements for herd certification [AMENDED]

Subchapter 49. Miscellaneous Animal Diseases

35:15-49-3. Separation requirements [AMENDED]

AUTHORITY:

Okla. Const., Art. 6, § 31; State Board of Agriculture; 2 O.S. § 2-4(A)(2); 2 O.S. § 6-1 et seq., 2 O.S. § 6-121 et seq., 2 O.S. § 6-141 et seq., 2 O.S. § 6-601 et seq., 2 O.S. § 9-130 et seq.

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n/a

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Incorporated Standards:

9 CFR (2016 Revision) § 93-301, USDA VS Guidance Document 13406.1 (2013 Revision), 9 CFR (2016 Revision) Part 79 excluding §§ 79.6 and 79.7, and 9 CFR (2016 Revision) Part 55.

Incorporating Rules:

35:15-16-1, 35:15-36-1, 35:15-36-2, 35:15-47-6.

Availability:

See contact person below.

GIST/ANALYSIS:

The proposed rule amendments update citations to the Code of Federal Regulations; add and revise definitions; revise recordkeeping requirements for livestock auction markets; revise rules for EIA testing laboratories; revise rules related to feral swine; revise rules related to bovine trichomoniasis; revise rules related to bovine tuberculosis; revise rules related to miscellaneous animal diseases; and make grammatical corrections.

CONTACT PERSON:

Bennett Abbott, Assistant General Counsel, Oklahoma Department of Agriculture, Food, and Forestry, Office of General Counsel, P.O. Box 528804, Oklahoma City, OK 73152-8804, phone: (405) 522-5803, email: bennett.abbott@ag.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 5. BIOLOGICAL PRODUCTS AND LABORATORIES

35:15-5-2. Laboratories

(a) **Privately owned laboratories requesting authority to perform certain procedures.** Privately owned laboratories requesting authority to perform certain official laboratory procedures must apply for said approval on an application provided by the Assistant Director (AD) of the United States Department of Agriculture (USDA) Animal Plant Health Inspections Service (APHIS) Veterinary Services (VS) Surveillance Preparedness Response Service (SPRS) which provides for a joint signature of recommendation for approval of the AD and the State Veterinarian or designee.

(b) **Initial request for laboratory approval.** All initial requests for laboratory approval shall be made to the AD or State Veterinarian or designee. Laboratories must specify those ~~terms~~ tests which they are requesting approval to perform. These tests include, but are not limited to, Bluetongue, Bovine Leukosis, Equine Infectious Anemia, Johne's Disease, Pseudorabies, Bovine Trichomoniasis, and those diseases that are reportable to the Department.

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

(1) An authorized representative of the Department or USDA will review with laboratory officials the responsibilities, regulatory and technical, inherent in conducting and reporting official tests.

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

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

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

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

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

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

(5) Information with sample submission shall include:

(A) Name and address of submitting veterinarian.

(B) Name and address of owner.

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

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

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

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

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

(8) Incomplete tests charts shall not be accepted and the sample shall not be tested until the chart is completed.

(e) **Training.**

(1) Personnel who perform any approved official test must be recognized as qualified by Veterinary Services and the Department. The AD and the State Veterinarian or designee must recommend personnel for approval and training by NVSL.

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

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

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

(f) **Evaluation of personnel.** The AD, State Veterinarian or designee, and NVSL will evaluate personnel who do not successfully complete proficiency testing in order to determine if additional training is necessary.

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

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

(i) **Approval of laboratories.** After the requirements of training have been satisfactorily completed, the laboratory will be approved by the Director of NVSL and will be so notified of approval by a telegram or a letter signed by the Director of NVSL.

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

(1) Laboratory approval will be removed or suspended by the Director of NVSL or State Veterinarian or designee when any criteria are not met. If the laboratory is approved to perform tests for more than one disease, removal or suspension will apply only to the disease for which proficiency is not maintained. The laboratory will be informed of removal or suspension by a telegram signed by the Director of NVSL, or by certified letter from the Department, or both.

(2) Failure to maintain competency or failure to perform within any established protocol, shall constitute a

violation of this Section and shall submit the laboratory to actions outlined under the Administrative Procedures Act of the State of Oklahoma, above and beyond any action deemed appropriate by APHIS.

SUBCHAPTER 11. IMPORTATION OF LIVESTOCK, POULTRY, AND PETS

PART 1. GENERAL

35:15-11-1. General import requirements

(a) All persons importing livestock, as defined in 2 O.S. Section 6-150, shall have a certificate of veterinary inspection with the following exceptions:

(1) Livestock transported as part of a commuter herd with a copy of the commuter herd agreement;

(2) Livestock transported directly to an Oklahoma veterinarian for treatment if returned to the premises of origin within two (2) days following cessation of treatment;

(3) Livestock transported from a premises of origin in another state to an approved tagging site or approved livestock market and they are accompanied by an owner-shipper statement;

(4) Livestock transported from a premises of origin in another state directly to a slaughtering establishment and they are accompanied by an owner-shipper statement or a completed Drive-In document; or

(5) Livestock transported as a restricted movement accompanied by a VS form 1-27.

(b) The Commissioner of Agriculture or the State Veterinarian shall be authorized to impose pre-entry test requirements on any species if it becomes known that the threat of disease exists which could place the livestock industries of Oklahoma at risk or could become a public health hazard.

(c) Import requirements of this section may be in addition to import requirements for a species or disease found in this subchapter.

(d) The owner of the livestock, the person responsible for arranging transportation, and the operator of the vehicle transporting the livestock shall be equally and individually responsible for meeting all requirements regarding certificates of veterinary inspection, permits, and the movement of livestock into this state.

SUBCHAPTER 13. TESTING AND INSPECTION FOR DISEASE AND RELEASE OF LIVESTOCK AT AUCTION MARKETS

35:15-13-1. Definitions

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

"Approved veterinarian" means a licensed accredited veterinarian who has complied with all Department regulations

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and educational requirements, and who has been approved by the Department to conduct necessary tests, vaccinations, inspections, and other duties.

"Drive-in" means a written record of livestock in a single consignment. Information on a drive-in shall include name and address of the consignor, license tag number of vehicle used to haul livestock, list and brief description of livestock and corresponding backtags applied, and any special notes or instructions concerning the livestock.

"Livestock auction market veterinarian" means a licensed, accredited veterinarian who has been approved to represent the Department by performing the veterinarian's duties at livestock auction markets.

"Official forms" means forms furnished or approved by the State Board of Agriculture or Animal and Plant Health Inspection Service of the United States Department of Agriculture.

"Slaughter only" means to go directly to a slaughter establishment or to a ~~registered feed lot~~ approved feedlot to be fed to go directly to slaughter.

"Slaughter only tag" means a cardboard tag with the words, "For Slaughter Only" applied to the hip of an animal that is to be taken directly to a slaughter establishment or to a ~~registered feed lot~~ approved feedlot to be fed before going directly to slaughter.

"Brucellosis test eligible cattle" means all cattle eighteen (18) months of age, as determined by the loss of first pair of temporary incisor teeth, except exposed cattle which have been "S" branded, steers, and spayed heifers.

35:15-13-3. General requirements for a livestock auction market

- (a) Any person owning, operating, conducting, or maintaining a livestock auction market shall be required to:
- (1) Submit an application for a license to the Department on an official form prior to operation.
 - (2) Bond the market pursuant to 2 O.S. § 9-132, as amended or according to the provisions of the Federal Packers and Stockyards Act as amended.
 - (3) Employ a livestock auction market veterinarian for auctions selling cattle, horses, swine, or other species as determined by the state veterinarian.
- (b) The livestock auction market license shall cost Twenty Five Dollars (\$25.00) per year and shall expire on December 31 of each year.
- (c) Both the buyer's and seller's invoices shall include the name, address of the owner, and description of the cattle as to breed, sex, and age. Invoices for swine shall show the predominant breed and shall show them to be feeding, breeding, or slaughter swine.
- (d) The livestock auction market veterinarian or sale company shall not be responsible for results of any tests that are conducted properly or for any reactor animals or responder animals found in the market.
- (e) Refusal or failure to comply with the Department rules shall be just cause for the revocation or suspension of the livestock auction market license.

(f) No person owning, operating, conducting, or maintaining a livestock auction market shall allow any of the following animals to leave the livestock auction market unless it is individually identified by an official identification with an exception for weak cattle or cattle that pose a greater than normal risk of being injured or injuring a person:

- (1) All beef cattle eighteen (18) months of age or older, except terminal fed steers and heifers, going directly to a feedlot or slaughter which will not be reintroduced into the breeding herd;
 - (2) All dairy cattle;
 - (3) All "M" branded cattle including any commingled cattle, and
 - (4) All roping, exhibition, event, and rodeo cattle.
- (g) Weak cattle or cattle that pose a greater than normal risk of being injured or injuring a person may be sold with a back tag and slaughter only tag to be transported directly to slaughter.
- (h) The owner or operator of the livestock auction market shall keep records of each animal consigned or delivered to the livestock auction market for a period of five (5) years for disease traceback purposes, including but not limited to the following:

- (1) "Drive-in" or any other documents identifying the backtag, owners name and address, and license tag of mode of transportation;
 - (2) Any records kept pursuant to the Livestock Auction Market Act;
 - (3) Records of any official identification applied to the animal or already existing with the animal; ~~and~~
 - (4) Any records available regarding the purchaser of the animals; and
 - (5) Records of official identification shall be sufficiently legible and accurate to facilitate successful tracebacks.
- (i) Each livestock auction market shall sign and have on record with the Department the most current livestock market contract for each of the species sold at the market.
- (j) The livestock auction market shall make the above records available to ODAFF personnel when requested.

35:15-13-5. Approval and responsibilities of veterinarians in livestock auction markets

- (a) The veterinarian shall make application for approval to the Department and shall be examined as to his or her ability to function as a livestock auction market veterinarian.
- (b) The livestock auction market veterinarian shall inspect cattle, bison, horses, swine, or other species as determined by the State Veterinarian at the livestock auction market for the purposes of determining the condition of health and freedom from infectious or contagious diseases.
- (c) The livestock auction market veterinarian shall arrive at the market in sufficient time to do all required testing, official identification, and inspection prior to the beginning of the sale.
- (d) The livestock auction market veterinarian is responsible for completion of state and federal forms necessary for the release of livestock from markets and other state and federal forms required for disease traceability, control, and eradication

programs. These state and federal forms shall be sufficiently legible and accurate to facilitate successful tracebacks.

(e) In the event that an official identification is already present in the animal being tested, the livestock auction market veterinarian shall use this tag instead of retagging, and include all prefixes and numbers in recording the tag on test charts and official documents.

(f) The livestock auction market veterinarian shall use separate bleeding needles or separate syringes for each animal. The use of the same syringe or needle for ~~all~~ multiple animals is prohibited.

(g) If the livestock auction market veterinarian cannot determine the class of livestock to be shipped by the description on the purchaser's invoice, the livestock auction market veterinarian shall look at each shipment prior to release.

(h) All reactor or responder cattle received for sale shall be examined as to official identification by the livestock auction market veterinarian prior to sale.

(i) Copies of all forms shall be forwarded to the office of the State Veterinarian by the livestock auction market veterinarian immediately after sale.

(j) All official ear tags, forms, certificates of veterinary inspection, or documents and official stamps and signature stamps, shall be kept in the exclusive possession of the livestock auction market veterinarian and shall be dated and signed by him or her only at the time it is filled out and issued. Under no circumstances shall any official document be pre-signed or pre-stamped by the livestock auction market veterinarian. Use of any official stamp by persons other than the livestock auction market veterinarian or a state or federal employee is expressly prohibited. The livestock auction market veterinarian shall be solely responsible for the unauthorized or improper issuance of any official document or the use of any official stamp or signature stamp.

(k) The livestock auction market veterinarian shall ensure another livestock auction market veterinarian is available at the market when the regular livestock auction market veterinarian is absent from the market.

(l) The livestock auction market veterinarian shall not resign his duties without written notice to the sale company and State Veterinarian's office at least ten (10) days prior to resignation.

(m) The livestock auction market veterinarian's failure or neglect to perform any of the functions in this Section shall be cause for disapproval and immediate removal from the livestock auction market.

35:15-13-6. Movement of livestock through livestock auction markets

(a) All certificates of veterinary inspection, permits, and other documents, including out-of-state documents accompanying livestock into Oklahoma livestock auction markets, that are incomplete or have been altered in any way are void and shall not be accepted. This includes documents that are incomplete as to official identification number and description of animal it represents. In order to be accurate and acceptable, the prefix of each official identification number shall be recorded.

(b) All livestock shipped or exported from the State of Oklahoma shall meet the state of destination importation requirements.

(c) Dairy cattle or Mexican cattle to be tuberculosis tested after change of ownership that are not held at the livestock auction for testing shall be consigned to the purchaser's accredited veterinarian of choice accompanied by a VS 1-27 form to verify the arrival of the animal for testing.

(d) Cattle tagged with a Slaughter Only Tag shall not be diverted from slaughter channels and shall be transported to a slaughter establishment or an approved feedlot within seven (7) days of sale.

SUBCHAPTER 15. EQUINE INFECTIOUS ANEMIA (EIA)

PART 3. PROCEDURES

35:15-15-34. Requirements for approved EIA testing laboratories

(a) No person shall operate an EIA testing laboratory without first obtaining approval from the Board.

(b) Conditions of approval.

(1) Submit a complete application to the office of the State Veterinarian.

(2) Upon receipt of an application, the facility shall be inspected by an authorized agent of the Board.

(3) A report of the inspection shall be submitted to the State Veterinarian and identify the EIA testing laboratory's compliance with the minimum standards for facilities, equipment, and personnel.

(4) The applicant shall agree in writing to operate the laboratory in conformity with the Department rules and the requirements of the USDA and shall continually meet all requirements during operation of the laboratory.

(5) A determination by the Department that an additional EIA laboratory is necessary in the area.

(c) Operating requirements.

(1) All personnel conducting an official test at an approved laboratory shall receive training prescribed by the National Veterinary Services Laboratories (NVSL).

(2) Approved laboratories shall use USDA licensed antigen and follow standard test protocols prescribed by NVSL.

(3) Approved laboratories shall maintain a work log clearly identifying each individual sample and test results.

(4) Approved laboratories shall maintain a work log and a file of all submission forms for a period of not less than two (2) years.

(5) All approved laboratories shall report all positive results to an official test for EIA to the State Veterinarian's office within twenty four (24) hours.

(6) A copy of all test charts for positive Equidae shall be sent to the State Veterinarian's office within seventy two (72) hours.

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- (7) Negative results shall be reported to the office of the State Veterinarian on a monthly basis.
- (8) Approved laboratories shall not test samples until an officially completed test chart is received.
- (d) Inspections, proficiency tests, and licenses.
- (1) The Board shall randomly and without prior notification collect samples and inspect the facilities and records of all EIA laboratories in Oklahoma at a minimum of once per year.
- (2) All records required to be maintained by approved laboratories shall be open to inspection by state or federal employees during normal business hours.
- (3) All approved laboratories shall pass annual proficiency test requirements administered by the NVSL.
- (4) All approved laboratories shall pass any additional proficiency test requirements administered by the Board.
- (5) The Board shall charge a fee to the approved laboratory for administering each additional proficiency test in the amount of Fifty Dollars (\$50.00).
- (6) Each approved laboratory shall obtain a license on an annual basis.
- (A) The annual license fee shall be \$250.00.
- (B) The annual license shall expire on January 31 of each calendar year.
- (C) The renewal license application shall be submitted no later than January 31 of each calendar year.
- (D) A renewal application received or postmarked after January 31 shall be in violation of these rules.
- (E) Failure to renew may result in disapproval of the laboratory.
- (F) A fee waiver may be granted to an EIA laboratory at a university or state agency.
- (e) An EIA laboratory may have its approval cancelled if the Board finds that the laboratory has failed to meet the requirements or has falsified records or reports.
- (f) Any action taken by the Board to cancel laboratory approval shall conform to the Administrative Procedures Act.
- (g) The Department may deny the application of any EIA laboratory if it fails to meet any criteria required by the Department.
- (h) Approved laboratories shall only perform the ELISA test.
- (i) The Department may at its discretion in limited and approved circumstances grant approved laboratories the ability to perform the AGID test for equine being exported from Oklahoma to a foreign country or for horses not residing in Oklahoma. The limited exception shall be detailed in a written agreement between the Department and the approved laboratory.
- (j) Any approved EIA laboratory shall resubmit all application information for approval by the Department upon a change in ownership of the facility or a change in location of the facility.

SUBCHAPTER 16. CONTAGIOUS EQUINE METRITIS

35:15-16-1. Incorporation by reference

- (a) The contagious equine metritis regulation found in Title 9 of the Code of Federal Regulations (CFR) (20152016 Revision), Section 93-301 and USDA VS Guidance Document 13406.1 (2013) Revision are hereby adopted in their entirety.
- (b) All words and terms defined or used in the federal regulation incorporated by reference by the Department shall mean the state equivalent or counterpart to those words or terms.

SUBCHAPTER 17. BOVINE AND BISON BRUCELLOSIS

PART 3. RULES ADOPTED FROM USDA UNIFORM METHODS AND RULES (UM&R) FOR BRUCELLOSIS ERADICATION

35:15-17-52. Heifers to be spayed

Heifers less than test eligible age and are to be spayed may be released from an auction market to a licensed approved veterinarian's clinic within the state of Oklahoma. These heifers shall be accompanied by an official permit. All heifers spayed be marked with ~~as pade a spade~~ brand on the ~~tailhead~~ tailhead. "S" branded females shall not be released to a veterinarian's clinic for spaying.

SUBCHAPTER 34. FERAL SWINE

35:15-34-2. Definitions

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

"Captive feral swine hunter" means a person of any age who procures a hunt at any of the licensed feral swine hunting facilities in Oklahoma.

"Feral swine" means any hog, pig, or swine species (*Sus scrofa*) including, but not limited to, Russian and European wild boar that are running at large, free roaming, or wild upon public or private lands in this state, and shall also include any hog, pig, or swine species that has lived any part of its life running at large, free roaming, or wild. The term feral swine shall also include any feral phenotype swine, whether or not running at large, free roaming, or wild. The term feral swine shall denote live feral swine and not feral swine carcasses unless otherwise specified.

"Feral swine facility" means a handling facility, ~~holding pen,~~ or sporting facility.

"Feral Swine Free Zone" means any region of the state defined by the Board of Agriculture where hunting feral swine or taking feral swine from the region is restricted and the licensing of feral swine facilities or movement of feral swine into or across the region is prohibited.

"Handling facility" means any premises maintaining feral swine in captivity for the purpose of temporary holding,

breeding, slaughter, re-sale, dog training, competition, exhibition, personal use, or any other purpose. Commercial hunting is not permitted in a handling facility.

"Sealed trailer" means a trailer or container holding feral swine that an Oklahoma Department of Agriculture, Food, and Forestry or United States Department of Agriculture employee has affixed a seal for special purpose movement displaying a serial number listed on the VS 1-27 form accompanying the transport.

"Sporting facility" means any premises maintaining feral swine in captivity intended for hunting and feral swine are only removed from the premises through hunting.

"Transport" means intrastate or interstate movement of one or more feral swine.

35:15-34-5. Transporter license

~~(a) All persons that transport live feral swine in this state shall be required to obtain a transporter license from the Department.~~

~~(b) Transporter licenses shall be active for a period of one (1) year and shall not be transferable.~~

~~(c) Transporter licenses shall expire each June 30 but may be renewed. Five year licenses issued by the Department prior to the effective date of these rules shall not be grandfathered and shall expire on June 30, 2017.~~

~~(d) Application for a transporter license shall be on a form prescribed by the Department and shall include the following:~~

- ~~(1) Name, mailing address, physical address, email address, and telephone number of the applicant,~~
- ~~(2) Drivers license number of the transporter;~~
- ~~(3) A brief statement describing the area for which the applicant typically transports feral swine, and~~
- ~~(4) A description of the vehicles, used to transport feral swine, including any license tag numbers.~~

~~(e) Live feral swine shall not be removed from the transport vehicle until released or unloaded pursuant to subsection (f) of this section.~~

~~(f) Any person transporting feral swine pursuant to a valid 24 hour permit may park the transport vehicle at a location the home premises of a licensed transporter specified in the 24 hour permit, so long as a new 24 hour permit is obtained prior to further transport of the feral swine to a location specified in subsection (g) of this section.~~

~~(g) Live feral swine shall only be released or unloaded at the following locations:~~

- ~~(1) A licensed sporting facility;~~
- ~~(2) A licensed handling facility;~~
- ~~(3) A slaughter facility, or~~
- ~~(4) A location designated in an order issued by the State Veterinarian.~~

~~(h) Feral swine shall not be commingled with any domestic livestock species at any point during transportation. Common cages or enclosures, water sources or food sources accessible by both domestic livestock species and feral swine shall be prohibited.~~

35:15-34-5.1. 24 hour permit

(a) A transporter shall apply for a 24 hour permit to transport feral swine using an online system provided by the Department or by phone during regular business hours. The transporter may either request immediate approval or request advance approval by specifying the 24 hour period that the transporter intends to transport feral swine.

(b) If the transporter requests immediate approval, the 24 hour permit shall be valid for twenty-four (24) hours following approval by the Department. The online system shall provide automatic approval for 24 hour permits after the following information is provided:

- (1) The date feral swine are transported;
- (2) The number of feral swine transported;
- (3) The name of the county in which the feral swine were acquired;
- (4) The name of the owner of the property on which the feral swine were acquired;
- (5) A description of the acquisition method (capture or purchase); and
- (6) The name and license number of destination facility or consignee.

(c) If the transporter requests advance approval, the 24 hour permit shall specify the 24 hour period in which the transporter is authorized to transport feral swine.

~~(d) The 24 hour permit shall describe the number and destination of feral swine transported.~~

~~(e) The transporter shall carry paper copy of the approved 24 hour permit in the vehicle transporting feral swine or carry an electronic device capable of accessing and displaying an electronic version of the approved 24 hour permit.~~

35:15-34-6. Sporting facilities

(a) No new sporting facilities shall be licensed by the Department. The Department may issue a license to an unlicensed sporting facility in operation prior to January 27, 2015 and holding a Commercial Hunting Area license issued by the Oklahoma Department of Wildlife Conservation. Licenses for existing sporting facilities shall be renewable and transferrable.

(b) The owner or operator of a sporting facility shall comply with the following requirements:

- (1) The owner or operator of a sporting facility shall maintain a perimeter fence at least forty-eight (48) inches tall made of solid walls, game fence, or other material constructed in a manner adequate to reasonably prevent the escape of enclosed feral swine, and the unsolicited additions of feral swine from outside the enclosure.
- (2) The owner or operator of a sporting facility shall keep the following records using forms provided by the Department:

(A) The name, and 24-hour permit number, and license number for each consignor releasing feral swine into the sporting facility with the corresponding date and number of feral swine released; and

(B) The name of each captive hog hunter killing a feral hog at the sporting facility with the corresponding date and number of feral swine killed.

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(3) Any person renewing or procuring a sporting facility license shall provide the following information on a form prepared by the Department:

- (A) Name, mailing address, email address, and telephone number of the owner;
- (B) Name, mailing address, email address, and telephone number of the operator, if different from the owner;
- (C) Name, physical address, and county of the sporting facility;
- (D) Legal description to the nearest quarter section and GPS coordinates, if available, of the sporting facility;
- (E) A map showing topography of the area with a diagram of the facility structures, fencing plan, and perimeter clearly marked;
- (F) Whether the applicant has been convicted of a felony, misdemeanor, administrative, or civil violation of any natural resources requirements, including but not limited to wildlife, forestry, fisheries, environment, or animal health within the past three (3) years in Oklahoma or any other jurisdiction;
- (G) Whether the property where the sporting facility is located is owned or leased;
- (H) Driving directions from the nearest town; and
- (I) Signature under oath "I certify under penalty of law this document, all attachments, and information submitted are to the best of my knowledge and belief, true, accurate, and complete. I am aware there are significant penalties for knowingly submitting false, inaccurate, or incomplete information, including the possibility of fines for each violation."

(4) The owner or operator of a sporting facility shall submit a report describing all feral swine released into or killed at the sporting facility in a month and any other information required by the Department by the 10th day of the following month using forms provided by the Department.

(c) Sporting facilities may have a gate device installed in the perimeter fence that allow for the ingress of additional feral swine but does not allow the egress of captive feral swine. These devices shall be inspected and approved by the Department within seven (7) days of installation.

(d) Sporting facilities shall be licensed for one year terms beginning July 1 of each calendar year and ending on June 30 of the following calendar year. Applications for the renewal of a sporting facility license shall be due on April 1 of each calendar year.

(e) Feral swine shall not be commingled with any domestic livestock species in any sporting facility. Common pens, water sources or food sources accessible by both domestic livestock species and feral swine shall be prohibited. This subsection is not intended to prohibit a licensee from constructing a feral swine facility along the licensee's property line.

(f) Live feral swine shall not be transported from a sporting facility to any other location.

(g) The owner or operator of a sporting facility shall verify that each person who hunts feral swine on the facility has a

valid Oklahoma feral swine hunter's license prior to hunting. If the owner or operator of a sporting facility cannot verify that a person has a feral swine hunter's license prior to hunting, the owner or operator shall collect a captive hog hunter's fee from each hunter using the sporting facility and remit fees collected to the Department on the 10th day of the month following the hunter's visit. The captive hog hunter's fee:

- (1) Shall be collected only once from each hunter during a calendar year;
- (2) Shall be valid for the calendar year in which it is purchased;
- (3) Shall not restrict the number feral swine the hunter is permitted to kill; and
- (4) Shall not restrict the number of visits a hunter may make to any sporting facility.

(h) Any person may apply for a captive feral swine hunter's license by using an online system provided by the Department or by phone during regular business hours.

35:15-34-7. Handling facilities

(a) An owner or operator shall obtain a handling facility license prior to operation of any new handling facility.

(b) The owner or operator of a handling facility licensed prior to October 1, 2017 shall maintain a perimeter fence at least forty-eight (48) inches tall made of solid walls, game fence, or other material constructed in a manner adequate to reasonably prevent the escape of enclosed feral swine, and the unsolicited additions of feral swine from outside the enclosure.

(c) The owner or operator of a handling facility licensed on or after October 1, 2017 shall maintain a perimeter fence at least sixty (60) inches tall made of solid walls, game fence, or other material constructed in a manner adequate to reasonably prevent the escape of enclosed feral swine, and the unsolicited additions of feral swine from outside the enclosure.

(ed) The owner or operator of a handling facility or operator shall keep the following records using forms provided by the Department:

- (1) The name, ~~and~~ 24-hour permit number, and license number of each consignor or consignee releasing feral swine into or transporting feral swine from the handling facility and the corresponding date and number of feral swine released or transported;
- (2) The number of feral swine that are killed at the facility and corresponding dates; and
- (3) The number of feral hogs that die of natural causes at the facility and corresponding dates.

(de) The owner or operator of a handling facility shall submit a report describing all feral swine released into, killed, or dying by natural causes at the handling facility in a month by the 10th day of the following month using forms provided by the Department.

(ef) Any person applying for a handling facility license shall provide the following information on a form prepared by the Department:

- (1) Name, mailing address, email address and telephone number of the owner;
- (2) Name, mailing address, email address, and telephone number of the operator, if different from the owner;

- (3) Name, physical address, and county of the handling facility;
- (4) Legal description to the nearest quarter section and GPS coordinates, if available, of the handling facility;
- (5) A map showing topography of the area with a diagram of the facility structures, fencing plan, and perimeter clearly marked;
- (6) Method of carcass disposal for the facility, including carcass storage sites, carcass burial areas, incineration approval, rendering company, composting plan, or land-fill.
- (7) Whether the applicant has been convicted of a felony, misdemeanor, administrative, or civil violation of any natural resources requirements, including but not limited to wildlife, forestry, fisheries, environment, or animal health within the past three (3) years in Oklahoma or any other jurisdiction;
- (8) Whether the property where the handling facility is located is owned or leased;
- (9) Driving directions from the nearest town; and
- (10) Signature under oath "I certify under penalty of law this document, all attachments, and information submitted are to the best of my knowledge and belief, true, accurate, and complete. I am aware there are significant penalties for knowingly submitting false, inaccurate, or incomplete information, including the possibility of fines for each violation."

(fg) Handling facilities shall be licensed for one year terms beginning July 1 of each calendar year and ending on June 30 of the following calendar year. Applications for the renewal of a handling facility license shall be due on April 1 of each calendar year.

(gh) Feral swine shall not be commingled with any domestic livestock species in a handling facility. Common pens, water sources or food sources accessible by both domestic livestock species and feral swine shall not be permitted. This subsection is not intended to prohibit a licensee from constructing a feral swine facility along the licensee's property line.

(i) Handling facilities licensed on or after October 1, 2017 shall not exceed one (1) acre in size.

35:15-34-13. License fees

- (a) Sporting facilities that are not licensed as a commercial hunting area by the Oklahoma Department of Wildlife Conservation:
 - (1) Application fee - \$325.
 - (2) Renewal fee - \$200.
- (b) Handling facility:
 - (1) Application fee - \$200.
 - (2) Renewal fee - \$100.
- (c) Transporter: Application and renewal fee - \$25.
- (d) Captive ~~hog~~feral swine hunter - \$25.

35:15-34-14. Modify, suspend, cancel, or revoke licenses

- (a) The license of any owner or operator may be revoked if the owner or operator is convicted of violating any provisions of the Oklahoma Agricultural Code.
- (b) In the event a license is denied, revoked, cancelled, or suspended, the owner or operator is not eligible to reapply until after the date the license would have expired.
- (~~dc~~) The Department shall not issue a license in the following circumstances:
 - (1) The facility was not inspected by the Department.
 - (2) The owner or operator had any equivalent license denied, revoked, or suspended by any authority.
- (~~ed~~) Using information from the application and from the State's files, the Department shall determine:
 - (1) The accuracy of all materials in the application;
 - (2) The applicant can reasonably be expected to comply with all legal requirements; and
 - (3) The proposed facility is adequate and complies with all legal requirements and would not result in harm to domestic swine.

35:15-34-15. Holding pens [REVOKED]

- (~~a~~) ~~A handling facility license shall not be required of any feral swine facility that is a temporary holding pen where no individual feral swine is held for more than seven (7) days.~~
- (~~b~~) ~~Any owner or operator shall consent to inspections by the Department to determine compliance with this provision and shall provide any available documentation to show compliance with this provision.~~
- (~~c~~) ~~Any owner of a holding pen shall hold a valid transporter license.~~
- (~~d~~) ~~The perimeter fence of a holding pen shall be constructed in a manner to prevent the escape of enclosed feral swine and unsolicited additions of feral swine from outside the enclosure.~~

SUBCHAPTER 36. SCRAPIE

35:15-36-1. Incorporation by reference of federal regulations

Regulations of the United States Department of Agriculture concerning scrapie in sheep and goats found at 9 CFR Part 79 (~~2015~~2016 Revision) are adopted by reference with the exception of the deleted regulations specified in 35:15-36-2.

35:15-36-2. Deleted regulations

The following sections of the Federal regulations governing scrapie in sheep and goats (9 CFR, Part 79 et seq.) (~~2015~~2016 Revision) of the USDA incorporated by reference under 35:15-36-1 are deleted and are not rules of the Oklahoma Department of Agriculture, Food, and Forestry: 79.6 and 79.7.

SUBCHAPTER 38. BOVINE TRICHOMONIASIS

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35:15-38-1. Definitions

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

"Acceptable specimen" means a specimen determined satisfactory for diagnostic testing by the testing laboratory, including complete documentation.

"Approved Feedlot/feedlot" means a confined animal feeding operation (CAFO) licensed by the Department.

"Approved laboratory" means any laboratory designated and approved by the state veterinarian for examining T. foetus samples.

"Approved veterinarian" means a licensed accredited veterinarian who has complied with all Department regulations and educational requirements, and who has been approved by the Department to conduct necessary tests, vaccinations, inspections, and other duties.

"Bovine" means any sexually intact male and female animal of the genus bos.

"Change of ownership" means control of an animal being transferred between two (2) persons by sale, lease, or lending.

"Commingle" means animals of opposite sex and/or belonging to different owners in the same enclosure or pasture with a reasonable opportunity for sexual contact.

"Exposed bull" means an untested bull that has had an opportunity to breed exposed female cattle.

"Exposed Femalefemale" means a female bovine animal that is sexually intact and sexually mature that could have been exposed to a positive T. foetus bull.

"Herd" means the group of animals consisting of all male and female bovines over twelve (12) months of age that have commingled during the last twelve (12) months.

"Negative T. foetus bull" means a bull that qualifies by one of the following:

(A) originate from a herd not known to be infected and has had a negative official T. foetus bull test within the last year;

(B) originate from a positive herd but has a series of three negative official T. foetus bull tests at intervals of at least one week; or

(C) a negative official T. foetus bull test within sixty (60) days prior to entry with no sexual activity for one (1) week prior to the test and between the test and movement.

"Official T. foetus laboratory testing" means the laboratory procedures that shall be approved by the state veterinarian for culture and identification of T. foetus.

"Official T. foetus bull test" means the sampling of the preputial content of a bull by a licensed, accredited and trichomoniasis certified veterinarian or a veterinarian from the Oklahoma Department of Agriculture, Food, and Forestry. The test shall be conducted after a one week separation from all female bovine and the bull and sample shall be officially identified and documented for laboratory submission. The test may consist of three (3) culture tests at least one (1) week apart or one (1) Real Time PCR test. Pooled samples are acceptable

"Oklahoma trichomoniasis certified free herd" means a herd of cattle that has been determined to be free of bovine trichomoniasis by following the requirements of OAC 35:15-38-4.

"Pooled sample" means a method of sampling where a sample from each bull is submitted in an individual transport pouch and the laboratory mixes aliquots from up to five (5) samples together to economize the test cost.

"Positive T. foetus bull" means a bull that has had a positive T. foetus test.

"Positive T. foetus herd" means the group of all bovines which have had any opportunity for sexual contact in the previous breeding season and in which any male or female animal has had a positive diagnosis for T. foetus.

"Negative T. foetus bull" means a bull that qualifies by one of the following:

(A) ~~originate from a herd not known to be infected and has had a negative official T. foetus bull test within the last year;~~

(B) ~~originate from a positive herd but has a series of three negative official T. foetus bull tests at intervals of at least one week; or~~

(C) ~~a negative official T. foetus bull test within sixty (60) days prior to entry with no sexual activity for one (1) week prior to the test and between the test and movement.~~

"Suspect T. foetus bull" means a bull from a positive T. foetus herd that has not yet had three (3) consecutive negative official T. foetus bull tests.

"Trichomonas (Tritrichomonas) Tritrichomonas foetus" or **"T. foetus"** means a contagious venereal protozoan parasite disease of the trichomonas foetus species that frequently results in lifetime infection of male bovidae as an inapparent carrier and causes infertility, pyometra, abortions and reproductive inefficiency in female bovidae.

"Unacceptable sample" means a sample that is deemed not diagnostic by the official testing laboratory.

"Virgin bull" means a sexually intact male bovine less than twelve (12) months of age or a sexually intact male bovine between twelve (12) and eighteen (18) months of age that has had no breeding and no potential breeding contact with females.

"Virgin bull affidavit" means a signed affidavit from the owner, manager, or veterinarian that verifies the bull is between twelve (12) and eighteen (18) months of age and has had no breeding and no potential breeding contact with females.

35:15-38-2.1. Intrastate change of ownership requirements for bulls

(a) Any bull greater than twelve (12) months of age changing ownership within the state of Oklahoma shall have a negative official T. foetus test within sixty (60) days prior to change of ownership with no exposure to females from seven (7) days prior to the test to the time of change of ownership.

(b) Exceptions to this rule shall include the following:
(1) A bull between twelve (12) and twenty-four (24) months of age accompanied by a virgin bull affidavit;
(2) A bull sold directly to slaughter;

- (3) A bull sold for feeding and slaughter to be fed in a registered an approved feedlot only and leaves the feedlot only to be slaughtered; or
- (4) A bull for intrastate change of ownership may be considered a virgin bull up to twenty four (24) months of age with a signed virgin bull affidavit from the owner.
- (c) Any bull presented for sale at a livestock auction market without a virgin bull affidavit (if between twelve (12) and twenty-four (24) months of age) or verification of a negative official T. foetus test:
 - (1) Shall be tagged for slaughter only and sold for slaughter only;
 - (2) May go to the purchaser's destination so long as the market veterinarian takes a sample for an official T. foetus test and the purchaser agrees to keep the bull under quarantine at the destination until receipt of negative test results.
- (d) A livestock auction market shall not be liable for a virgin bull affidavit and shall not be liable for the results of a market veterinarian's sampling and results for an official T. foetus test.

35:15-38-3.2. Exposed bulls

Exposed bulls shall be officially identified and change ownership only:

- (1) With notification of two negative official T. foetus tests, with the first test administered at least seven (7) days after the last exposure to female cattle and the second test administered seven (7) to twenty-one (21) days after the first test;
- (2) If sold for slaughter only; or
- (3) If consigned to an approved feedlot to be fed for slaughter only.

35:15-38-4. Oklahoma trichomoniasis free herd certification

Herd owners who enroll in the Trichomoniasis Herd Certification Program shall sign a herd agreement with the department and maintain the herd in accordance with the herd agreement and following conditions:

- (1) All non-virgin breeding bulls shall be tested annually for T. foetus for three consecutive years as required by the herd agreement.
- (2) During the three year inception period, all non-virgin breeding bulls that are sold, leased, gifted, exchanged or otherwise change possession shall be tested for T. foetus within thirty (30) days prior to such change in possession. The test must be completed and test results known prior to the time a bull(s) is physically transferred to the receiving premises or herd.
- (3) Negative T. foetus bulls will be identified with official identification.
- (4) All slaughter bulls removed from the herd must be tested for T. foetus. The test may be performed at a slaughter facility if prior arrangement with a certified veterinarian and an appropriate agreement with the slaughter facility management are made.
- (5) Bovine females added to a certified herd shall not originate from a known T. foetus infected herd. Female

herd additions must originate from a certified T. foetus free herd or qualify in one of the following categories:

- (A) Calf at side and no exposure to other than known negative T. foetus bulls;
 - (B) Checked by an accredited veterinarian, at least one hundred and twenty (120) days pregnant and so recorded;
 - (C) Virgin; or
 - (D) Heifers exposed as virgins only to known negative T. foetus infected bulls and not yet one hundred and twenty (120) days pregnant.
- (6) Records must be maintained for all tests including all non-virgin bulls entering the herd and made available for inspection by a designated accredited veterinarian or state animal health official.
 - (7) All non-virgin bulls shall be tested for T. foetus every two years after the initial three year inception period to maintain certification status.
 - (8) Herd premises must have perimeter fencing adequate to prevent ingress or egress of cattle.
 - (9) All bulls originating from a Trichomoniasis Certified Free Herd that are maintained in accordance with this section and the herd agreement are exempt from the testing requirements found in OAC 35:15-38-2.1.

SUBCHAPTER 40. BOVINE TUBERCULOSIS

PART 1. DEFINITIONS

35:15-40-1. Definitions

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

"Accredited free state" means a state that maintains full compliance with all of the provisions of the USDA Uniform Methods and Rules for bovine tuberculosis eradication and where no evidence of bovine tuberculosis has been disclosed for five (5) or more years.

"Accredited herd" means a herd of cattle, bison, or dairy goats that passed at least two (2) consecutive negative caudal fold tuberculin tests at an interval of not less than ten (10) months nor more than fourteen (14) months, has no other evidence of bovine tuberculosis, and meet the standards of this Subchapter.

"Affected herd" means a herd of cattle, bison, or dairy goats that contains, or has recently contained, one (1) or more animals infected with Mycobacterium bovis and has not passed the required tests necessary for release from quarantine.

"Annual tests" means those tests conducted at intervals of not less than ten (10) months nor more than fourteen (14) months.

"Approved feedlot" means a confined dry lot area for the finish feeding of animals on a concentrated feed with no facilities for pasturing or grazing that is licensed as a Concentrated Animal Feeding Operation by ODAFF's Agriculture Environmental Management Services Divison.

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"Auction" means a public sale of cattle, bison, or dairy goats to the highest bidder.

"Bison" means a bovine-like animal (genus *Bison*) commonly referred to as American buffalo or buffalo.

"Bovine Tuberculosis" means a disease in cattle, bison, or dairy goats caused by *Mycobacterium bovis*.

"Cattle" means all domestic bovine (genus *Bos*).

"Caudal Fold Tuberculin Test" or **"CFT"** means the intradermal injection of 0.1 milliliters of USDA bovine purified protein derivative (PPD) tuberculin into either side of the caudal fold, with reading by visual observation and palpation seventy-two (72) hours (+ or - 6 hours) following injection. Animals or herds of unknown status shall not be subjected to retest at intervals of less than sixty (60) days.

"Commission firm" means a person, partnership, or corporation that buys or sells livestock as a third party and reports to the seller or to the buyer details of the transactions whether or not a fee is charged for the services.

"Comparative Cervical Tuberculin Test" or **"CCT"** means the intradermal injection of biologically balanced bovine PPD tuberculin and avian PPD tuberculin at separate sites in the cervical area and a determination as to the probable presence of bovine tuberculosis (*M. bovis*) by comparing the responses of the two (2) tuberculins seventy-two (72) hours (+ or - 6 hours) following injection.

"Dairy cattle" means any typical dairy framed animals as determined by the inspecting veterinarian.

"Dairy goats" means domestic caprine (genus *Capra*) kept for the purpose of producing milk for human consumption.

"Dealer" means any person, firm, or partnership engaged in the business of buying or selling cattle, bison, or dairy goats in commerce, either on the dealer's own account or as the employee or agent of the vendor or purchaser, or any person engaged in the business of buying or selling cattle, bison, swine, sheep, or dairy goats in commerce on a commission basis. The term shall not include any person who buys or sells cattle, bison, or dairy goats as a part of their own bona fide breeding, feeding, or dairy operation; is not engaged in negotiating the transfer of cattle, bison, or dairy goats; or receives cattle, bison, or dairy goats exclusively for immediate slaughter on the person's own premise.

"Eradication" means the complete elimination of bovine tuberculosis from cattle and bison in the state so that the disease does not appear unless introduced from another species or from outside the state.

"Exposed animals" means cattle, bison, or dairy goats that have been exposed to bovine tuberculosis by reason of associating with known tuberculous animals.

"Feedlot" means a confined dry lot area for the finish feeding of animals on a concentrated feed with no facilities for pasturing or grazing.

"Herd" means one or more cattle, bison, or dairy goats maintained on common ground or two (2) or more groups of cattle, bison, or dairy goats under common ownership or supervision that are geographically separated but can have an interchange or movement without regard to health status.

"Herd plan" means a herd management and testing plan designed by a state or federal regulatory veterinarian and the herd owner that will control and eventually eradicate bovine tuberculosis from an affected, adjacent, or exposed herd.

"High risk cattle" means cattle from countries, states, or areas that are not considered Bovine Tuberculosis free, including but not limited to, dairy cattle, exhibition cattle, rodeo cattle, and Mexican origin cattle.

"Mexican origin" means cattle that originate or have ever resided in Mexico.

"Modified Accredited Advanced State" means a state that is actively participating in the eradication of bovine tuberculosis and that maintains its status in accordance with the provisions of the USDA Uniform Methods and Rules for Bovine Tuberculosis Eradication.

"Modified Accredited State" means a state that is actively participating in the eradication of bovine tuberculosis and that maintains its status in accordance with the provisions of the USDA Uniform Methods and Rules for Bovine Tuberculosis Eradication.

"Natural additions" means animals born and raised in a herd.

"No Gross Lesion Animals" or **"NGL"** means any cattle, bison, or dairy goats that do not reveal a lesion of bovine tuberculosis upon postmortem inspection. Any animal with skin lesions alone shall be considered a NGL animal.

"Official in charge" means any manager, superintendent, secretary, or other person responsible for an exhibition.

"Official tuberculin test" means a test for tuberculosis conducted and reported by approved personnel in accordance with this Subchapter and the USDA Uniform Methods and Rules for bovine tuberculosis eradication. The official tuberculin tests are the caudal fold test, the comparative cervical test, the single cervical test, gamma interferon test, or any other test that is approved by the United States Department of Agriculture (USDA).

"Permit" means a VS 127 issued by an authorized agent of the State Board of Agriculture, a representative of USDA APHIS Veterinary Services or an accredited veterinarian that is required to accompany any reactor, suspect, or exposed animals to slaughter.

"Reactor" means any animal that may be classified as a reactor by the designated epidemiologist based on supplemental diagnostic tests results from approved laboratories or other information.

~~**"Restricted feedlot"** means a feedlot that has the ability to manage higher risk cattle in such a way as to assure they do not expose cattle in the feedlot that will not go directly to slaughter. A restricted feedlot must agree to identify high risk cattle and handle them in such a way as to prevent the exposure of other cattle and trace the high risk cattle in case of a disease traceback.~~

"Rodeo bulls" means sexually intact male cattle kept for the purposes of performances at rodeos, bucking events, exhibition purposes, or for breeding to produce rodeo bulls.

"**Suspect**" means any cattle, bison, or goats that show a response to the caudal fold tuberculin test and are not classified as reactors, and cattle, bison, or goats that are classified suspects by a comparative cervical test.

"**Tuberculin**" means a product that is approved by and produced under USDA license for injection into cattle, bison, or goats for the purpose of detecting bovine tuberculosis.

PART 3. GENERAL TUBERCULOSIS RULES

35:15-40-46. Quarantine procedures

(a) All herds with reactor animals shall be quarantined. Exposed animals shall remain on the premises where disclosed unless a state or federal permit is obtained. Movement for immediate slaughter shall be directly to an approved slaughtering establishment where state or federal inspection is administered. Animals shall be identified by official identification. Use of the "S" brand is required on cattle and bison or animals shipped in a sealed vehicle.

(b) Sale of feeder calves from quarantined herds shall be restricted. Feeder calves under twelve (12) months of age that have passed a caudal fold tuberculin test within sixty (60) days may be permitted to move intrastate to a ~~restricted~~ approved feedlot.

(c) Herds in which mycobacterium bovis infection is confirmed shall remain under quarantine if not depopulated and shall pass two tuberculin tests of intervals of at least sixty (60) days and one (1) additional test after one hundred eighty (180) days. All animals moved from the farm shall be shipped directly to slaughter and shall be accompanied by slaughter permit issued by a state or federal representative.

(d) Herds in which only NGL reactor(s) occur and in which no evidence of mycobacterium bovis infection is disclosed may be released from quarantine after a sixty (60) day negative caudal fold retest of the entire herd.

(e) Suspects in herds where only suspect animals are disclosed shall be quarantined on the premises until retested and classified negative or shipped directly to slaughter under permit. If an animal is slaughtered as a comparative cervical test reactor following two (2) CCT tests as a suspect and shows no gross lesions, results in an entire herd retest at sixty (60) days by caudal fold test and released from quarantine as in 35:15-40-46(d). If animals are slaughtered as suspects, but show no gross lesions, a sixty (60) day herd retest is recommended.

(f) Herds indicated as the source of slaughter trace back case investigations shall be placed under quarantine within thirty (30) days of notification, and a herd test scheduled.

(g) The issuance of a quarantine may be waived if the State Board of Agriculture or the State Veterinarian enters into a formal cooperative agreement with the affected party that will control and eradicate bovine tuberculosis.

35:15-40-49.1. Dairy cattle change of ownership

(a) All dairy cattle shall be individually identified with an official identification prior to change of ownership.

(b) Sexually intact dairy cattle six (6) months of age or older and weighing four hundred fifty (450) pound or more shall:

(1) Test negative for tuberculosis no more than sixty (60) days prior to a change in ownership;

(2) Be quarantined and test negative for tuberculosis within ten (10) days after the change of ownership date; or

(3) Originate from an accredited tuberculosis free herd.

(c) Any dairy cattle that do not meet the testing requirements in subsection (b) shall be tagged as slaughter only and sent either directly to slaughter or to a ~~restricted~~ approved feedlot.

(d) For purposes of this section, dairy cattle shall include typical dairy framed animals and dairy crossbred animals as determined by the inspecting veterinarian.

PART 7. IMPORT REQUIREMENTS

35:15-40-90. Requirements for cattle entering Oklahoma from a tuberculosis free state or zone

(a) Cattle that test positive for tuberculosis shall not enter Oklahoma.

(b) Cattle from herds quarantined for tuberculosis shall not enter Oklahoma.

(c) All dairy cattle shall be individually identified by official identification and accompanied by a certificate of veterinary inspection.

(1) Originate from a tuberculosis free herd;

(2) Test negative no more than sixty (60) days prior to entry with the results recorded on the certificate of veterinary inspection; or

(3) Be sent directly to slaughter or to a ~~restricted~~ approved feedlot.

35:15-40-90.1. Requirements for cattle entering Oklahoma from a modified accredited advanced state or zone

(a) Cattle that test positive for tuberculosis shall not enter Oklahoma.

(b) Cattle from herds quarantined for tuberculosis shall not enter Oklahoma.

(c) All cattle shall be accompanied by a permit number and a certificate of veterinary inspection that was approved by the Oklahoma State Veterinarian prior to entry into Oklahoma.

(d) Cattle or bison may move directly to slaughter at an approved slaughtering facility.

(e) Sexually intact heifers may move to a ~~restricted~~ approved feedlot.

(f) Steers or spayed heifers may move into Oklahoma so long as they meet one of the following:

(1) Cattle or bison are individually identified by an official identification and the cattle or bison:

(A) Are accompanied by the original certificate of veterinary inspection at all times;

(B) Are placed at a single location for grazing; and

(C) Are only removed from the single location directly to a ~~restricted~~ approved feedlot or directly to slaughter;

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(2) Cattle or bison enter on a state or federal identification number for the premise of origin and premise of destination with an approved Group Lot Number and the group lot:

- (A) Is accompanied by the original certificate of veterinary inspection at all times;
- (B) Is placed at a single location for grazing;
- (C) Remains as a group lot;
- (D) Does not commingle with other cattle or bison; and
- (E) Is only removed from the single location directly to a ~~restricted~~ approved feedlot or directly to slaughter; or

(3) Cattle or bison are individually identified by an official identification and test negative to an official tuberculosis test conducted within sixty (60) days prior to movement into Oklahoma.

(g) Cattle or bison from an accredited herd may enter Oklahoma with a certificate of veterinary inspection that includes complete herd tuberculosis negative test results within one (1) year prior to entry.

(h) Sexually intact cattle or bison, not from an accredited herd, shall be individually identified and accompanied by a certificate of veterinary inspection stating the cattle or bison tested negative to an official tuberculin test conducted within sixty (60) days prior to the date of movement.

(i) The state veterinarian may grant a variance to this section so long as the variance is consistent with federal law.

35:15-40-91. International importation of sexually intact cattle or bison

(a) All sexually intact cattle and bison from any foreign country or part thereof with a status less than Modified Accredited Advanced as compared to the UM&R standards of the U.S. Bovine Tuberculosis Eradication program and imported for reasons other than immediate slaughter or feeding for slaughter shall meet the following criteria:

- (1) Obtain a permit issued by the Oklahoma Department of Agriculture, Food, and Forestry prior to entry; and
- (2) Be quarantined to the premise approved in the entry permit pending two (2) consecutive negative tuberculosis tests, with the first test conducted not less than ninety (90) days nor more than 120 days after arrival and the second test conducted not less than 210 days nor more than 240 days after arrival in the state.

(b) All sexually intact cattle and bison from any foreign country or part thereof with no recognized tuberculosis status comparable to the UM&R standards of the U.S. Bovine Tuberculosis Eradication program of Modified Accredited Advanced or above and imported for immediate slaughter or feeding for slaughter shall meet the following criteria:

- (1) Obtain a permit issued by the Oklahoma Department of Agriculture, Food, and Forestry prior to entry; and
- (2) Be consigned direct to an approved slaughter establishment or ~~restricted~~ approved feedlot with no diversion from the permitted destination.

35:15-40-92. Mexican origin cattle

(a) Mexican origin steers and spayed heifers imported as stocker, feeder, slaughter animals may enter Oklahoma provided they test negative for tuberculosis in accordance with the Norma Oficial Mexicana (NOM) within sixty (60) days prior to entry into Oklahoma and a telephone entry permit providing the following information has been obtained prior to entering Oklahoma:

- (1) A certificate of veterinary inspection containing the individual identification and all tag numbers, tuberculosis testing information, statement that the animals are "Mexican Origin Cattle," and complete consignor or consignee information including telephone numbers; and
- (2) A VS 17-30 form.

(b) Mexican origin steers, spayed heifers, and any commingled cattle shall not be diverted from or separated from the main group within the stocker, feeder, slaughter channel.

(c) Mexican origin steers and spayed heifers shall not be commingled with any cattle other than stocker, feeder, slaughter cattle. Any commingled cattle assume the same status as the Mexican cattle.

(d) Holstein and Holstein-cross steers and spayed heifers from Mexico shall not enter Oklahoma regardless of test history.

(e) Mexican stocker, feeder, slaughter steers, and spayed heifers which are separated from their imported group shall:

- (1) Be accompanied by evidence of a negative tuberculosis test no more than sixty (60) days prior to a change in ownership;
- (2) Be quarantined and tested for tuberculosis within ten (10) days after the change of ownership date;
- (3) Be consigned to a ~~restricted~~ approved feedlot; or
- (4) Be tagged for slaughter only and transported directly to a slaughter facility or to a ~~restricted~~ approved feedlot.

(f) Mexican origin steers and spayed heifers and U.S. origin Corriente cattle utilized as rodeo stock prior to entry into Oklahoma shall obtain an entry permit, provide individual identification and all tag numbers, and be accompanied by a negative tuberculosis test that meets one of the following:

- (1) Performed by a U.S. accredited veterinarian within the previous 365 days; or
- (2) Performed in accordance with the Norma Oficial Mexicana (NOM), the animal is accompanied by a VS 17-30 form, and the animal is quarantined upon entry into Oklahoma until retested by a U.S. accredited veterinarian within sixty (60) to one hundred twenty (120) days of the original tuberculosis test.

(g) Mexican origin steers and spayed heifers and U.S. origin Corriente cattle utilized as rodeo stock moving within the state shall meet the following requirements:

- (1) Be accompanied by a negative tuberculosis test performed by an accredited veterinarian within the previous 365 days;
- (2) Be identified with an official identification; and
- (3) There is no change of ownership since the date of the last official test.

- (h) No sexually intact Mexican origin rodeo stock shall enter Oklahoma unless the animal is accompanied by documentation establishing that USDA requirements for entry of sexually intact Mexican cattle have been completed.
- (i) The official in charge of an event shall be responsible for verifying that all Mexican origin cattle utilized as rodeo stock entering any exhibition meet all testing requirements.
 - (1) The official in charge of an event shall not be held responsible for recording or accepting falsified or erroneous information provided by an owner.
 - (2) Any person providing erroneous or fictitious information shall be in violation of these rules.
- (j) Any official in charge of an event who knowingly, negligently, or willfully allows an untested or positive animal to enter an exhibition shall be in violation of these rules and the official in charge and the owner of the positive or untested animal shall be equally and individually in violation of these rules.
- (k) For the purposes of this section and OAC 35:15-40-92.1, "stocker, feeder, slaughter" means the steps of beef production in which cattle are grazed, finished at a ~~feed lot~~ an approved feedlot, and sent to a slaughter establishment.

35:15-40-92.1. Diversion or separation of Mexican origin cattle

If Mexican origin steers, spayed heifers, or any commingled cattle are diverted from or separated from the main group within the stocker, feeder, slaughter channel in violation of OAC 35:15-40-92(c), the diverted or separated cattle shall:

- (1) Have a negative tuberculosis test performed within ten (10) days after the change of ownership date; or
- (2) Be tagged as slaughter only and sent either directly to slaughter or to a ~~restricted~~ an approved feedlot.

SUBCHAPTER 47. CHRONIC WASTING DISEASE (CWD) IN CERVIDS

PART 3. HERD CERTIFICATION STANDARDS

35:15-47-6. Minimum requirements for herd certification

- (a) Regulations of the United States Department of Agriculture concerning the control of CWD found at 9 CFR Part 55 (~~2015~~2016 Revision) are adopted by reference.
- (b) The Board shall issue a quarantine on any herd that contained a CWD positive cervid. The quarantined herd shall not participate in the herd certification program until all herd plan requirements are completed.
- (c) All deaths of cervids twelve (12) months of age or older, regardless of cause of death, shall have the obex and medial retropharyngeal lymph nodes sampled and submitted to an approved laboratory by a certified CWD sample collector. CWD sample collectors shall submit written test results to the Department within seven (7) days after receiving said test results from the laboratory.

- (d) If eligible animal deaths are not tested due to a missed sample, improper sample, or untestable sample, an additional live animal over twelve (12) months of age shall be sacrificed for sampling, status suspended, status decreased, or combination thereof.
- (e) Freezing animal heads or other acts that delay or inhibit quality sampling and testing may result in the suspension, decrease, or loss of CWD status.
- (f) The State Veterinarian may relax the minimum requirements for herd certification for extraordinary circumstances.
- (g) Herd owners shall report any animals displaying clinical signs of CWD, which may include but are not limited to, weight loss, behavioral changes, excessive salivation, increased drinking and urination, and depression.
- (h) Herd owners shall complete an annual herd inventory with an approved veterinarian during the dates assigned by the Department.

SUBCHAPTER 49. MISCELLANEOUS ANIMAL DISEASES

35:15-49-3. Separation requirements

- (a) Any person holding female wildebeest within Oklahoma shall maintain ~~sufficient~~ 0.5 miles separation, or another safe distance as determined by the State Veterinarian, of all wildebeest, including male and female, from cervidae, bovidae, giraffidae, and antilocapridae.
- (b) If wildebeest were legally occupants of a premises prior to another owner locating other livestock within the 0.5 mile radius, the new livestock owner shall maintain the livestock at his own risk.
- ~~(bc) In no case shall any~~ No person holding wildebeest shall allow any of the above listed species to be held in any enclosure sharing a common fence with wildebeest.
- ~~(ed)~~ The requirements of this rule shall not be applicable to any zoological park licensed by USDA APHIS Animal Care.

[OAR Docket #17-571A; filed 7-7-17]

**TITLE 35. OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY
CHAPTER 30. CONSUMER PROTECTION**

[OAR Docket #17-570A]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 6. Emerald Ash Borer Quarantine [NEW]
 - 35:30-6-1. Establishment of quarantine [NEW]
 - 35:30-6-2. Regulated area [NEW]
 - 35:30-6-3. Regulated articles [NEW]
 - 35:30-6-4. Conditions governing movement [NEW]
 - 35:30-6-5. Movement for scientific purposes [NEW]
- Subchapter 17. Combined Pesticide
 - Part 3. Certification, Conduct of Examinations, and Recertification
 - 35:30-17-5.1. Examination applicant requirements [NEW]
 - 35:30-17-5.2. Prohibited at the examination site [NEW]
 - 35:30-17-6. Recertification [AMENDED]

Permanent Final Adoptions

Part 6. Pesticidal Product Producing Establishments
35:30-17-13. Incorporation by reference of federal pesticide producing establishment regulations [AMENDED]
Part 8. Pesticide Registrations and Permits
35:30-17-18. Dealer permits [AMENDED]
Part 15. Minimum Standards for Termite Work for Existing Structures
35:30-17-54. Minimum standards for termite work [AMENDED]
35:30-17-69.2. Exceptions to minimum standards [AMENDED]
Part 21. Standards for Disposal of Pesticide and Pesticide Containers
35:30-17-89.1. Incorporation by reference of federal pesticide management and disposal regulations [AMENDED]

AUTHORITY:

Okla. Const., Art. 6, § 31; State Board of Agriculture; 2 O.S. §2-4(A)(2); and 2 O.S. § 3-81 et seq.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

November 1, 2016

COMMENT PERIOD:

December 1, 2016 through January 5, 2017

PUBLIC HEARING:

January 5, 2017

ADOPTION:

January 24, 2017

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

February 3, 2017

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 13, 2017.

FINAL ADOPTION:

June 13, 2017

EFFECTIVE:

September 11, 2017

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

Incorporated Standards:

40 CFR (2016 Revision) Part 167 et seq. excluding § 167.90, Part 169, Part 156.140 et seq. and Part 165 et seq.

Incorporating Rules:

35:30-17-30 and 35:30-17-89.1.

Availability:

See contact person below.

GIST/ANALYSIS:

The proposed amendments update citations to the Code of Federal Regulations, establish a quarantine for emerald ash borer, prohibit cheating on certification examinations, limit credit for continuing education units to five years, and establish an annual expiration date of pesticide registrations and permits.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 6. EMERALD ASH BORER QUARANTINE

35:30-6-1. Establishment of quarantine

The State Board of Agriculture does hereby establish a quarantine for emerald ash borer, *Agrilus planipennis*.

35:30-6-2. Regulated area

Regulated articles from Delaware County, Oklahoma, and any other counties, states or foreign country known to be infested with emerald ash borer shall be quarantined.

35:30-6-3. Regulated articles

The following shall be regulated pursuant to this quarantine:

- (1) Emerald ash borer, *Agrilus planipennis*;
- (2) Firewood of all hardwood (non-coniferous) tree species;
- (3) Nursery stock, green lumber, and other living, dead, cut, or fallen material, including logs, stumps, roots, branches, mulch, and both composted and uncomposted chips of the genus *Fraxinus* (ash); and
- (4) Any other article, product, or means of conveyance not listed in this section may be designated as a regulated if determined by the Oklahoma Department of Agriculture, Food, and Forestry to present a risk of spreading emerald ash borer.

35:30-6-4. Conditions governing movement

- (a) All regulated articles originating from quarantined areas shall be prohibited entry to any destination outside the quarantined area.
- (b) Regulated articles originating in an area not known to have emerald ash borer but transiting through an area known to have emerald ash borer shall be considered to be regulated articles. The point of origin shall be indicated on shipping documents and accompanied by a certificate of inspection for this pest.

35:30-6-5. Movement for scientific purposes

Interstate and intrastate movement of regulated articles and all living stages of the emerald ash borer, *Agrilus planipennis*, for scientific or experimental purposes shall only move under a compliance agreement and scientific permit.

SUBCHAPTER 17. COMBINED PESTICIDE

PART 3. CERTIFICATION, CONDUCT OF EXAMINATIONS, AND RECERTIFICATION

35:30-17-5.1. Examination applicant requirements

- (a) Examinations shall not be administered until the applicant provides the following documents to the testing proctor:
 - (1) A completed and signed Record of Testing on a form provided by the Department;
 - (2) A valid photo identification (ID); and
 - (3) Payment of the appropriate testing fee or proof of payment issued by the Department.
- (b) Applicants shall re-sign the official roster upon completion of the examination and return testing materials and any scratch paper to the testing proctor. Applicants that fail to

re-sign the official roster and return testing materials or scratch paper shall receive a failing grade and may be subject to further administrative action.

35:30-17-5.2. Prohibited at the examination site

(a) Cheating is prohibited. Cheating shall include, but is not limited to, talking to other applicants during the examination, looking at other applicants answer sheet, or using reference materials that are not provided by the testing proctor.

(b) Applicants shall not physically possess or have access to the following items while testing:

- (1) Cell phones or other electronic devices;
- (2) Study materials of any kind; or
- (3) Books, notebooks, or paper of any kind unless provided by the testing proctor.

(c) Applicants shall not engage in conversations, disruptions, or conduct that might disturb other applicants.

(d) Applicants shall not copy, record, or reproduce exam booklets or examination questions.

(e) Any person found in violation of this section shall receive a failing grade and may be subject to further administrative action.

35:30-17-6. Recertification

(a) Each certified applicator shall seek recertification every five (5) years.

(b) A certified applicator shall either pass a written examination or earn a specified number of Continuing Education Units (CEU) approved by the Department to successfully complete recertification. Approximately one (1) hour of education shall be the equivalent of one (1) CEU. The CEU requirements for each category are as follows:

- (1) 1a - Agricultural Plant:
 - (A) Total in five years - 20 CEU
 - (B) Maximum in any one year - 10 CEU
- (2) 1b - Agricultural Animal:
 - (A) Total in five years - 5 CEU
 - (B) Maximum in any one year - 2 CEU
- (3) 2 - Forest:
 - (A) Total in five years - 10 CEU
 - (B) Maximum in any one year - 5 CEU
- (4) 3a - Ornamental and Turf Outdoor:
 - (A) Total in five years - 20 CEU
 - (B) Maximum in any one year - 10 CEU
- (5) 3b - Interiorscape:
 - (A) Total in five years - 10 CEU
 - (B) Maximum in any one year - 5 CEU
- (6) 3c - Nursery/Greenhouse:
 - (A) Total in five years - 15 CEU
 - (B) Maximum in any one year - 7 CEU
- (7) 4 - Seed Treatment:
 - (A) Total in five years - 5 CEU
 - (B) Maximum in any one year 2 CEU
- (8) 5 - Aquatic:
 - (A) Total in five years - 5 CEU
 - (B) Maximum in any one year 2 CEU
- (9) 6 - Right-of-Way:
 - (A) Total in five years - 15 CEU
 - (B) Maximum in any one year 7 CEU

- (A) Total in five years - 15 CEU
- (B) Maximum in any one year 7 CEU
- (10) 7a - General Pest:
 - (A) Total in five years - 20 CEU
 - (B) Maximum in one year - 10 CEU
- (11) 7b - Structural Pest:
 - (A) Total in five years - 20 CEU
 - (B) Maximum in one year - 10 CEU
- (12) 7c - Fumigation:
 - (A) Total in five years - 10 CEU
 - (B) Maximum in one year - 5 CEU
- (13) 7d - Food Processing:
 - (A) Total in five years - 15 CEU
 - (B) Maximum in one year - 7 CEU
- (14) 8 - Public Health:
 - (A) Total in five years - 15 CEU
 - (B) Maximum in one year - 7 CEU
- (15) 9 - Regulatory:
 - (A) Total in five years - 10 CEU
 - (B) Maximum in one year - 5 CEU
- (16) 10 - Demonstration & Research in app. Category:
 - (A) Total in five years - 20 CEU
 - (B) Maximum in one year - 10 CEU
- (17) 11a - Bird & Vertebrate Animal Pest:
 - (A) Total in five years - 5 CEU
 - (B) Maximum in one year - 2 CEU
- (18) 11b - Predatory Animal
 - (A) Total in five years - 5 CEU
 - (B) Maximum in one year - 2 CEU
- (19) 12 - Timber Treating (all subcategories):
 - (A) Total in five years - 5 CEU
 - (B) Maximum in one year - 2 CEU
- (20) 13 - Antimicrobial:
 - (A) Total in five years - 5 CEU
 - (B) Maximum in any one year - 2 CEU
- (21) 14 - Specialty Category:
 - (A) Total in five years - 5 CEU
 - (B) Maximum in any one year - 2 CEU
- (22) 15 - Aerial:
 - (A) Total in five years - 5 CEU
 - (B) Maximum in any one year - 2 CEU

(c) No more than one-half (1/2) of the total credit units shall be accepted for any one (1) calendar year.

- (1) Credit units shall be obtained in at least three (3) of the five (5) years, in any combination, so that the total number obtained equals or exceeds the five (5) year requirement.
- (2) The continuing education units may be prorated for any applicator whose recertification period is less than five (5) years.
- (3) The Department may allow a CEU to be credited to more than one (1) category.

(d) The CEU shall be structured to provide the following information over the five (5) year period:

- (1) Laws and rules;
- (2) Pesticides (formulations, registration, labeling and label comprehension, handling and storage, toxicity, and hazards);

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- (3) Application equipment and calibration;
 - (4) Pests and IPM;
 - (5) Identification of hazardous areas;
 - (6) Drift prevention;
 - (7) Endangered species;
 - (8) Groundwater; and
 - (9) Worker protection.
- (e) Any person may request approval of an education program as CEU.
- (1) The request for approval shall include the following:
 - (A) A list of proposed topics including a description of the content and their relative value for meeting the standards of continuing certification;
 - (B) A list of speakers and their qualifications; and
 - (C) Method used to verify attendance and evaluate the progress of participants.
 - (2) The Department and the Oklahoma State University Pesticide Coordinator shall review the request for approval to determine if it meets the criteria of CEU.
 - (A) If the education program is approved for CEU, the person requesting approval shall be notified of the number of assigned CEU.
 - (B) Awarded CEUs shall not be valid for more than five (5) years after the date of approval. After five (5) years, courses shall be resubmitted for review and approval.
 - (C) The person requesting approval may appeal the number of assigned CEU to a three-person review committee with a representative from each of the following:
 - (i) Oklahoma State University;
 - (ii) the Department; and
 - (iii) certified applicators.

PART 6. PESTICIDAL PRODUCT PRODUCING ESTABLISHMENTS

35:30-17-13. Incorporation by reference of federal pesticide producing establishment regulations

- (a) The Registration of Pesticide and Active Ingredient Producing Establishments, Submission of Pesticide Reports and Books and Records of Pesticide Production and Distribution Regulations found in Title 40 of the Code of Federal Regulations (CFR) (~~2015~~2016 Revision), Part 167 et seq. and Part 169 et seq. for the United States Environmental Protection Agency (EPA) as promulgated and amended in the Federal Register, are hereby adopted in their entirety with the exception of 40 CFR § 167.90.
- (b) All words or terms defined or used in the Federal regulations incorporated by reference shall mean the state equivalent or counterpart to those words or terms.

PART 8. PESTICIDE REGISTRATIONS AND PERMITS

35:30-17-18. Dealer permits

- (a) Dealer permits shall be issued for a period of one (1) year and shall expire annually ~~as follows: on December 31 of each year.~~
- (1) ~~Companies whose name begins with the letters A, B, C, D, E, & F shall expire on March 31st of each year (group 1).~~
 - (2) ~~Companies whose name begins with the letters G, H, I, J, K, L, & M shall expire on June 30th of each year (group 2).~~
 - (3) ~~Companies whose name begins with the letters N, O, P, Q, R, & S shall expire on September 30th of each year (group 3).~~
 - (4) ~~Companies whose name begins with the letters T, U, V, W, X, Y, & Z shall expire on December 31st of each year (group 4).~~
- (b) Dealer permit applications must be received no later than the fifteenth day of the month following the date of expiration.

PART 15. MINIMUM STANDARDS FOR TERMITE WORK FOR EXISTING STRUCTURES

35:30-17-54. Minimum standards for termite work

The minimum standards for termite work at existing structures shall be followed, unless the exceptions contained in Section ~~35:30-17-70~~35:30-17-69.2 apply.

35:30-17-69.2. Exceptions to minimum standards

- (a) Exceptions to minimum standards for a complete treatment shall include the following:
- (1) The property owner agrees with the written explanation in the contract as to why the standard was not performed. Sections 35:30-17-66 and 35:30-17-69 shall in no case be written out of the contract; ~~or and~~
 - (2) The termiticide label specifically allows for a variation and the variation is stated in the contract.
- (b) Exceptions to minimum standards for a spot or partial treatment shall include the following:
- (1) The property owner agrees with the written explanation in the contract as to why the standard is not performed, or the termiticide label specifically allows for a variation and the variation is stated in the contract. Sections 35:30-17-66 and 35:30-17-69 shall in no case be written out of the contract.
 - (2) The contract shall include the statement, "This is a SPOT/PARTIAL treatment," or otherwise clearly convey that the treatment is not a complete termite treatment.
 - (3) The contract shall specifically identify the exact location where the spot treatment is performed and the treatment shall meet all minimum standards for the specific location identified. The identified spot treatment location shall not be equal to the entire structure.
 - (4) The contract shall not contain any misrepresentations or false claims regarding the effectiveness of a spot or partial treatment.
- (c) The Board of Agriculture may grant an exception to existing rules or minimum standards if:

- (1) The registered pesticide allows for the use or application method that is currently prohibited under rule or minimum standards; and
- (2) The manufacturer provides verifiable research data to the Board concerning the efficacy of the chemical or methodology.

PART 21. STANDARDS FOR DISPOSAL OF PESTICIDE AND PESTICIDE CONTAINERS

35:30-17-89.1. Incorporation by reference of federal pesticide management and disposal regulations

- (a) The Labeling Requirements for Pesticides and Devices, Container Labeling and Pesticide Management and Disposal regulations found in Title 40 of the Code of Federal Regulations (CFR) (~~2015~~2016 Revision), Part 156.140 et seq. and Part 165 et seq. for the United States Environmental Protection Agency (EPA) as promulgated and amended in the Federal Register, are hereby adopted in their entirety.
- (b) All words or terms defined or used in the federal regulations incorporated by reference shall mean the state equivalent or counterpart to those words or terms.

[OAR Docket #17-570A; filed 7-7-17]

**TITLE 35. OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY
CHAPTER 37. FOOD SAFETY**

[OAR Docket #17-569A]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 3. Meat Inspection
 - Part 1. General Provisions
 - 35:37-3-1. Incorporation by reference of federal meat inspection regulations [AMENDED]
- Subchapter 5. Poultry Products Inspection
 - Part 1. General Provisions
 - 35:37-5-1. Definitions and incorporation by reference of federal poultry inspection regulations [AMENDED]
 - 35:37-5-2. Deleted regulations and exemptions [AMENDED]
- Subchapter 7. Construction Standards for Meat Packing Plants
 - Part 1. Description of Plans and Specifications Required
 - 35:37-7-1. Submission of plans [AMENDED]
 - 35:37-7-2. Plot plan [AMENDED]
 - 35:37-7-3. Floor plans [AMENDED]
 - 35:37-7-4. Plumbing plan [AMENDED]
 - 35:37-7-5. Rearrangement of operations or activities [AMENDED]
 - 35:37-7-6. Approval of plans and specifications [AMENDED]
 - 35:37-7-7. Changes and revisions [AMENDED]
 - 35:37-7-8. Use of competent architect or engineer [AMENDED]
 - Part 3. Location of Establishments [REVOKED]
 - 35:37-7-9. Site [REVOKED]
 - 35:37-7-10. Accessibility [REVOKED]
 - 35:37-7-11. Separation [REVOKED]
 - 35:37-7-12. Retail business on premises [REVOKED]
 - 35:37-7-13. Expansion [REVOKED]
 - 35:37-7-14. Inedible products departments and grease catch basins [REVOKED]

- Part 5. Water Supply, Plant Drainage, and Sewage Disposal System [REVOKED]
 - 35:37-7-15. Potable water supply [REVOKED]
 - 35:37-7-16. Nonpotable water supply [REVOKED]
 - 35:37-7-17. Vacuum breakers [REVOKED]
 - 35:37-7-18. Plant waste disposal [REVOKED]
 - 35:37-7-19. Disposal of paunch contents, hog hair, feathers, blood, and similar waste material [REVOKED]
 - 35:37-7-20. Acceptance of plant waste system [REVOKED]
 - 35:37-7-21. Catch basins for grease recovery [REVOKED]
 - 35:37-7-22. Plant drainage [REVOKED]
- Part 7. Plant Construction [REVOKED]
 - 35:37-7-23. Minimum requirements [REVOKED]
 - 35:37-7-24. Materials [REVOKED]
 - 35:37-7-25. Floors [REVOKED]
 - 35:37-7-26. Coves [REVOKED]
 - 35:37-7-27. Interior walls [REVOKED]
 - 35:37-7-28. Ceilings [REVOKED]
 - 35:37-7-29. Window ledges [REVOKED]
 - 35:37-7-30. Doorways and doors [REVOKED]
 - 35:37-7-31. Screens and insect control [REVOKED]
 - 35:37-7-32. Rodent proofing [REVOKED]
 - 35:37-7-33. Interior woodwork [REVOKED]
 - 35:37-7-34. Stairs [REVOKED]
 - 35:37-7-35. Lighting [REVOKED]
 - 35:37-7-36. Ventilation [REVOKED]
 - 35:37-7-37. Refrigeration [REVOKED]
 - 35:37-7-38. Equipment [REVOKED]
- Part 11. Hand Washing Facilities, Sterilizers, Drinking Fountains, and Connections for Cleanup Hoses [REVOKED]
 - 35:37-7-39. Lavatories [REVOKED]
 - 35:37-7-40. Sanitizers [REVOKED]
 - 35:37-7-41. Drinking fountains [REVOKED]
 - 35:37-7-42. Hose connections [REVOKED]
 - 35:37-7-43. Location of facilities [REVOKED]
- Part 13. Facilities for Processing Edible Product [REVOKED]
 - 35:37-7-44. Size of departments [REVOKED]
 - 35:37-7-45. Flow of operations [REVOKED]
 - 35:37-7-46. Perishable product departments [REVOKED]
 - 35:37-7-47. Freezers [REVOKED]
 - 35:37-7-48. Incubation room for canned product [REVOKED]
 - 35:37-7-49. Dry storage space for supplies [REVOKED]
 - 35:37-7-50. Truckways within the plant [REVOKED]
 - 35:37-7-51. Vehicular areas for trucks and railroad track gutters [REVOKED]
- Part 15. Design, Equipment, and Operation of Meat and Poultry Slaughtering Departments and Related Areas [REVOKED]
 - 35:37-7-52. Meat [REVOKED]
 - 35:37-7-53. Poultry [REVOKED]
 - 35:37-7-54. Facilities for handling animal or fish food [REVOKED]
 - 35:37-7-55. Facilities for handling meat and poultry inedible and condemned materials [REVOKED]
- Part 17. Required Cattle Slaughtering Facilities [REVOKED]
 - 35:37-7-56. Cattle dressing layouts [REVOKED]
 - 35:37-7-57. Requirements for various types of cattle slaughtering layouts [REVOKED]
 - 35:37-7-58. Requirements for double-rail and single-rail hang-off dressing systems [REVOKED]
 - 35:37-7-59. Requirements for "on-the-rail" dressing systems [REVOKED]
 - 35:37-7-60. Viscera inspection facilities [REVOKED]
- Part 19. Required Sheep, Goat, and Calf Slaughtering Facilities [REVOKED]
 - 35:37-7-61. Bleeding rail [REVOKED]
 - 35:37-7-62. Dressing rails [REVOKED]
 - 35:37-7-63. Dressing space and operations [REVOKED]
 - 35:37-7-64. Calf washing facilities [REVOKED]
 - 35:37-7-65. Calf head handling facilities [REVOKED]
 - 35:37-7-66. Carcass washing facilities [REVOKED]
 - 35:37-7-67. Viscera, head, and carcass inspection facilities [REVOKED]
 - 35:37-7-68. Floor drainage [REVOKED]
- Part 21. Required Hog Slaughtering Facilities for Large Plants that Scald Hogs [REVOKED]
 - 35:37-7-69. Location of certain operations [REVOKED]

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- 35:37-7-70. Scalding vat [REVOKED]
- 35:37-7-71. Space for operations and truckways [REVOKED]
- 35:37-7-72. Floor drainage [REVOKED]
- 35:37-7-73. Shaving and carcass washing facilities [REVOKED]
- 35:37-7-74. Inspection facilities needed for very large slaughter layouts [REVOKED]
- Part 23. Required Hog Slaughtering Facilities for Small Plants [REVOKED]
- 35:37-7-75. General specifications [REVOKED]
- Part 25. Required Poultry Slaughtering Facilities [REVOKED]
- 35:37-7-76. Eviscerating and chilling areas [REVOKED]
- 35:37-7-77. Conveyors [REVOKED]
- 35:37-7-78. Facilities for processing giblets [REVOKED]
- 35:37-7-79. Facilities for handling inedible offal [REVOKED]
- 35:37-7-80. Semi-dry poultry offal system [REVOKED]
- Part 27. Welfare Facilities for Plant Employees [REVOKED]
- 35:37-7-81. Dressing rooms and equipment [REVOKED]
- 35:37-7-82. Lockers [REVOKED]
- 35:37-7-83. Shower-bath facilities [REVOKED]
- 35:37-7-84. Toilet rooms [REVOKED]
- 35:37-7-85. Handwashing facilities [REVOKED]
- 35:37-7-86. Ventilation of welfare rooms [REVOKED]
- 35:37-7-87. Lunch facilities [REVOKED]
- 35:37-7-88. Welfare facilities for employees working in inedible product areas [REVOKED]
- Part 29. Inspector's Office and Welfare Facilities [REVOKED]
- 35:37-7-89. General [REVOKED]
- 35:37-7-90. Dressing facilities [REVOKED]
- 35:37-7-91. Toilet room [REVOKED]
- 35:37-7-92. Shower-bath facilities [REVOKED]
- 35:37-7-93. Lighting and ventilation [REVOKED]
- Part 31. Suggested Notes on Specifications to Accompany Drawings [REVOKED]
- 35:37-7-94. Use of suggested notes [REVOKED]
- 35:37-7-95. Building construction [REVOKED]
- 35:37-7-96. Water supply, plumbing, drainage, and refrigeration [REVOKED]
- 35:37-7-97. Equipment [REVOKED]
- 35:37-7-98. Operations [REVOKED]
- 35:37-7-99. General [REVOKED]

AUTHORITY:

Okl. Const., Art. 6, § 31; State Board of Agriculture; 2 O.S. § 2-4(A)(2); 2 O.S. 6-181 et seq.; and 2 O.S. § 6-251 et seq.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

November 1, 2016

COMMENT PERIOD:

December 1, 2016 through January 5, 2017

PUBLIC HEARING:

January 5, 2017

ADOPTION:

January 24, 2017

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

February 3, 2017

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 13, 2017

FINAL ADOPTION:

June 13, 2017

EFFECTIVE:

September 11, 2017

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

Incorporated Standards:

9 CFR (2016 Revision) Parts 301 to 391; 416; 417; 418; 424; 430; 441; 442 and 500 excluding §§ 302.2; 303.1(c); 304.1; 304.2(a); 304.2(c); 305.2(b); 307.4; 307.5; 307.6; 316.12; 316.13(c); 317.5; 317.7; 317.9; 317.13; 318.8; 318.12; 321; 322; 327; 329; 331; 335; 351; 352; 354; 355; 362; 381; 381.6; 381.10(a)(2), (5), (6), and (7); 381.10(b); 381.10(d)(2)(i); 381.13(b); 381.16; 381.17; 381.20; 381.21; 381.37; 381.38; 381.39; 381.96; 381.101; 381.103 through 381.112; 381.123(b)(1) and (4); 381.132(c); 381.133; 381.179; 381.185; 381.186; and 381.195 through 381.225; 390; 391; 392; 412; 439; and 590.

Incorporating Rules:

35:37-3-1, 35:37-3-3, 35:37-5-1, and 35:37-5-2.

Availability:

See contact person below.

GIST/ANALYSIS:

The proposed amendments update citations to the Code of Federal Regulations and revise construction standards for meat packing plants by updating contact information, reduce paperwork submitted during the approval process, make minor grammatical corrections, and delete unnecessary or outdated regulations.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 3. MEAT INSPECTION

PART 1. GENERAL PROVISIONS

35:37-3-1. Incorporation by reference of federal meat inspection regulations

The Mandatory Meat Inspection Regulations found in Title 9 of the Code of Federal Regulations (CFR) (~~2015~~2016 Revision), Parts 301 to 391; 416; 417; 418; 424; 430; 441; 442 and 500 for the United States Department of Agriculture (USDA) as promulgated and amended in the Federal Register, are hereby adopted in their entirety with the exception of the deleted regulations specified in 35:37-3-3. Whenever an official mark, form, certificate or seal is designated by federal regulations, the appropriate Oklahoma Department of Agriculture, Food, and Forestry form, certificate or seal shall be substituted.

SUBCHAPTER 5. POULTRY PRODUCTS INSPECTION

PART 1. GENERAL PROVISIONS

35:37-5-1. Definitions and incorporation by reference of federal poultry inspection regulations

(a) The Mandatory Poultry Inspection Regulations found in Title 9 of the Code of Federal Regulations (CFR) (~~2015~~2016 Revision), Parts 381; 416; 417; 418; 424; 430; 441; 442; and 500 for the United States Department of Agriculture (USDA) as promulgated and amended in the Federal Register, are hereby adopted in their entirety with the exception of the deleted regulations specified in 35:37-5-2. Whenever an official mark, form, certificate or seal is designated by federal

regulations, the appropriate Oklahoma Department of Agriculture, Food, and Forestry mark, form, certificate or seal shall be substituted.

(b) All words and terms defined or used in the federal regulations incorporated by reference by the Department shall mean the state equivalent or counterpart to those words or terms.

(c) The following terms, when used in this subchapter, shall have the following meaning unless the context clearly indicates otherwise:

- (1) **"Act"** means the Oklahoma Poultry Products Inspection Act.
- (2) **"Director"** means the Director of Meat Inspection.
- (3) **"Poultry"** means any domesticated bird, whether live or dead, including chickens, turkeys, ducks, geese, guineas, ratites, or squabs (also known as young pigeons from one to about thirty (30) days of age).
- (4) **"Poultry product"** means any poultry carcass, part, or product made wholly or in part from any poultry carcass or part that can be used as human food, except those exempted from definition as a poultry product in Title 9 of the Code of Federal Regulations (CFR), Part 381.15. This term shall not include detached ova.
- (5) **"Poultry byproduct"** means the skin, fat, gizzard, heart, or liver, or any combination of any poultry for cooked, smoked sausage.

35:37-5-2. Deleted regulations and exemptions

(a) The following sections of the Federal regulations governing the mandatory poultry inspection (9 CFR Parts 381; 416; 417; 418; 424; 441; 442; and 500), (20152016 Revision) of the USDA incorporated by reference under 35:15-27-1 are deleted and are not rules of the Oklahoma Department of Agriculture, Food, and Forestry: 381.6; 381.10(a)(2), (5), (6), and (7); 381.10(b); 381.10(d)(2)(i); 381.13(b); 381.16; 381.17; 381.20; 381.21; 381.37; 381.38; 381.39; 381.96; 381.101; 381.103 through 381.112; 381.123(b)(1) and (4); 381.132(c); 381.133; 381.179; 381.185; 381.186; and 381.195 through 381.225.

(b) The provisions of this Act and rules do not apply to poultry producers who slaughter their own poultry raised on their farm, and each of the following apply:

- (1) The producers slaughter no more than two hundred and fifty (250) turkeys or their equivalent with a ratio of four (4) birds of other species, excluding ratites, to one (1) turkey during a calendar year;
- (2) The producers do not engage in buying or selling poultry products other than those produced from poultry raised on their own farms;
- (3) The poultry and poultry products do not move in commerce. Poultry producers are prohibited from selling or donating uninspected poultry products to retail stores, brokers, meat markets, schools, orphanages, restaurants, nursing homes, and other similar establishments and are prohibited from sales or donation of uninspected poultry through any type of retail market or similar establishment owned or operated by the poultry producer;
- (4) The producers submit a certificate of registration to the Board;

(5) The poultry is healthy, the poultry is slaughtered and processed under sanitary standards, practices, and procedures that result in the preparation of poultry products that are sound, clean, and fit for human food, and each carcass, part, or poultry product bears a label that lists the customer's name, the producer's name, and the following statement, "This poultry product has not been inspected and passed;"

(6) The poultry is sold directly to the household consumer and transported by either the household consumer or the poultry producer without third-party intervention or intervening transfer or storage, and is maintained in a safe and unadulterated condition during transportation; and

(7) The poultry producers, allow an authorized agent of the Board access to their facilities and an opportunity to examine records at all reasonable times upon notice.

SUBCHAPTER 7. CONSTRUCTION STANDARDS FOR MEAT PACKING PLANTS

PART 1. DESCRIPTION OF PLANS AND SPECIFICATIONS REQUIRED

35:37-7-1. Submission of plans

(a) ~~Three (3)~~ Two (2) sets of drawings with separate specification sheets that fully and clearly illustrate and describe the applicant's plans for constructing and equipping the plant for inspection ~~must~~ shall be submitted to: Oklahoma Department of Agriculture, Food, & Forestry, Food Safety Division, Meat Inspection Services, ~~2800 N. Lincoln Boulevard~~ P.O. Box 528804, Oklahoma City, Oklahoma 73105-4298 ~~73152-8804~~.

~~For custom and/or retail exempt plants, only two (2) sets of drawings and specification sheets are required. This procedure~~ Submission of drawings is required for a new plant and for changing or modifying an existing plant. Plans should be reviewed and given an initial approval by the District or Circuit Supervisor prior to submission to the Oklahoma City office for final approval. The appropriate District or Circuit Supervisor ~~will~~ shall be identified to the applicant when he or she ~~the~~ applicant makes initial contact with the Oklahoma City office.

(b) The name and address of the applicant ~~must~~ shall be shown on each sheet of drawings. ~~The sheets on which prints~~ Prints or drawings are ~~made~~ should shall not exceed 34 by 44 inches.

(c) ~~It is essential for the lines~~ Lines on the drawings ~~to~~ shall be sharp and clear and all writing ~~to~~ shall be legible.

(d) The required specification sheets which accompany the drawings ~~should~~ shall identify such features as the finish of the floors, walls, and ceilings; the source of the water supply; method of sewage disposal; method of controlling rodents and vermin; description of the trapping and venting of drainage lines; description of the hot water system, means to dispel steam and vapor in work rooms; screens for other openings to prevent admittance of flies; ~~as well as~~ and other important features. The specifications should be typewritten on 8 1/2 by 11 inch sheets and organized into sets.

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35:37-7-2. Plot plan

(a) The plot plan ~~must~~shall show the entire premises. ~~This should~~The plot plan shall include the location of ALL buildings, railroad sidings, roadways, ~~and~~ alleys adjoining the plant, ~~as well as all~~ streams, catch basins, water wells, routing of sewer lines on premises, and storage tanks. If buildings exist on adjoining property, ~~their~~the height and use ~~of buildings should~~shall be indicated. The character and surfacing of roadways, driveways, streets, ~~and the paving of~~ vehicular loading areas and alleys ~~should~~shall be indicated. The north point of the compass ~~is to~~shall be shown.

(b) ~~A~~Plot plans shall be drawn in a scale of not less than 1/32 inch-per-foot is required for plot plans. Extremely large plants may be exempted from this scale requirement only to the extent necessary to fit the plot plan on the maximum allowable size sheet of 34 by 44 inches

35:37-7-3. Floor plans

(a) A floor plan ~~must~~shall be submitted for each entire floor of the establishment. Each floor plan ~~must~~shall accurately illustrate the facilities as they will exist when the establishment is actually in operation. Most floor plans should be scaled 1/8 inch-per-foot. However, complicated layouts such as large slaughtering departments, hog cutting departments, and large sausage kitchens ~~will need to~~shall be scaled 1/4 inch-per-foot so that necessary details can be clearly illustrated. Very large floor plans ~~can~~may be divided into two or more sheets by using a key to show how the sheets relate to each other.

(b) ~~The~~Floor plans shall show essential features ~~to show on floor plans are~~including locations of walls, partitions, posts, doorways, windows, floor drainage openings, ~~and~~ gutters, rail systems for conveying carcasses, principal pieces of equipment (also include platforms, tables, etc.), hot and cold water hose connections, hand-washing facilities, pipelines for moving product or product ingredients, lockers and benches, toilets, urinals, shelves, ~~and~~ racks, chutes, conveyors, ventilation fans, ramps, and stairways.

(c) Floor plans for poultry plants ~~should~~shall also show the point at which live poultry is hung on the conveyor line, the point at which dressed poultry is removed, the point of transfer of dressed poultry to the eviscerating line, and the routes of the edible and inedible products.

(d) In addition to the drawing features, the floor plans ~~must~~shall include the name and use of each room, number of employees using each welfare and toilet room, room temperature (for coolers, freezers, processing areas, etc.), height of rails, height of all work platforms, and height of inspection tables. The rooms or areas illustrated on the drawings that will not be part of the official establishment ~~must~~shall be clearly marked as such.

(e) The pitch of floors to floor drains or drainage gutters ~~must~~shall be indicated by either grade lines or arrows noting the direction of the pitch.

35:37-7-4. Plumbing plan

The plumbing plan of the floor drainage system and the toilet soil lines ~~must~~shall be shown for the entire plant, ~~and~~

~~the~~The size of the drainage lines ~~shown~~and the toilet soil lines shall be shown on the plumbing plan. Furthermore, theThe toilet soil lines ~~must show that the two systems are~~shall remain separate to some point outside the building. ~~and must be complete for the official premises.~~ Toilet soil lines ~~must~~shall not discharge into grease catch basins.

35:37-7-5. Rearrangement of operations or activities

Expansion or remodeling projects often results in rearrangement of operations to the extent that previously approved overall floor layouts are misleading. In these instances, updated overall floor layouts ~~must~~shall be submitted.

35:37-7-6. Approval of plans and specifications

If the ~~final~~examination of the drawings and specifications shows that ~~they~~the drawings meet ~~the~~meat and poultry inspection requirements, a letter of approval ~~will~~shall be placed with ~~them~~the drawings and an approved set of drawings and letter of approval returned to the applicant. Another set ~~is of~~drawings shall be retained for the Meat Inspection files in Oklahoma City. ~~If the plant is to operate as an officially inspected establishment, a third set will be filed in the plant inspector's files.~~

35:37-7-7. Changes and revisions

Meat Inspection Services, Oklahoma City, Oklahoma, ~~maintains~~shall maintain the approved drawings ~~on file.~~ ~~Accordingly, when~~When changes are proposed in areas for which drawings have been previously approved, one of the following types of revised drawings ~~must~~shall be submitted for review and consideration.

(1) A completely revised sheet ~~or sheet~~ or sheets that show the existing construction and equipment which will remain unchanged, together with the proposed alterations and/or additions (preferable method); or

(2) ~~The required number of~~Two (2) sets of pasters ~~{two (2) required for custom and/or retail exempt plants, and three (3) required for plants under inspection}~~ showing proposed changes, one of which is superimposed and securely affixed to the most recently approved sheets(s). The pasters, as affixed, must not obscure essential data and must be prepared to the same scale and presented on a background similar to that of the previously approved drawings. A new sheet must be submitted when changes would require several pasters.

35:37-7-8. Use of competent architect or engineer

Because of the specialized knowledge required to design and construct a well-arranged meat ~~or~~for poultry packing plant, a competent architect or engineer experienced in laying out plans for operation under State Meat and Poultry Inspection should be employed to prepare the drawings and specifications.

PART 3. LOCATION OF ESTABLISHMENTS [REVOKED]

35:37-7-9. Site [REVOKED]

(a) To the extent possible, slaughtering or processing plants shall be located in areas reasonably free of objectionable odors, smoke, flying ash, dust, etc., that may be produced by oil refineries, city dumps, chemical plants, sewage disposal plants, dyeworks, paper pulpmills, and the like.

(b) The prevailing winds are also an important factor in the site determination because objectionable substances emanating from more distant sources may be a problem if the winds carry them to the plant site.

35:37-7-10. Accessibility [REVOKED]

The shipping and receiving areas of the plant should be connected to public streets or highways by adequate, dust-proof access ways. If supplies or raw materials are to be received into the plant or the finished product is to be shipped from the plant by rail, consideration should be given to arranging for suitable railroad spur tracks.

35:37-7-11. Separation [REVOKED]

An establishment operating under State Meat and Poultry Inspection must be separated from any other plant or building. Direct communication by means of doorways, windows, stairways, elevators, passageways, loading or unloading platforms, or loading courts is permissible only when authorized by the Program Coordinator.

35:37-7-12. Retail business on premises [REVOKED]

If a retail meat or poultry business is carried on within the official premises of a state inspected establishment, it must be arranged so that customers have access only to the room or rooms where such business is conducted.

35:37-7-13. Expansion [REVOKED]

In planning a plant, consideration should be given to providing space that will permit future expansion. To this end, coolers, freezers, processing departments, etc., should be located so that they may be enlarged without adversely affecting other departments.

35:37-7-14. Inedible products departments and grease catch basins [REVOKED]

(a) Features such as the inedible products department and catch basins for grease recovery must be suitably located to avoid objectionable conditions affecting the preparation and handling of edible products.

(b) The Plant is to be designed so that the flow of inedible and condemned products will not come into contact with edible products or otherwise be likely to contaminate edible products.

PART 5. WATER SUPPLY, PLANT DRAINAGE, AND SEWAGE DISPOSAL SYSTEM [REVOKED]

35:37-7-15. Potable water supply [REVOKED]

(a) The water supply must be ample and potable. A certificate showing that the water is potable must be obtained from the State Federal Agriculture Laboratory in Oklahoma City, Oklahoma, prior to granting approval for the plant to operate.

(b) If chlorinators are required to assure a continuous potable supply, they should be automatic, with devices that inform the plant management and inspector when they have ceased to function.

(c) Poultry plants must have specified, in terms of gallons per minute, the water available for the processing needs of the plant.

(d) Water must be distributed throughout the plant under adequate pressure and in quantities sufficient for all operating needs. Both hot and cold water must be provided. Hot water must come from a central heating plant of sufficient capacity or from other facilities capable of furnishing an ample supply. Hand operated mixing valves for mixing steam and water are not acceptable for producing hot water used for such purposes as sanitizing equipment or areas contaminated by diseased material. If automatic mixing valves are utilized, a thermometer must be located at a point after mixing has occurred.

35:37-7-16. Nonpotable water supply [REVOKED]

A nonpotable water supply is a potential health hazard. If such a supply is essential for fire protection or for the condensers of the refrigeration system, it must be kept separate from the potable supply. If a cross connection between the two supplies is necessary, it must adequately safeguard the potable supply, and be acceptable to Meat Inspection Services and appropriate health authorities. Nonpotable water lines should be avoided in buildings where edible products departments are located.

35:37-7-17. Vacuum breakers [REVOKED]

Vacuum breakers of an acceptable type should be provided on all steam lines and water lines connected to various pieces of equipment for the purpose of preventing contamination to the general water supply through back siphonage of contaminated water and other wastes. Examples of these various pieces of equipment are thawing vats, sanitizers (heated by steam), urinals, etc.

35:37-7-18. Plant waste disposal [REVOKED]

An efficient method of disposing of plant wastes is essential. If a private septic tank or sewage disposal system is used, it must be efficiently designed and operated so as not to produce objectionable conditions. The system must be acceptable to those authorities having jurisdiction.

35:37-7-19. Disposal of paunch contents, hog hair, feathers, blood, and similar waste material [REVOKED]

Waste material such as paunch contents, hog hair, feathers, blood, and pen manure must be disposed of without creating

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objectionable conditions, and the drawings or specifications must indicate how this will be accomplished.

35:37-7-20. Acceptance of plant waste system [REVOKED]

The sewage disposal facilities must be acceptable to those having jurisdiction over such matters. If the packing plant is to be connected to a city or municipal sewage system, the acceptance must be obtained from that city or municipality. For plants connected to a sewage system outside of city limits, acceptance must be obtained from: Oklahoma Department of Environmental Quality. A letter or permit from these authorities indicating that the proposed sewage system is satisfactory to them must be submitted to the Meat and Poultry Inspection Services Office in Oklahoma City before approval can be granted for the plant to operate.

35:37-7-21. Catch basins for grease recovery [REVOKED]

Catch basins for the recovery of grease must not be located in or near edible products departments or areas where edible products are shipped or received. To permit easy cleaning, such basins must have inclined bottoms and a removable cover. They must be constructed so that they can be completely emptied of their contents for cleaning. Hot water hose connections must be provided at convenient locations near the basins for cleanup purposes. The area surrounding an outside catch basin must be paved with impervious material such as concrete, and provided with proper drainage. Suitable facilities, such as a blow tank, must be provided for the transfer of grease to the point of disposal after it is skimmed from the basins.

35:37-7-22. Plant drainage [REVOKED]

(a) All parts of floors where wet operations are conducted must be well drained. As a general rule, one drainage inlet must be provided for each 400 square feet of floor space. A slope of 1/4 inch per foot to drainage inlets is required. In areas such as beef sales, coolers, and other departments where a limited amount of water is used, the slope may be 1/8 inch per foot.

(b) It is important that the floors slope uniformly to drains with no low spots where liquids could collect. Floor drains are not required in freezer rooms or dry storage areas. When floor drains are installed in rooms where the water seal in traps is likely to evaporate unless replenished, they shall be provided with suitable removable metal screwplugs.

(1) Special drainage requirements. In certain departments, special floor drainage may be required. For example, in very large plants, floor drainage valleys are essential under the dressing rails for hogs, calves, and sheep. Such valleys in the floor should be about 24 inches wide, and should slope at least 1/8 inch per foot to floor drains within the valleys. In on the rail cattle slaughtering departments, floor valleys under the dressing rails are required unless the floor drainage is carefully localized, with

drainage inlets placed advantageously beneath the dressing rail. In poultry picking rooms and poultry eviscerating rooms, for example, drains must have adequate capacity and slope (counter to product flow) to accommodate the operational and cleanup demands without overflow or backup of effluent. All drains should have effluent flow in the reverse direction from edible product flow.

(2) Traps and vents on drainage lines. Each floor drain, including blood drains, must be equipped with a deep seal trap approved by the appropriate plumbing code. Drainage lines must be properly vented to the outside air and be equipped with effective rodent screens.

(3) Trunk lines. Where several drainage lines discharge into one trunk line, this line must be proportionately larger so as to handle the drainage into it efficiently.

(4) Sanitary drainage lines. Drainage lines from toilet bowls and urinals must not be connected with other drainage lines within the plant and must not discharge into a grease catch basin. Such lines must be located so that if leakage develops, it will not affect product or equipment.

(5) Size and construction of drainage lines. Drains for cattle and bison paunch contents must be at least 8 inches in diameter to avoid clogging. Drains for hog, sheep, and calf stomach contents must be at least 6 inches in diameter. Such drains must not be connected to the regular plant drainage lines or to toilet lines. All other lines must have an inside diameter of at least 4 inches. Drainage lines within the plant must be constructed of cast iron, galvanized metal or other acceptable material.

PART 7. PLANT CONSTRUCTION [REVOKED]

35:37-7-23. Minimum requirements [REVOKED]

The building materials listed in this handbook represent minimum requirements. Variations are acceptable, provided substitutions equal or exceed these standards.

35:37-7-24. Materials [REVOKED]

Building materials should be impervious, easily cleanable, and resistant to wear and corrosion. Wall and ceiling surfaces should be white or light colored for light reflection and sanitation. Whenever practical, materials that do not require painting must be used. Materials that are absorbent and difficult to keep clean are generally unacceptable. Examples of such unacceptable materials are wood, plaster boards, and porous acoustical type boards.

35:37-7-25. Floors [REVOKED]

Floors must be constructed of durable water resistant materials. Commonly used acceptable materials are concrete, ceramic floor tile, floor brick, and synthetic materials approved by Meat and Poultry Inspection Services. As a safety precaution, excessively smooth floors must be avoided. Good results are obtained by using brick or concrete floors with abrasive particles embedded in the surface. Concrete floors should have

a wood float (rough) finish. Concrete or mortar floors that incorporate an approved latex or synthetic resin base have better than ordinary resistance to meat fats and acids.

35:37-7-26. Coves [REVOKED]

Coves with radii sufficient to promote sanitation should be installed at the juncture of floors and walls in all rooms.

35:37-7-27. Interior walls [REVOKED]

Interior walls must be smooth, flat, and constructed of impervious materials such as glazed brick, glazed tile, smooth-surfaced portland cement plaster, plastic, or other nontoxic, nonabsorbent material applied to a suitable base. Walls should be provided with suitable sanitary type bumpers or curbs to protect them from damage by handtrucks, carcass shanks, and the like.

35:37-7-28. Ceilings [REVOKED]

Ceilings must be of sufficient height 10 feet or more is desirable in workrooms. So far as structural conditions permit, ceilings must be smooth and flat. Ceilings should be constructed of portland cement plaster or other approved material which is impervious to moisture and easily cleaned. If the ceiling has exposed joists, the joists should be at least 36 inches on center and designed so that there are no excessive ledges or crevices that would be difficult to keep clean.

35:37-7-29. Window ledges [REVOKED]

Window ledges should be sloped 45 degrees to promote proper cleaning. To avoid damage to window glass from impact of handtrucks and similar equipment, the window sills must be at least 3 feet above the floor.

35:37-7-30. Doorways and doors [REVOKED]

(a) Doorways through which product is transferred on rails or in handtrucks must be wide enough so that there is not contact between the doorways and the product. In these cases, 5 foot wide doorways are necessary. For carcasses being transported through doors in which the carcasses are hanging on 11 ft. high rails, 4 1/2 foot wide doorways are necessary.

(b) Doors in doorways must be constructed of either rust-resistant metal or other approved material. If made of wood, they must be clad on both sides with rust resistant metal having tightly soldered or welded seams. Door jambs must be clad with rust resistant metal securely affixed so as to provide no crevices for dirt or vermin. The juncture at the walls must be effectively sealed with a flexible sealing compound.

(c) For safety reason, double acting doors must have a reinforced glass or transparent plastic panel at eye level.

35:37-7-31. Screens and insect control [REVOKED]

All windows, doorways, and other openings that would admit insects must be equipped with effective insect and rodent control devices (screens, fans, seals, etc.)

35:37-7-32. Rodent proofing [REVOKED]

Effective means must be provided to exclude rats and other rodents.

35:37-7-33. Interior woodwork [REVOKED]

Dressed lumber may be used for exposed interior woodwork. Any exposed wood surfaces must be painted with a good grade nontoxic oil or plastic base paint or treated with hot linseed oil or a clear wood sealer.

35:37-7-34. Stairs [REVOKED]

(a) Stairs in edible product handling departments must be of impervious construction with solid treads and closed risers and must have side curbs of similar material, 6 inches high measured at the front edge of the treads.

(b) When stiles are used over exposed edible product, the walking surface shall be of solid construction with solid side guards to prevent debris from falling on product below. Alternately, a solid shield completely enclosing the exposed product area may be used.

35:37-7-35. Lighting [REVOKED]

Well distributed and good quality artificial lighting is required at all places where natural light is unavailable or insufficient. The overall intensity of artificial illumination in workrooms must be no less than 30 foot candles. At all locations where inspections are made or where special illumination is required to enable employees to properly prepare products to meet the requirements of the inspections, the illumination shall be not less than 50 foot candles. Specific requirements for certain locations in meat plants include:

- (1) **General ante-mortem inspection.** Ten foot candles in the pens, alleys, or area where ante-mortem inspection is performed. Readings are taken 3 feet above the floor.
- (2) **Suspect pen.** Twenty foot candles over the entire suspect pen including restraint facilities if separate. Readings are taken 3 feet above the floor.
- (3) **Headwashing cabinet (beef).** Fifty foot candles at the level of the head hook.
- (4) **Beef cervical (head rack).** All areas of head illuminated to 50 foot candles down to the symphysis of the mandible.
- (5) **Beef cervical (head chain).** Fifty foot candles at the lowest inspection point on the hanging heads.
- (6) **Swine cervical.** Fifty foot candles at the level of the mandibular lymph nodes of the lowest hanging heads.
- (7) **Beef viscera (truck).** Fifty foot candles with meter resting at bottom of the pan of lower portion of truck.
- (8) **Viscera (moving top tables).** Fifty foot candles with meter resting in pan or on table top. (All species.)
- (9) **Rail inspection.** Fifty foot candles at levels of the shoulders. (All species.)
- (10) **Final inspection.** Fifty foot candles at shoulder level, viscera pan, and head rack. (All species.)
- (11) **Carcass holding coolers.** Ten foot candles at the level of the front shanks of carcasses in the cooler.

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(12) **General work coolers.** Twenty foot candles general cooler illumination at lowest level of product storage. Fifty foot candles at packing point and reinspection area.

(13) **Protective devices.** Light fixtures in rooms where exposed meat or poultry is handled must have a protective shield of suitable non-shattering material to preclude contamination of product with broken glass.

35:37-7-36. Ventilation [REVOKED]

Adequate means for ventilation must be provided in work rooms and welfare rooms. This may be accomplished with ventilating type windows, skylights, or both, or by mechanical means such as air conditioning or a fan duct system. In locations subject to dust and objectionable odors, such as those adjoining livestock pens, runways, and inedible departments, windows must be the fixed type.

35:37-7-37. Refrigeration [REVOKED]

(a) Sufficient refrigerated space should be provided to handle carcasses and product properly. A maximum temperature of 50° F. [10 C.] must be maintained in such areas.

(b) The type of refrigeration must be indicated on the drawings. If wall coils are installed, a drip gutter, of concrete or other impervious material in the floor and properly connected with the drainage system, must be placed beneath them. Floor-type refrigeration units must be placed within curbed and separately drained areas unless located adjacent to floor drains.

35:37-7-38. Equipment [REVOKED]

Equipment intended for use in plants operating under State Inspection must be reviewed, evaluated, and found acceptable by Meat Inspection Services in Oklahoma City. The equipment must be constructed so that it can be readily kept clean. All surfaces contacting product shall be smooth, free from pits, crevices, and scale.

(1) **Acceptable materials.** Excepting equipment as cutting boards, equipment must be constructed either of rust-resisting metal, such as 18-8 (300-series) stainless steel, or of plastic approved by Meat Inspection Services. Galvanized metal, although acceptable in certain equipment, is not desirable because it is not adequately resistant to the corrosive action of food products and cleaning compounds. When used, galvanized metal must have the smoothness of high quality commercial hot dip.

(2) **Nonacceptable materials.**

(A) Copper and its usual alloys are not acceptable in equipment used in connection with edible product.

(B) Cadmium is not acceptable in any manner or form in equipment used for handling edible product.

(C) Lead must not be used in equipment contacting edible product, except that it may be employed in dairy solder in an amount not to exceed 5 percent.

(D) Equipment with painted surfaces in product zone is not acceptable.

(E) The use of containers or equipment made of enamelware or porcelain is not acceptable for any purpose in connection with the handling and processing of product.

(3) **Plastics and resins.** Plastic materials and resinous coatings must be abrasion-resistant, heat-resistant, shatterproof, nontoxic, and shall not contain a constituent that will migrate to meat or meat product in contact with the material. Materials must be approved by Meat Inspection Services.

(4) **Gaskets and packings.** All gasketing and packing materials must be nontoxic, nonporous, nonabsorbent, and unaffected by food products and cleaning compounds. The materials shall be installed in a manner resulting in a true fit to prevent protrusion of the materials into the product zone or creation of recesses or ledges at the gasketed joints.

(5) **Design and construction of equipment (product zone).**

(A) **Accessibility for cleaning.** All parts of the product zone must be readily accessible to sight and reach for cleaning and inspection.

(B) **Provisions for dismantling.** Where necessary for proper cleaning and inspections, equipment must be easily dismantled. To facilitate this dismantling, quick opening devices that require no tools or, at most, such simple tools as a mallet and an open end wrench shall be provided. Bayonet joints, butterfly clamps, spring bolts, and other similar devices are desirable for connecting or closing parts of equipment. Where parts must be retained by nuts and bolts, the design shall provide for fixed stubs with wing nuts, rather than bolts to a tapped hole.

(C) **Bearings.** All bearings must be located outside the product zone, and if adjacent thereto, must be constructed with a readily removable seal at the entrance of the shaft into the product zone.

(D) **Interior corners.** Interior corners of equipment must be provided with radii of a minimum of 1/4 inch, except where greater radii are required to facilitate drainage and cleaning.

(E) **Welded joints.** All welding within the product zone must be continuous, smooth, even, and relatively flush with the adjacent surfaces.

(F) **Freedom from cracks, recesses, ledges, and the like.** All parts of the product zone must be free of recesses, open seams and gaps, crevices, protruding ledges, inside treads, inside shoulders, inside bolts or rivets, and dead ends.

(G) **Self-draining equipment.** Where necessary for sanitary maintenance, equipment must be constructed and installed so as to be completely self-draining.

(H) **Lubricants.** Care must be taken to prevent contaminating product by lubricants used in overhead motors, gears, and similar devices. If drip pans are necessary to provide such protection, they shall be

easily accessible for inspection and removable for cleaning.

(I) ~~**Pumps and pipelines.**~~ Pumps and pipelines used in connection with edible product (including edible brine or vinegar solutions) shall be constructed of 18-8 type stainless steel or approved plastic.

(6) ~~**Design and construction of equipment (non-product zone).**~~

(A) ~~**Safety guards.**~~ All safety or gear guards must be readily removable for cleaning and inspection.

(B) ~~**External surfaces.**~~ All external surfaces that do not contact food product shall be free of open seams, gaps, crevices, and inaccessible recesses.

(7) ~~**Spacing above floor.**~~ All permanently mounted equipment must be installed far enough above the floor to provide access for cleaning (minimum of 1 foot) and inspection, or must be completely sealed (watertight) to the floor.

(8) ~~**Wall-mounted facilities.**~~ Wall-mounted cabinets and electrical connections (such as switch boxes, electrical control panels, conduits, and cables) must be installed at least one (1) inch from equipment or walls, or be completely sealed to the equipment or walls.

(9) ~~**Control of waste water.**~~ Water-wasting equipment, such as soaking and cooking vats, sausage stuffing tables, can sterilizers, and casing preparation equipment, shall be installed so that waste water from each unit is delivered through an interrupted connection into the drainage system without flowing over the floor. Valves on drainage lines serving such equipment shall be easily cleanable and mounted flush with the bottom of the equipment. Soaking and cooking vats shall be equipped with overflow pipes at least two inches in diameter. The upper end of each overflow pipe shall be equipped with an open end cleanout tee to facilitate cleaning.

(10) ~~**Vent stacks from hoods.**~~ Vent stacks from covered cooking vats or hoods over cook tanks shall be so arranged or constructed to preclude drainage of condensate back into the vats.

(11) ~~**Height of work tables.**~~ Working surfaces of tables and other equipment shall be at a height of not more than 34 inches above the floor where employees stand to conduct operations. If tables and equipment have higher working surfaces, suitable metal foot platforms must be provided for employees to stand on.

(12) ~~**Water on work tables.**~~ All tables or other equipment having water on the working surfaces shall be provided with turned up edges. The height of the turned up edge depends on the volume of water used and the operations conducted. In no instance shall the turn up be less than one (1) inch.

(13) ~~**Cutting and boning boards and tables.**~~ Boards used on boning and cutting tables shall be of either an approved plastic or rubber type construction. Boards shall be easily removable from the framework of the table for purposes of cleaning and inspection.

(14) ~~**Equipment washroom or area.**~~ A separate washroom or area shall be provided in a location convenient to the department involved for cleaning curing vats, handtrucks, utensils, and trays. The room or area must have adequate light and ventilation, impervious well drained floor, impervious walls and ceilings, and an exhaust fan for dispelling steam vapors. In plants using cages or trees for smoking sausage or other product, facilities for washing and rinsing such equipment are required.

PART 11. HAND WASHING FACILITIES, STERILIZERS, DRINKING FOUNTAINS, AND CONNECTIONS FOR CLEANUP HOSES [REVOKED]

35:37-7-39. Lavatories [REVOKED]

Each processing room or area should have conveniently located handwashing facilities (lavatories) with a bowl large enough to prevent splashing. Lavatories shall be supplied with hot and cold running water delivered through a combination mixing faucet with outlet at least 12 inches above the rim of the bowl to facilitate washing arms as well as hands; liquid soap; an adequate supply of sanitary towels in suitable dispensers; and a suitable receptacle for used towels. Lavatories in workrooms and welfare rooms must be other than hand operated (usually pedal operated). One lavatory should be provided for every two sausage stuffing tables, and they shall be convenient to the stuffer operators. Lavatories must be directly connected to the drainage system. On eviscerating lines in poultry plants, a continuous flow or other acceptable handwashing facility must be provided at each inspection station. The supply of water shall be of adequate quantity and at proper temperature.

35:37-7-40. Sanitizers [REVOKED]

Sanitizers shall be constructed of rust resistant metal, and of sufficient size for complete immersion of knives, cleaners, saws, and other implements in 180° F (83° C) water. They should adjoin the lavatories in slaughtering departments and elsewhere as required. Each sanitizing receptacle must be provided with a water line, a steam line or other means of heating, an overflow, and a means for completely emptying the receptacle.

35:37-7-41. Drinking fountains [REVOKED]

Sanitary drinking fountains should be provided in large workrooms and in dressing rooms. If desired, they may be located at lavatories and arranged so that the overflow discharges into the bowls of the lavatories. If so located, they shall be placed sufficiently high above the bowls to avoid water and soap splashing on them when the lavatories are used.

35:37-7-42. Hose connections [REVOKED]

Adequate and conveniently located hose connections for cleanup purposes shall be provided throughout the plant. The

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use of long hoses should be avoided. Suitable racks or reels for storing the hose when not in use must be provided.

35:37-7-43. Location of facilities [REVOKED]

The location of lavatories, lavatory sanitizers, drinking fountains, and other similar features must be shown on the drawings.

PART 13. FACILITIES FOR PROCESSING EDIBLE PRODUCT [REVOKED]

35:37-7-44. Size of departments [REVOKED]

Meat and poultry preparation and processing departments shall be of sufficient size to permit the installation of all necessary equipment with ample space for plant operators and truck ways.

35:37-7-45. Flow of operations [REVOKED]

For efficiency, the processing departments should be arranged to allow a proper flow of product without undue congestion or backtracking from the time raw materials and supplies are received until the finished product is shipped from the plant. Areas in which raw products are handled (processed) must be separate from areas used for handling (processing) ready to eat product.

35:37-7-46. Perishable product departments [REVOKED]

Facilities for holding perishable product under refrigeration shall be provided. To ensure proper care of product and to prevent growth of molds and bacteria, operations such as beef boning and trimming, deboning or otherwise processing raw poultry, bacon slicing, pork cutting, prepackaging meats, and sausage chopping and mixing should be conducted in departments having a temperature not higher than 50° F (10° C). Such operations should be located in rooms separate from carcass or product holding coolers to avoid contamination of product by cleanup water and condensation during the cleanup time.

35:37-7-47. Freezers [REVOKED]

Freezers shall have adequate space and capacity to properly freeze and/or store product. Product must be stored in freezers well above the floor and in such a manner so as to preclude congestion or other conditions that may lead to contamination or adulteration.

35:37-7-48. Incubation room for canned product [REVOKED]

A room for incubating samples of fully processed canned meat or poultry product shall be provided in a suitable location in all plants conducting regular canning operations. The room shall have adequate size and equipment for holding the necessary samples. A 7 day recording thermometer should be

mounted on the outside wall of the room. The sensitive elements for the thermostat and recording thermometer should be below the bottom shelf. The shelves should be made of expanded metal or heavy gauge (No. 9) wire mesh and be removable for cleaning. The floor in the room shall be pitched to a floor drain equipped with a removable metal screwplug. The door of the room shall be equipped for sealing or locking.

35:37-7-49. Dry storage space for supplies [REVOKED]

Suitable and adequate space for holding supplies such as boxes, paper, and cans, shall be provided in a convenient location in each plant. Establishments that slice bacon, slice and prepackage luncheon meat, bread and batter, chicken, and prepare turkey loaves, sandwich steaks, and the like, generally use a large volume of packaging and labeling material. Adequate dry storage space shall be provided for holding such supplies in a location convenient and preferably adjacent to the department where used. Provisions shall be made to store supplies on racks 12 inches above the floor.

35:37-7-50. Truckways within the plant [REVOKED]

Truckways shall be unobstructed passageways having a minimum width of 5 feet without overhead storage rails. When truckways are in coolers having overhead rails, a horizontal distance of 7 feet shall be provided between an adjacent wall and the vertical of the nearest rail. Truckways shall be clearly designated on the drawings.

35:37-7-51. Vehicular areas for trucks and railroad track gutters [REVOKED]

(a) Concrete paved or other acceptable hard surface areas, properly drained and extending at least 20 feet from buildings, loading docks, poultry handling docks, or livestock chutes and platforms, shall be provided at places where vehicles are loaded or unloaded.

(b) Railroad track gutters with suitable drainage shall be provided where refrigerated railroad and livestock cars are loaded and unloaded. The top of the gutter shall be below the bottom of the railroad ties unless the entire track area is paved. This feature must be clearly illustrated on the drawings by a typical cross section of the gutter and adjacent railroad ties and rails.

PART 15. DESIGN, EQUIPMENT, AND OPERATION OF MEAT AND POULTRY SLAUGHTERING DEPARTMENTS AND RELATED AREAS [REVOKED]

35:37-7-52. Meat [REVOKED]

(a) Livestock Pens. To avoid delays in slaughtering operations, pens for ante mortem inspection should have the capacity for holding the maximum number of animals of the various kinds that will be slaughtered in a single day. The pens, ramps, unloading chutes, and runways must be paved with concrete or

brick and be equipped with suitable drainage facilities. Except at gateways, they shall have side curbs of similar impervious material at least 12 inches in height. Water troughs shall be provided with suitable overflows located above or adjacent to pen floor drains.

(b) Ante mortem inspection facilities. To facilitate the ante mortem inspection of animals, ample natural or artificial lighting must be available, and a suitable suspect pen with a squeeze chute or gate where the temperature of the animals may be taken, shall be provided. A reasonable proportion of the live-stock pens, including the area where the suspect pen and restraining area are located shall be under a weathertight roof to provide an area for proper ante mortem inspection in inclement weather.

(c) Location of holding and shackling pens. To avoid dust and odors, holding and shackling pens should be located outside the slaughtering department or should be separated from the department by full height partitions of impervious material.

(d) Facilities for crippled animals. Suitable facilities should be furnished for conveying crippled animals into the slaughtering department.

(e) Slaughtering departments. Slaughtering departments must have adequate floor space and be arranged to facilitate the sanitary conduct of operations and efficient inspection. Truckways over which products are conveyed from the slaughtering department to rooms such as the offal cooler, the edible products tank charging room, and the inedible products tank charging level shall be located so that the material is not trucked beneath rails from which dressed carcasses and products are suspended. Personnel traffic shall not move through lines of carcasses.

(f) Maximum rate of slaughter permitted.

(1) The rate of slaughter is dependent on the ability of the establishment to present carcasses, their viscera, and parts in an orderly and clean manner, permitting a complete and efficient inspection without congestion or other objectionable conditions.

(2) The drawings or specifications (for very large plants) should indicate the proposed maximum slaughter rate. Drawings should also indicate if more than one species of animal will be slaughtered simultaneously or consecutively and if the Kosher method of slaughtering will be used.

(g) Facilities for handling viscera. Adequate space and suitable, properly located facilities must be provided for separating and handling the viscera of the various species of animals slaughtered. The cattle paunch emptying table should be equipped with a power operated lift. If paunches are saved for edible purposes, the top of the table should extend over the emptying hopper 12 inches, and the sides of the hopper should extend vertically below the top of the table at least 3 1/2 feet, to avoid soiling the paunches.

(h) Edible by product cooler. Suitable facilities for holding edible organs and parts (offal) under refrigeration in a separate cooler or in a separately drained part of a carcass cooler

are required. Such areas must be accessible to the slaughtering departments without passing through a line of carcasses or through a congested cooler.

(i) Carcass chilling coolers rail requirements.

(1) Rail arrangement. Cooler rails must be placed at least 2 feet from refrigerating equipment, walls, columns, and other fixed parts of the building. To promote cleanliness of product and to protect walls from damage by carcass shanks, it is desirable to place rails (required for main header or traffic rails) at least 3 feet from the walls.

(2) Height of cooler rails. The tops of cooler rails must be at least 11 feet above the highest part of the floor for halves of beef and bison; 9 feet above for headless hog carcasses and calves (trolleys 12 inches long); and 7 1/2 feet above for quarters of beef. Sheep and goat carcasses shall be suspended so that the hooks or gambrels are at least 6 1/2 feet above the floor.

(j) Retaining compartments. A suitable compartment shall be provided in a cooler for holding retained carcasses or parts and retained products in plants that are under Official State Inspection. The compartment may be separated from the remainder of the cooler by partitions of rust resistant wire screen (No. 9 gauge, 1 inch mesh), or flat expanded metal of comparable gauge and mesh, extending from 2 inches above the floor to the ceiling. The compartment should have a door of similar material at least 4 feet wide, equipped for sealing or locking by the Oklahoma Department of Agriculture. For cattle carcasses retained because of infestation with *Cysticercus bovis*, a similar compartment may be provided for holding such carcasses in a freezer at a temperature not higher than 15° F (10° C) for at least 10 days.

35:37-7-53. Poultry [REVOKED]

(a) Holding sheds, truck maneuvering areas and loading dock bays.

(1) The holding sheds must be sufficient in size to facilitate the prescribed ante mortem inspection, to assure a continual smooth flow of poultry into the plant, and to provide for the welfare of birds awaiting slaughter.

(2) Artificial lighting shall be provided in the holding sheds as necessary to facilitate inspection. The roofs must be watertight and the road surfaces should be paved with an impervious material, such as concrete. Any additional truck parking area and the truck maneuvering area should be surfaced with an impervious material such as concrete. The loading dock bays should be surfaced with an impervious material such as concrete which extends outward at least 20 feet. Suitable slope and drainage must be provided on all surfaces to prevent the collection of water or other obnoxious substances and to facilitate cleanup. Cleanup hose connections shall be well located and adequate for the purpose.

(b) Docks for receiving and hanging live poultry, slaughtering area and picking area.

(1) To prevent dust, feathers, and other obnoxious substances from entering other parts of the plant, the live hanging dock shall be separated from the rest of the plant by full height impervious walls, self closing impervious

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doors, and openings limited to those necessary for poultry conveyance or other systems.

(2) The slaughtering area shall be separated from the rest of the plant by full height impervious walls, self closing impervious doors, and only such other openings as are necessary for conveyance of the poultry. Facilities shall be provided to contain the blood in an area as small as feasible. The picking and scalding operations shall be separated from the eviscerating and other areas of the plant by full height impervious walls, self closing impervious doors, and openings limited to those necessary for poultry conveyor systems.

(c) Maximum rate of slaughter. The rate of slaughter is dependent upon the number of inspectors; the line arrangement; the spacing of birds; the incidence of disease; and the ability of the plant to present carcasses for inspection which are properly dressed and drawn, permitting complete and efficient inspection. The specifications or drawings shall indicate the proposed maximum hourly rate of slaughter for each class of poultry.

35:37-7-54. Facilities for handling animal or fish food [REVOKED]

Slaughtering establishments that process certain by products into inedible animal or fish food shall provide adequate facilities for decharacterizing, chilling, packing, or otherwise preparing the material separate and apart from facilities used in the preparation of edible products. The material must be decharacterized promptly as a part of the dressing or viscera separating operations to avoid extra supervision by inspectors. After the inedible material has been packed in properly marked (labeled) liquid tight container, it may be stored in the edible products freezer, provided it is held separately and does not interfere with handling or storage of edible products.

35:37-7-55. Facilities for handling meat and poultry inedible and condemned materials [REVOKED]

(a) Well arranged and adequate facilities for handling inedible and condemned material must be provided at slaughtering plants. The layout must permit inspectors complete control of condemned material with a minimum of travel and supervision.

(b) Inedible products departments must be separate and distinct from the areas used for edible products, except that one connecting doorway equipped with a solid door completely filling the opening is allowed between the inedible products departments and the slaughtering or eviscerating departments.

(c) If rendering facilities are not located at the establishment, condemned materials must be denatured. Sufficient watertight storage facilities must be provided to hold such materials pending daily removal to a rendering plant (or more frequent removal if deemed necessary by the Circuit or District Supervisor). These storage facilities must be located separate and apart from edible products departments, and they must be constructed to prevent insanitary conditions, including attraction or harborage for vermin. Permission to transport condemned material over public streets and highways must be obtained

from the State of Oklahoma if the plant wishes to transport said materials themselves.

(d) In large meat plants, the most desirable facilities include hooded, vented, closed chutes that lead directly from the slaughtering department to the hashers or prebreakers. This equipment is also recommended for non rendering plants to prevent objectionable odors from inedible and condemned product destined for an outside renderer, from entering edible departments.

(e) If other techniques for transferring inedible materials are used (auger), appropriate methods of odor control must be used.

(f) In low volume slaughter operations where plant personnel perform a number of different duties including the handling of condemned viscera, mechanical devices must be used to eliminate the manual transfer of condemned viscera. Areas for inedible trucks must be paved and enclosed.

PART 17. REQUIRED CATTLE SLAUGHTERING FACILITIES [REVOKED]

35:37-7-56. Cattle dressing layouts [REVOKED]

(a) Cattle dressing layouts are of three principal types:

- (1) double rail hang off,
- (2) single rail hang off, and
- (3) "on the rail" dressing.

(b) Principal minimum rail heights and floor space, is included and should be carefully followed in preparing layouts.

35:37-7-57. Requirements for various types of cattle slaughtering layouts [REVOKED]

(a) Stunning or kosher shackling pens. Efficient facilities shall be provided for confining animals for stunning before bleeding or, if Kosher operations are conducted, for confining animals for shackling.

(b) Dry landing area. A dry landing area at least 7 feet wide should be provided in front of the stunning pen to receive stunned animals ejected from the pen. The area should be separately drained and sufficiently removed from the bleeding area. The dry landing area should be constructed of rust resistant metal pipes and may be installed either as upright pipes 16 inches on center without crossrails, or, if desired, crossrails may be used and the number of upright pipes reduced to the number necessary for adequate and proper support. NOTE: In very small layouts in which only one animal at a time will be slaughtered and dressed, the dry landing area and bleeding area can be the same provided the area is thoroughly washed and dried/squeezed between each animal.

(c) Bleeding area. A curbed in bleeding area of adequate size shall be provided. It shall be located so that blood will not be splashed on stunned animals lying on the dry landing area or on carcasses being skinned on the siding beds.

(d) Bleeding and dressing rails. The top of the bleeding rail must be at least 16 feet above the floor or the metal grating over the bleeding area. Dressing rails must be at least 11 feet above the floor. When moving top viscera inspection tables are used, dressing rails must be at least 12 feet, 3 inches high.

- (e) Facilities for handling heads.
 - (1) Suitable facilities and adequate floor space must be provided for dehorning, flushing, washing, and inspecting heads; for storing heads on racks or trucks after removal from carcasses; and for head workup.
 - (2) If conveyors are used for cattle head inspection, the heads must be spaced 2 feet on centers, and a distance of 4 1/2 feet must be provided between the bottom of the head hooks and the inspector's foot platform. (The details of construction of this equipment should be shown on the drawings.)
- (f) Hide chute or other system of hide removal. In large plants, a properly constructed hide chute should be provided near the point where hides are removed from carcasses. The chute should have a hood of substantial rust resistant metal with a push in door closely fitting a metal frame inclined so as to be self closing by gravity. A vent pipe at least 10 inches in diameter should extend from the hood vertically to a point above the roof. If hides are removed by means other than a chute, the facilities should be designed so as to create no problem of sanitation.
- (g) Carcass washing and shrouding facilities. A separately drained area or an area of sufficient size sloped 1/2 inch per foot to a floor drain shall be provided where carcasses are either washed or shrouded. A platform to permit proper washing shall be provided.
- (h) Header rail clearance. At least 3 feet shall be provided between the header rail and the adjacent wall for the clearance of dressed carcasses transferred on the rail.
- (i) Trim rails. In large slaughtering establishments, the kill floor layout should be designed so that carcasses railed out for trimming or touchup will be reintroduced onto the carcass line prior to the rail inspection position so that a final rail inspection can be performed.
- (j) Retain rail. In plants operating under inspection, a suitable space for holding retained carcasses for final disposition will be provided along with the necessary platforms and hand washing facilities.
- (k) Floor drainage. Efficient drainage facilities must be provided for the entire slaughtering department.

35:37-7-58. Requirements for double-rail and single-rail hang-off dressing systems [REVOKED]

- (a) Space between bleeding area and dressing beds. In plants which slaughter more than one animal at a time, the pritch plates or cradles shall be located at least 5 feet from the curb around the bleeding area.
- (b) Space between drop off to dressing beds and evisceration hoists. For layouts of two dressing beds, a distance of 16 feet should exist between the vertical of the drop offs to the pritch plate area and the vertical of the line of the hoists where carcasses are eviscerated. For three or more beds, a distance of 18 feet or more should exist between the verticals. This is necessary to provide space for the evisceration of carcasses and trucking of product and for the inspections made at this point.

35:37-7-59. Requirements for "on-the-rail" dressing systems [REVOKED]

- (a) **Disposal of feet and udders.** An efficient method must be provided for disposing of feet and udders removed from carcasses. Chutes to a lower level are highly desirable, if structurally possible.
- (b) **Metal foot platforms.** Metal foot platforms installed for establishment employees performing various carcass dressing operations may be either stationary or the elevating type. If elevating, they must be located so as not to contact skinned portions of carcasses. If stationary platforms are used, they must be set far enough away from the dressing rail and be constructed with the legs sufficiently set in to prevent contact with the with the forelegs of cattle. Alternatively, they may be suspended from overhead structures.
- (c) **Spacing of carcasses on dressing rails when powered conveyor or gravity flow rails are used.**
 - (1) To prevent contact between carcasses and to provide adequate space for operation, cattle carcasses shall be separated by fingers at least 5 feet on center on conveyor type dressing rails or by rail "stops" 5 feet on center on gravity flow dressing rails, except that such spacing shall be at least 8 feet on center alongside the viscera inspection table (if used).
 - (2) When a down hide puller is used, the area of the hide puller, head drop and head removal shall be curbed and drained. Also, sufficient space must be provided between hide pulling and carcass evisceration to permit cervical inspection prior to viscera inspection.

35:37-7-60. Viscera inspection facilities [REVOKED]

- (a) **Viscera trucks for small layouts.** In small layouts with a limited rate of slaughter, viscera are usually placed in a specially designed hand truck for inspection. Such trucks shall be constructed of stainless steel. An inspection pan at least 24 1/2 by 26 by 3 inches in size is required for inspecting hearts, lungs, livers, and spleens. This pan should be placed with its bottom 34 inches above the floor. A compartment designed to facilitate evisceration and large enough to contain paunches and intestines is required beneath the inspection pan. The bottom of the lower compartment should be about 14 inches above the floor.
- (b) **Viscera truck cleaning and sterilizing facilities.** When viscera inspection trucks are used, a separately drained area at least 7 by 8 feet in size is required for washing and sanitizing such equipment. The facilities should be located at or near the point where condemned material is discharged from the trucks. When placed where splash might contaminate edible product, the truck washing area must have walls 8 feet or more in height. The floor in the area should be pitched at least 1/2 inch per foot to a drain in a rear corner. A hose with an ample volume of water at a temperature of at least 180° F (83° C) is required for washing trucks in the washing area. The hot water shall be obtained from a central supply rather than by mixing steam and water at or near the hose connection. A dial type thermometer with its temperature sensitive element located in the hot water line near the hose connection is required.

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(e) **Flight-top inspection tables for medium or large layouts.**

(1) **Construction.** In layouts handling 30 or more cattle per hour, viscera is usually placed on a flight top table for inspection. (Moving tables are required when the rate of slaughter is 40 or more per hour.) The table must be constructed with stainless steel flights about 5 feet wide. The table shall be of sufficient length for efficient evisceration, inspection, and viscera removal.

(2) **Washing and disinfection.**

(A) Cold water sprays shall be provided beneath the discharge (unloading) end of the table to remove blood and animal tissues and fluids. A suitable compartment type sanitizer is required at the loading end that is vented to the outside air. The vent duct should be at least 10 inches in diameter and constructed of rust-resistant metal. Additional cold water sprays are necessary to cool the flights after the exit from the sanitizing compartment.

(B) A thermometer is required with its sensitive element in the hot water line as the water enters the sanitizing compartment. The temperature recording scale of the thermometer must be located so that it can be readily observed by the inspector working alongside the inspection table.

(3) **Synchronization with carcass conveyor.** The movement of the inspection table must be carefully synchronized with the movement of the carcass conveyor. To accomplish this, the table and the carcass conveyor should be motivated by the same drive with the table propelled by a shaft or worm mechanism.

(4) **Control for movement of table.** A stop button for controlling the movement of the carcass conveyor and the viscera inspection table shall be provided in a location convenient to the inspector.

(5) **Location of the table.** The viscera inspection table shall be located over a separately drained floor area. A floor drain is required beneath the sanitizing chamber.

(6) **Eviscerator's facilities.** A foot platform, hand washing facilities, a hand tool sanitizer, a boot washing cabinet, and a boot storage locker are required for the eviscerator alongside the loading end of the table.

space is required for removing the heads before the carcasses are washed, and for placing the heads on a head truck after they are flushed and washed for transfer to the viscera inspection station. An unobstructed route for conveying the heads to the point of inspection shall also be provided.

35:37-7-63. **Dressing space and operations** [REVOKED]

Adequate space must be provided along the rail for skinning legs and for skinning and removing calf heads before carcasses are transferred from shackles to gambrels. (The transfer point and the places where the principal dressing operations are performed must be indicated on the drawings.) If a moving carcass conveyor and combination viscera and head inspection table are used in the calf dressing layout, and if the carcasses are suspended high enough to prevent contamination of the heads through contact with the floor or splash from the floor, the head skinning, removal, flushing, and washing should be deferred until the carcass reaches a point adjacent to the charging end of the inspection table. Heads from koshered calves, however, should be handled as described in 35:37-7-62.

35:37-7-64. **Calf washing facilities** [REVOKED]

If calf carcasses are dressed with the hides on, proper facilities must be provided for washing the hides before any incisions (except the sticking wounds) are made.

35:37-7-65. **Calf head handling facilities** [REVOKED]

Suitable facilities must be provided for flushing, washing, inspecting, and storing calf heads.

35:37-7-66. **Carcass washing facilities** [REVOKED]

Suitable facilities must be provided for washing unopened sheep carcasses after pelts have been removed and for washing the internal surfaces, breasts, and necks of calf, sheep, or goat carcasses after inspection has been completed.

35:37-7-67. **Viscera, head, and carcass inspection facilities** [REVOKED]

(a) When the rate of slaughter is less than 20 calves, sheep, or goats per hour, facilities for the inspection of viscera and calf heads should consist of a hopped metal stand of the proper size to accommodate an inspection unit of two pans.

(1) The height of the stand should be that the bottom of the pans are 34 inches above the floor or the inspector's foot platform. The stand must be directly connected to the drainage system through a deep seal trap, or it may discharge through a waste pipe directly into a floor drain. The stand should be placed 2 feet from the vertical of the dressing rail, with the smaller of the two pans nearest the rail.

(2) The large pan for the inspection of abdominal viscera must be at least 24 by 36 by 3 inches; the small pan for thoracic viscera (or heads, if calf heads are placed on

PART 19. REQUIRED SHEEP, GOAT, AND CALF SLAUGHTERING FACILITIES [REVOKED]

35:37-7-61. **Bleeding rail** [REVOKED]

The top of the bleeding rail must be at least 11 feet above the floor for handling sheep, goats, or calves. If only sheep are handled in the bleeding section, the bleeding rail may be only 9 feet.

35:37-7-62. **Dressing rails** [REVOKED]

Dressing rails shall be of such height that gambrels or leg hooks from which carcasses are suspended are at least 7 1/2 feet above the floor of the inspector's platform. If calves are slaughtered by the kosher method and dressed with the skin on,

the table for inspection) must be at least 12 by 36 inches. The pans must be located so they do not interfere with the movement of the inspector and eviscerator alongside the stand. The pans should have handles or hand holes for convenient removal and a perforated bottom with the holes 1/4 inch in diameter, spaced 3 inches on centers. If calves are dressed on the layout, the smaller pan must be provided with a suitable device for holding the head immobile in an upright position for inspection. If only sheep or goats are dressed on the layout, the pans may be 24 by 24 by 3 inches and 12 by 24 by 3 inches in size. A conveniently located receptacle (sanitizer) must be provided for sanitizing the inspection pan.

(b) When the rate of slaughter is more than 20 sheep, goats, or calves per hour, a moving pan type inspection table and a carcass conveyor are required. The pan must conform to the previously listed standards, and the table must conform to the requirements described in the section for moving hog viscera and head inspection facilities.

35:37-7-68. Floor drainage [REVOKED]

A drip valley 24 inches wide is required beneath the dressing rail from the bleeding area to the point where viscera inspection is completed.

PART 21. REQUIRED HOG SLAUGHTERING FACILITIES FOR LARGE PLANTS THAT SCALD HOGS [REVOKED]

35:37-7-69. Location of certain operations [REVOKED]

The following equipment and operations should be located in an area or areas entirely separated from the carcass dressing room, except for the necessary openings for access and the passage of carcasses: hoisting, sticking, and bleeding; scalding vat; dehairing machine located within a curbed area having non-clogging drainage outlet; gambrelling table; facilities for dipping carcasses in a rosin mixture as a depilatory aid (if installed); and singeing operations.

35:37-7-70. Scalding vat [REVOKED]

The scalding vat should be constructed of rust resistant metal and of sufficient size to accommodate the rate of production.

35:37-7-71. Space for operations and truckways [REVOKED]

Adequate space and facilities must be provided for the proper conduct of operations and the efficient performance of inspection. The layout must preclude the need to walk, truck, or otherwise convey product through a line of carcasses suspended from the dressing rail.

35:37-7-72. Floor drainage [REVOKED]

A drip valley 24 inches wide should be provided in the floor. It should be pitched to drainage inlets properly located in the valley and extend from the point where carcasses leave the gambrelling table to the point where carcass inspection is completed. The floor may be sloped to drain to the drip valleys.

35:37-7-73. Shaving and carcass washing facilities [REVOKED]

In very large hog slaughtering layouts, a shaving rail of adequate length and a separately drained cabinet type carcass washer are essential. The carcass washer should be located at a point after completion of the shaving operations and before the head dropper's station. A throw out rail prior to head dropping should be provided so that unclean hogs can be removed from the dressing line for cleaning. No shaving is permitted after heads are dropped.

35:37-7-74. Inspection facilities needed for very large slaughter layouts [REVOKED]

In a plant in which the slaughter rate will consistently be in excess of 20 hogs per hour, it is recommended that a moving carcass conveyor and a pan type moving inspection table be used. Moving viscera and head inspection tables for hogs must conform to the following specifications: the pans of the moving top viscera inspection table shall be constructed of stainless steel. The guard rail should be omitted from the section of the viscera inspection table opposite the eviscerator's station. A suitable pan sanitizer is required at the loading end of the table. The sanitizer should be without bottom and the sides should extend upward from 2 inches above the floor. In all other details, hog viscera inspection tables shall conform to specifications already listed under cattle.

PART 23. REQUIRED HOG SLAUGHTERING FACILITIES FOR SMALL PLANTS [REVOKED]

35:37-7-75. General specifications [REVOKED]

In smaller meat packing plants, the hog slaughtering department is usually located in an area in which all species of livestock are slaughtered. In general, the minimum specifications for cattle slaughter will meet the requirements for the slaughter of swine as well, with the exceptions of:

- (1) Scalding vats and related equipment (if hogs are to be scalded rather than skinned).
- (2) Additional drainage lines for these pieces of equipment.
- (3) Additional inspection trays, pans, tables, sanitizers, etc., if needed.
- (4) Additional rail space or different rail layout, if necessary.
- (5) Additional stunning area and/or facilities if necessary.
- (6) Additional equipment and/or facilities for handling inedible and condemned materials if needed.

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PART 25. REQUIRED POULTRY SLAUGHTERING FACILITIES [REVOKED]

35:37-7-76. Eviscerating and chilling areas [REVOKED]

~~The eviscerating department must have adequate floor space and be arranged to facilitate sanitary operations and efficient inspection. All eviscerating operations shall be readily accessible. Lines that cross over walkways, equipment, or work stations, shall be of sufficient height to protect the product, and drip pans shall be installed underneath them. Truckways and walkways shall be of sufficient width to preclude encroachment on evisceration and inspection operations. Eight feet of space shall be provided for each inspection station. The chillers shall be located so that all sides can be inspected, and all meters and chiller settings shall be readily accessible so the inspector is not required to assume an awkward or unsafe position.~~

35:37-7-77. Conveyors [REVOKED]

~~The poultry conveyors shall be constructed of metal or other acceptable material and designed to present each carcass and its parts so as to permit adequate and efficient inspection. A trough or other acceptable facility shall be provided beneath the conveyor line. Its length shall not be less than from the point where the carcass is opened or inspected to the point where all viscera have been completely removed. It must be continually water flushed or otherwise kept in an acceptable sanitary state. At a point after complete removal of viscera and before poultry enters the chilling system, a water spray washing system shall be provided with sufficient water pressure to thoroughly and efficiently wash the inside and outside of each carcass. A control button for stopping and starting the poultry conveyor system shall be within easy reach of the inspector.~~

35:37-7-78. Facilities for processing giblets [REVOKED]

~~The facilities must be sufficient to allow the giblet processing to keep pace with the slaughter rate. The operation must result in adequate and proper removal, preparation, inspection, and washing of giblets prior to pumping and entry into the chilling system. The location and construction of these facilities must provide adequate safeguards against contamination by, and of, other plant operations.~~

35:37-7-79. Facilities for handling inedible offal [REVOKED]

~~In poultry plants, the facilities for handling inedible offal, whether trough or otherwise, shall be large enough to allow clean and orderly removal during processing, without a pileup and without cross contamination of edible product.~~

35:37-7-80. Semi-dry poultry offal system [REVOKED]

~~(a) Materials. All materials used in the system within the eviscerating rooms must be constructed of noncorrosive and nontoxic materials.~~

~~(b) Design.~~

~~(1) For young chickens, the water rail should range from 34 to 36 inches in height above the standing surface and be positioned 7 to 10 inches horizontally from the vertical line of the shackle.~~

~~(2) For turkeys, the water rail should range from 34 to 36 inches in height above the standing surface and be positioned 13 to 15 inches horizontally from the vertical line of the shackle.~~

~~(3) Handwashing facilities must be within easy reach of each worker and should be movable when operational adjustments require a change in a worker's position. (If the worker must walk to reach such facility, it is improperly located.)~~

~~(4) The floor gutter shall be distinct, with vertical sides sufficiently inside the post supporting the water rail (a minimum of 6 inches is suggested to prevent worker's feet from being in the gutter). Gutters must also be wide enough to catch all material dropping from the carcass.~~

~~(5) Splash protectors in the form of flat sheets made of acceptable material shall be installed at all points along the eviscerating line where splashing by employees occurs.~~

~~(6) Pipes for conveying offal shall be constructed to permit daily cleaning and positioned so that sanitation will not be a problem, i.e., no pipes lying on the floor or bottom of a gutter.~~

~~(7) Side walls of hoppers must have sufficient pitch to assure that material deposited in the hopper will slide to the point where the offal is being mechanically conveyed.~~

~~(e) Wax dipping. When wax dipping is used, metal troughs shall be provided to catch the wax removed from dipped poultry. Acceptable facilities and methods shall be used to reclaim the wax.~~

PART 27. WELFARE FACILITIES FOR PLANT EMPLOYEES [REVOKED]

35:37-7-81. Dressing rooms and equipment [REVOKED]

~~Well located dressing rooms, properly separated from toilet rooms, are required for employees of each sex (unless only one sex is employed at the plant). The number of employees using each dressing room should be indicated on the specifications accompanying the drawings. If multiple shifts of employees use the facilities, this should also be indicated on the plans.~~

35:37-7-82. Lockers [REVOKED]

~~(a) In larger plants, each employee shall be provided with a metal locker at least 15 by 18 by 60 inches to facilitate cleaning beneath the lockers, they shall be placed on legs or other supports 16 inches above the floor. The lockers must have sloping~~

tops to facilitate orderliness and cleaning of the dressing room. Seats should be plastic or wood planks about 12 inches wide, mounted in front of and below the doors of the lockers on an extension of the framework supporting the lockers. If preferred, the seats may be unattached to the lockers and located in the aisle between the lockers. They should be plastic or wooden planks securely fastened to the floor by a minimum number of pipe leg supports.

(b) The aisle between the rows of lockers must be a minimum of 7 feet wide when attached seats are used (5 feet between rows of seats) and a minimum of 6 feet wide with centrally located seats.

(c) Alternate means of storing work clothing and equipment will be considered if it is accomplished in an orderly and sanitary manner.

35:37-7-83. Shower-bath facilities [REVOKED]

Suitable shower bath facilities should be provided in locker rooms (not in toilet rooms) at establishments where slaughtering operations are conducted. Such facilities are also desirable in processing plants. The shower bath stall should have an 8 inch high curb of impervious material, unless entry is through an individual dressing room with a floor sloped to drain into the shower.

35:37-7-84. Toilet rooms [REVOKED]

(a) Toilet rooms shall be separated from adjoining dressing rooms by tight, full height walls and self closing doors. Toilet rooms may not be entered directly from a workroom, but entrance through an intervening dressing room or ventilated toilet room vestibule is permissible. Toilet rooms and toilet room vestibules must have solid, self closing doors completely filling the openings except as described in the paragraph under Part F. of OAC 35:37-7-95.

(b) A sufficient number of elongated water closets with open front seats should be provided. The following formula should be used to determine the number of toilet bowls required in meat and poultry plants:

- (1) For 1 to 15 employees (persons of the same sex): 1
- (2) For 16 to 35 employees (persons of the same sex): 2
- (3) For 36 to 55 employees (persons of the same sex): 3 (1 urinal may be substituted for toilet bowls but only up to 1/3 of the total number of bowls required)
- (4) For 56 to 80 employees (persons of the same sex): 4 (1 urinal may be substituted for toilet bowls but only up to 1/3 of the total number of bowls required)
- (5) For each additional 30 employees in excess of 80 (persons of the same sex): 1 (1 urinal may be substituted for toilet bowls but only up to 1/3 of the total number of bowls required)

(c) Two feet of trough urinal is considered equivalent to one individual urinal. In both meat and poultry plants, it is desirable to provide urinals in toilet rooms for men. If stall type urinals are used, the floor must slope to drain in to the urinals. If wall hung type urinals are used, floor drains must be provided immediately beneath such fixtures.

35:37-7-85. Handwashing facilities [REVOKED]

A sufficient number of modern type (other than hand operated) handwashing basins (lavatories) are required in welfare rooms. In small plants with a limited number of employees, lavatories may be located in toilet rooms. However, plants with large dressing rooms must have handwashing facilities, in addition to those located in the toilet rooms.

35:37-7-86. Ventilation of welfare rooms [REVOKED]

Toilet and dressing rooms which are not air conditioned and which are located where no natural light and ventilation is available, must be equipped with an exhaust fan (activated by a common switch with the lighting in the area) and a duct leading to the outside air. Doors to dressing and toilet rooms ventilated in this manner should have a louvered section 12 inches by 12 inches minimum in the lower panel.

35:37-7-87. Lunch facilities [REVOKED]

To avoid unsanitary conditions usually associated with employees eating lunch in edible processing departments, adequate lunch facilities must be provided when plant cafeterias or nearby eating places are not available. There will be no objection to providing lunch facilities in dressing rooms if there is sufficient space to avoid congestion. Otherwise, a separate room or area is required.

35:37-7-88. Welfare facilities for employees working in inedible product areas [REVOKED]

In large volume establishments, separate welfare facilities must be provided for employees of the hide cellar, inedible products department, live poultry dock, and the like.

PART 29. INSPECTOR'S OFFICE AND WELFARE FACILITIES [REVOKED]

35:37-7-89. General [REVOKED]

(a) In official establishments (those under inspection), a well located inspector's office is required. The office shall be easily accessible without having to pass through or under eviscerating lines, plant offices, locker rooms, toilets or similar such detriments to access. It shall be supplied with suitable furniture including, but not limited to, a desk, chairs, a metal clothing locker at least 15 inches by 18 inches by 60 inches, and a metal filing cabinet with provisions for locking with an Oklahoma Department of Agriculture padlock. The minimum acceptable floor space is 70 square feet. However, if inspection supplies must be stored in this room, a minimum of 100 square feet must be provided.

(b) In larger plants where more than one inspector is routinely assigned, additional office space must be provided. A minimum of 40 square feet of floor space for the first inspector and at least 15 additional square feet for each additional inspector is required. When the USDA grader (in poultry plants) also occupies this office, at least 40 additional square feet of

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floor space is needed. Additional desks, chairs, storage lockers, file cabinets, etc., shall be supplied in sufficient quantity for the number of inspectors assigned to the plant.

35:37-7-90. Dressing facilities [REVOKED]

Adequate dressing facilities to accommodate both sexes shall be provided in plants where more than two full-time inspectors are routinely assigned.

35:37-7-91. Toilet room [REVOKED]

A common toilet room can be utilized when more than two inspectors are assigned to the plant if access is not through either locker (dressing) room.

35:37-7-92. Shower-bath facilities [REVOKED]

Suitable shower-bath facilities shall be provided in or connected to locker rooms (not in toilets) in establishments where slaughter operations are conducted.

35:37-7-93. Lighting and ventilation [REVOKED]

A minimum of 20 foot candles of lighting is required in locker rooms and toilets. A minimum of 30 foot candles is required in the offices except on desk surfaces where a minimum of 50 foot candles is required. Facilities that provide adequate ventilation and maintain an even comfortable temperature are required. Adequate janitorial services and supplies are to be maintained.

PART 31. SUGGESTED NOTES ON SPECIFICATIONS TO ACCOMPANY DRAWINGS [REVOKED]

35:37-7-94. Use of suggested notes [REVOKED]

The following suggestions are intended to be of assistance in preparing specifications that must accompany prints or drawings. The complete set of suggestions may not include all specifications to be submitted nor will any given plant necessarily use each suggestion listed. For example, a slaughter plant that does no processing would not use purely processing suggestions and a processing plant that does not slaughter would not use purely slaughtering suggestions. Suggestions that are applicable should be used in a manner that results in factual information about the plant as it is, as it will be when under inspection, or as it will be when revisions are completed. Therefore, persons preparing plans for approval are urged to be selective and accurate in making use of the following specifications notes.

35:37-7-95. Building construction [REVOKED]

- (a) Finish of walls, floors, doors, and ceilings must be indicated.
- (b) All exposed wood surfaces are painted with a good grade of oil or approved plastic paint or treated with hot linseed oil or a clear wood sealer.

(e) All window, door, and other openings that would admit insects are provided with effective screens or fly chaser fans. Effective means are also provided to preclude rodents and other vermin from entering buildings.

(d) Rails are placed not less than 2 feet from walls, posts, and other fixed parts of the building. Header rails are spaced at least 3 feet from adjacent walls and columns.

(e) For plants which are to slaughter and operate under inspection, the drawings should indicate a retaining compartment for holding carcasses and parts in a cooler. The compartment should be constructed of rust resistant No. 9 gauge wire or comparable material extending from the floor to the ceiling with doors equipped for locking or sealing by the Oklahoma Department of Agriculture. Poultry and processing plants under inspection should also provide for suitable retaining facilities.

(f) All doors of toilet rooms and dressing rooms and toilet room vestibules are solid, self-closing, and completely fill the openings, except as otherwise allowed for purposes of adequate ventilation (1 foot by 1 foot louvered area located near the bottom of the door, etc.).

(g) Suitable coves to facilitate sanitary maintenance are provided at junctions between walls and floors.

(h) Stairs are of impervious material and have solid treads, closed risers, and side curbs six (6) inches high measured at the front edge of the step.

(i) The livestock pens are paved with impervious material, such as concrete or brick, and pitched to suitable drainage facilities. Curbs at least 12 inches high and constructed of impervious material such as concrete, are installed around the borders of the livestock pen area, except at entrances, to confine liquids and fecal material. In plants under inspection, a suitable suspect pen and squeeze chute or gate are provided in locations shown on the drawings. Good natural or artificial lighting is provided in the livestock pen area for the performance of ante-mortem inspection at times when there is insufficient daylight. Well located hose connections are provided for the cleanup of the livestock pens. Watering troughs are located above or adjacent to pen floor drains and are equipped with suitable overflow outlets. For plants under inspection, a reasonable portion of the livestock pens, including the area with the suspect pen and squeeze gate, has a weathertight roof.

(j) Floor openings for chutes, etc., and for stairways except at entrances have curbs of impervious material, such as concrete or metal, at least 12 inches high to exclude floor drainage.

35:37-7-96. Water supply, plumbing, drainage, and refrigeration [REVOKED]

(a) The potable water supply is obtained from (indicate source of supply, e. g., private well, City of), and is effectively protected from pollution.

(b) An ample supply of hot water is available at adequate temperature and under suitable pressure and is properly distributed throughout the plant. Hose connections for supplying hot and cold water are provided in the various work rooms at the approximate locations shown on the drawings. Hot water of at least 180°F. at hose outlets is supplied for cleaning the

slaughtering, inedible and similar departments, and for sanitizing equipment such as cattle viscera inspection trucks. A thermometer with an easily read dial type scale is provided on the common water line at the place where viscera trucks are cleaned and sanitized.

(e) Only clean, and not re-circulated, water is used in the hog dehairer or poultry scalders. (In large volume swine establishments, clean water is required in at least the last six (6) feet of the dehairer.)

(d) Each lavatory (handwashing basin) is supplied with hot and cold water delivered through a combination mixing faucet with outlet 12 inches above the rim of the bowl, liquid soap, an adequate supply of sanitary towels in suitable dispensers, and a suitable receptacle for used towels. Lavatories are other than hand operated (knee or pedal operated).

(e) In larger plants, sanitary drinking fountains are provided in the slaughtering and processing departments and in the dressing rooms. If placed adjoining a lavatory, they are located high enough to avoid splash from the lavatory.

(f) All equipment wasting water is installed so that waste water is delivered into the drainage system without flowing over the floor. Drainage from edible products handling equipment such as sausage tables, cook tanks, tripe scalders, etc., is delivered to the drainage system by means of uninterrupted connections.

(g) Effective means have been taken to prevent back siphonage of liquids into the potable water supply or steam lines. Back siphonage of liquids into potable water supply is prevented by placing water lines to equipment, such as cooking or soaking vats and the like, higher than the highest level reached by liquids in the vats, or by other acceptable means such as mechanical anti-siphonage devices.

(h) The sewage from the plant is discharged into the city sewer system (furnish description of facilities if other method of disposal is employed).

(i) Toilet soil lines are separate from house drainage lines to a point outside of the building and bypass the grease catch basin (if there is one at the plant).

(j) Floor drainage lines inside the building are metal with an inside diameter of at least 4 inches and are properly vented to the outside air to a point above the roof. Each drainage inlet is equipped with a deep seal trap. All floor drains and vent lines are equipped to exclude rodents.

(k) Discharge lines for paunch contents are cast iron or steel pipe at least eight (8) inches in diameter. The paunch material is discharged into a tank for dewatering. The solid material is then discharged into a water tight truck for removal from the plant. Hog stomach content lines are at least six (6) inches in diameter. The paunch contents are removed daily or more often as may be necessary and are disposed of in a manner that does not create a nuisance or other objectionable condition. The area adjoining the tank where the truck stands during loading is paved with concrete (or other acceptable impervious material) and provided with suitable drainage facilities. A hose connection for supplying hot water for cleanup is provided nearby. The capacity of the dewatering tank is sufficient for holding the paunch contents from the maximum daily

slaughter of cattle. At least 2 1/2 cubic feet of capacity per animal is provided. Paunch and stomach contents lines are not connected to the regular drainage lines within the plant.

(l) Blood drains are provided with long neck deep seal traps properly vented to a point about the roof.

(m) Blood is discharged into a metal receiving tank and transferred by gravity or pump or blowline to a metal truck for removal from the plant or to processing equipment in the plant. (Use appropriate statement, if either is applicable.)

(n) The grease catch basin is not located in or near an edible department and is constructed so that it can be completely drained of its contents for daily cleaning. It is without ground cover (debris and clutter) for ready inspection. Grease skimmed from the basin is placed in water tight containers and promptly removed from the plant. (Use appropriate statement.) A conveniently located hose connection is provided for supplying hot water to clean the basin and adjacent area. The area around the basin is paved with concrete and equipped with drainage facilities. The location and construction of the basin are shown on detailed drawings.

(o) A means is provided in un-refrigerated workrooms to dispel steam and vapor which would interfere with inspection.

(p) Refrigerated rooms are maintained at a temperature no higher than 50°F.

(q) The coolers are refrigerated by means of (select appropriate statement below):

(1) overhead refrigeration units with insulated drip pans beneath them, properly connected to the drainage system;

(2) floor type refrigeration units placed within curbed and separately drained area unless located adjacent to floor drains;

(3) wall refrigeration coils with drip gutters installed beneath them; the gutters are constructed of impervious material such as concrete and are properly connected to the drainage system.

35:37-7-97. Equipment [REVOKED]

(a) Product handling equipment is designed and constructed in a manner acceptable to the Oklahoma Department of Agriculture, Food, & Forestry and is located in conformity with the guidelines in this Handbook.

(b) Chutes for the transfer of product are constructed so they can be readily cleaned. Chutes are round in shape or otherwise have well rounded corners. Those leading from edible to inedible products departments are effectively hooded and vented to dispel odors.

(c) Cooking vats and similar equipment are equipped with overflow pipes at least 2 inches in diameter with open end cleanout tees at the upper ends and are connected to the drainage system by means of interrupted drains. Valves on drainage lines leading from such equipment are located flush with the bottom of equipment for complete drainage.

(d) A suitable room or space and facilities for washing gambrels, beef hooks, trolleys, etc., are provided in a convenient location as shown and an exhaust fan is installed for dispelling steam.

(e) The hog scalding vat is constructed of metal.

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(f) Platforms for eviscerators, openers, giblet harvesters, etc., are constructed of suitable metal, of a type that can be readily cleaned (not subway type grating). Foot platforms for employees performing such operations as hind legging, erotch opening, udder removal, etc., in "on the rail" cattle or calf slaughtering departments are constructed with legs sufficiently set in to prevent contact between the forelegs of the cattle and the platform legs or such platforms can be suspended from the ceiling.

(g) The pans (or flights) of the moving top viscera inspection table are constructed of stainless steel or similar rust resistant metal. A suitable pan (or flight) sanitizer is provided at the loading end of the table. The sanitizer is without bottom and the sides extend upward from two (2) inches above the floor. The sanitizing chamber is vented to the outside air with a rust resisting metal vent pipe, at least ten (10) inches in diameter. A thermometer is provided with the sensitive element in the hot water line as it enters the sanitizer and with the temperature recording scale located so that it can be easily read by the inspector working alongside the viscera inspection table. A floor drain is provided beneath the sanitizer. The area in which the viscera inspection table is located has separate drainage. Cold water sprays are provided at both ends of the table. The movement of the viscera inspection table is synchronized with the movement of the carcass conveyor. The viscera inspection table is driven by a shaft and worm device and the carcass conveyor and the viscera inspection table are motivated by the same drive. A stop button for controlling the movement of the carcass conveyor and the viscera inspection table is provided in a location convenient for use by the inspector.

(h) Acceptable booths for flushing and washing cattle and calf heads are provided. Facilities are provided for sanitizing saws and knives used to remove horns and pieces of hide from cattle and calf heads before washing. Similar facilities are provided for sheep and goats if the heads are saved for edible purposes.

(i) The paunch emptying table is constructed of rust resistant metal. The end of the table overhangs the emptying hopper 12 inches to avoid soiling the cut and serous surfaces of paunches. The sides of the hopper extend vertically below the top of the table at least three and one half (3 1/2) feet and then converge to a discharge opening at least eight (8) inches in diameter.

(j) Edible offal is placed on cages with removable metal drip pans beneath or on suitable trucks equipped with similar drip pans, and conveyed to the offal cooler. If offal is packed in the coolers, suitable facilities, including a table and lavatory, are provided.

(k) Suitable mechanical equipment is provided for transferring condemned soft material to metal containers or hasher and washer without manual handling of this material.

(l) The rendering units and driers in the inedible products rendering department are equipped with effective condensers to suppress objectionable odors. Rendering units are equipped for Oklahoma Department of Agriculture sealing.

(m) Curing containers are constructed of stainless steel or other materials approved by the Oklahoma Department of Agriculture.

(n) Pipelines and pumps used in connection with edible product (including edible brine and pickling solutions) are demountable and made of stainless steel or other approved materials.

(o) The cages or trees used for smoked meats and sausage are designed to provide a clearance of at least twelve (12) inches between the product and the floor of the smokehouses and hanging rooms.

(p) Smoke making equipment, ducts, and smokehouses are located and designed so that all outer and inner surfaces can be readily cleaned.

(q) In large establishments, a suitable room or separately drained area is provided for washing handtrucks, boxes, trays, demountable parts of sausage stuffing equipment, etc. Two suitable compartments with entrance rails are provided for washing smokehouse cages and trees. The first compartment is used for washing cages and trees with a detergent solution and the second for rinsing this equipment with clean water to remove all detergent solution. The washing compartment has a suitable exhaust duct extending to a point outside the building.

(r) In plants with canning operations, a room for incubating samples of fully processed canned meat product is provided. The room is of adequate size and properly equipped for incubation. The room is equipped with a 7 day recording thermometer located on an outside wall and visible from outside the room. The shelves are made of expanded metal and are removable. The sensitive elements of the thermostat and recording thermometer are below the bottom shelf. The floor in the room is pitched to a floor drain equipped with a removable screw plug. The door of the room is equipped for sealing.

(s) A designated area is indicated and properly equipped for the reinspection of received carcasses and other products.

(t) A suitable rust resistant metal table is provided in an unobstructed space in a cooler for holding returned product for inspection.

(u) Each employee is provided with a metal locker at least 15 by 18 by 60 inches, having a sloping top and elevated on legs 16 inches long, removable plastic or wood seats 12 inches wide are provided in front of and below the doors of the lockers (or, a single plastic or wooden seat 12 inches wide securely attached to the floor by a minimum number of pipe leg supports is located 2 1/2 feet in front of the lockers). The dressing room will be used by not more than (give number and sex of employees). Alternate means of storing work clothing or equipment will be considered if this can be accomplished in an orderly and sanitary manner.

(v) The inspector's office is provided with suitable furniture, including a desk and chairs, a metal clothing locker (at least as large as that provided for employees) for each inspector, a metal cabinet equipped with a lock for the storage of supplies, and lavatory and toilet facilities.

(w) A suitable room or space for storage of supplies, such as wrapping paper, cartons and containers, is provided in a convenient location. All supplies are placed on racks 12 inches above the floor.

35:37-7-98. Operations [REVOKED]

- (a) The rate of slaughter is dependent upon the ability of the establishment to present carcasses, their viscera, and parts in an orderly and clean manner, permitting complete and efficient inspection at all times without congestion or other objectionable conditions. Therefore, give the maximum rate expected under optimum conditions. The estimated maximum rate of slaughter is: (give rate for each species or class).
- (b) ~~Animals (are or are not) slaughtered by the Kosher method;~~
- (c) ~~Hides are not spread for inspection in the slaughtering room.~~
- (d) ~~Calves of such large size that:

 - (1) there is not a clearance of at least 12 inches between the carcass and the floor, and
 - (2) the viscera cannot be readily transferred by the eviscerator manually and unaided from carcasses to the viscera inspection pan are not slaughtered on the calf inspection layout. Large calves are skinned and eviscerated as cattle.~~
- (e) ~~In large volume slaughtering plants, duplicate tags are provided to identify cattle and/or calf heads with corresponding carcasses.~~
- (f) ~~Sinks are provided for washing pieces of meat individually and not in batches, under running water.~~
- (g) ~~Hog hair is removed from the slaughtering room in watertight metal containers at the end of the day's operations and

 - (1) removed from the plant in a watertight metal truck and disposed of in a manner that does not create objectionable conditions such as fly breeding or odors; or
 - (2) conveyed to suitable equipment for processing in the plant. (Use appropriate statement.)~~
- (h) ~~Condemned and inedible material is transferred to the inedible products department in suitable watertight metal containers or conveyors

 - (1) for processing in the department; or
 - (2) for removal from the plant daily, or more often if deemed necessary by the inspector in charge, to an outside rendering plant for disposal. (Use appropriate statement.) Suitable facilities are provided for washing the containers used for such materials.~~
- (i) ~~Animals found dead on the premises are disposed of by prompt removal

 - (1) to a rendering plant; or
 - (2) to inedible products rendering department at the establishment. (Use appropriate statement.)~~
- (j) ~~Empty cans in canning department are washed in an inverted position using water at a temperature of at least 180°F, or they are cleaned by an approved jet vacuum device immediately before filling. If hot water is used for cleaning, an easily read dial type thermometer is provided in the hot water line of the sanitizer.~~
- (k) ~~Retorts drain into curbed and drained areas or pits or are connected to the drainage system by interrupted drains.~~
- (l) ~~Sausage material grinding and chopping, bacon slicing, boning, cutting, and similar operations are conducted in departments having a temperature no higher than 50°F. If conducted in areas warmer than this, a mid-shift cleanup will be~~

- ~~performed. Such departments are not located in areas where hanging carcasses or exposed product are stored.~~
- (m) ~~Vegetables are stored in bulk in a suitable separate room and are handled so as to avoid dissemination of dust. Suitable facilities in a location separate from the processing area are provided for the preliminary preparation of vegetables used in product. Vegetables such as celery and potatoes are thoroughly washed before being cut.~~
- (n) ~~Sawdust is conveyed to smokehouses in metal containers with tightly fitting lids (when it is necessary to transport through processing departments). Ashes are removed from smokehouses in the same manner.~~

35:37-7-99. General [REVOKED]

- (a) ~~Each workroom is provided with artificial lighting of good quality having an intensity of at least 50 foot candles at places where inspections are performed and where plant operations require establishment employees to prepare products of any character to meet inspection requirements. Other work surfaces should have at least 30 foot candles of light.~~
- (b) ~~Outer clothing of employees, shroud clothes, etc., are laundered at

 - (1) the plant laundry; or
 - (2) an outside laundry. (Use appropriate statement.)~~
- (c) ~~Roadways on the premises adjoining the plant are hard surfaced, with a binder of asphalt, tar, or cement, and are properly drained.~~
- (d) ~~Wall mounted cabinets, electrical control panels, and the like have a clear space of at least one (1) inch between the mounted units and the wall.~~
- (e) ~~Light fixtures in rooms where exposed meat is handled or processed have a protective shield of suitable non shattering material.~~
- (f) ~~A set of specifications must be submitted with each set of drawings. A minimum of two (2) sets of drawings and two (2) sets of specifications are required for plants not under inspection, and three (3) sets of drawings and three (3) sets of specifications are required for plants that will be under State Inspection.~~

[OAR Docket #17-569A; filed 7-7-17]

**TITLE 35. OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY
CHAPTER 37. FOOD SAFETY**

[OAR Docket #17-568A]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 13. Milk and Milk Products
35:37-13-2 [AMENDED]

AUTHORITY:

Okla. Const., Art. 6, § 31; State Board of Agriculture; 2 O.S. § 2-4(A)(2); 2 O.S. § 7-401 et seq.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

December 23, 2016

Permanent Final Adoptions

COMMENT PERIOD:

January 17, 2017 through February 17, 2017

PUBLIC HEARING:

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February 28, 2017

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 13, 2017

FINAL ADOPTION:

June 13, 2017

EFFECTIVE:

September 11, 2017

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:**Incorporated Standards:**

Grade A Pasteurized Milk Ordinance with Administrative Procedures - ~~2013~~2015 Recommendations," including Appendices A through R thereto excluding portions of Sections 5, 16, and 17 and Appendix E.

Incorporating Rules:

35:37-13-2.

Availability:

See contact person below.

GIST/ANALYSIS:

The proposed amendments update references to publications and reference materials.

CONTACT PERSON:

Bennett Abbott, Assistant General Counsel, Oklahoma Department of Agriculture, Food, and Forestry, Office of General Counsel, P.O. Box 528804, Oklahoma City, OK 73152-8804, phone: (405) 522-5803, email: bennett.abbott@ag.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 13. MILK AND MILK PRODUCTS

35:37-13-2. Incorporations by reference

(a) **Adopted references.**

(1) PMO. "Grade A Pasteurized Milk Ordinance with Administrative Procedures - ~~2013~~2015 Recommendations," including Appendices A through R thereto, hereinafter referred to as the "PMO," as published in the Grade A Pasteurized Milk Ordinance, ~~2013~~—2015 Revisions, by the Department of Health and Human Services, Public Health Service/Food and Drug Administration, Washington, D.C. is hereby incorporated by reference.

(2) Code of Federal Regulations. Where mention is made to any section or sections of the Code of Federal Regulations in the PMO, that section or sections shall be incorporated by reference. The State Board of Agriculture declares that, by incorporating the PMO by reference, it does not intend to create any inconsistency with the Oklahoma Milk and Milk Products Act, in the event there may be any inconsistency.

(b) **Exceptions.**

(1) Section 16, "Penalty" is not incorporated by reference.

(2) Section 17, "Repeal and Date of Effect" is not incorporated by reference.

(3) Section 5, "Certified Industry Inspection" is not incorporated by reference.

(4) Appendices E, "Examples of 3-out-of-5 Compliance Enforcement Procedures" is not incorporated by reference.

[OAR Docket #17-568A; filed 7-7-17]

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

[OAR Docket #17-567A]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. Agriculture Environmental Permitting and AgPDES

Part 1. General Provisions

35:44-1-3. Date of federal regulations incorporated [AMENDED]

Subchapter 3. Permit Conditions and Requirements

35:44-3-3. Date of federal regulations incorporated [AMENDED]

AUTHORITY:

Okla. Const., Art. 6, § 31; State Board of Agriculture; 2 O.S. § 2-4(A)(2); 2-18.2; 2 O.S. § 2A-1 et seq.; 2 O.S. § 2A-21 et seq.; 27A O.S. § 1-3-101(D).

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n/a

INCORPORATIONS BY REFERENCE:**Incorporated Standards:**

Title 40 of the Code of Federal Regulations (2016 Revision).

Incorporating Rules:

35:44-1-3 and 35:44-3-3.

Availability:

See contact person below.

GIST/ANALYSIS:

The proposed amendments update references to publications and reference materials.

CONTACT PERSON:

Bennett Abbott, Assistant General Counsel, Oklahoma Department of Agriculture, Food, and Forestry, Office of General Counsel, P.O. Box 528804, Oklahoma City, OK 73152-8804, phone: (405) 522-5803, email: bennett.abbott@ag.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 1. AGRICULTURE ENVIRONMENTAL PERMITTING AND AGPDES

PART 1. GENERAL PROVISIONS

35:44-1-3. Date of federal regulations incorporated When reference is made to 40 CFR it means, unless otherwise specified, Title 40 of the Code of Federal Regulations (20152016 Revision).

SUBCHAPTER 3. PERMIT CONDITIONS AND REQUIREMENTS

35:44-3-3. Date of federal regulations incorporated When reference is made to 40 CFR it means, unless otherwise specified, Title 40 of the Code of Federal Regulations (20152016 Revision).

[OAR Docket #17-567A; filed 7-7-17]

TITLE 35. OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY CHAPTER 50. AQUACULTURE

[OAR Docket #17-566A]

RULEMAKING ACTION: PERMANENT final adoption

RULES: Subchapter 1. Private Commercial Production Part 3. Licensing, Reporting, and Records 35:50-1-30. Initial licensing requirements [AMENDED] 35:50-1-31. Renewal licensing requirements [AMENDED]

AUTHORITY: Okla. Const., Art. 6, § 31; State Board of Agriculture; 2 O.S. § 2-4(A)(2) and 2-4(A)(20); 2 O.S. § 6-311 et seq.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY: November 1, 2016

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EFFECTIVE: September 11, 2017 SUPERSEDED EMERGENCY ACTIONS: n/a INCORPORATIONS BY REFERENCE: n/a GIST/ANALYSIS:

The proposed rule amendments revise fee structures to reflect the increased cost of labor and supplies required to manage the Aquaculture program.

CONTACT PERSON: Bennett Abbott, Assistant General Counsel, Oklahoma Department of Agriculture, Food, and Forestry, Office of General Counsel, P.O. Box 528804, Oklahoma City, OK 73152-8804, phone: (405) 522-5803, email: bennett.abbott@ag.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 1. PRIVATE COMMERCIAL PRODUCTION

PART 3. LICENSING, REPORTING, AND RECORDS

35:50-1-30. Initial licensing requirements Every aquaculture operation shall obtain a license and aquaculture hauling unit decals from the Department.

- (1) A duplicate license may be issued at the cost of ~~five~~ fifteen dollars ~~(\$5.00)~~ (\$15.00) each. (2) Licenses are non-transferable. (3) A license may be revoked pursuant to Title 2, Section 6-316 F1-4. (4) No license shall be issued prior to an initial inspection by the Department. (5) Each hauling unit used for the transportation of live aquatic species shall be affixed with each of the following: (A) No less than two (2) hauler decals. (i) Each decal shall be replaced every eight (8) years and shall be available from the Department. (ii) Each decal shall cost ~~One Dollar and Seventy Five Cents (\$1.75)~~ five dollars (\$5.00). (B) No less than two (2) date decals indicating the appropriate year. (i) The date decals shall each be applied to a separate hauler decal. (ii) Each date decal shall cost ~~One Dollar and Twenty Five Cents (\$1.25)~~ two dollars and fifty cents (\$2.50) and shall be available from the Department. (6) Prior to issuance of a license, an applicant shall provide the following to the Department: (A) A license fee of ~~ten~~ twenty-five dollars ~~(\$10.00)~~ (\$25.00). (B) Proof of identification including the applicant's age or date of birth and current residency information.

(C) A list of all persons with control or decision-making authority at the aquaculture operation, including but not limited to owners, operators, and managers.

(D) If applicable, copies of any permits directly related to the aquaculture operation issued by the Oklahoma Department of Environmental Quality (including a copy of any BMP submitted to the Oklahoma Department of Environmental Quality), the Oklahoma Water Resources Board, and the Army Corps of Engineers.

(E) A map or aerial photograph showing the aquaculture operation including the facilities and property lines, and specifies the legal description of the property or Global Positioning System (GPS) coordinates.

(F) A catastrophic aquatic species die-off disposal plan that requires immediate notification to the Department and is approved by the Department for emergency purposes.

35:50-1-31. Renewal licensing requirements

Each aquaculture operation shall renew the license and aquaculture vehicle decals by January 15th of each year.

(1) The renewal application shall include the following:

(A) A renewal fee of ~~twenty-five~~ twenty-five dollars ~~(\$10.00)~~ (\$25.00). Any renewal fee received after the annual renewal deadline of January 15th shall be assessed a late fee of ~~twenty-five~~ twenty-five dollars ~~(\$10.00)~~ (\$25.00).

(B) A copy of any modifications, changes, updates, or renewals to the items listed in (6)(B) through (F) of Rule 35:50-1-30.

(C) An annual report.

(2) Each hauling unit used for the transportation of live aquatic species shall be affixed with each of the following:

(A) No less than two (2) hauler decals.

(i) Each decal shall be replaced every eight (8) years and shall be available from the Department.

(ii) Each decal shall cost ~~One Dollar and Seventy Five Cents (\$1.75)~~ five dollars (\$5.00).

(B) No less than two (2) date decals indicating the appropriate year.

(i) The date decals shall each be applied to a separate hauler decal.

(ii) Each date decal shall cost ~~One Dollar and Twenty Five Cents (\$1.25)~~ two dollars and fifty cents (\$2.50) and shall be available from the Department.

[OAR Docket #17-566A; filed 7-7-17]

**TITLE 35. OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY
CHAPTER 55. COMMERCIAL PET BREEDERS AND ANIMAL SHELTERS**

[OAR Docket #17-565A]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 3. Standards of Care
35:55-3-1. Incorporation by reference [AMENDED]

AUTHORITY:
Okla. Const., Art. 6, § 31; State Board of Agriculture; 2 O.S. § 2-4(A)(2); and 4 O.S. § 30.1 et seq.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
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SUPERSEDED EMERGENCY ACTIONS:
n/a

INCORPORATIONS BY REFERENCE:
Incorporated Standards:
9 CFR (2016 Revision), Part 3.

Incorporating Rules:
35:55-3-1.

Availability:
See contact person below.

GIST/ANALYSIS:
The proposed rule amendments revise fee structures to reflect the increased cost of labor and supplies required to manage the Aquaculture program.

CONTACT PERSON:
Bennett Abbott, Assistant General Counsel, Oklahoma Department of Agriculture, Food, and Forestry, Office of General Counsel, P.O. Box 528804, Oklahoma City, OK 73152-8804, phone: (405) 522-5803, email: bennett.abbott@ag.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 250.3(5) AND 308(E) WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 3. STANDARDS OF CARE

35:55-3-1. Incorporation by reference

(a) The following provisions of Title 9 of the Code of Federal Regulations and the requirements contained therein pertaining to Animal Welfare, Part 3 (Standards) are, unless otherwise specified, adopted and incorporated by reference in their entirety:

- (1) 3.1 (housing facilities, general)

- (2) 3.2 (indoor housing facilities)
- (3) 3.3 (sheltered housing facilities)
- (4) 3.4 (outdoor housing facilities)
- (5) 3.5 (mobile or traveling housing facilities)
- (6) 3.6 (primary enclosures), except for 3.6 (c)(1)(ii) and (c)(2)
- (7) 3.7 (compatible grouping)
- (8) 3.8 (exercise for dogs)
- (9) 3.9 (feeding)
- (10) 3.11 (cleaning, sanitization, housekeeping, and pest control)
- (11) 3.12 (employees)
- (12) 3.13 (consignments to carriers and intermediate handlers)
- (13) 3.14 (primary enclosures used to transport live dogs and cats)
- (14) 3.15 (primary conveyances [motor vehicle, rail, air, and marine])
- (15) 3.16 (food and water requirements)
- (16) 3.17 (care in transit)
- (17) 3.18 (terminal facilities)
- (18) 3.19 (handling)

(b) When reference is made to a federal entity, it shall mean the state counterpart.

(c) When reference is made to 9 C.F.R. it means, unless otherwise specified, the volume of 9 C.F.R. as published on July 1 (2015)(2016).

[OAR Docket #17-565A; filed 7-7-17]

**TITLE 40. BOARD OF TESTS FOR ALCOHOL AND DRUG INFLUENCE
CHAPTER 1. ORGANIZATION, OPERATIONS, PROCEDURES AND POLICIES**

[OAR Docket #17-604]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

40:1-1-1 [AMENDED]

AUTHORITY:

Board of Tests for Alcohol and Drug Influence; 47 O.S. §759

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

January 22, 2017

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Superseded rules:

40:1-1-1 [AMENDED]

Gubernatorial approval:

October 10, 2016

Register publication:

34 Ok Reg 95

Docket number:

16-772

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The proposed rules update the purpose statement of Chapter 1 in response to the Court of Civil Appeals' ruling in *Sample v. DPS*. The proposed rules more accurately describe the purpose of the rules in Chapter 1.

CONTACT PERSON:

Kevin Behrens, State Director of Tests, Board of Tests for Alcohol and Drug Influence, P.O. Box 36307, Oklahoma City, OK 73136-2307, 405-425-2460, kevin.behrens@dps.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

40:1-1-1. Purpose

The rules of set forth in this Chapter have been adopted to comply with the provisions of the Administrative Procedures Act, 75 O.S., Sections 302, 305, and 307. They concern and control describe the organization, powers, duties, operations, and procedures of the Board with respect to its administration, rule-making, individual proceedings, and other activities.

[OAR Docket #17-604; filed 7-11-17]

**TITLE 40. BOARD OF TESTS FOR ALCOHOL AND DRUG INFLUENCE
CHAPTER 20. SPECIMENS**

[OAR Docket #17-605]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

40:20-1-3 [AMENDED]

AUTHORITY:

Board of Tests for Alcohol and Drug Influence; 47 O.S. §759

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Permanent Final Adoptions

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Superseded rules:

40:20-1-3 [AMENDED]

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34 Ok Reg 95

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16-773

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The proposed rules approve disposable materials for use in the collection of blood specimens for the determination of the alcohol concentration thereof, or the presence and concentration of other intoxicating substances, or a combination thereof. The proposed rules eliminate language that implies regulation of health care providers in the performance of their duties by the Board of Tests. The proposed rules make minor changes to terminology related to retained blood samples.

CONTACT PERSON:

Kevin Behrens, State Director of Tests, Board of Tests for Alcohol and Drug Influence, P.O. Box 36307, Oklahoma City, OK 73136-2307, 405-425-2460, kevin.behrens@dps.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

40:20-1-3. Collection, ~~transfer~~transfer, and retention of blood specimens of blood

(a) ~~Withdrawal and collection~~Collection of specimens of blood ~~obtained~~ from living human subjects under the provisions of Title 47 and Title 3 and Title 63, Oklahoma Statutes shall be performed as set forth in this Section. The person, from whom blood is collected for analysis of the presence or concentration of alcohol, other intoxicating substances, or a combination thereof, is referred to as the "Tested Person" for the purposes of this Section.~~The entire process shall be carried out with full regard for the health and safety of the tested persons, and so as to maintain properly the identity, integrity, and composition of such blood specimens.~~

(1) Collection of blood specimens - general conditions.

(A) ~~Blood specimens shall be withdrawn in accordance with accepted medical practices, in an appropriate hospital or medical or clinical environment, including the interior of an ambulance, and collected by persons authorized by Title 47, Section 752 of the Oklahoma Statutes, and these rules, to withdraw blood.~~

(B) No blood shall be knowingly ~~with-~~drawn~~collected~~ from any person with hemophilia or from any person who is taking anticoagulant medication(s) ~~under the direction of a licensed healing arts practitioner.~~ However, the collection of blood from a person with hemophilia or from a person who is taking anticoagulant medications does not invalidate an otherwise valid test.

(2) Procedures ~~and~~techniques, and precautions.

(A) ~~Blood shall be withdrawn by venipuncture, after appropriate preparation of the puncture site(s), and with necessary precautions to maintain asepsis and avoid contamination of the specimens. Puncture site preparation and skin cleansing shall be performed without the use of alcohol or other volatile organic disinfectant.~~

(B) All blood specimens shall be collected directly in or immediately deposited into ~~suitable clean, sterile, dry containers with inert closures, which contain adequate and appropriate anticoagulant(s) and preservative(s) in accordance with recognized procedural standards.~~ 10 milliliter (mL) glass vacuum tubes labeled by the manufacturer as containing 100 milligrams (mg) of sodium fluoride and 20 milligrams (mg) of potassium oxalate. Such containers are hereby approved for the collection of blood for analysis of the presence or concentration of alcohol, other intoxicating substances, or a combination thereof.

~~(C) All disposable materials, supplies, and paraphernalia shall not be reused for the withdrawal and collection or storage of blood specimens. All such materials, supplies, and paraphernalia other than required records or those required to be stored or retained or forwarded for evidentiary or other reasonable purposes shall be safely disposed of as soon as practicable after use. All materials, supplies, and paraphernalia with which the tested subject will or may come into physical contact shall be stored, handled, and used in a properly safe and sanitary manner.~~

~~(D)~~ Each tube ~~or other vessel~~ containing a blood specimen shall be placed into a ~~sealed envelope or other suitable sealed container or enclosure,~~ approved by the State Director of Tests for Alcohol and Drug Influence, and bearing or containing at least the following information:

- (i) Full name of the subject from whom the blood specimen was obtained
- (ii) Date, time, and location where the blood specimen was obtained
- (iii) Name of the law enforcement agency (and unit thereof, if needed for further identification) responsible for obtaining and processing the blood specimen
- (iv) ~~Legible signature~~Signature, printed name, and title of the qualified person who withdrew the blood specimen.

(b) **Handling and disposition of state's blood specimen.** A blood specimen collected at the request of a law enforcement officer, hereafter termed "State's blood specimen~~Blood Specimen~~," shall be handled and processed as set forth hereinafter.

(1) Each State's ~~blood specimen~~Blood Specimen, in its sealed container and employing other shipping or transport enclosures as required, shall be promptly dispatched or forwarded by the law enforcement agency to a central or branch forensic laboratory of the Oklahoma State Bureau

of Investigation, or to another official Forensic Alcohol Laboratory or Forensic Drug Laboratory approved by the Board, as appropriate, accompanied by a request for determination of the presence and/or concentration of alcohol and/or other intoxicating substance in such blood specimen, as appropriate. The ~~choice~~selection of the approved ~~Laboratory~~laboratory shall be made by the law enforcement agency employing the arresting officer.

(2) The law enforcement agency may ~~accomplish the dispatch or forwarding of~~forward the State's ~~blood specimen~~Blood Specimen to the approved ~~Laboratory~~laboratory of its choice by use of the U. S. Postal Service, personal delivery, or by any other appropriate means.

(3) The storage and dispatch or forwarding of the State's ~~blood specimen~~Blood Specimen shall be accomplished in such manner and by such means as to maintain the identity and integrity of specimens, maintain the chain of custody, to exclude tampering with and unauthorized access to or exchange or loss of specimens, and to provide the requisite security for evidentiary purposes.

(c) **Collection, transfers, and retention of retained blood specimens.** Whenever a State's blood specimen is collected under the provisions of Title 47, Oklahoma Statutes, at the direction of a law enforcement officer and for the purpose of determining the concentration of alcohol or other intoxicating substance thereof, an additional and separate blood specimen shall be collected at the same time and by the same qualified person withdrawing the State's blood specimen. The resulting additional specimen is hereafter termed "Retained Blood Specimen." Such Retained Blood Specimens shall be collected, retained, transferred, and analyzed as set forth hereinafter.

(1) **Collection of retained blood specimens** ~~Retained Blood Specimens.~~

(A) Whenever possible, the additional blood specimen shall be withdrawn from the tested person without performing additional venipunctures, and shall be collected incident to and as a part of the entire blood collection process.

(B) The Retained Blood Specimen shall be ~~with- drawn—~~and collected in a manner identical to the State's ~~blood specimen~~Blood Specimen and as set forth heretofore in this Section.

(C) The tube ~~or other vessel~~ containing the Retained Blood Specimen shall be placed into a ~~sealed envelope or other suitable sealed container or enclosure~~, approved by the State Director of Tests for Alcohol and Drug Influence, and bearing or containing at least the following information:

- (i) Full name of the subject from whom the blood specimen was obtained
- (ii) Date, time, and location where the blood specimen was obtained
- (iii) Name of the law enforcement agency (and unit thereof, if needed for further identification) responsible for obtaining and processing the blood specimen

(iv) ~~Legible signature~~Signature, printed name, and title of the qualified person who withdrew the blood specimen.

(2) **Transfer of retained blood specimens** ~~Retained Blood Specimens to an approved retention laboratory.~~

(A) Each Retained Blood Specimen, in a sealed container and employing other shipping or transport enclosures as required, shall be promptly transferred by the law enforcement agency to a Retention Laboratory approved by the Board of Tests for Alcohol and Drug Influence and designated for that purpose by the Board.

(B) Each Retained Blood Specimen so transferred shall be accompanied by substantially the following information, clearly associated with a given specimen:

- (i) Name, location, address, and telephone number of the law enforcement agency (and unit thereof if needed for further identification) transferring the blood specimen
- (ii) Date of transfer of the blood specimen from the law enforcement agency to the Approved Retention Laboratory
- (iii) Full name of the subject from whom the blood specimen was obtained
- (iv) Date, time and location of blood specimen collection
- (v) Case or identification number assigned to the case or subject by the law enforcement agency
- (vi) ~~Legible signature~~Signature, printed name, and title of the authorized person initiating the transfer of the specimen from the law enforcement agency to the Approved Retention Laboratory.

(C) The law enforcement agency may ~~accomplish the transfer or forwarding of~~forward the Retained Blood Specimen to the Approved Retention Laboratory designated by the Board by use of the U. S. Postal Service, personal delivery, or by any other appropriate means.

(D) The transfer or forwarding of the Retained Blood Specimen shall be accomplished in such manner and by such means as to maintain the identity and integrity of specimens, to exclude tampering with and unauthorized access to or exchange or loss of specimens, and to provide the requisite security for evidentiary purposes.

(E) Neither the tested person, nor any agent or attorney of such person, shall have access to the Retained Blood Specimen while it is in the custody of the law enforcement agency, or during the transfer process, or thereafter.

(3) **Retention and storage of retained blood specimens** ~~Retained Blood Specimens.~~

(A) Each Retained Blood Specimen, in a sealed envelope or other sealed container or enclosure, shall be kept and stored by the Approved Retention Laboratory designated by the Board for sixty (60) days from the date of collection, unless transferred prior thereto

to a Board-approved Forensic Alcohol Laboratory or Forensic Drug Laboratory as hereinafter provided. After the expiration of sixty (60) days from the date of such collection, all such Retained Blood Specimens, other than those transferred to an approved Laboratory as hereinafter provided, may be promptly and safely destroyed by the Approved Retention Laboratory.

(B) Retained Blood Specimens shall be stored and kept in accordance with policies, practices, or procedures established by the Approved Retention Laboratory responsible for obtaining and storing these specimens and not inconsistent with the Rules of the Board of Tests for Alcohol and Drug Influence. Storage shall be carried out in such a manner and by such means as to maintain the identity and integrity of specimens, to exclude tampering with and unauthorized access to or exchange or loss of specimens, and to provide the requisite security for evidentiary purposes.

(C) Neither the tested person, nor any agent or attorney of such person, shall have access to the Retained Blood Specimen while it is in the custody of the Approved Retention Laboratory.

(4) ~~Transfer of retained blood specimens~~Retained Blood Specimens to a forensic alcohol laboratory or forensic drug laboratory.

(A) Upon ~~proper~~written direction by the tested person or such person's agent to the Approved Retention Laboratory ~~which~~that has custody of the Retained Blood Specimen obtained from such person, received in accordance with such Approved Retention Laboratory's policies, practices and procedures and within sixty (60) days from the date of collection of the Retained Blood Specimen, the Approved Retention Laboratory shall promptly transfer the Retained Blood Specimen obtained from such person to any Forensic Alcohol Laboratory or Forensic Drug Laboratory, as appropriate, which is approved by the Board of Tests for Alcohol and Drug Influence and was selected by such person or such person's agent.

(B) The Approved Retention Laboratory may ~~accomplish the transfer of~~ the Retained Blood Specimen to the Forensic Alcohol Laboratory or Forensic Drug Laboratory by use of the U. S. Postal Service, personal delivery, or by any other appropriate means; provided, that neither the tested person nor any agent or attorney of such person shall have access to the Retained Blood Specimen during the transfer process, or thereafter.

[OAR Docket #17-605; filed 7-11-17]

TITLE 40. BOARD OF TESTS FOR ALCOHOL AND DRUG INFLUENCE CHAPTER 25. APPARATUS, DEVICES, EQUIPMENT, AND MATERIAL

[OAR Docket #17-606]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

40:25-1-2 [AMENDED]

40:25-1-3 [AMENDED]

40:25-1-4 [REVOKED]

AUTHORITY:

Board of Tests for Alcohol and Drug Influence; 47 O.S. §759

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Superseded rules:

40:25-1-2 [AMENDED]

40:25-1-3 [AMENDED]

40:25-1-4 [REVOKED]

Gubernatorial Approval:

October 10, 2016

Register publication:

34 Ok Reg 98

Docket number:

16-774

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The proposed rules approve evidential breath alcohol measurement devices for use in determining the breath alcohol concentration of persons suspected of driving under the influence or driving while impaired. The proposed rules approve dry gas canisters to be used as external reference methods in conjunction with approved evidential breath alcohol measurement devices. The proposed rule revocations eliminate language that is either unnecessary or relocated to other rules.

CONTACT PERSON:

Kevin Behrens, State Director of Tests, Board of Tests for Alcohol and Drug Influence, P.O. Box 36307, Oklahoma City, OK 73136-2307, 405-425-2460, kevin.behrens@dps.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

40:25-1-2. Approved evidential breath-alcohol analyzers measurement devices

~~(a) Any evidential breath alcohol analyzer, approved by the Board as an automated analyzer, by resolution, at an~~

open meeting of the Board is hereby approved for analysis of alcohol in breath specimens and is designated as an automated analyzer. The Intoxilyzer 8000 is hereby approved for determining the presence or concentration of alcohol in subject's breath.

(b) ~~The Board may expunge from approval any previously approved analyzer, by resolution, at an open meeting of the Board.~~

(c) ~~The Board shall maintain a list of all said approved analyzers, available for public review at the administrative office of the Board during regular office hours.~~

40:25-1-3. Alcoholic breath simulators and reference methods Approved dry gas canisters

(a) ~~Any alcoholic breath simulator or reference method, approved by the Board, by resolution, at an open meeting of the Board is hereby approved, for use in association with any breath alcohol analysis apparatus, device, or instrument for the determination of the alcohol concentration of breath specimens approved for that purpose by the Board of Tests for Alcohol and Drug Influence. Any pressurized dry gas canister labeled by the manufacturer with a target value of 0.080 BAC, 2% or .002, whichever is greater, is hereby approved for use in association with approved evidential breath alcohol measurement devices.~~

(b) ~~The Board may expunge from approval any previously approved simulator or reference method, by resolution, at an open meeting of the Board. The State Director of Tests, in accordance with the needs of the agency, may deploy dry gas canisters approved by this section for the purpose of performing calibration checks of approved evidential breath alcohol measurement devices.~~

(c) ~~The Board shall maintain a list of all said approved simulators or reference methods, available for public review at the administrative office of the Board during regular office hours. The State Director of Tests shall maintain a list of the dry gas canisters approved by this section that have been deployed by the agency.~~

40:25-1-4. Disposable materials, supplies, and paraphernalia [REVOKED]

(a) ~~**Items for breath alcohol analysis.** In the collection and analysis of breath specimens for the determination of the alcohol concentration thereof by means of any apparatus, device, instrument, method, or procedure approved for that purpose by the Board of Tests for Alcohol and Drug Influence or its predecessor agency, the following safeguards additional to the prescribed operating procedure shall be employed in every such collection and/or analysis involving a human subject.~~

(1) ~~All mouth pieces employed in any breath test shall be new, previously unused, commercial items designed and manufactured for that purpose and specifically approved for such use by the State Director of Tests for Alcohol and Drug Influence. For the purpose of this rule, breath test means the completion of the steps contained in~~

~~40 O.A.C. 30-1-3 and the operating procedure prescribed by the State Director of Tests.~~

(2) ~~Any such disposable materials, supplies, and paraphernalia shall not be reused for the collection or analysis of breath specimens from any other human subject.~~

(3) ~~All such disposable materials, supplies, and paraphernalia, other than required records or report or other documents, shall be safely disposed of as soon as practicable after use.~~

(4) ~~All such disposable materials, supplies, or paraphernalia with which the tested subject will or may come into physical contact shall be stored, handled, and used in a properly safe and sanitary manner.~~

(b) ~~**Items for blood alcohol analysis.** All materials, supplies, and paraphernalia of whatever kind (including but not limited to hypodermic needles, syringes, partially evacuated tubes and other containers, anticoagulants, preservatives, etc.) employed in the withdrawal and collection of blood and storage of blood specimens shall be new, previously unused, sterile or otherwise suitable single use disposable commercial items designed and manufactured for that purpose and approved for such use by the State Director of Tests for Alcohol and Drug Influence; or shall be other suitable items, materials, or supplies specifically approved for such use by the State Director of Tests for Alcohol and Drug Influence.~~

[OAR Docket #17-606; filed 7-11-17]

**TITLE 40. BOARD OF TESTS FOR ALCOHOL AND DRUG INFLUENCE
CHAPTER 50. IGNITION INTERLOCK DEVICES**

[OAR Docket #17-607]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
40:50-1-1.1 [AMENDED]
40:50-1-6.1 [AMENDED]
40:50-1-8 [AMENDED]

AUTHORITY:
Board of Tests for Alcohol and Drug Influence; 47 O.S. §759
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INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The proposed rules update, add, and remove the definitions of various terms related to the ignition interlock device. The proposed rules change how installations, removals, and maintenance are recorded by ignition interlock technicians, service centers, and manufacturers.

CONTACT PERSON:

Kevin Behrens, State Director of Tests, Board of Tests for Alcohol and Drug Influence, P.O. Box 36307, Oklahoma City, OK 73136-2307, 405-425-2460, kevin.behrens@dps.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

40:50-1-1.1. Definitions

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

"Absconding" means a failure of an interlock program participant to remedy a permanent lockout in accordance with these rules within 30 days of the occurrence of such permanent lockout, which results in a report of removal being sent to the installation authority and/or monitor.

"Alcohol" means Ethyl Alcohol, also called ethanol.

"Anti circumvention feature" means any feature or circuitry incorporated into the device that is designed to prevent activity that would cause the device not to operate as intended.

"Board" means the Administrative Offices of the Oklahoma Board of Tests for Alcohol and Drug Influence created by O.S. 47:759.

"Board en banc" means the sitting members of the Board as defined by O.S. 47:759 (A).

"Breath alcohol test" means the analysis of a person's expired alveolar breath to determine the alcohol concentration.

"Calibration" means the process of testing and adjusting a device to ensure accuracy.

"Circumvention" means to bypass the correct operation of an interlock device by starting the vehicle, by any means, without first providing a breath test or passing a confirmatory test.

"Confirmatory test" means a breath test required in response to a circumvention.

"Certification" means a status granted by the Board that permits a manufacturer to distribute a device in the state of Oklahoma.

"Data storage system" means a recording of all events monitored by the device.

"Director" means the position of the State Director of the Board as defined in O.A.C. 40:1-1-3.

"Fee" means a non-refundable administrative fee.

"Free restart" means a function of a device that will allow a vehicle to be restarted under the requirements in this title, without having to complete another breath alcohol test.

"Ignition interlock device" means a mechanism that prevents a vehicle from starting when the breath alcohol concentration of a breath alcohol test meets or exceeds the startup set point. Also referred to as "device".

"Inclusion Zone" means an area encompassing 25 driven miles from the Oklahoma state line as determined by the Board.

"Installation Authority" means the Oklahoma agency or entity by statute or order requiring or authorizing installation of a device.

"License" means the permission granted by the Board to engage in specific activities of the ignition interlock program.

"Manufacturer" means the actual producer of the device.

"Manufacturer representative" means the individual designated by the manufacturer to act on behalf of or represent the manufacturer in all matters under the jurisdiction or consideration of the Board with respect to device certification.

"Monitor" means the agency, organization and/or person(s) designated by the Installation Authority to receive reports regarding ignition interlock program participants.

"Negative result" means a breath alcohol test result indicating the alcohol concentration is less than the specific point value for the purpose specified.

"Penalty Fail" means a breath alcohol test resulting in a positive result that meets or exceeds the specific point value for the purpose specified.

"Permanent lockout" means a condition wherein the device will not allow a breath alcohol test and therefore will not allow the vehicle to be started.

"Positive result" means a breath alcohol test result indicating the alcohol concentration meets or exceeds the specific point value for the purpose specified.

"Proper Record Maintenance" means the manufacturer's complete records on every participant for a period of five (5) years from the date of removal including, but not limited to, all data retrieved from the data storage system of a device. The Board, or its designee, shall have access to any and all records.

"Reciprocity" means the process by which the Board may defer to a foreign state's device standards and specifications when an interlock participant is required to meet an interlock requirement for more than one state simultaneously.

"Reference sample device" means any alcohol breath testing external control or device approved for use by the Board.

"Retest" means a breath alcohol test or tests required in accordance with O.A.C. 40:50-1-3(e).

"Startup set point" means an alcohol concentration at which, or above, the device would prevent the vehicle from starting.

"Tampering" means any act or attempt to alter, interfere, disable, defeat or circumvent the installation or operation of the device.

"Vendor" means a licensed ignition interlock technician designated by the Manufacturer representative of a certified device to act on behalf of or represent the manufacturer in all matters under the jurisdiction or consideration of the Board, excluding matters related to device certification.

40:50-1-6.1. Removal requirements

The device shall be removed according to the following guidelines:

- (1) The only person(s) allowed to remove or observe the removal of the device are ignition interlock technicians ~~duly~~ licensed by the Board.
- (2) A designated waiting area that is separate from the removal area is to be provided for the participant.
- (3) Adequate security measures shall be taken to ensure that unauthorized personnel cannot gain access to proprietary materials or files of other participants.
- (4) All data contained in the data storage system shall be retrieved in conjunction with removal of the device. Records may be maintained electronically.
- (5) Upon completion of the removal of the device, the licensed ignition interlock technician shall:
 - (A) Provide the participant a report showing the removal of the device, and
 - (B) Notify the Board in the form and/or format designated by the Board.
 - (C) Notify the installation and monitoring authority in the form and format designated by the Board.

40:50-1-8. Ignition interlock technician

- (a) No person may perform any service(s) related to any device in this state or located within the inclusion zone without being duly licensed by the Board.
- (b) An applicant who has been convicted of an alcohol related traffic offense or any offense classified as a felony, within five (5) years prior to the date of filing of the applicant's application for licensure as an ignition interlock technician may not be eligible for licensure. For purposes of this section, a conviction means the applicant was adjudicated guilty by a court of competent jurisdiction.
- (c) An applicant must be at least eighteen (18) years of age.
- (d) An applicant must possess a valid driver license.
- (e) A vendor seeking licensure for an ignition interlock technician shall initiate an ignition interlock technician license application and remit the appropriate fee by accessing the Board website at <http://ignitioninterlock.ok.gov>.
- (f) The applicant shall:
 - (1) Complete the ignition interlock technician license application.
 - (2) Complete and score an 80% or higher on a knowledge and skills examination administered by the Board.
 - (3) Submit a criminal history report certified within the immediately preceding thirty (30) days from either the Oklahoma State Bureau of Investigation or, if the applicant has not lived in Oklahoma for the immediately preceding five (5) years, a criminal background check from the agency responsible for keeping criminal history in the state or states of previous residence.
- (g) Each application for licensure shall be for a single ignition interlock technician. Separate ignition interlock technician applications are required for additional ignition interlock technicians.

(h) The technician must utilize the ignition interlock management system for issuing, updating, and removing the installation verification form for any participant provided device related services.

[OAR Docket #17-607; filed 7-11-17]

**TITLE 40. BOARD OF TESTS FOR ALCOHOL AND DRUG INFLUENCE
CHAPTER 55. SCREENING DEVICES**

[OAR Docket #17-608]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 1. Alcohol screening devices [NEW]
40:55-1-1 [NEW]
40:55-1-2 [NEW]
40:55-1-3 [NEW]
Subchapter 2. Drug screening devices [NEW]
40:55-1-1 [NEW]
40:55-1-2 [NEW]
40:55-1-3 [NEW]

AUTHORITY:
Board of Tests for Alcohol and Drug Influence; 47 O.S. §759
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INCORPORATIONS BY REFERENCE:
Incorporated standards:
Conforming Products List of Screening Devices to Measure Alcohol in Bodily Fluids (77 FR 35745), Model Specifications for Screening Devices to Measure Alcohol in Bodily Fluids (73 FR 16956),

Incorporating rules:
40:55-1-1

Availability:
Available Monday through Friday at the Board of Tests for Alcohol and Drug Influence, 3600 N. Martin Luther King Ave. Oklahoma City, OK 73111, 405-425-2460.

GIST/ANALYSIS:
The proposed rules provide for the approval of screening devices for drugs and alcohol in suspected impaired drivers. The rules provide procedures for the use, maintenance, and calibration of screening devices.

CONTACT PERSON:
Kevin Behrens, State Director of Tests, Board of Tests for Alcohol and Drug Influence, P.O. Box 36307, Oklahoma City, OK 73136-2307, 405-425-2460, kevin.behrens@dps.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S.,

Permanent Final Adoptions

SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 1. ALCOHOL SCREENING DEVICES

40:55-1-1. Approved devices

Devices listed on the current *Conforming Products List of Screening Devices to Measure Alcohol in Bodily Fluids* (77 FR 35745), or conforming to the *Model Specifications for Screening Devices to Measure Alcohol in Bodily Fluids* (73 FR 16956), published by the National Highway Traffic Safety Administration are approved for use as alcohol screening devices for law enforcement use to aid in the detection of impaired drivers.

40:55-1-2. Operating Procedure

(a) **Authorized use.** Alcohol screening devices approved by these rules shall be used as a presumptive preliminary breath test. The operator of the alcohol screening device, or the law enforcement agency employing the operator, shall determine the appropriate timing for use of the alcohol screening device during impaired driving investigations.

(b) **Operation.** Alcohol screening devices approved by these rules shall be operated in accordance with the manufacturer's instructions. In addition to any manufacturer's instructions, the operator of the alcohol screening device shall observe the subject for at least 15 minutes prior to obtaining a breath sample to confirm that the subject has not ingested any substance, vomited, or smoked during that time.

40:55-1-3. Calibration check and calibration

(a) **Authorized personnel.** The calibration, or calibration check, may be performed by the operator, a designated member of the law enforcement agency employing the operator, or a third party in accordance with the manufacturer's instructions.

(b) **Calibration check interval and procedure.** Alcohol screening devices approved by these rules shall be checked for calibration accuracy annually. Calibration accuracy shall be within (=/-) 0.005 g/210L of the value of the reference method at the time of the calibration check. Calibration checks shall be performed in accordance with the manufacturer's instructions.

(c) **Calibration procedure.** Calibrations shall be performed in accordance with the manufacturer's instructions when a calibration check falls outside (+/-) 0.005 g/210L of the value of the reference method at the time of the calibration check.

SUBCHAPTER 2. DRUG SCREENING DEVICES

40:55-2-1. Approved method

The approved method for drug screening devices for use in the field by law enforcement officers is oral fluid testing accomplished by immunoassay lateral flow testing devices.

40:55-2-2. Approved devices

The following devices are approved for use as drug screening devices:

- (1) Draeger Drug Test 5000
- (2) Alere DDS-2

40:55-2-3. Use, precautions, and maintenance

(a) Oral fluid testing shall be performed in accordance with the manufacturer's instructions related to the use of the approved device.

(b) The officer shall be trained in the use of the approved drug screening device in accordance with the manufacturer's specifications. The drug screening device results do not imply impairment in and of themselves. All precautions for the safety of the subject as prescribed by the manufacturer shall be adhered to.

(c) Approved drug screening devices shall be maintained in accordance with the manufacturer's instructions.

[OAR Docket #17-608; filed 7-11-17]

TITLE 92. OKLAHOMA STATE ATHLETIC COMMISSION CHAPTER 10. RULES FOR BOXING AND OTHER ACTIVITIES

[OAR Docket #17-655]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions
92:10-1-4 [AMENDED]

AUTHORITY:

3A O.S. 2011, §§ 603 and 607; Oklahoma State Athletic Commission

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INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The rule requires applicants who are age forty (40) or older to provide specific health information when applying to be licensed as a combative sports practitioner in boxing or Mixed Martial Arts. The rule provides a process by which licensure can be denied if it is determined that competing in a combative sports event poses an undue risk to the applicant's health or safety. The rule also provides a process by which a denied applicant may request that the Commission review the denial. The rule implements 3A O.S. § 603(A) which

authorizes the Commission to promulgate rules defining qualifications for licensure.

CONTACT PERSON:

Aleta Billings, Oklahoma State Athletic Commission, 1000 NE 10th Street, Room 159, Oklahoma City, OK 73117-1299; Phone: (405) 271-2694.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 1. GENERAL PROVISIONS

92:10-1-4. Licenses process

- (a) All participants must apply for and be issued a license before participating in an event.
- (b) Each applicant for a license shall request an official application from the Commission. The Commission will not process any application for a license that does not contain the proper fee and all information required from the applicant. All licenses expire on June 30 of each year following the date of issuance.
- (c) Each participant shall consistently use the same name in events. Each participant shall provide the Commission with the participant's legal name and the name to be used in events, if any.
- (d) The license fees and permit fees shall be:
 - (1) Professional Promoter - \$250.00
 - (2) Combative Sports Practitioner Fee - \$30.00
 - (3) Referee Fee - \$50.00
 - (4) Judge - \$50.00
 - (5) Matchmaker - \$150.00
 - (6) Second - \$25.00
 - (7) Announcer - \$20.00
 - (8) Timekeeper - \$40.00
 - (9) Vendor - \$50.00
 - (10) Event Permit Boxing - \$50.00
 - (11) Event Permit MMA - \$100.00
 - (12) Event Permit Wrestling - \$50.00
 - (13) National MMA ID Cards - \$20.00
 - (14) Federal Boxer ID Cards - \$20.00
 - (15) Replacement License, Permit or ID - \$15.00
 - (16) Fight Fax Records - \$5.00 per record requested
- (e) Applicants must provide a residence or business address at the time of application and inform the Commission in writing of any change of address. An applicant whose license or permit is returned to the Commission office because of an incorrect address, or whose application is not legible forfeits the fee that has been paid and must submit a new application and pay a replacement fee in order to be issued a license or permit.
- (f) Applicants shall provide the Commission with identification showing proof of age.
- (g) Any person whose license is lost or stolen may obtain a replacement from the Commission.
- (h) No license issued under the Act or these rules shall be transferable.

(i) Applicants for licensure as combative sports practitioners in boxing, kickboxing or MMA who are 40 years of age or older shall attach to their application the following:

- (1) the results a thorough physical examination administered by a Medical Doctor (MD) or Doctor of Osteopathy (DO) on a form provided by the Commission;
- (2) a Dilated Ophthalmologic Examination;
- (3) a Brain MRI
- (4) a Cardiac Stress Echo; and
- (5) a Cardiac Stress Test.

(j) The examinations and tests required by this subsection shall be dated no more than One Hundred Eighty (180) days prior to the date of the event. The application shall be submitted to the Commission at least ten (10) days prior to the date of the event. The Commissioner who has experience in sports medicine, or a physician certified by the Association of Ringside Physicians approved by the Commission, shall review the application. The Executive Director shall deny the application if the Commissioner or approved physician determines that competing in a combative sports event poses an undue risk to the applicant's health or safety.

(k) If an application is denied under subsection (i) of this section, the applicant may file a written request within ninety (90) days for the denial to be reviewed by the Commission at its next regularly scheduled meeting. The Commission may in its discretion reverse the denial and approve the application. The review shall not constitute an individual proceeding under the Oklahoma Administrative Procedures Act.

[OAR Docket #17-655; filed 7-13-17]

**TITLE 120. CAPITOL-MEDICAL CENTER IMPROVEMENT AND ZONING COMMISSION
CHAPTER 10. ZONING REGULATIONS FOR CAPITOL-MEDICAL CENTER IMPROVEMENT AND ZONING DISTRICT**

[OAR Docket #17-546]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 1. General Provisions
 - 120:10-1-1. Purpose [AMENDED]
 - 120:10-1-3. Definitions [AMENDED]
 - 120:10-1-8. Zoning districts [AMENDED]
 - 120:10-1-9. Interpretation of district boundaries [AMENDED]
- Subchapter 3. Specific District Regulations
 - 120:10-3-1.2. Low Density Residential (R-1) [REVOKED]
 - 120:10-3-1.3. Medium Density Residential District (R-2) [REVOKED]
 - 120:10-3-3.1. Low Rise General Residence District (RD-3) [REVOKED]
 - 120:10-3-4.1. High Rise General Residence District (RD-4) [REVOKED]
 - 120:10-3-5.1. Historic Preservation District (HP) [REVOKED]
 - 120:10-3-6.1. Neighborhood Commercial District (CN) [REVOKED]
 - 120:10-3-7.1. Office Commercial District (CO) [REVOKED]
 - 120:10-3-8. Health Center Commercial District (CHC) [REVOKED]
 - 120:10-3-9.1. Commercial Service Center District (CSC) [REVOKED]
 - 120:10-3-10.1. Restricted Light Industrial District (I-1) [REVOKED]
 - 120:10-3-11.1. Light Industrial District (I-2) [REVOKED]
 - 120:10-3-12. Public District (P) [REVOKED]
 - 120:10-3-13. Health Center District (HC) [REVOKED]

Permanent Final Adoptions

120:10-3-20. Single Family Residential District (RD-1) [NEW]
120:10-3-21. Low Density General Residential District (RD-1) [NEW]
120:10-3-22. Low Rise General Residential District (RD-3) [NEW]
120:10-3-23. High Rise General Residential District (RD-4) [NEW]
120:10-3-24. Neighborhood Commercial District (CN) [NEW]
120:10-3-25. Office Commercial District (CO) [NEW]
120:10-3-26. Health Center Commercial District (CHC) [NEW]
120:10-3-27. Restricted Light Industrial District (I-1) [NEW]
120:10-3-28. Light Industrial District (I-2) [NEW]
120:10-3-29. Public District (P) [NEW]
120:10-3-30. Health Center District (HC) [NEW]
Subchapter 5. General District Provisions and Additional Zoning Regulations
Part 1. General Provisions
120:10-5-1.2. District group classification [AMENDED]
120:10-5-3.1. Height regulations [AMENDED]
120:10-5-5.1. Storage and parking of trailers and commercial vehicles [AMENDED]
120:10-5-8. Commercial dumpsters and trash receptacles [AMENDED]
120:10-5-9.2. Dilapidated structures [NEW]
Part 3. Special Districts
120:10-5-10.1. Historical Landmark District (HL) [AMENDED]
120:10-5-10.2. Historic Preservation District (HP) [NEW]
120:10-5-11.1. Planned Unit Development (PUD) [AMENDED]
120:10-5-14. Mixed Use Overlay District-1, Health Center Commercial (MXD-1) [AMENDED]
120:10-5-15. Mixed Use Overlay District-2, Limited Health Center Commercial (MXD-2) [AMENDED]
Part 5. Special Uses
120:10-5-20. Adult day care centers [AMENDED]
120:10-5-21. Child care facilities [AMENDED]
120:10-5-22. Home occupation or home based business [AMENDED]
120:10-5-23. Humanitarian or philanthropic foundations [AMENDED]
120:10-5-24. Group living facilities [AMENDED]
Subchapter 11. Historical Preservation and Landmark Board of Review
120:10-11-1.1. Definitions [AMENDED]
120:10-11-2.1. Historical Preservation and Landmark Board of Review created [AMENDED]
120:10-11-3.1. Membership of the Board of Review [AMENDED]
120:10-11-8.1. Certificate of Appropriateness [AMENDED]
Subchapter 13. Administration
120:10-13-14. Building permit and plan review procedure [AMENDED]
120:10-13-19. Powers relative to conditional uses permissible on review [AMENDED]
Subchapter 15. Signage Regulations
120:10-15-3. Definitions [AMENDED]
120:10-15-5. Materials [AMENDED]
120:10-15-10. Prohibited Signage [AMENDED]
120:10-15-11. Limitation Per Site [AMENDED]
120:10-15-13. Landscaping Requirement [AMENDED]
120:10-15-16. Provisions for Oklahoma Health Center Signage [AMENDED]
Subchapter 17. Off-Street Parking Facilities Landscape Code
120:10-17-1. Definitions [AMENDED]
120:10-17-3. General requirement [AMENDED]
120:10-17-5. Landscape areas [AMENDED]
120:10-17-10. Miscellaneous provisions [AMENDED]
Appendix E. Tree Planting Standard [REVOKED]
Appendix A.1. Capitol-Medical Center Improvement and Zoning Districts Map [REVOKED]
Appendix A.1. Capitol-Medical Center Improvement and Zoning Districts Map [NEW]
Appendix C.1. State Capitol Complex Subdistrict [REVOKED]
Appendix C.1. State Capitol Complex Subdistrict [NEW]
Appendix D.1. Parking Lot Landscaping Requirements [NEW]
Appendix E.1. Historic Preservation Standards and Guidelines [NEW]

AUTHORITY:

73 O.S. §83.4; Capitol-Medical Center Improvement and Zoning Commission

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n/a

GIST/ANALYSIS:

The purpose of these amendments is to update and clarify the rules and to correct scrivener's errors.

CONTACT PERSON:

Kimberlee Williams, Deputy General Counsel, OMES, (405) 522-3615 or Kimberlee.Williams@omes.ok.gov.

DUE TO EXCESSIVE LENGTH OF THESE RULES (AS DEFINED IN OAC 655:10-7-12), THE FULL TEXT OF THESE RULES WILL NOT BE PUBLISHED. THE RULES ARE AVAILABLE FOR PUBLIC INSPECTION AT THE OFFICE OF MANAGEMENT AND ENTERPRISE SERVICES, CAPITAL ASSETS MANAGEMENT, 2401 N. LINCOLN BLVD. (WILL ROGERS BUILDING), SUITE 206, OKLAHOMA CITY, OK, AND AT THE SECRETARY OF STATE'S OFFICE OF ADMINISTRATIVE RULES. THE FOLLOWING SUMMARY HAS BEEN PREPARED PURSUANT TO 75 O.S., SECTION 255(B):

Throughout the rules, terminology was updated, scrivener's errors were corrected, and clarifications were made, including clarification and renaming of some of the zoning district classifications. Two new appendices provide information on parking lot landscaping requirements, and historic preservation standards and guidelines. The full text of these amendments can be found on the Office of Management and Enterprise Services website at www.OMES.ok.gov. Copies of the full text of these amendments may also be obtained by emailing Kimberlee.Williams@omes.ok.gov.

[OAR Docket #17-546; filed 6-29-17]

TITLE 135. COMMISSION ON CHILDREN AND YOUTH CHAPTER 10. PROGRAMS, BOARDS, AND COUNCILS: OPERATION AND ADMINISTRATION

[OAR Docket #17-573]

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PERMANENT final adoption

RULES:

Subchapter 3. Office of Juvenile System Oversight
135:10-3-2 [AMENDED]

AUTHORITY:

Oklahoma Commission on Children and Youth; 10 O.S. § 601.4(9); 10 O.S. § 1150.2(A)(5)

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n/a
GIST/ANALYSIS:
The new rule changes provide the procedure by which the Commission Director or Director's designee may refer matters under review by the Office of Juvenile System Oversight to the Oklahoma State Bureau of Investigation pursuant to 10 O.S. § 601.4(11).
CONTACT PERSON:
Michael Walsh, Oklahoma Commission on Children and Youth, at (405) 606-4900; Michael.Walsh@occy.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 3. OFFICE OF JUVENILE SYSTEM OVERSIGHT

135:10-3-2. Duties and responsibilities
(a) In addition to the duties set out in 10 O.S. § 601.6 et seq., the Office of Juvenile System Oversight:
(1) Shall conduct periodic inspections of facilities and community-based programs operated within the state by public and private agencies;
(2) Shall abide by applicable state and federal confidentiality statutes;
(3) Shall, to the maximum extent possible consistent with state and federal law, discharge its responsibilities in a manner open to the public;
(4) Shall provide ongoing education and training for current and new OJSO staff to ensure implementation of established rules and procedures; and
(5) May release de-identified reports to the public relating to their investigations and make recommendations when appropriate.
(b) Pursuant to 10 O.S. § 601.4(11), the Director or the Director's designee may request that an investigation be conducted by the Oklahoma State Bureau of Investigation in matters under OJSO review where the Director or designee reasonably believes that criminally injurious conduct including, but not limited to, physical or sexual abuse of a child has occurred.

[OAR Docket #17-573; filed 7-6-17]

**TITLE 135. COMMISSION ON CHILDREN AND YOUTH
CHAPTER 10. PROGRAMS, BOARDS, AND COUNCILS: OPERATION AND ADMINISTRATION**

[OAR Docket #17-574]

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PERMANENT final adoption
RULES:
Subchapter 26. Juvenile Forensic Evaluator Credentialing [NEW]
135:10-26-1 [NEW]
135:10-26-2 [NEW]
135:10-26-3 [NEW]
135:10-26-4 [NEW]
AUTHORITY:
Oklahoma Commission on Children and Youth; 10 O.S. § 601.4(9); 10 O.S. § 1150.2(A)(5)
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The proposed new rules establish the procedure by which the Oklahoma Commission on Children and Youth shall credential juvenile competency evaluators pursuant to Oklahoma Session Laws 2015, ch. 398, § 4, codified at 10A O.S. § 2-2-401.4, which became effective Jan. 1, 2016.
CONTACT PERSON:
Michael Walsh, Oklahoma Commission on Children and Youth, at (405) 606-4900; Michael.Walsh@occy.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 26. JUVENILE FORENSIC EVALUATOR CREDENTIALING

135:10-26-1. Origin and authority
The Oklahoma Commission on Children and Youth has the duty of credentialing juvenile forensic evaluators pursuant

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to 10A O.S. § 2-2-401.4. The Commission shall establish procedures for ensuring the training and qualifications of evaluators and shall provide a list of credentialed juvenile forensic evaluators to the Administrative Office of the Courts.

135:10-26-2. Definitions

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

"Commission" shall refer to the Oklahoma Commission on Children and Youth.

"Competent and competency" refer to a child's ability to understand the nature and objectives of a proceeding against the child or to assist in the child's defense. A child is incompetent if, due to developmental disability, developmental immaturity, intellectual disability, or mental illness, the child is presently incapable of understanding the nature and objective of proceedings against the child or of assisting in the child's defense.

"Credentialed forensic evaluator" means a licensed psychologist, psychiatrist or other physician with necessary education, training, and experience to perform juvenile competency evaluations, and who has been approved to render such opinions for the court.

"Developmental disability" means a severe and chronic disability that is attributable to a mental or physical impairment. Such disabilities include, but are not limited to, cerebral palsy, epilepsy, autism, or other neurological conditions that lead to impairment of general intellectual functioning or adaptive behavior.

"Developmental immaturity" means a condition based on a juvenile's chronological age and significant lack of developmental skills when the juvenile has no significant mental illness or intellectual disability.

"Director" means the Director of the Oklahoma Commission of Children and Youth.

"Intellectual disability" means a disability characterized by significant limitations both in intellectual functioning and in adaptive behavior as expressed in conceptual, social and practical adaptive skills.

"Juvenile Competency Evaluation Professional Committee" or **"Professional Committee"** shall mean those persons appointed by the Director to perform the duties provided for by this subchapter.

"Mental illness" has the same meaning as in paragraph 11 of Section 5-502 of Title 43A of the Oklahoma Statutes.

135:10-26-3. Credentialing process

(a) **Eligibility.** In order to be eligible to be placed on the list of credentialed juvenile forensic evaluators, a psychologist, psychiatrist or other physician shall:

- (1) Submit an application on a form prepared by the Director in consultation with the Professional Committee;
- (2) Hold a current license to practice in Oklahoma;
- (3) Provide documentation of clinical experience consisting of at least two thousand (2,000) hours, of which one thousand (1,000) hours must be postdoctoral, in the

assessment, diagnosis or treatment of children and/or adolescents with developmental disability, developmental immaturity, intellectual disability or mental illness;

(4) Demonstrate professional experience conducting comprehensive/integrated psychological evaluations of children and/or adolescents which shall include administering intellectual/cognitive, personality and behavioral measures; and

(5) Successfully complete the Oklahoma Juvenile Forensic Evaluator Training including a post-training written exam.

(b) **Provisional approval.** A candidate who meets the criteria established in (a). shall be deemed provisionally approved by the Commission and shall be placed on the list of credentialed evaluators. Such provisionally approved evaluators shall complete one juvenile competency evaluation at the discretion of the court. At the time that the provisionally approved evaluator submits the first evaluation report to the court, the evaluator shall submit a redacted copy to the Professional Committee for review. The report will be assessed by the Professional Committee to determine adherence to the minimum criteria as established in the Oklahoma Juvenile Forensic Evaluator Training.

(c) **Final Approval.**

(1) The Professional Committee shall submit to the Commission for final approval the names of those evaluators whose first report meets minimum criteria as determined by the Professional Committee. Persons approved by the Commission shall remain on the list of credentialed evaluators for a period of three (3) years. Approved evaluators must retake and successfully complete the Juvenile Forensic Evaluator Training at the end of each three-year period in order to remain on the list.

(2) If an evaluator's first evaluation report does not meet minimum criteria, the Professional Committee shall notify the court. The Professional Committee shall also inform the evaluator of the deficiencies, make mentoring available, and provide an opportunity for the evaluator to submit one additional report contingent upon referral by a court. If the Professional Committee determines that the second evaluation report does not meet minimum criteria, the Professional Committee shall notify the court and the evaluator's name shall be removed from the list of credentialed evaluators. A person whose name is removed from the list may reapply and must retake and successfully complete the Oklahoma Juvenile Forensic Evaluator Training.

135:10-26-4. Juvenile Competency Evaluation Professional Committee

(a) **Membership.** The Director shall appoint up to twelve (12) members each serving a term of three (3) years. Members may be reappointed at the discretion of the Director. The members shall be persons who have training and experience in matters related to juvenile competency and shall include as a minimum:

- (1) Four persons licensed to practice either psychology or psychiatry in the State of Oklahoma;

- (2) One judge with responsibility for juvenile cases;
 - (3) One defense attorney who primarily represents juvenile defendants;
 - (4) One prosecuting attorney with responsibility for juvenile cases; and
 - (5) A legal or other professional with expertise in areas relevant to competency such as developmental disabilities, special education or competency restoration services.
- (b) Duties. The Professional Committee shall advise the Commission on development and implementation of Juvenile Competency Evaluator credentialing including but not limited to:

- (1) Developing and administering the Oklahoma Juvenile Forensic Evaluator Training;
- (2) Reviewing evaluator applications and determining whether an applicant meets minimum criteria for provisional approval;
- (3) Reviewing in a timely fashion reports submitted by provisionally approved evaluators, and recommending evaluators to the Commission for final approval; and
- (4) Performing any other duties as directed by the Commission.

[OAR Docket #17-574; filed 7-6-17]

**TITLE 140. BOARD OF CHIROPRACTIC EXAMINERS
CHAPTER 1. ADMINISTRATIVE ORGANIZATION AND OPERATIONS**

[OAR Docket #17-559]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions
140:1-1-2 [AMENDED]

AUTHORITY:

Oklahoma Board of Chiropractic Examiners; 59, O.S., 2001 Section 161.2

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GIST/ANALYSIS:

The rule amendments deletes a duplicate definition for "Emergency Meeting".

CONTACT PERSON:

Beth Kidd, Executive Director, 421 N.W. 13th Street, Suite 180, Oklahoma City, OK 73103, 405-522-3400

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 1. GENERAL PROVISIONS

140:1-1-2. Definitions

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

"Accredited Chiropractic College" means a chiropractic educational institution, which is accredited by the Commission on Accreditation of the Council on Chiropractic Education or its successor.

"Act" means the Oklahoma Chiropractic Practice Act, 59 O.S. 1991, §§161.1 et seq.

"APA" means the Oklahoma Administrative Procedures Act, 75 O.S.1991, §§ 250 et seq.

"Advisory Committee" means the committee appointed by the Board to advise and assist the Board in the investigation of the qualifications for licensure, complaints as to the conduct of chiropractic physicians, and for such other matters as the Board delegate to them.

"Applicant" means any person submitting an application for licensure to the Board.

"Board" means the Board of Chiropractic Examiners.

"Certified chiropractic assistant" means an unlicensed member of a chiropractic physician's team of healthcare workers who may assist a chiropractic physician in the performance of examination and therapeutic procedures and techniques necessary to deliver healthcare services within the scope of chiropractic and has been certified by the Board.

"Chiropractic" means the science and art that teaches health in anatomic relation and disease or abnormality in anatomic, disrelation, and includes hygienic, sanitary and therapeutic measures incident thereto in humans.

"Chiropractic physician" or "licensee" means a person who holds an original license to practice chiropractic in this state.

"Continuing education requirements" means attendance by a licensee at a minimum of (16) sixteen hours of Chiropractic education seminars as required for a renewal license.

"Emergency meeting" means a meeting of the board, which is called pursuant to the Open Meeting Act based upon exigent circumstances, which require expedited attention, by the board to the matters concerned.

~~**"Emergency meeting"** means a meeting of the board, which is called pursuant to the Open Meeting Act based upon exigent circumstances, which require expedited attention, by the board to the matters concerned.~~

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"Examination" means the process used by the Board, prior to the issuance of an original license, to test the qualifications and knowledge of an applicant on any or all of the following: current statutes, rules, or any of those subjects listed in Section 161.8 of the Act.

"Executive Director" means the Executive Director of the Board.

"Final order" means an order made by the Board pursuant to the APA and which is subject to judicial review.

"Individual proceeding" means the formal process employed by the Board to provide a hearing for a licensee of the Board to provide a hearing for the licensee of the Board accused of a violation of the Act and in which the Board may take action against such person's original license to practice chiropractic in this state.

"Licensure" means the Board's process with respect to the grant, denial, renewal, revocation, or suspension of an original or renewal license.

"Nonclinical" means of a business nature including, but not limited to, practice management, insurance information, and computer information. It shall also mean the discussion of philosophy as it relates to the performance of chiropractic; **"OAC"** means the Oklahoma Administrative Code.

"Order" means a formal or official decision of the Board including, but not limited to, final orders.

"Original license" means a license which grants initial authorization to practice chiropractic in this state issued by the Board to an applicant found by the Board to meet the requirements for licensure of the Act,

(A) by examination pursuant to § 161.7 and 161.8 of the Act and 140:10-3-1 through 140:10-3-4; or

(B) by relocation of practice pursuant to § 161.9 of the Act and 140:10-3-5.

"Party" means a person or agency named and participating or properly seeking and entitled by law to participate in an individual proceeding.

"Person" means any individual, association, governmental subdivision, or public or private organization of any character other than an agency.

"Regular meetings" means regular meetings of the Board held at such times and places as scheduled by the Board and includes continued and reconvened meetings as may be allowed pursuant to the Open Meetings Act. Provided, however, that continued and reconvened meetings shall be as limited by the Open Meeting Act.

"Relocation of Practice" means the ability for an applicant to obtain a chiropractic license on the following conditions:

(A) The applicant is of good moral character;

(B) The applicant shall submit documentary evidence that they have been in active practice for five (5) years immediately preceding the date of application;

(C) The applicant has had no disciplinary action pending against their license in any other state, country or province:

(D) The licensee requesting relocation of practice shall comply with the jurisprudence assessment examination administered by the Board of Chiropractic Examiners of this state.

(E) The applicant may be requested to appear before the Board for a personal interview, and:

(F) The applicant shall meet all other requirements set forth in the Oklahoma Chiropractic Practice Act.

"Renewal license" means a license issued by the Board on or before the first day of January of each year to a licensee, which authorizes the licensee to practice chiropractic in this state for the succeeding calendar year.

"Revocation" means the recalling, annulling or rendering inoperative of an original license or renewal license, or both, by the Board, after notice and an opportunity for a hearing in an individual proceeding.

"Rule or rules" means the rules of the Board promulgated pursuant to the APA or its successor statutes.

"Rule-making" means the process employed by the Board for the promulgation of a rule.

"Scope of practice" means chiropractic is the science and art that teaches health in anatomic relation and disease or abnormality in anatomic disrelation, and includes hygienic, sanitary and therapeutic measures incident thereto in humans. Pursuant to 59 O.S. § 161.2, the Board hereby approves those diagnostic and treatment services and procedures related to the science and art of chiropractic as defined herein and as described in the Oklahoma Chiropractic Practice Act and, which have been taught by an accredited chiropractic college. Such diagnostic and treatment services and procedures shall include the following: Chiropractic physicians may examine, analyze and diagnose the human body to correct, relieve or prevent diseases and abnormalities by the use of any physical, chemical, electrical, or thermal method; use or order diagnostic radiological imaging; use or order laboratory testing; and use any other method of examination for diagnosis and analysis taught by an accredited chiropractic college. In addition, Chiropractic physicians may adjust, manipulate and treat the human body by manual, mechanical, chemical, electrical, or natural methods; by the use of physiotherapy; meridian therapy; by utilizing hygienic, sanitary and therapeutic measures; by the administration of naturopathic and homeopathic remedies, by the application of first aid or by performing any other treatment taught by an accredited chiropractic college. Nothing in this rule shall permit a Chiropractic Physician to prescribe legend drugs, beyond injectable nutrients as authorized by Section 161.12 of the Oklahoma Statutes.

"Secretary-Treasurer" means the Secretary-Treasurer of the Board.

"Special meeting" means all meetings of the Board other than regular or emergency meetings.

"Suspension" means temporary discontinuance or cessation, with an expectation of reinstatement, of an original license or renewal license, or both, by the Board after notice and an opportunity for a hearing as required in an individual proceeding.

[OAR Docket #17-559; filed 7-5-17]

**TITLE 140. BOARD OF CHIROPRACTIC EXAMINERS
CHAPTER 10. LICENSURE OF CHIROPRACTIC PHYSICIANS**

[OAR Docket #17-560]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 5. Procedures for Renewal Licenses

140:10-5-2 [AMENDED]

140:10-5-3 [AMENDED]

AUTHORITY:

Oklahoma Board of Chiropractic Examiners; 59, O.S., 2001 Section 161.10a and 161.5

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GIST/ANALYSIS:

The rule amendment deletes the requirement that the Board approve or deny an application within thirty days after submission. The Board does not meet monthly making compliance with the rule unduly burdensome and costly. The amendment does not prevent the Board from making timely reviews of the applications. The proposed amendment in OAC140:10-5-3 removes the discrepancy between OAC 140:10-5-3 and OAC 140:10-8-1(2)(E). The proposed rule harmonizes the two rules and clarifies that the penalty fee for late renewal of a license is One Hundred and Fifty Dollars (\$150.00).

CONTACT PERSON:

Beth Kidd, Executive Director, 421 N.W. 13th Street, Suite 180, Oklahoma City, Oklahoma 73103, 405-522-3400.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 5. PROCEDURES FOR RENEWAL LICENSES

140:10-5-2. License renewal program approval

(a) Approval of programs to be offered to satisfy license renewal provisions of the Subchapter is vested solely in the Board. No program shall be offered, advertised or marketed for the purpose of license renewal prior to being approved by the Board.

(b) It shall be the duty of the Board to review and consider for approval, during a meeting of the Board, every application from a chiropractic association or ~~institution~~ accredited chiropractic colleges which desires to present a continuing chiropractic education program required for license renewal.

(c) The Board shall maintain a list of all chiropractic associations or accredited chiropractic colleges ~~institution~~ that notify the Board of an intent to present a continuing chiropractic education program for license renewal. It shall be the duty of each association to inform the Board of any change of address or name.

(d) A chiropractic association or accredited chiropractic college ~~institution~~ may submit applications to present continuing chiropractic program for license renewal. All applications to present continuing chiropractic program must be submitted at least ninety (90) calendar days prior to said education programs being presented. Each application must contain the qualifications of the applicant, association or entity seeking to sponsor the program, the state of domicile, the classification of the applicant as "profit" or "nonprofit", and the educational experience of the instructors conducting the program.

(e) The board shall create and approve a form to be used by a chiropractic association or accredited chiropractic college ~~institution~~ to apply for approval to present a continuing chiropractic education program. In order to be considered for approval, such form shall be completed by an association or accredited chiropractic college. An association or accredited chiropractic college shall submit a separate application for each program it wishes to present.

(f) The board in its discretion, may refer the application to the Advisory Committee or the Executive Director for review and/or information gathering.

~~(g) No later than thirty (30) days after submission of the application the Board shall either approve or reject the application.~~

~~(h)g~~ During the meeting provided for in paragraph (b) of this Section, each association and accredited chiropractic college, shall be given the opportunity to make an oral presentation of no more than fifteen (15) minutes for each application to provide the Board with any additional relevant information for such program. The board may request additional information regarding the application.

~~(h)h~~ The board shall consider, among other relevant factors, the content of the program and the cost by for a chiropractic physician to attend the program. The Board shall not approve programs which do not present a program of a chiropractic nature; provided no program shall be approved which is used primarily as a sales promotion for the association and accredited chiropractic college which presents the program or any speaker who presents any part of a program or at which products or services related to the programs are offered for sale.

~~(i)j~~ At the conclusion of all presentations and during the same meeting, the board shall announce individually the approval or denial of the application to present a continuing chiropractic program. The Board shall state the specific reason or reasons for the denial of any application.

~~(k)j~~ All programs approved by the Board shall be open to all persons.

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140:10-5-3. Revocation or suspension of license; reinstatement

In the event that a licensee fails to obtain a renewal license on or before the first day of July of each year, the original license of such licensee shall be subject to revocation or suspension, upon order of the Board. The Board may reinstate the original license of such person upon the payment of all fees due, plus a penalty fee in the amount provided for in the Board's fee schedule of One Hundred Dollars (\$100.00), and upon presentation to the Board of satisfactory evidence of compliance with the continuing education requirements.

[OAR Docket #17-560; filed 7-5-17]

TITLE 140. BOARD OF CHIROPRACTIC EXAMINERS CHAPTER 15. SPECIAL CERTIFICATIONS AND MISCELLANEOUS PROVISIONS

[OAR Docket #17-561]

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RULES:
Subchapter 7. Public Welfare
140:15-7-5 [AMENDED]

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Oklahoma Board of Chiropractic Examiners; 59, O.S., 2001, Section 161.2

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GIST/ANALYSIS:
The rule amendment is necessary to add the word "to: in paragraph (1). The amendment does not change the effect of the rule.

CONTACT PERSON:
Beth Kidd, Executive Director, 421 N.W. 13th Street, Suite 180, Oklahoma City, OK 73103, 405-522-3400

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 7. PUBLIC WELFARE

140:15-7-5. Code of Ethics

There is hereby created the "Oklahoma Chiropractic Code of Ethics". This Code of Ethics is based upon the fundamental principle that the ultimate end and objective of the chiropractic physician's professional services and effort should be: "The greatest good for the patient."

(1) Chiropractic physicians shall attend to their patients as often as they consider necessary to ensure the well-being of their patients, but should avoid unnecessary treatments;

(2) Having once undertaken to serve a patient, chiropractic physicians shall not neglect the patient. Chiropractic physicians shall not terminate their professional services to patients without taking reasonable steps to protect such patients, including due notice to them allowing sufficient time for obtaining professional services of others, delivering to their patients all papers and documents in compliance with paragraph 3 of this subsection;

(3) Chiropractic physicians shall comply within twenty-one (21) calendar days of a patient's authorization certification to provide records, or copies of such records, to those persons whom the patient designates as authorized to inspect or receive all or part of such records. A reasonable charge may be made for the cost of copying records. Unpaid charges incurred by the patient are not grounds for refusal to release records.

(A) After receipt of complaint, all records shall be available for inspection and copying by investigators of the Board during normal business hours.

(B) A patient record shall be maintained for every patient under the care of the chiropractic physician and such records shall be kept confidential. Only authorized personnel shall have access to the records.

(C) Records generally shall not be removed from the control of the chiropractic physician except upon court order or as authorized by law. Board staff shall be authorized to obtain copies or review any records to assure compliance with these rules or other parts of the Act.

(D) Chiropractic physicians shall furnish the Board, its investigators or representatives, information lawfully requested by the Board and shall cooperate with a lawful investigation conducted by the Board.

(4) Subject to paragraph 3 of this subsection, chiropractic physicians should preserve and protect the patient's confidences and records, except as the patient directs or consents, or if the law requires otherwise. They should not discuss a patient's history, symptoms, diagnosis, or treatment with a lawyer until they have received the consent of the patient or the patient's personal representative. They should avoid exploiting the trust and dependency of their patients;

(5) Chiropractic physicians shall maintain the highest standards of professional and personal conduct. Chiropractic physicians shall refrain from all illegal or morally reprehensible conduct;

(6) Chiropractic physicians shall assure that the patient possesses enough information to enable an intelligent choice in regard to proposed chiropractic treatment. The patient shall make his or her own determination on such treatment;

(7) Chiropractic physicians shall observe the appropriate laws, decisions and rules of state governmental agencies of the United States and the State of Oklahoma and cooperate with the pertinent activities.

(8) Chiropractic physicians may advertise but shall exercise utmost care that such advertising is relevant to the selection of a chiropractic physician, is accurate, truthful, not misleading, false or deceptive, and is scrupulously correct in representing the chiropractic physician's professional status and area of special competence. Communications to the public shall not appeal primarily to an individual's anxiety or create unjustified expectations of results. Chiropractic physicians shall conform to all applicable state laws, rules and judicial decisions in connection with professional advertising;

(9) Chiropractic physicians may testify either as experts or when their patients are involved in court cases, workers' compensation proceedings or in other similar proceedings in personal injury or related cases.

(10) The chiropractic profession shall address itself to improvements in licensing procedures consistent with the development of the profession and of relevant advances in science;

(11) Chiropractic physicians who are public officers part time or full time, shall not engage in activities which are, or may be perceived to be, in conflict with their official duties;

(12) Chiropractic physicians shall not commit fraud, misrepresentation, or deception which includes, but is not limited to:

(A) Practicing or attempting to practice chiropractic under false or assumed name;

(B) Aiding, assisting, or advising another in the unlicensed practice of chiropractic;

(C) Fraud or deceit in obtaining or renewing a license to practice chiropractic;

(D) Making false or misleading statements or withholding relevant information regarding the qualifications of any individual in order to attempt to obtain a license or engage in the practice of chiropractic;

(E) Failing to report past, present, or pending disciplinary action by another licensing board or the current status of the final administrative disposition of a matter. A licensee is required to report any compromise or settlement of disciplinary action, whether voluntary or involuntary, which results in encumbrance of licensure;

(F) Making or filing a report which the licensee knows to be false, intentionally or negligently failing to file a report or record required by state or federal law, or willfully impeding or obstructing another person to do so. Such reports or records shall include

only those which are signed by the licensee in his/her capacity as a licensed chiropractic physician;

(G) Submitting to any patient, insurer or third-party payor a claim for a service or treatment which was not actually provided to a patient.

(H) Failing to report to the Board a conviction of, or pleading guilty or nolo contendere to, fraud in filing Medicare or Medicaid claims or in filing claims with any third party payor. A copy of the record of the plea or conviction certified by the clerk of the court entering the plea or conviction, shall be conclusive evidence of the plea or conviction.

(13) Chiropractic physicians shall not abuse the physician's position of trust by coercion, manipulation or fraudulent representation in the doctor-patient relationship which includes, but is not limited to:

(A) Engaging in sexual misconduct which consists of sexual behavior that occurs during the doctor-patient relationship. Chiropractic physicians shall terminate the doctor-patient relationship before dating or having a sexual relationship with a patient. Such termination shall be done in writing and signed by both the patient and the chiropractic physician and placed in the patient's record. This paragraph shall not apply to chiropractic physicians treating their spouses.

(B) Engaging in sexual impropriety which consists of behavior, verbal or physical, that is suggestive, seductive, harassing, intimidating or demeaning to a patient.

(C) Engaging in sexual violation which consists of physical contact, whether or not initiated by the patient, that is sexual or may be reasonably interpreted as such.

(14) Chiropractic physicians shall not violate any lawful order of the Board previously entered in a disciplinary hearing or fail to comply with a lawfully issued subpoena of the Board.

(15) Chiropractic physicians shall not make statements which in any way reflect against a fellow licensee including statements which imply superiority over another licensee.

[OAR Docket #17-561; filed 7-5-17]

**TITLE 140. BOARD OF CHIROPRACTIC EXAMINERS
CHAPTER 30. CERTIFIED CHIROPRACTIC ASSISTANTS**

[OAR Docket #17-562]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 3. Certified Chiropractic Assistant
140:30-3-2 [AMENDED]
140:30-3-3 [AMENDED]
140:30-3-4 [AMENDED]

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140:30-3-5 [AMENDED]
140:30-3-7 [AMENDED]

AUTHORITY:

Oklahoma Board of Chiropractic Examiners; 59 O.S., 2001, Section 161.2

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

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Approved by Governor's declaration on June 13, 2017

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September 11, 2017

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The rule amendment would increase the current examination score, increase the required chiropractic assistant from 4 hours to 12 hours, and delete January 1, 2013. The amendments will not prevent the certification renewal of the certified chiropractic assistant.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 3. CERTIFIED CHIROPRACTIC ASSISTANT

140:30-3-2. Application for certification

(a) Chiropractic assistants seeking certified chiropractic assistant status shall complete and submit an application on a form provided by the Board. The application shall contain the signature of the applicant's supervisory chiropractic physician and be accompanied by a nonrefundable application fee. The applicant must complete the certification process and pass the certification examination as set forth in these rules within twelve (12) months of the date of ~~examination~~ application.

(b) If an applicant is approved by the Executive Director, the applicant shall be notified by the Executive Director of such approval and will thereafter be eligible to take the certified chiropractic assistant examination.

(c) If an applicant is disapproved, the applicant shall be notified by the Executive Director of such disapproval by the return of the application along with the reason(s) for disapproval being fully stated in writing.

(d) A fraudulent or false statement as to any material fact which is contained in any application for the certification, or failure to provide any requested information, shall constitute sufficient cause for the disapproval of the application.

(e) The certified chiropractic assistant shall display his/her certificate in an area for public view.

140:30-3-3. Certified chiropractic assistant examination

(a) If an application to become a certified chiropractic assistant is approved by the Executive Director pursuant to 140:30-3-2, they must have taken a ~~four (4)~~ twelve (12) hour training course approved by the Board before taking the certified chiropractic assistant exam. The applicant will have (3) opportunities to pass the exam. If the exam is failed three times, the applicant will be required to take another ~~four (4)~~ (12) hour course before he or she can retake the exam.

(b) A nonrefundable examination fee will be charged each time an applicant takes the certified chiropractic assistant examination.

(c) In order to pass the certified chiropractic examination, the applicant must receive a score of ~~sixty percent (60%)~~ seventy percent (70%) or higher.

(d) After certification, that certification will remain with the assistant even if the assistant leaves the employment of the supervisory chiropractic physician who employed the assistant at the time of certification.

(e) If an applicant has a minimum of two thousand (2000) hours of full time employment as a chiropractic assistant employed by a licensed Oklahoma chiropractic physician, that applicant will be exempt from obtaining the ~~four (4)~~ (12) hours of training prior to taking the examination the first time as required in paragraph (a) of this section. If the applicant is unable to pass the examination after three attempts, the applicant must, at that time, successfully complete ~~four (4)~~ twelve (12) hours of training obtained at an educational program approved by the Board before taking the certified chiropractic assistant examination a third fourth time.

140:30-3-4. Continuing education

Each certified chiropractic assistant shall complete ~~2 hours~~ 6 hours of continuing education every two (2) years beginning the year following certification by the Board. Continuing education may be obtained by attending training offered by an accredited chiropractic college, or other educational program which has been approved by the Board.

140:30-3-5. Certification renewal

(a) Chiropractic assistant certifications shall be renewed within two years of ~~January 1, 2013~~, following their original ~~application~~ certification issuance.

~~(b) Chiropractic assistant certifications which are issued after January 1, 2013 shall be renewed by the next January 1st two (2) years following certification.~~

~~(be)~~ All certified chiropractic assistants must complete and submit a renewal form and a renewal fee along with verification of completion of approved continuing education by January 1 of the required recertification year.

(1) Failure to renew by January 1 will result in a penalty of twenty-five dollars (\$25.00).

(2) Failure to renew by March 1 will result in forfeiture of certification and the employee must reapply and complete all the requirements for initial certification.

140:30-3-7. Prohibited acts

(a) Certified chiropractic assistants and other employees to whom duties are delegated by the supervisory physician shall not:

- (1) Perform independent patient examinations
- (2) Diagnose conditions
- (3) Determine or change a regimen of patient care/plan case management
- (4) Perform chiropractic manipulation or adjustments
- (5) Perform Acupuncture
- (6) Unlawfully disclose patient information
- (7) Violate any portion of the Chiropractic Practice Act or Rules

(b) The Board may refuse to grant a certificate to any certified chiropractic assistant applicant, may suspend or revoke a certificate, or may impose upon a certified chiropractic assistant or a certified chiropractic assistant applicant, a penalty not to exceed one thousand dollars (\$1,000.00) per occurrence upon finding a violation of any prohibited act as stated in 140:30-3-7.

(c) The supervising chiropractic physician is required to notify the Board, in writing of any dismissal of a certified chiropractic assistant or certified chiropractic applicant for a prohibited act within thirty (30) days of the dismissal.

(d) The supervising chiropractic physician is required to immediately notify the Board, in writing if the supervising chiropractic physician learns that a certified chiropractic assistant and certified chiropractic assistant applicant has:

- (1) Committed fraud or misrepresentation in applying for or maintaining certification
- (2) Plead guilty, nolo contendere or was convicted of:
 - (A) a felony
 - (B) a misdemeanor involving moral turpitude, or
 - (C) a violation of federal or state controlled dangerous substance laws;

[OAR Docket #17-562; filed 7-5-17]

**TITLE 145. OKLAHOMA DEPARTMENT OF EMERGENCY MANAGEMENT
CHAPTER 10. ~~DISASTER RELIEF PROGRAMS TO POLITICAL SUBDIVISIONS~~ GUBERNATORIAL DECLARATIONS FOR DISASTER ASSISTANCE**

[OAR Docket #17-663]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 1. General
145:10-1-1 through 145:10-1-3 [AMENDED]

145:10-1-6 through 145:10-1-11 [AMENDED]
Subchapter 3. The Declaration Process
145:10-3-2 through 145:10-3-13 [AMENDED]
Subchapter 5. Public Assistance Project Administration
145:10-5-2 through 145:10-5-7 [AMENDED]
Subchapter 7. Public Assistance Eligibility
145:10-7-2 through 145:10-7-9 [AMENDED]
Subchapter 9. Public Assistance Insurance Requirements
145:10-9-1 [AMENDED]
145:10-9-2 through 145:10-9-4 [REVOKED]

AUTHORITY:

63 O.S., § 683.8(d)(1); Senate Bill 1091 (1994); Oklahoma Department of Emergency Management

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

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September 12, 2017

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The proposed amendments provide revisions to the State Public Assistance Program. Proposed amendments to Section 145:10-5-4 establish a maximum of one Gubernatorial Declaration per Grantee in a calendar year, a maximum State share of one hundred thousand dollars (\$100,000.00) per Grantee in a calendar year, cost share responsibilities for the Grantee and the State, and limitations of eligibility due to delinquency and time limitations for requests. Proposed amendments to Section 145:10-7-3 identify entities eligible for funding through the State Public Assistance Program. Proposed amendments to all subchapters provide an update to the agency acronym, from "ODCEM" to "OEM".

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2017:

SUBCHAPTER 1. GENERAL

145:10-1-1. Purpose

The purpose of this subchapter is to prescribe the policies and procedures to be followed in implementing 62 O.S. Supp. 1993, § 139.47 as amended by Enrolled Senate Bill No. 1091, signed into law by the Governor on 26 May 1994, delegated to the Oklahoma Department of ~~Civil~~ Emergency Management (~~ODCEM~~OEM).

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145:10-1-2. Definitions

Definitions which apply to individual Subchapters in this chapter are found in those Subchapters. In addition, the following words and terms, when used in this chapter, shall have the following meaning, unless the context clearly indicates otherwise:

~~"Applicant" means local governments and political subdivisions who apply for assistance as a result of a declaration of major disaster or emergency.~~

"Contractor" means any individual, partnership, corporation, agency, or other entity (other than an organization engaged in the business of insurance) performing work by contract for the ~~local government~~ eligible Applicant.

"Designated Area" means any emergency or major disaster-affected portion of the State which has been determined eligible for State Disaster Assistance.

"Director" means the Director, ~~ODCEMOEM~~, or his/her designee.

"Eligible Applicant" means incorporated cities, towns and counties that apply for assistance as a result of a declaration of major disaster or emergency.

"Emergency" means any occasion or instance for which, in the determination of the Governor, State assistance is needed to supplement local efforts and capabilities to save lives and protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the State of Oklahoma.

~~"State Agency" means any department, independent establishment, Government corporation, or other agency of the executive branch of the State Government.~~

~~"State Coordinating Officer (SCO)" means the person appointed by the Director, or in his absence, the Deputy Director, to coordinate State assistance in an emergency or major disaster.~~

"Governor" means the chief executive officer in the State, or the Acting Governor.

"Governor's Authorized Representatives (GAR)" means the person empowered by the Governor to execute, on behalf of the State, all necessary documents for State Disaster Assistance.

"Gubernatorial Declaration" means any major disaster or emergency declaration made by the Governor to alleviate suffering, protect life and property and provide assistance to eligible Applicants.

"Hazard Mitigation" means any cost-effective measure which will reduce the potential for damage to a facility from a disaster event.

"Local Government" means any county, city, village, town, district or other political subdivision of the State; and includes any rural community, unincorporated town or village, or other public entity for which an application for assistance is made by a county or political subdivision thereof.

"Major Disaster" means any natural catastrophe (including any tornado, storm, high water, wind-driven water, earthquake, landslide, mudslide, snow storm, or drought), or regardless of cause, any fire, flood, or explosion, in any part of the State of Oklahoma, which in the determination of the Governor causes damage of sufficient severity and magnitude

to warrant major disaster assistance to supplement ~~the efforts and available resources of State and local governments~~ State and local resources in alleviating the damage, loss, hardship, or suffering caused thereby.

"Public Assistance" means supplementary State assistance provided to ~~local governments~~ eligible Applicants other than assistance for the direct benefit of individuals and families. For further information, see subchapters 5, 7 and 9 of this chapter.

"State Agency" means any department, independent establishment, Government corporation, or other agency of the executive branch of the State Government.

"State Coordinating Officer (SCO)" means the person appointed by the Director, or in his/her absence, the Deputy Director, to coordinate State assistance in an emergency or major disaster.

145:10-1-3. Policy

It is the policy of ~~ODCEMOEM~~ to provide an orderly and continuing means of assistance by the State government to ~~local governments~~ eligible Applicants in carrying out their responsibilities to alleviate the suffering and damage that result from major disasters and emergencies by:

- (1) Providing State assistance programs for public losses and needs sustained in disasters;
- (2) Encouraging the development of comprehensive disaster preparedness and assistance plans, programs, capabilities, and organizations by the State and local governments;
- (3) Achieving greater coordination and responsiveness of disaster preparedness and relief programs;
- (4) Encouraging individuals and local governments to obtain insurance coverage and thereby reduce their dependence on governmental assistance; and
- (5) Encouraging hazard mitigation measures, such as development of land-use and construction regulations, floodplain management, protection of wetlands, and environmental planning, to reduce losses from disasters.

145:10-1-6. Use of local firms and individuals

In the expenditures of State funds for debris removal, distribution of supplies, reconstruction, and other major disaster or emergency assistance activities which may be carried out by contract or agreement, consistent with State and Federal procurement procedures, with private organizations, firms, or individuals, preference shall be given, to the extent feasible and practicable, to those organizations, firms, and individuals residing or doing business primarily in the area affected by such major disaster or emergency. This shall not be considered to restrict the use of State resources in the provision of major disaster assistance under the Act.

145:10-1-7. Nondiscrimination in disaster assistance

(a) State financial assistance to political subdivisions eligible Applicants in this Act is conditioned on full compliance with 44 CFR part 7 Nondiscrimination in Federally-Assisted Programs.

(b) All personnel carrying out State major disaster or emergency assistance functions, including the distribution of supplies, the processing of the applications, and other relief and assistance activities, shall perform their work in an equitable and impartial manner, without discrimination on the grounds of race, color, religion, nationality, sex, age, or economic status.

(c) As a condition of participation in the distribution of assistance or supplies under the Act, or a receiving assistance under the Act, government bodies and other organizations shall provide a written assurance of their intent to comply with regulations relating to nondiscrimination.

(d) The ~~agency—State Agency~~ shall make available to employees, applicants, participants, beneficiaries, and other interested parties such information regarding the provisions of this chapter and its applicability to the programs or activities conducted by the ~~agency~~State Agency, and make such information available to them in such manner as the head of the agency finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this chapter.

145:10-1-8. Standards and reviews

(a) The Director shall establish program standards and assess the efficiency and effectiveness of programs administered under the Act by conducting annual reviews of the activities of State agencies and the ~~State and local governments~~eligible Applicant(s) involved in a major disaster or emergency response efforts.

(b) In carrying out this provision, the Director may direct State agencies to submit reports relating to their disaster assistance activities. The Director may request similar reports relating to these activities on the part of the ~~State and local governments~~eligible Applicant(s). Additionally, the Director may conduct independent investigations, studies, and evaluations as necessary to complete the reviews.

145:10-1-9. Criminal and civil penalties

(a) **Misuse of funds.** Any ~~political—subdivision~~eligible Applicant~~who—that~~ knowingly misapplies the proceeds of cash benefit obtained under the Act may be fined an amount equal to one and one-half times the misapplied amount of the proceeds or cash benefit.

(b) **Civil enforcement.** Whenever it appears that any ~~political—subdivision~~eligible Applicant has violated or is about to violate any provision of the Act, including any civil penalty imposed under the Act, the Attorney General may bring a civil action for such relief as may be appropriate. Such action may be brought in an appropriate district court.

(c) **Referral to Attorney General.** The Director shall expeditiously refer to the Attorney General for appropriate action any evidence developed in the performance of functions under the Act that may warrant consideration for criminal prosecution.

(d) **Civil penalty.** Any ~~political—subdivision~~eligible Applicant~~who—that~~ knowingly violates any order or regulation issued under the Act may be subject to a civil penalty of not more than \$5,000 for each violation.

145:10-1-10. Recovery of assistance

Any ~~political—subdivision~~eligible Applicant~~who—that~~ intentionally causes a condition for which State assistance is provided under the Act or under any other law as a result of a declaration of major disaster or emergency under the Act shall be liable to the State for the reasonable costs incurred by the State in responding to such disaster or emergency to the extent that such costs are attributable to the intentional act or omission of such ~~political—subdivision~~Applicant which caused such condition. Such action shall be brought in an appropriate District Court.

145:10-1-11. Audit and investigations

(a) The Director shall conduct ~~audits—fiscal reviews~~ and investigations as necessary to assure compliance with the Act, and in connection therewith may question such persons as may be necessary to carry out such audits and investigations.

(b) For purposes of audits and investigations under this section, ~~ODCEMOEM~~ or State auditors, the Governor's Authorized Representative, ~~The—the~~ Director or their duly authorized representatives, may inspect any books, documents, papers, and records of any person relating to any activity undertaken or funded under the Act.

SUBCHAPTER 3. THE DECLARATION PROCESS

145:10-3-2. Definitions

All definitions in 145:10-1-2 apply to this Subchapter. In addition, the following words or terms, when used in this Subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

"**Appeal**" means a request for reconsideration of a determination on any action related to State assistance. Specific procedures for appeals are contained in the relevant subchapters of this chapter.

"**Incident**" means any condition which meets the definition of major disaster or emergency as set forth in 145:10-1-2 which causes damage or hardship that may result in a gubernatorial declaration of a major disaster or an emergency.

"**Incident period**" means the time interval during which the disaster-causing incident occurs. No State assistance under the Act shall be approved unless the damage or hardship to be alleviated resulted from the disaster-causing incident which took place during the incident period or was in anticipation of that incident period. The incident period will be established by ODCEMOEM.

145:10-3-3. Preliminary damage assessment

The preliminary damage assessment (PDA) process is a mechanism used to determine the impact and magnitude of damage and the resulting unmet needs of the public sector, and the community as a whole. ~~Information collected is used by the State as a basis for the Governor's request, and by ODCEM to document the recommendation made to the Governor in response to the Declaration request.~~ It is in the best interest of

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all parties to combine State and local personnel resources by performing a joint PDA prior to the initiation of a request, as follows:

(1) **Preassessment by the State.** When an incident occurs, or is imminent, which the State official responsible for disaster operations determines may be beyond the ~~local government~~ eligible Applicant(s) capabilities to respond, the State will perform a joint ~~State-Local preliminary damage assessment~~ PDA with the eligible Applicant. ~~It is not anticipated that all occurrences will result in the requirement for assistance; therefore, the State will be expected to verify their initial information, in some manner.~~

(2) **Damage assessment teams.** Damage assessment teams will be composed of at least one representative of the ~~Local Government~~ eligible Applicant and one representative of the State. Other State agencies, may also be asked to participate, as needed. It is the State's responsibility to coordinate ~~State and local participation in the~~ PDA and to ensure that the participants receive timely notification concerning the schedule. An ~~ODCEMOEM~~ official will brief team members on damage criteria, the kind of information to be collected for the particular incident, and reporting requirements.

(3) **Review of findings.** At the close of the PDA, ~~ODCEMOEM~~ will consult with ~~local officials~~ the eligible Applicant to discuss findings and reconcile any differences.

(4) **Exceptions.** The requirements for a joint PDA may be waived for those incidents of unusual severity and magnitude that do not require field damage assessments to determine the need for supplemental State assistance under the Act, or in such other instances determined by the Director upon consultation with the ~~local official~~ eligible Applicant. It may be necessary, however, to conduct an assessment to determine unmet needs for managerial response purposes.

145:10-3-4. Requests for emergency declarations

(a) When an incident occurs or threatens to occur in the State, which would not qualify under the definition of a major disaster, the ~~Chief Elected Official~~ eligible Applicant's highest elected official, or his/her representative in his/her absence, may request that the Governor declare an emergency. The ~~Chief Elected Official~~ eligible Applicant's highest elected official should submit the request to the Governor through the Director to ensure prompt acknowledgment and processing.

(b) The basis for the eligible Applicant's highest elected officials ~~Chief Elected Officials~~ request must be the finding that the situation:

(1) Is of such severity and magnitude that effective response is beyond the capability of the ~~affected local government(s)~~ eligible Applicant(s) and

(2) Requires supplementary State emergency assistance to save lives and to protect property, public health and safety, or to lessen or avert the threat of a disaster.

(c) In addition to the findings in (b) of this Section, the complete request shall include:

(1) Confirmation that the ~~local jurisdiction~~ eligible Applicant has taken appropriate action and directed the execution of the ~~local~~ emergency plan;

(2) Information describing the ~~local~~ efforts and resources which have been or will be used to alleviate the emergency;

(3) Information describing other ~~local~~ efforts and resources which have been or will be used in responding to this incident.

(d) The requirement for a ~~local~~ request under subsection (a) of this section can be waived when an emergency exists for which the primary responsibility rests in the State government because the emergency involves a subject area for which, under the Constitution or laws of the State of Oklahoma exercises exclusive or preeminent responsibility and authority. Any party may bring the existence of such a situation to the attention of the ~~ODCEMOEM~~ Director. In determining that such an emergency exists, the Director shall consult the Governor.

(e) It is not intended for an emergency declaration to preempt other state authorities and/or established plans and response mechanisms in place prior to the enactment of the act.

(f) The request must be submitted within 30 days after the occurrence of the incident in order to be considered.

145:10-3-5. Requests for major disaster declarations

(a) When a ~~catastrophe~~ incident occurs in the State, the eligible Applicant's highest elected official ~~Chief Elected Official~~ of the affected jurisdiction or his/her representative may request a major disaster declaration. The eligible Applicant's highest elected official ~~Chief Elected official~~ should submit the request to the Governor through the Director to ensure prompt acknowledgment and processing.

(b) This basis for the request shall be a finding that:

(1) The situation is of such severity and magnitude that effective response is beyond the capabilities of the ~~affected local governments~~ eligible Applicant(s); and

(2) State assistance under the Act is necessary to supplement the efforts and available resources of the ~~local governments~~ eligible Applicant(s), and compensation by insurance for disaster-related losses.

(c) In addition to the findings in (b) of this Section, the complete request shall include:

(1) Confirmation that the ~~Chief Elected Official~~ eligible Applicant's highest elected official has taken appropriate action and directed the execution of the ~~local~~ emergency plan;

(2) An estimate of the amount and severity of damages and losses stating the impact of the disaster on the public sector;

(3) Information describing the nature and amount of ~~State and local~~ resources which have been or will be committed to alleviate the results of the disaster;

(4) Preliminary estimates of the types and amount of supplementary State disaster assistance needed under the Act.

(d) The request must be submitted within 30 days of the occurrence of the incident in order to be considered.

145:10-3-6. Processing requests for declarations of a major disaster or emergency

- (a) **Acknowledgment.** The Director shall provide written acknowledgment of the ~~local eligible Applicant's~~ request.
- (b) **ODCEMOEM recommendation.** Based on all available information, the Director shall formulate a recommendation which shall be forwarded to the Governor or ~~his/her representative~~ with the ~~local eligible Applicant's~~ request.
 - (1) **Major disaster recommendation.** The major disaster recommendation will be based on a finding that the situation is or is not of such severity and magnitude as to be beyond the capabilities of the ~~local governments~~ eligible Applicant(s). It will also contain a determination of whether or not supplemental State assistance under the Act is necessary and appropriate. In developing a recommendation, ~~ODCEMOEM~~ will consider such factors as:
 - (A) the amount and type of damages;
 - (B) the impact of damages ~~on affected individuals, the State, and local governments;~~
 - (C) the ~~available availability of resources of the State and local governments, and other disaster relief organizations;~~
 - (D) the extent and type of insurance in effect to cover losses;
 - (E) assistance available from other State programs and other sources;
 - (F) imminent threats to public health and safety;
 - (G) recent disaster history in the State;
 - (H) hazard mitigation measures taken by the State or ~~local governments~~ the eligible Applicant(s), especially implementation of measures required as a result of previous major disaster declarations; and
 - (I) other factors pertinent to a given incident.
 - (2) **Emergency recommendation.** The emergency recommendation will be based on ~~a report~~ the findings which will indicate whether or not State emergency assistance is necessary to ~~supplement local efforts to save lives, protect property and public health and safety, or to lessen or avert the threat of a catastrophe~~ major disaster. ~~Only after it has been determined that all other resources and authorities available to meet the crisis are inadequate, and that assistance would be appropriate, will ODCEM recommend an emergency declaration to the Governor.~~
- (c) **Modified State emergency recommendation.** ~~The modified State emergency recommendation will be based on a report which will indicate that an emergency does or does not exist for which assistance would be appropriate.~~

145:10-3-7. Gubernatorial determination

- (a) The ~~local eligible Applicant's~~ request for a major disaster declaration may result in either a Governor's declaration of a major disaster or ~~an emergency~~, or denial of the ~~local~~ request.
- (b) The ~~local eligible Applicant's~~ request for an emergency declaration may result ~~only in either~~ a Governor's declaration of an emergency; or denial of the request.

145:10-3-8. Notification

- (a) The ~~eligible Applicant's highest elected official~~ Chief Elected Official of the affected jurisdiction will be promptly notified by the Director or his/her designee of a declaration by the Governor that an emergency or a major disaster exists. ~~ODCEMOEM~~ also will notify other state agencies and other interested parties.
- (b) The ~~eligible Applicant's highest elected official~~ Chief Elected Official of the affected jurisdiction will be promptly notified by the Director or his/her designee of a determination that the request does not justify the use of the authorities of the Act.
- (c) Following a major disaster or emergency declaration, the Director will promptly notify the ~~eligible Applicant's highest elected official~~ Chief Elected Official of the affected jurisdiction of the designations of assistance and areas eligible for such assistance.

145:10-3-9. Designation of affected areas

- (a) **Areas eligible to receive assistance.** The Director ~~also~~ has been delegated authority to designate ~~the disaster affected areas~~ eligible for supplementary State assistance under the Act. ~~A disaster affected area designated by the Director includes all local government jurisdictions within its boundaries. The Director may, based upon damage assessments in any given area, designate all or only some of the areas requested by the Chief Elected Official of the affected jurisdiction or for supplementary State assistance.~~
- (b) **Requests for additional designations after a declaration.** After a declaration by the Governor, requests that additional areas or types of supplementary State assistance may be authorized by the Director. Such requests shall be accompanied by appropriate verified assessments and commitments by ~~local governments~~ eligible Applicant(s) to demonstrate that the requested designations are justified and that the unmet needs are beyond local capabilities without supplementary State assistance.
- (c) **Time limits to request.** In order to be considered, all supplemental requests under subsection (b) of this section must be submitted within 30 days from the termination date of the incident ~~period, or 30 days after the declaration, whichever is later.~~ The 30-day period may be extended by the Director provided that a written request is made by the ~~appropriate local official~~ eligible Applicant's highest elected official during this 30-day period. The request must include justification of the local's inability to meet the deadline.

145:10-3-10. Appointment of disaster officials

- (a) **State Coordinating Officer.** Upon a declaration of a major disaster or of an emergency, the Governor ~~of the affected State~~ shall designate a State Coordinating Officer (SCO) who shall coordinate ~~local disaster assistance efforts with those of the State Government~~ all State assistance.
- (b) **Governor's Authorized Representative.** The Governor shall designate the Governor's Authorized Representative (GAR), who shall administer disaster assistance programs on

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behalf of the ~~State Governor~~. The GAR is responsible for the State and local compliance.

145:10-3-11. Responsibilities of coordinating officers

Following a declaration of a major disaster or an emergency, the SCO shall:

- (1) Make an initial appraisal of the types of assistance most urgently needed;
- (2) Establish field offices as necessary to coordinate and monitor assistance programs, ~~and disseminate information, and accept applications.~~
- (3) Coordinate the administration of relief, ~~including activities of State and local governments.~~
- (4) Undertake appropriate action to make certain that all of the State agencies are carrying out their appropriate disaster assistance roles under their own legislative authorities and operational policies; and
- (5) Take other action, consistent with the provisions of the Act, as necessary to assist citizens and public officials in promptly obtaining assistance to which they are entitled.

145:10-3-12. Emergency support teams

The State Coordinating Officer may activate emergency support teams, composed of State program and support personnel, to be deployed into an area affected by a major disaster or emergency. These emergency support teams assist the SCO in carrying out his/her responsibilities. Any State ~~agency~~ Agency can be directed to detail personnel within the agency's administrative jurisdiction to temporary duty with SCO approval. Each detail shall be without loss of seniority, pay, or other employee status.

145:10-3-13. Appeals

- (a) **Denial of declaration request.** When a request for a major disaster declaration or for any emergency declaration is denied, the eligible Applicant's highest elected official ~~Chief Elected Official of the affected jurisdiction~~ may appeal the decision. An appeal must be made within 30 days after the date of the letter denying the request. This one-time request for reconsideration, along with appropriate additional information, is submitted to the Governor through the Director. ~~The processing of this request is similar to the initial request.~~
- (b) **Extension of time to appeal.** The 30-day period referred to in subsection (a) of this section may be extended by the Director provided that a written request for such an extension, citing reasons for the delay, is made during this 30-day period, and if the Director agrees that there is a legitimate basis for extension of the 30-day period. Only the ~~Chief Elected Official of the affected jurisdiction~~ eligible Applicant's highest elected official may request a time extension for appeals covered in subsection (a) of this section.

SUBCHAPTER 5. PUBLIC ASSISTANCE PROJECT ADMINISTRATION

145:10-5-2. Definitions

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

"Eligible Applicant" means a ~~local government, or political subdivision~~ an incorporated city, town or county submitting an application for assistance under the State's grant.

"Emergency work" means that work which must be done immediately to save lives and to protect improved property and public health and safety, or to avert or lessen the threat of a major disaster.

"Facility" means any publicly owned building, works, system, or equipment, built or manufactured, or an improved and maintained natural feature. Land used for agricultural purposes is not a facility.

"Grant" means an award of financial assistance. The grant award shall be based on the total eligible State share of all approved projects.

"Grantee" means the ~~government~~ eligible Applicant to which a grant is awarded which is accountable for the use of the funds provided. ~~The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document.~~

"Hazard mitigation" means any cost effective measure which will reduce the potential for damage to a facility from a disaster event.

~~"Individual project" means "Project", as defined in this Section.~~

"Permanent work" means that restorative work that must be performed through repairs or replacement, to restore and eligible facility on the basis of its predisaster design and current applicable standards.

"Predisaster design" means the size or capacity of a facility as originally designed and constructed or subsequently modified by changes or additions to the original design. It does not mean the capacity at which the facility was being used at the time the major disaster occurred if different from the most recent designed capacity.

"Project Worksheet (PW)" means an OEM document capturing all work performed at a single or multiple site sites and eligible for assistance under this Act, whether or not described on a single Damage Survey Report (DSR). ~~See also definition of "Individual project" in this Section.~~

"Project Worksheet approval" means the process where the Director signs an approval of work and costs on a ~~DSR or group of DSR's~~ PW. Such approval is also an obligation of funds to the ~~grantee~~ Grantee.

145:10-5-3. Application procedures

(a) **General.** This section describes the policies and procedures for processing grants for State disaster assistance. The State is responsible for processing grants to applicants in accordance with its own policies and procedures.

(b) **Grantee.** The Grantee serves as the grant administrator for all funds provided under the State Public Assistance grant program. The Grantee's responsibilities as they pertain to procedures outlined in the section include providing ~~local~~ support and submission of those documents necessary for grants award.

(c) **Per Capita Indicator.** The Grantee must provide evidence their level of damage has exceeded their indicator. The Grantee indicator is derived from the calculated result of the current year Federal Emergency Management Agency ("FEMA") County Per Capita Indicator multiplied by the latest census of the Grantee's population.

(ed) **Notice of Interest Intent (NOI).** The Grantee must submit to the Director a completed NOI (ODCEM Form 94-01) for requesting assistance. NOI's must be submitted to the Director within 30 days following designation of the area in which the damage is located. The Grantee must submit to the Director, within 30 days following designation of the area in which damage is located, a letter on official letterhead and contain the following:

- (1) Evidence the Grantee indicator has been met or exceeded
- (2) Identification of damage
- (3) Recovery cost or estimate
- (4) Economic impact to the jurisdiction's budget

(de) **Damage Survey Reports (DSR's) Project Worksheet (PW).** Damage surveys are conducted by an inspection team. An authorized local representative accompanies the inspection team and is responsible for representing the applicant and ensuring that all eligible work and costs are identified. The inspectors prepare a Damage Survey Report Data Sheet (ODCEM Form 94-01), for each site. On the Damage Survey Report Data Sheet the inspectors will identify the eligible scope of work and prepare a quantitative estimate for the eligible work. Any damage that is not shown to the inspection team during its initial visit shall be reported in writing to the Director by the Grantee within 60 days following completion of the initial visit. A Project Worksheet will be formulated following policies and procedures established by OEM. A PW will identify the eligible scope of work and a quantitative estimate for the eligible work. All PWs will be written using the current FEMA Public Assistance eligibility criteria.

(ef) **Grant approval.** Upon completion of the field surveys the Damage Survey Report Data Sheets are reviewed and action is taken by the Director. This will be done within 45 days of the date of inspection or a written explanation of any delay will be provided to the grantee. Prior to the obligation of any funds the Grantee shall submit a Standard Form ODCEM 424, Application for Assistance, and ODCEM 424-D, Assurances for Construction Programs, to the Director. Following receipt of the ODCEM 424 and 424D, the Director will then obligate funds to the grantee based upon the approved DSR's. The Director will provide NOI approval or denial notification to the Grantee within 60 days from the date of the NOI. If approved, all eligible PWs will be written and approved by the Director within 60 days of the date of the Director's approval notification or from the date OEM receives all needed documentation to formulate the PW from the Grantee. The Director shall have the authority to withdraw grant approval if all required documentation is not submitted by the Grantee to OEM within 30 days of the date of the Director's approval notification.

(fg) **Exception.** The time limitations shown in subsections (c) and (d) of this section may be extended by the Director when justified and requested in writing by the Grantee. Such

justification shall be based on extenuating circumstances beyond the ~~grantee's~~ Grantee's control.

145:10-5-4. State grant assistance

(a) **General.** This section describes the types and extent of State funding available under State disaster assistance grants, as well as limitations and special procedures applicable to each.

(b) **Project funding Funding.** A Grantee shall only be eligible to receive one Gubernatorial Declaration per calendar year.

(1) **Large projects.** When the approved estimate of eligible costs for an individual project is \$50,000 or greater. State funding shall equal the actual eligible costs documented by a grantee. Such \$50,000 amount shall be adjusted annually to reflect changes in the Consumer Price Index for All Urban Consumers published by the Department of Labor.

(2) **Small projects.** When the approved estimate of costs for an individual project is less than \$50,000 State funding shall equal the approved estimate of eligible costs. Such \$50,000 amount shall be adjusted annually as indicated in paragraph (b)(1) of this section.

(c) **Funding options. Annual maximum.** Funding provided to a Grantee through the State Public Assistance Program shall not exceed one hundred thousand dollars (\$100,000.00) in a calendar year.

(1) **Improved projects.** If a grantee desires to make improvements, but still restore the predisaster function of a damaged facility, the Director's approval must be obtained. State funding for such improved projects shall be limited to the approved estimate of eligible costs.

(2) **Alternate projects.** In any case where a grantee determines that the public welfare would not be best served by restoring a damaged public facility or the function of that facility, the Grantee may request that the Director approve an alternate project.

(A) The alternate project option may be taken only on permanent restorative work.

(B) Funding for such alternate projects shall equal 90 percent of the approved estimate of eligible costs.

(C) Funds contributed for alternate projects may be used to repair or expand other selected public facilities, to construct new facilities, or to fund hazard mitigation measures.

(D) Prior to the start of construction of any alternate project the Grantee shall submit for approval by the Director the following: a description of the proposed alternate project(s); a schedule of work; and the projected cost of the project(s). The Grantee shall also provide the necessary assurances to document compliance with special requirements, including, but not limited to floodplain management, environmental assessment, hazard mitigation, protection of wetlands, and insurance.

(d) **Cost Share.** Funding of the State Public Assistance Program is to be shared by the Grantee and the State. The State shall be responsible for 75 percent of total cost, of which may not exceed one hundred thousand dollars (\$100,000.00). The

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Grantee shall be responsible for the remaining 25 percent of total cost.

(e) **Delinquency.** A Grantee delinquent in owing the State funds received through the FEMA Public Assistance Program or previous Gubernatorial declarations may not be eligible to receive Gubernatorial declaration funding until all outstanding payments have been paid to the State.

145:10-5-5. **Project worksheet performance validation**

(a) **General.** This section describes the policies and procedures applicable during the performance of eligible work project worksheet validation.

(b) **Advances of funds.** Advances of funds will be made in accordance with 145:10-5-4 (b)(1) and (2).

(eb) **Time limitations for completion of work.**

(1) **Deadlines.** The PW project completion deadlines shown below are set from the date that a major disaster or emergency is declared and apply to all projects—PWs approved under State disaster assistance grants:

- (A) Debris clearance - 6 months
- (B) Emergency work - 6 months
- (C) Permanent work - 18 months

(2) **Exceptions.** The State may impose lesser alternate deadlines for the completion of work.

(A) under paragraph (c)(1) of this section if considered appropriate.

(B) Based on extenuating circumstances or unusual project requirements beyond the control of the Grantee the Director may extend the deadlines under paragraph (c)(1) of this section for an additional 6 months for debris clearance and emergency work and an additional 30 months, on a project by project basis for permanent work.

(ec) **Requests for time extensions.** Requests for time extensions shall be submitted by the Grantee to the Director-SCO and shall include the following:

(1) The dates and provisions of all previous time extensions on the project-PW; and

(2) A detailed justification for the delay and a projected completion date. The Director—SCO shall review the request and make a determination. The Grantee shall be notified of the Directors—SCO's determination in writing. If the Director—SCO approves the request, the letter notification shall reflect the approved completion date and any other requirements the Director—SCO may determine necessary to ensure that the new completion date is met. If the Director—SCO denies the time extension request, the grantee Grantee may, upon completion of the project-PW, be reimbursed for eligible project-PW costs incurred only up to the latest approved completion date. If the project-PW is not completed, no State funding will be provided for that project-PW.

(ed) **Cost Overruns.** During the execution of approved work a grantee Grantee may find that actual project-PW costs are exceeding the approved DSR-PW estimates.

(1) Such cost overruns normally fall into the following three categories:

- (A) Variations in unit prices;
- (B) Change in the scope of eligible work; or
- (C) Delays in timely starts or completion of eligible work.

(2) The ~~grantee~~ Grantee shall evaluate each cost overrun and, when justified, submit a request for additional funding to the Director—SCO for final determination. All requests for the Directors—SCO's approval shall contain sufficient documentation to support the eligibility of claimed work and costs. The ~~grantee~~ Grantee shall include a written recommendation when forwarding the request. The Director shall notify the Grantee in writing of the final determination. ~~OCDEM will not normally review an overrun for an individual small project. The normal procedure for small projects will be that when a grantee discovers a significant overrun related to the total final cost for all small projects, the~~ The grantee Grantee may submit an appeal for additional funding in accordance with 145:10-5-6 ~~145:10-5-7~~, within 60 days following the completion of all of its small projects-PWs. Funding shall not exceed the annual maximum.

(fe) **Progress reports.** Progress reports will be submitted by the Grantee to the Director—SCO quarterly. The Director and Grantee shall negotiate the date for submission of the first report. The first quarterly report shall be due the first quarter subsequent to receiving the award. Such reports will describe the status of those projects—PWs on which a final payment has not been made to the grantee Grantee and outline any problems issues or circumstances expected to result in noncompliance with the approved grant conditions.

145:10-5-6. **Payment of claims**

(a) **Payment.** PWs may be paid up to the PW estimate at the Director's discretion.

(b) **Small projects.** Final payment of small projects shall be made to the Grantee upon approval of the project. The State shall make payment to the grantee as soon as practicable after approval of funding. **Timing.** Payment should be made by the State to the Grantee as soon as practicable after approval of funding. Prior to the ~~closeout~~ validation of the disaster contract-PW, the Grantee shall certify that all such projects were completed ~~in~~ the completed PWs are in accordance with ~~OCDEM~~ OEM approvals. The payment for small projects shall not be reduced if all of the approved funds are not spent to complete a project. However, ~~failure~~ Failure to complete a project-PW may require that the payment be refunded.

(bc) **Large projects. Account of Work.**

(1) If requested by the SCO, The Grantee shall make an accounting to the Director—SCO of eligible costs for each approved large—project-PW. In submitting the accounting the Grantee shall certify that reported costs were incurred in the performance of eligible work, that the approved work was completed and that the project-PW is in compliance. Each large project-PW shall be submitted as soon as practicable after the grantee Grantee has completed the approved work and requested payment.

(2) The Director—SCO shall review the accounting to determine the eligible amount of reimbursement for each

large project PW and approve eligible costs. If a discrepancy between reported costs and approved funding exists, the Director-SCO may conduct field reviews to gather additional information. If discrepancies in the claim cannot be resolved through a field review, a State audit may be conducted and funds may be recovered by the State. If the Director-SCO determines that eligible costs exceed the initial approval, he/she will obligate additional funds as necessary up to the annual maximum.

145:10-5-7. Appeals

(a) **Grantee.** The grantee~~Grantee~~ may appeal any determination previously made related to State assistance including a time extension determination made by the grantee~~Grantee~~. The grantee~~Grantee~~'s appeal shall be made in writing and submitted to the Director within 60 days after receipt of notice of the action which is being appealed. The appeal shall contain documented justification supporting the grantee~~Grantee~~'s position.

(b) **Director.** Upon receipt of an appeal, the Director shall review the material submitted and make such additional investigations as deemed appropriate. Within 90 days following receipt of an appeal, the Director shall notify the Grantee, in writing, as to the disposition of the appeal or of the need for additional information. Within 90 days following the receipt of such additional information, the Director shall notify the grantee~~Grantee~~, in writing, of the disposition of the appeal. If the decision is to grant the appeal, the Director will take appropriate implementing action.

SUBCHAPTER 7. PUBLIC ASSISTANCE ELIGIBILITY

145:10-7-2. Definitions

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

"Facility" means any publicly owned building, works, system, or equipment, built or manufactured, or an improved and maintained natural feature. Land used for agricultural purposes is not a facility.

"Force account" means an applicant's own labor forces and equipment.

"Immediate threat" means the threat of additional damage or destruction from an event which can reasonably be expected to occur within five years.

"Improved property" means a structure, facility or item of equipment which was built, constructed or manufactured. Land used for agricultural purposes is not improved property.

"Public entity" means an organization formed for a public purpose whose direction and funding are provided by one or more political subdivisions of the State.

"Public facility" means the following facilities owned by a local government:

(A) any flood control, navigation, irrigation, reclamation, public power, sewage treatment and collection, water supply and distribution, watershed development, or airport facility; any

(B) non-Federal aid, street, road, or highway; and

(C) any other public building, structure, or system.

"Standards" means codes, specifications or standards required for the construction of facilities.

145:10-7-3. Applicant eligibility

The following entities are eligible to apply for assistance under the State public assistance grant:

(1) Local governments-Incorporated cities and towns

(2) Other political subdivisions-Counties

145:10-7-4. General work eligibility

(a) **General.** To be eligible for financial assistance, an item of-work must be:

(1) Be required~~Required~~ as the result of the major disaster event,

(2) Be located~~Located~~ within a designated disaster area, and

(3) Be the~~The~~ legal responsibility of an eligible applicant~~Applicant~~.

(b) **Public entities.** Facilities belonging to a public entity may be eligible for assistance when the application is submitted through the State or a political subdivision of the State.

(c) **Negligence.** No assistance will be provided to an applicant-eligible Applicant for damages caused by its own negligence. If negligence by another party results in damages, assistance may be provided, but will be conditioned on agreement by the applicant-eligible Applicant to cooperate with OCCEMOEM in all efforts necessary to recover the cost of such assistance from the negligent party.

145:10-7-5. Debris removal

(a) **Public interest.** Upon determination that debris removal is in the public interest, the Director-SCO may provide assistance for the removal of debris and wreckage from publicly and privately owned lands and waters. Such removal is in the public interest when it is necessary to:

(1) Eliminate immediate threats to life, public health, and safety; or

(2) Eliminate immediate threats of significant damage to improved public or private property; or

(3) Ensure economic recovery of the affected community to the benefit of the community-at-large.

(b) **Debris removal from private property.** When it is in the public interest for an eligible applicant~~Applicant~~ to remove debris from private property in urban, suburban and rural areas, including large lots, clearance of the living, recreational and working area is eligible except those areas used for crops and livestock or unused areas. The Grantee will ensure that the rights of the property owner are met through documentation and notification.

(c) **Assistance to individuals and private organizations.** No assistance will be provided directly to an individual or

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private organizations, or to an eligible ~~applicant~~ Applicant for reimbursement of an individual or private organization, for the cost of removing debris from their own property.

145:10-7-6. Emergency work

(a) ~~General.~~

~~(1) Emergency protective measures to save lives, to protect public health and safety, and to protect improved property are eligible.~~

~~(2) In determining whether emergency work is required, the Director-SCO may require certification by local officials that a threat exists, including identification and evaluation of the threat and recommendations of the emergency work necessary to cope with the threat.~~

~~(3) In order to be eligible, emergency protective measures must:~~

~~(A) Eliminate or lessen immediate threats to livelife, public health or safety; or~~

~~(B) Eliminate or lessen immediate threats of significant additional damage to improved public or private property through measures which are cost effective.~~

~~(b) **Emergency access.** An access facility that is not publicly owned or is not the direct responsibility of an eligible applicant for repair or maintenance may be eligible for emergency repairs or replacement provided that emergency repair or replacement of the facility economically eliminates the need for temporary housing. The work will be limited to that necessary for the access to remain passable through events which can be considered an immediate threat. The work must be performed by an eligible applicant and will be subject to cost sharing requirements.~~

~~(c) **Emergency communications.** Emergency communications necessary for the purpose of carrying out disaster relief functions may be established and may be made available to local government officials as deemed appropriate. Such communications are intended to supplement but not replace normal communications. ODCEM funding for such communications will be discontinued as soon as the needs have been met.~~

~~(d) **Emergency public transportation.** Emergency public transportation to meet emergency needs and to provide transportation to public places and such other places as necessary for the community to resume its normal pattern of life as soon as possible is eligible. Such transportation is intended to supplement but not replace predisaster transportation facilities that remain operable after a major disaster. ODCEM funding for such transportation will be discontinued as soon as the needs have been met.~~

145:10-7-7. Restoration of damaged facilities

Work to restore eligible facilities on the basis of the design and function of such facilities as they existed immediately prior to the disaster and in conformity with the following is eligible:

(1) **Assistance under other State or Federal agency programs.** Generally, disaster assistance will not be made available under the Act when another State or Federal

agency has specific authority to restore facilities damaged or destroyed by an event which is declared a major disaster.

(2) **Standards.** For the costs of ~~State, and local~~ repair or replacement standards which change the predisaster design and construction of facility to be eligible, the standards must meet Federal and State guidelines:

~~(A) Apply to the type of repair or restoration required (Standards may be different for new construction and repair work);~~

~~(B) Be appropriate to the predisaster use of the facility;~~

~~(C) Be in writing and formally adopted by the applicant prior to project approval or be a legal State requirement applicable to the type of restoration;~~

~~(D) Apply uniformly to all similar types of facilities within the jurisdiction of owner of the facility; and~~

~~(E) For any standard in effect at the time of a disaster, it must have been enforced during the time it was in effect.~~

(3) **Hazard mitigation.** In approving grant assistance for restoration of facilities, the Director-SCO may require cost effective hazard mitigation measures not required by applicable standards. The cost of any requirements for hazard mitigation placed on restoration projects by ODCEMOEM will be an eligible cost for ODCEMState assistance, not to exceed the cumulative annual maximum allowed.

(4) **Repair vs. replacement.**

(A) A facility is considered repairable when disaster damages do not exceed 50 percent of the cost of replacing a facility to its predisaster condition, and it is feasible to repair the facility so that it can perform the function for which it was being used as well as it did immediately prior to the disaster.

(B) If a damaged facility is not repairable in accordance with paragraph (d)(1) of this section, approved restorative work may include replacement of the facility. The ~~applicant~~ eligible Applicant may elect to perform repairs to the facility, in lieu of replacement, if such work is in conformity with applicable standards. However, eligible costs shall be limited to the less expensive of repairs or replacement.

(C) An exception to the limitation in paragraph (d)(2) of this section may be allowed for facilities eligible for or on the National Register of Historic Properties. If an applicable standard requires repair in a certain manner, costs associated with that standard will be eligible.

(5) **Relocation.**

(A) The Director-SCO may approve funding for and require restoration of a destroyed facility at a new location when:

(i) The facility is and will be subject to repetitive heavy damage;

(ii) The approval is not barred by other provisions.

(iii) The overall project worksheet (PW), including all costs, is cost effective.

(B) When relocation is required by the ~~Director~~ SCO, eligible work includes land acquisition and ancillary facilities such as roads and utilities, in addition to work normally eligible as part of a facility reconstruction. Demolition and removal of the old facility is also an eligible cost.

(C) When relocation is required by the ~~Director~~ SCO, no future funding for repair or replacement of a facility at the original site will be approved.

(D) When relocation is required by the ~~Director~~ SCO, and, instead of relocation, the applicant ~~eligible Applicant's~~ requests approval of an "alternate project", eligible costs will be limited to 90 percent of the estimate of restoration at the original location excluding hazard mitigation measures.

(E) If relocation of a facility is not feasible or cost effective, the ~~Director~~ SCO shall disapprove funding for the original location when he/she determines that restoration in the original location is not allowed. In such cases, an alternate project may be applied for.

(6) **Equipment and furnishings.** If equipment and furnishings are damaged beyond repair, comparable items are eligible as replacement items.

(7) **Library books and publications.** Replacement of library books and publications is based on an inventory of the quantities of various categories of books or publications damaged or destroyed. Cataloging and other work incidental to replacement are eligible.

(8) **Beaches.**

(A) Replacement of sand on an unimproved natural beach is not eligible.

(B) **Improved beaches.** Work on an improved beach may be eligible under the following conditions:

- (i) The beach was constructed by the placement of sand (of proper grain size) to a designed elevation, width, and slope; and
- (ii) A maintenance program involving periodic renourishment of sand must have been established and adhered to by the applicant.

(9) **Restrictions.**

(A) **Alternative use facilities.** If a facility was being used for purposes other than those for which it was designed, restoration will only be eligible to the extent necessary to restore the immediate predisaster alternate purpose.

(B) **Inactive facilities.** Facilities that were not in active use at the time of the disaster are not eligible except in those instances where the facilities were only temporarily inoperative for repairs or remodeling, or where active use by the applicant was firmly established in an approved budget or the owner can demonstrate to ODCEM's satisfaction an intent to begin use within a reasonable time.

145:10-7-8. Snow removal assistance

~~Thru traffic lanes of collector roads and streets; minor arterial roads and streets; and principal arterial; and tracks and rights of way of urban mass transit systems as necessary for the continuation or resumption of services; and roads and streets, are defined for purposes of snow removal assistance as:~~

~~(1) **Collector roads and streets** means local roads and streets which serve thru traffic and provide access to higher type roads and facilitate community activities but are primarily of local interest.~~

~~(2) **Minor arterial roads and streets** means roads and streets which serve thru traffic and provide access of higher type roads, connecting communities in nearby areas in addition to serving adjacent property.~~

~~(3) **Principal arterial** means roads and streets which serve thru traffic and are of statewide interest. They carry high volumes of traffic between population centers and are designed to facilitate traffic movement with limited land access. It also means roads and streets which serve thru traffic only and provide no access to abutting property.~~ Snow removal assistance under this Act will be consistent with current Federal guidelines and policy.

145:10-7-9. Allowable costs

~~General policies for determining allowable costs are explained below. Reimbursement for ownership and operation costs of applicant owned equipment used to perform eligible work shall be provided in accordance with the following guidelines.~~ Policy for determining allowable costs of eligible Applicant-owned equipment used to perform eligible work will be in accordance with current FEMA Cost Codes for the State. :

~~(1) **Rates established under State guidelines.** In those cases where an applicant uses reasonable rates which have been established or approved under State guidelines, in its normal daily operations, reimbursement for applicant owned equipment which has an hourly rate of \$75 or less shall be based on such rates. Reimbursement for equipment which has an hourly rate in excess of \$75 shall be determined on a case by case basis by ODCEM.~~

~~(2) **Rates established under local guidelines.** Where local guidelines are used to establish equipment rates, reimbursement will be based on those rates or rates in a Schedule of Equipment Rates published by ODCEM whichever is lower. If an applicant certifies that its local established rates do not reflect actual costs, reimbursement may be based on the ODCEM Schedule of Equipment Rates, but the applicant will be expected to provide documentation if requested. If an applicant wishes to claim an equipment rate which exceeds the ODCEM Schedule, it must document the basis for that rate and obtain ODCEM approval of an alternate rate.~~

~~(3) **No established rates.** The ODCEM Schedule of Equipment Rates will be the basis for reimbursement in all cases where an applicant does not have established equipment rates.~~

SUBCHAPTER 9. PUBLIC ASSISTANCE INSURANCE REQUIREMENTS

145:10-9-1. General

- (a) The requirements of this subchapter apply to all assistance provided pursuant to the Act with respect to any major disaster declared by the Governor.
- (b) Insurance requirements prescribed in the subchapter shall apply equally to all eligible applicants.
- (c) Actual and anticipated insurance recoveries shall be deducted from otherwise eligible costs, in accordance with the subchapter.
- (d) The full coverage available under the standard flood insurance policy from the National Flood Insurance Program (NFIP) will be subtracted from otherwise eligible costs for a building and its contents within the special flood hazard area.
- (e) The insurance requirements of this subchapter should not be interpreted as a substitute for various hazard mitigation techniques which may be available to reduce the incidence and severity of future damage. Public Assistance Insurance requirements are consistent with current FEMA guidelines and policies.

145:10-9-2. Definitions [REVOKED]

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

"Assistance" means any form of a State grant under the Act to replace, restore, repair, reconstruct, or construct any facility and/or its contents as a result of a major disaster.

"Building" means a walled and roofed structure, other than a gas, or liquid storage tank, that is principally above ground and affixed to a permanent site, as well as a manufactured home on a permanent foundation.

"Community" means a political subdivision thereof, which has authority to adopt and enforce floodplain management regulations for the areas within its jurisdiction.

"National Flood Insurance Program (NFIP)" means the program authorized by the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4001 et seq.

"Special flood hazard area" means an area having special flood, mudslide, and/or flood related erosion hazards, and shown on a Flood Hazard Boundary map (FHBM) or the Flood Insurance Rate Map (FIRM) issued by FEMA as Zone A, AO, A1-30, AE, A99, AH, VO, V1-30, VE, V, M, or E.

"Standard Flood Insurance Policy" means the flood insurance policy issued by the Federal Insurance Administrator, or by a Write Your Own Company pursuant to 44 CFR 62.23.

145:10-9-3. Insurance requirements for facilities damaged by flood [REVOKED]

- (a) Where an insurable building damaged by flooding is located in a special flood hazard area identified for more than one year by the Director, assistance of the Act shall be reduced. The amount of the reduction shall be the maximum amount of the insurance proceeds which would have been received had

the building and its contents been fully covered by a standard flood insurance policy.

(b) Prior to approval of a State grant for the restoration of a facility and its contents which were damaged by a flood, the Grantee shall notify the Director of any entitlement to an insurance settlement or recovery. The Director shall reduce the eligible costs by the amount of insurance proceeds which the grantee receives.

(c) The grantee is required to obtain and maintain flood insurance in the amount of eligible disaster assistance, as a condition of receiving State assistance that may be available. This requirement also applies to insurable flood damaged facilities located outside a special flood hazard area when it is reasonably available, adequate, and necessary. However, the Director shall not require greater types and amounts of insurance than are certified as reasonable by the State Insurance Commissioner. The requirement to purchase flood insurance is waived when eligible costs for an insurable facility do not exceed \$5,000.

145:10-9-4. Insurance requirements for facilities damaged by disasters other than flood [REVOKED]

(a) Prior to approval of a State grant for the restoration of a facility and its contents which were damaged by a disaster other than flood, the Grantee shall notify the Director of any entitlement to insurance settlement or recovery for such facility and its contents. The Director shall reduce the eligible costs by the actual amount of insurance proceeds relating to the eligible costs.

(b) Assistance under the Act will be approved only on the condition that the grantee obtain and maintain such types and amounts of insurance as are reasonable and necessary to protect against future loss to such property from the types of hazard which caused the major disaster. The extent of insurance to be required will be based on the eligible damage that was incurred to the damaged facility as a result of the major disaster. The Director shall not require greater types and extent of insurance than are certified as reasonable by the State Insurance Commissioner.

(c) Due to the high cost of insurance, some applicants may request to insure the damaged facilities under a blanket insurance policy covering all their facilities, an insurance pool arrangement, or some combination of these options. Such an arrangement may be accepted for other than flood damages. However, if the some facility is damaged in a similar future disaster, eligible costs will be reduced by the amount of eligible damage sustained on the previous disaster.

(d) The Director shall notify the Grantee of the type and amount of insurance required. The grantee may request that the State Insurance Commissioner review the type and extent of insurance required to protect against future loss to a disaster damaged facility, the Director shall not require greater types and extent of insurance than are certified as reasonable by the State Insurance Commissioner.

(e) The requirements of the Act are waived when eligible costs for an insurable facility do not exceed \$5,000. The Director may establish a higher waiver amount based on hazard

~~mitigation initiatives which reduce the risk of future damages by a disaster similar to the one which resulted in the major disaster declaration which is the basis for the application for disaster assistance.~~

~~(f) The Grantee shall provide assurances that the required insurance coverage will be maintained for the anticipated life of the restorative work or the insured facility, whichever is the lesser.~~

~~(g) No assistance shall be provided under the Act for any facility for which assistance was provided as a result of a previous major disaster unless all insurance required by ODCEM as a condition of the previous assistance has been obtained and maintained.~~

[OAR Docket #17-663; filed 7-19-17]

**TITLE 158. CONSTRUCTION INDUSTRIES BOARD
CHAPTER 1. PROCEDURES OF THE OKLAHOMA CONSTRUCTION INDUSTRIES BOARD**

[OAR Docket #17-591]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 3. General Operation and Procedures

158:1-3-9. Fees for plan review and project review for code conformance [AMENDED]

AUTHORITY:

Construction Industries Board; 59 O.S. §§ 858-627, 1000.4, 1000.5, 1002, 1032, 1681, 1850.3, 1151.2a, and 1151.4

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

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October 1, 2017

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

Gist: The amendments add provisions already described in the separate trade Acts (Plumbing, Electrical and Mechanical), and add language clarifying existing rules and statutory authority.

Analysis: No fees are established or changed by these amendments. The amendments incorporate into the procedures for the Construction Industries Board the requirement currently in separate trade Acts for notice of work related to installing, modifying or altering plumbing, electrical facilities, or mechanical systems in an incorporated area of the State which has not adopted a State recognized code and which has not appointed an inspector for the respective trade. The amendments also clarify procedures for requesting an inspection by a Construction Industries Board Inspector. The amendments

may result in amendments/clarifications on existing forms or the creation of new forms.

CONTACT PERSON:

Linda Ruckman, Board Secretary/Executive Assistant, 405-521-6550.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF OCTOBER 1, 2017:

SUBCHAPTER 3. GENERAL OPERATION AND PROCEDURES

158:1-3-9. Fees for plan review and project review for code conformance

(a) **Plan review fee.** For formal review of project plans pursuant to 59 O.S. §§ 1002.1, 1681.1 and 1850.3a, the Construction Industries Board shall charge a fee of \$ 75.00 per hour per review, one hour minimum, not to exceed \$200 for any single review.

(b) **Project review inspection fee.** For inspection services related to a project review for code conformance pursuant to 59 O.S. § 1000.5(A)(2), the Construction Industries Board shall charge a fee of \$ 75.00 per hour, per inspection, one hour minimum, not to exceed \$200 for any single inspection.

(c) **Limitations on inspection fees.** The fee required in subsection (b) herein only applies in localities where the Construction Industries Board is the authority having jurisdiction for code enforcement purposes and the inspection services are performed at the request of a contractor or property owner. The Construction Industries Board shall not charge a fee for inspections related to licensing or licensee investigations.

(d) **Each code inspection requires separate fee.** A separate fee shall be charged pursuant to subsection (b) herein based on the trade (plumbing, electrical or mechanical) work inspected for code conformance by the Construction Industries Board.

(e) **Subsequent code inspection requires separate fee.** A separate fee shall be charged pursuant to subsection (b) herein for each subsequent inspection of work for conformance to a code, including scheduled progress inspections performed at different intervals during the stages of construction.

(f) **Notice requirement for work in incorporated areas without municipal inspector.** No individual, business, company, corporation, limited liability company, association, or other entity subject to the provisions of The Plumbing License Law of 1955, the Electrical License Act, or the Mechanical Licensing Act, shall install, modify or alter plumbing, electrical facilities, or mechanical systems in any incorporated area of this State which has not adopted a State recognized code and which has not appointed an inspector for the respective trade without providing notice of such plumbing, electrical or mechanical work to the Board. The notification must be submitted on a notice form provided by the Board.

(g) **Procedures to request inspection.** All requested inspections require advance notification, and in no event

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shall such notification be given less than two (2) business days before the work is to be inspected. To request an inspection, contact the trade supervisor in the trade for which the inspection is requested. Once an inspection request has been received an inspector will contact the requestor within one (1) business day to schedule a time for the inspection. Failure to provide sufficient notice may result in the inability to provide the requested inspection within the time frame requested. If upon inspection the work is determined not to be in conformance with the applicable code as adopted by the Oklahoma Uniform Building Code Commission, the inspector may issue a notice of violation pursuant to this Chapter. Any inspection conducted by the Construction Industries Board only determines if the electrical, mechanical, or plumbing work was completed according to the recently adopted code and the Board, does not warranty or guarantee any work.

[OAR Docket #17-591; filed 7-7-17]

TITLE 158. CONSTRUCTION INDUSTRIES BOARD CHAPTER 10. FINE SCHEDULE

[OAR Docket #17-592]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions
158:10-1-1.1 [AMENDED]
Subchapter 3. Administrative Fine Schedule
158:10-3-4 [AMENDED]

AUTHORITY:

Construction Industries Board; 59 O.S. §§ 858-627, 1000.4, 1000.5, 1002, 1032, 1681, 1850.3, 1151.2a, and 1151.4

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n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

Gist: The amendments add a definition and language clarifying existing rules and statutory authority.

Analysis: The amendments add a definition for "contracting" that is already described in the separate trade Acts (Plumbing, Electrical, Mechanical, and Roofing) and clarify that the requirement for payment of fines and penalties applies to all individuals assessed such a fine or penalty. The amendments may result in amendments/clarifications on existing forms or the creation of new forms.

CONTACT PERSON:

Linda Ruckman, Board Secretary/Executive Assistant, 405-521-6550.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF OCTOBER 1, 2017:

SUBCHAPTER 1. GENERAL PROVISIONS

158:10-1-1.1. Definitions

Unless the context otherwise requires, singular words shall be deemed to include the plural, and masculine words to include the feminine, and vice versa. The following words or terms, when used in this Chapter, shall have the following meaning unless the context clearly indicates otherwise:

"Act" means the Construction Industries Board Act as found at 59 O.S. § 1000.1, *et seq.*

"Administrator" means the Administrator of the Construction Industries Board as described in the Construction Industries Board Act.

"Board" means the Oklahoma Construction Industries Board.

"Contracting" means engaging or offering to engage in, on behalf of oneself or on behalf of another, any plumbing, mechanical, electrical, or roofing work which requires a valid and appropriate license or registration from the Construction Industries Board as required by the Plumbing License Law of 1955, the Electrical License Act, the Mechanical Licensing Act, or the Roofing Contractor Registration Act.

SUBCHAPTER 3. ADMINISTRATIVE FINE SCHEDULE

158:10-3-4. Payment of fines

(a) A person who is ordered to pay a fine shall submit the fine to the Construction Industries Board, 2401 N.W. 23, Suite 2F, Oklahoma City, Oklahoma 73107. A person who decides not to contest the issuance of the citation shall submit payment of the fine amount to the address above on or before the hearing date indicated on the citation.

(b) ~~Contractors or journeymen shall pay all~~Any fines and penalties imposed by penalty orders of the ~~Electrical, Mechanical, Plumbing, or Inspector~~by the respective Hearing Boards and/or the Board and fines and penalties imposed by courts of competent jurisdiction for the violation of municipal ordinances shall be paid.

(c) The Board may seek payment through the surety bond of any licensed Contractor for any fines or penalties, which the licensee fails to pay.

[OAR Docket #17-592; filed 7-7-17]

TITLE 158. CONSTRUCTION INDUSTRIES BOARD
CHAPTER 30. PLUMBING INDUSTRY REGULATIONS

[OAR Docket #17-593]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 1. General Provisions
158:30-1-2 [AMENDED]
Subchapter 5. License Types, Bond Requirements, and Display of License Number and Firm Name
158:30-5-2 [AMENDED]
158:30-5-4 [AMENDED]
Subchapter 9. Examination Procedures, License and Registration Fees and Duration of Licenses
158:30-9-1 [AMENDED]
158:30-9-3 [AMENDED]
158:30-9-4 [AMENDED]

AUTHORITY:

Construction Industries Board; 59 O.S. §§ 1000.4(A)(1) and 1002.

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INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

Gist: The amendments to the Plumbing Industry Regulations add language clarifying existing rules and statutory authority, including clarifying language from court supported interpretation; remove obsolete language; and provide applicants options on licensing renewal categories and partial exam completion.

Analysis: The amendments clarify and add definitions to provide the public a description of terms as the statutes have historically been applied by the agency; clarify the result of a contractor failing to maintain the required bond and insurance; clarify requirements for obtaining a plumbing license by reciprocity; provide options for those no longer needing to hold a contractor license but still wanting to work in the trade; establish a time limit for completing both portions of the contractor exam before an applicant is required to retake a portion they may have previously passed; establish procedures which allow an applicant for a contractor license who passes only the trade portion of the contractor exam to apply the passing score of the trade portion to an application for a journeyman license; allow an active or inactive contractor to elect to have a permanent change of license category and renew as a journeyman; amend and clarify the procedures/requirements related to an applicant who violates exam procedures; clarify the method by which license renewal fees can be paid; remove obsolete, outdated verbiage and clarify the manner in which continuing education programs must be conducted; rescind approval of all types of continuing education courses upon the adoption of a different statewide code; and amend the deadline for submission of applications for continuing education course approval. The amendments may result in amendments/clarifications on existing forms or the creation of new forms.

CONTACT PERSON:

Linda Ruckman, Board Secretary/Executive Assistant, 405-521-6550.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF OCTOBER 1, 2017:

SUBCHAPTER 1. GENERAL PROVISIONS

158:30-1-2. Definitions

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

"Act" means the Plumbing License Law of 1955 as found at 59 O.S. § 1001, et seq., as amended.

"Administrator" means the Administrator of the Board as described in the Construction Industries Board Act found at 59 O.S. § 1000.1, et seq.

"Applicant" means any person applying for an examination, for a license or registration, for continuing education approval, for review of plans and specifications or for a plumbing code variance from the standard of installation as described in OAC 158:30-1-4 by the Construction Industries Board under the Act.

"Board" means the Oklahoma Construction Industries Board.

"Bonds and Insurance Unit" means the consolidated unit that processes bonds and insurance under the direction of the Construction Industries Board.

"Cheating" means any unapproved deviation from any official instruction given before, during or after a license examination, for the purpose of affecting or influencing the examination results or otherwise providing an undue advantage to any examinee.

"Committee" means the Committee of Plumbing Examiners.

"Contracting" means engaging or offering to engage in, on behalf of oneself or on behalf of another, any plumbing work which requires a valid and appropriate license from the Construction Industries Board as required by the Plumbing License Law of 1955, regardless if said work is in exchange for monetary payment or otherwise.

"Credit Hour" or "Hour" means at least fifty (50) minutes of classroom instruction with a ten (10) minute break.

"Direct supervision" means the on-the-job presence by the supervisor who must be a licensed plumbing contractor or plumbing journeyman.

"Farm Operations"

(A) For purposes of the Plumbing License Law, "farm" means land devoted primarily to production for sale of livestock or agricultural commodities in sufficient quantity to be capable of contributing materially to the operator's support.

(B) For purposes of the Plumbing License Law, "farm building" means all homes (i.e., domiciles,

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residences), or buildings therewith designed and used primarily for and in conjunction with conducting farming operations, provided that said buildings are not connected to a public water and/or sewage system. A "farm building" shall not include other structures such as stores, service stations, schools, motels, or any other building having public access, whether connected to private or public water or sewer systems.

"Hearing Board" means the Plumbing Hearing Board.

"Maintenance of state owned or operated facilities" means maintenance of state institutions and school districts and will be construed as all repair and/or upkeep of existing plumbing or plumbing fixtures within existing state owned buildings or local school district owned buildings. This term shall not include the installation of plumbing in a new building or new additions to existing structures or replacement of plumbing systems in existing buildings.

"Oklahoma Uniform Building Code Commission" or **"OUBCC"** means the state agency created under 59 O.S. § 1000.20, *et seq.*, and authorized to adopt all building codes and standards for residential and commercial construction to be used as minimum standards by all entities within this State.

"Plumbing" means and includes:

(A) all piping, fixtures, appurtenances and appliances for, and in connection with, a supply of water within or adjacent to any building, structure, or conveyance, on the premises and to the connection with a water main or other source of supply;

(B) all piping, fixtures, appurtenances and appliances for sanitary drainage or storm drainage facilities, including venting systems for such facilities, within or adjacent to any building, structure, or conveyance, on the premises and to the connection with a public disposal system or other acceptable terminal;

(C) the installation, repair, maintenance and renovation of all piping, fixtures, appurtenances and appliances for a supply of water, or for the disposal of waste water, liquid waste, or sewage within or adjacent to any building, structure, or conveyance, on the premises and to the source of supply of water or point of disposal of wastes;

(D) the original installation of a water softener but not the exchanging of the units whereby only unions are disturbed in the replacement;

(E) the installation of water services and building sewers; and

(F) sewer cleaning-house sewer maintenance.

"Plumbing License Unit" means the staff and administrative support unit to the Committee of Plumbing Examiners and the Plumbing Hearing Board.

"Property of Residence" means permanently constructed residential property that is an existing single-family dwelling occupied by the individual owner as a primary dwelling where the individual owner's habitation is fixed.

"Reciprocity agreement" means an agreement whereby a person holding a plumber's license or registration who is licensed in another state with substantially similar or greater

licensure requirements may be licensed in this State after payment of a fee for licensing by reciprocity.

"Variance" means the use of an alternative material or method of construction from that prescribed in the standard of installation as described in OAC 158:30-1-4 for use at a particular location or project specified in the variance application; and

"Variance and Appeals Board" means the Oklahoma State Plumbing Installation Code Variance and Appeals Board.

SUBCHAPTER 5. LICENSE TYPES, BOND REQUIREMENTS, AND DISPLAY OF LICENSE NUMBER AND FIRM NAME

158:30-5-2. Insurance and bond requirements

(a) Unless as otherwise provided in (b) of this Section: Each active plumbing contractor must maintain a five thousand dollar (\$5,000.00) corporate surety bond, payable to the Board, and must cause the surety to deposit a copy of such bond with the Plumbing Licensing Unit.

(b) An active plumbing contractor may satisfy the requirements of (a) of this Section by depositing with the Plumbing Licensing Unit, either the sum of \$5,000 cash, or a certificate of deposit in the sum of \$5,000 payable to the order of the Plumbing Licensing Revolving Fund.

(c) Failure to maintain a corporate surety bond in effect shall constitute ~~an inactive contractor status~~ ~~grounds for summary suspension~~ of a bonded plumbing contractor license immediately upon the expiration of such bond.

(d) A corporate surety bond may be accepted from any surety authorized to do business in the State of Oklahoma. It shall continue in effect until thirty (30) days have elapsed after the Bond and Insurance Unit is notified by the surety of the cancellation of such bond, unless the bond expired on a date certain on its face. Sureties must notify each municipality furnished with a copy of the bond regarding the pending cancellation if known to them.

(e) The Board shall notify the surety of the ~~summary suspension or revocation of the~~ change in license status of any of its bonded licensed plumbing contractors.

(f) A bond or other surety filed in accordance with (a) of this Section shall be in lieu of filing a bond with each municipality where the plumbing contractor works, and shall be conditioned upon all the following terms:

(1) Plumbing contractors shall faithfully and properly conduct business in compliance with applicable statutes, rules of the Oklahoma Construction Industries Board, and with all the applicable ordinances of the municipality in which plumbing work is performed.

(2) Plumbing contractors shall pay all fines and penalties imposed by penalty orders of the Board and fines and penalties imposed by courts of competent jurisdiction for the violation of municipal ordinances. The Board may seek payment through the surety bond of any fines or penalties, which the licensee fails to pay.

(3) In lieu of a corporate surety, an active plumbing contractor may deposit with the Bonds and Insurance

Unit the required amount in lawful money or negotiable bonds of the United States, accompanied by a written instrument, to be approved by the Construction Industries Board, executed and acknowledged by the active plumbing contractor, and setting forth the conditions upon which the deposit is made. When the true owner is other than the active plumbing contractor making the deposit, the instrument shall so state and shall also be executed and acknowledged by the true owner. Upon exoneration, the instrument and deposit may be returned by the Bonds and Insurance Unit to the depositor or the true owner, if the depositor is other than the named true owner, after application of the deposit to claims made pursuant to this Section.

(4) Notwithstanding any provision of a security instrument to the contrary, every surety or depositor of security subjects himself or herself to the jurisdiction of the Construction Industries Board and irrevocably appoints the Administrator as his or her agent upon whom any papers affecting his or her liability may be served. Every surety or depositor of security consents to his or her liability being joint and several. Consequently, judgment may be entered against the surety, or depositor of security, in accordance with his or her obligation simultaneously with judgment against the principal, and execution may thereupon issue.

(5) Plumbing contractors shall protect, save harmless and indemnify the State and municipalities against any liability imposed by law against the State and municipalities for the negligence of said contractor arising from any act or omission while engaged in work pursuant to the Plumbing License Law.

(6) Any aggrieved person may bring an action upon the bond for the recovery of penalty thereof to the same extent and with equal rights as though such aggrieved person had been named as the obligee in the bond.

(7) For purposes of this Section, the term plumbing contractor also includes the agents, servants, and employees of a plumbing contractor.

(g) Exceptions. The bond and insurance requirement will be waived if:

(1) The plumbing contractor wishes to be inactive. A contractor may choose to place his or her license on inactive status and may practice as a journeyman but shall not practice as an active contractor. The inactive contractor can obtain an active license at any time if his or her license is valid and the bond and insurance requirements are met; or

(2) The plumbing contractor is employed by a corporation, partnership, public entity, or political subdivision and said corporation, partnership, public entity or political subdivision submits an affidavit on behalf of the contractor that the employee will only perform plumbing work on property owned by said corporation, partnership, public entity, or political subdivision and the employer assumes all financial responsibility in lieu of the contractor providing bond and insurance. The affidavit must include a statement by the employer that the Board will be notified if the contractor is no longer employed by said employer,

or if the employer no longer wishes to assume financial responsibility for the contractor.

(h) Insurance. A plumbing contractor shall provide proof of financial responsibility by providing a certificate of insurance, which indicates a minimum general liability policy of \$50,000.

158:30-5-4. Plumbing journeymen and contractor licenses by reciprocity

(a) **General procedures for application.** Any person holding a valid plumbing journeyman license or plumbing contractor license issued by another state who is seeking to obtain a license by reciprocity shall first submit an application to the Construction Industries Board on a form provided by the Board and confirm that a written reciprocity agreement exists between the applicant's state and Oklahoma for the license the applicant is seeking. The application shall include all documentation necessary to show the applicant meets the requirements established by the Act and this Chapter. All applications shall first be directed to the Committee or its designee for an initial review to determine if the applicant meets the qualifications for a license by reciprocity as set forth in this Chapter and in 59 O.S. § 1000.5A or any subsequent enactment of the Legislature. Following this review, the Committee or its designee shall make a recommendation to the Board or its designee as to whether the application should be approved or disapproved. The Board or its designee shall make the final determination as to whether an application shall be approved or disapproved. If the Board or its designee disapproves an application, the application shall be returned to the applicant with the reason for the disapproval.

(b) **Application fees.** Before an application will be considered, a person applying for a plumbing journeyman license by reciprocity must pay the journeyman application fee and the initial journeyman license fee as set forth in OAC 158:30-9-2. If the person is applying for a plumbing contractor license, the person must pay the contractors application fee and the initial contractor license fee as set forth in OAC 158:30-9-2. These fees shall not be refundable under any circumstances.

(c) **Requirements for issuance of a license by reciprocity.** An application for a license by reciprocity may be approved upon a satisfactory showing by the applicant of the following:

(1) That the requirements for licensure from the state in which the applicant is licensed are determined to be substantially the same or equivalent to the requirements for obtaining a license by examination in this State. In making this determination the following shall be considered:

(A) Whether the experience required by the other state to be eligible to sit for the license examination is substantially the same or equivalent to the Board's requirements;

(B) Whether the continuing education requirements of the other state are substantially the same or equivalent to the Board's requirements;

(C) Whether the codes adopted by the other state are substantially the same or equivalent to the Board's requirements;

(D) Whether the examination of the other state is substantially the same or equivalent to the Board's

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requirements. This shall include the score required to pass the examination, the subject matter of the examination, the codes on which the examination is based, and whether the examination is in written form.

- (2) That the other state will recognize a license issued by the State of Oklahoma through the Construction Industries Board. Paragraphs (1) and (2) of this subsection may only be satisfied by the existence of a reciprocity agreement between the Board and the state issuing the applicant's current license as provided in (d) of this Section.
- (3) That the applicant is currently licensed by a state that meets the requirements of (1) of this subsection and that one (1) year immediately prior to the application, the applicant lawfully practiced an applicable trade within and under the laws of that state.
- (4) That no disciplinary matters are pending against the applicant in any jurisdiction in which the applicant is currently licensed. This requirement will be considered satisfied upon presentation of a certified statement from the licensing authorities of all jurisdictions in which the applicant is currently licensed that no disciplinary matters are pending against applicant.
- (5) That the applicant obtained the license to be reciprocated by examination.
- (d) **Reciprocity agreements.** The Board may enter into a reciprocity agreement with another state if the requirements for licensure in the other state are deemed by the Board to be substantially the same or equivalent to the requirements for obtaining an original license by examination in this State.
- (e) **Additional requirements for contractor applicants.** Applicants seeking a plumbing contractor license by reciprocity who meet the necessary qualifications for a license as required in this Section and for which there is a written reciprocity agreement for contractors, will be granted a journeyman license by reciprocity. The applicant will be issued a contractor license upon successfully passing the Oklahoma Plumbing Contractor Business and Law portion of the full contractor examination and satisfaction of the bonding and insurance requirements of OAC 158:30-5-2.

SUBCHAPTER 9. EXAMINATION PROCEDURES, LICENSE AND REGISTRATION FEES AND DURATION OF LICENSES

158:30-9-1. Examination and licensure procedures

- (a) The plumbing standards for the plumbing examination shall be the standard of installation as described in OAC 158:30-1-4.
- (b) Any previously certified examination may be used to meet an examination requirement pursuant to the Act and this Chapter.
- (c) Examination for a plumber's license shall include, but not be limited to, written questions and drawings and/or charts.
- (d) The maximum grade value of each part of the plumbing examination shall be 100 points. An examinee must make 75% or more on each part, to pass the examination.

(e) Applicants for a contractor license must pass both portions (business/law and trade) of the contractor license exam. If an applicant for a contractor license passes only one of the two portions of the required exam, the applicant need only retake the portion of the exam not passed if done within three (3) years of the date the Applicant is approved and eligible to sit for the contractor's exam. Otherwise, the Applicant will need to retake both portions of the contractor license exam.

(f) If an applicant for a contractor license passes only the trade portion of the contractor exam, the applicant may choose to apply the passing score of the trade portion of the contractor exam to a journeyman license application. All other requirements in the Act and this Chapter for a journeyman license are required, including but not limited to, completing the journeyman application form and submitting any applicable fee, both of which must be received by the Board no more than one year after passing the trade portion of the contractor exam. The timeframe to complete both portions of the contractor exam as provided in (e) of this Section is applicable even if a journeyman license is obtained under this subsection.

(g) A contractor license, whether active or inactive, must be renewed annually including completing the renewal form and paying the renewal license fee for a contractor license. An inactive contractor status may be changed to active contractor status at any time by providing proof of compliance with bond and insurance requirements as provided in this Chapter. A contractor, whether active or inactive, can elect to renew as a journeyman with filing of a journeyman renewal application and fee which election will be considered a permanent change of license category. If a permanent license category change occurs and the individual wants to change from journeyman to contractor category, either active or inactive, the individual must retake and pass the contractor license exam and meet all other contractor license requirements in the Act and this Chapter.

(eh) Applicants for the plumbing contractor examination must be capable of reading English without assistance. A person who cannot meet this requirement may request a hearing before the Committee to request reasonable accommodations.

(fi) Except as authorized by the Plumbing Examiners Committee, no person, other than examinees, shall be permitted in the examination area.

(gj) An examinee who is caught cheating during the course of an examination shall be deemed to have failed the examination. Any applicant who violates exam procedures as determined by the examination provider, including but not limited to cheating, misrepresenting oneself as another, or inappropriate actions during an examination may be immediately notified and expelled from the examination. Furthermore, the applicant's exam will be considered invalid and the applicant will be disqualified from retaking the exam for a period of time no less than 30 days and no more than 365 days as determined by the Administrator of the Construction Industries Board.

(hk) Applicants for the journeyman examination must be eighteen (18) years of age or older and have:

- (1) three (3) years of experience in the plumbing trade while employed by a licensed Plumbing contractor; or
- (2) equivalent verifiable three (3) years of experience in the plumbing trade while serving in the U.S. military; or

(3) a verifiable out-of-state plumbing license that must be:

- (A) current, and
- (B) in good standing.

(h) Applicants for the contractors examination must be eighteen (18) years of age or older and have four (4) years of experience in the plumbing trade while employed by a licensed Plumbing contractor.

(jm) Applicants for plumbing license examinations who are not licensed and wish to include experience gained in Oklahoma must maintain an apprentice registration on file with the Oklahoma Construction Industries Board for all experience obtained in Oklahoma. The Construction Industries Board will not consider experience obtained in or outside of Oklahoma as verifiable experience for periods in which an apprentice is unregistered, except for experience lawfully obtained according to any applicable federal or state laws, and must be comprised of plumbing work as defined in the Act and in this Chapter.

(kn) The following may be substituted for a portion of the experience requirement in ~~(h)(1)(k)(1)~~ and ~~(i)(1)~~ of this Section:

- (1) An associate degree or Career Tech diploma certifying completion of a plumbing educational program consisting of a minimum of one thousand (1,000) classroom hours from a school, approved by the Committee, may be substituted for two (2) years of experience.
- (2) A Career Tech diploma certifying completion of an educational program consisting of a minimum of five hundred (500) classroom hours from a school, approved by the Committee, may be substituted for one (1) year of experience.
- (3) A Career Tech diploma certifying completion of an educational program consisting of a minimum of three hundred and seventy five (375) classroom hours from a school, approved by the Committee, may be substituted for three-fourths (3/4) of a year, or nine months of experience.
- (4) A Career Tech diploma certifying completion of an educational program consisting of a minimum of three hundred and thirty four (334) classroom hours from a school, approved by the Committee, may be substituted for two-thirds (2/3) of a year, or eight months of experience.
- (5) A Career Tech diploma certifying completion of an educational program consisting of a minimum of two hundred and fifty (250) classroom hours from a school, approved by the Committee, may be substituted for one-half (1/2) year, or six months of experience.

(lo) The fees for a license must be on deposit with the Administrator in advance of the examination.

(mp) If the applicant fails to meet the minimum qualifications to take the examination, the application fee will be forfeited.

158:30-9-3. Duration of licenses

- (a) All licenses shall have a duration of no longer than one (1) year, and shall expire on the last day of the birth month of the licensee each year.
- (b) Before any license may be renewed, all applicable continuing education requirements must be met.

(c) Any license issued by examination may be renewed by submitting the renewal application and the license fee for the next year by check or money order, or other payment method as provided, which must be delivered or mailed on or before the birth month expiration date, ~~or by credit card through a state-wide internet online licensing system.~~

(d) An expired license issued by examination may be reinstated by submitting the license renewal fee and late fee with the filing of a renewal application and proof of meeting all license renewal requirements.

(e) A licensee who, during an investigation of the licensee by the Construction Industries Board, surrenders their license shall be treated as if the license had been revoked for one (1) year from the day of surrender.

(f) A license cannot be renewed until the licensee has paid any and all outstanding fines due and owing to any division of the Construction Industries Board.

158:30-9-4. Continuing Education

(a) **Continuing education requirements.**

(1) ~~By July 1, 2014, no~~ No contractor or journeyman license shall be renewed unless the licensee has completed at least six (6) hours of continuing education ("CE"); ~~and thereafter, the licensee shall complete six (6) hours every three (3) years or thirty-six (36) months preceding the license expiration date.~~ The continuing education course and instructor shall be approved in advance by the Committee. Exceptions to advance approval, or post-course approval, may be allowed by the Committee, or its designee, for substitute instructors in emergency situations when written notice of the emergency is provided to the Committee or its designee within seven (7) days of the course. The continuing education material shall cover codes and revisions adopted by the OUBCC and/or other trade related subject matters appropriate for topics of continuing education for licensees and approved by the Committee including: examination materials, manufacturers' installation of equipment or parts, the licensing Act, the trade regulations as set forth in this Chapter as well as the rules of the Construction Industries Board in OAC 158:10, and other trade or safety related subject matters approved by the Committee.

(2) If a license expires before the licensee completes the CE requirement, any CE that is completed while the license is expired will be applied to the CE requirement for the thirty-six (36) months preceding the date the license expired. Six (6) hours of CE will still have to be completed in order to meet the CE requirement for the subsequent thirty-six (36) month period.

(3) Credit will be given for CE programs including correspondence and online courses approved by the Plumbing Examiners Committee or its designee.

(4) Except as provided herein this Section shall apply to every journeyman or contractor licensed by the Construction Industries Board.

(5) A licensee is exempt from the educational requirements of this Section for three (3) years from the date he or she passed their current licensing exam.

Permanent Final Adoptions

(b) The following standards will govern the approval of continuing education programs by the Committee.

(1) The program must be offered by a provider having substantial, recent experience in offering continuing education or demonstrated ability to organize and present effectively continuing education. Demonstrated ability arises partly from the extent to which individuals with trade training or educational experience are involved in the planning, instruction and supervision of the program.

(2) If written materials are provided, the materials must be thorough, high quality, readable, and must be made available to all participants at or before the time the course is presented.

(3) The program must be conducted in a comfortable physical setting which is conducive to learning.

(4) The program itself must be conducted by an individual or group qualified by practical or academic experience. The program including the named advertised participants must be conducted substantially as planned approved, including lunch and breaks shown on the approved agenda, subject to emergency withdrawals and alterations.

(5) Changes including but not limited to location, date, instructors, or cancellations must be requested from the Committee or its designee in writing prior to the start of class. All requests for change must include the Course ID number.

(6) The training location shall be outside the regular work place or after regular working hours.

(7) A credit hour is at least fifty (50) minutes of instruction with a ten (10) minute break.

(8) CE courses shall be presented in one of the following formats:

(A) Six (6) credit hours presented on one (1) day

(B) Two sessions of three (3) credit hours each presented within a seven (7) day period

(C) One (1) session of two (2) credit hours for the purposes of presenting a manufacturers' installation course,

(D) An approved correspondence or online course, or

(E) Another format approved by the Committee.

(9) Verification of Credit.

(A) The Course Provider shall verify the total number of continuing education hours completed by each attendee.

(B) Continuing education providers shall require attendees to present a photo I.D. prior to the attendee signing the sign-in sheet provided by the Construction Industries Board. Sign-in sheets shall include the name and license number of each licensee in attendance.

(C) As soon as practicable but in any event on or before seven (7) days following an approved education program, the provider shall furnish to the Plumbing License Unit the original sign-in sheets from the course.

(D) Providers must maintain copies of all sign-in sheets for a period of two (2) years following the conclusion of the course.

(10) Course providers or instructors may not advertise or promote the sale of any goods, products or services between the opening and closing of any Continuing Education Course.

(c) Any organization desiring approval of a course shall apply to the Plumbing Examiners Committee by submitting an application on a form to be obtained from the Construction Industries Board and supporting documentation at least fifteen (15) days prior to the date of the Regular meeting of the Committee from which the organization wants the course to be considered for approval, and at least thirty (30) days prior to the date for which the course is scheduled. An application is to be submitted for each date or set of dates that constitute a single class. Each class must be included on a separate application. The Committee or its designee will review each application for completeness of form and supporting documentation as well as course content. The applicant will be notified in writing by mail whether the program is approved or disapproved. Applicants denied approval of a course may appeal such a decision by submitting a letter of appeal to the Committee within fifteen (15) days of the receipt of the notice of disapproval. All appeals will be heard by the Committee at its next regularly scheduled meeting.

(1) Supporting documentation includes:

(A) resumes or a brief summary of qualifications for all instructors providing instruction for the class,

(B) a class agenda designating beginning and ending of actual instructional times, sign-in times, breaks, lunches and evaluation time, and

(C) A class curriculum indicating the subject or code areas to be taught with sufficient detail to determine which code revisions are to be addressed or the product for which the installation education is being provided.

(2) The Committee or its designee may refuse to accept any application for approval if the supporting documentation is insufficient or incomplete. The Committee may deny or revoke approval of an application for any of the following reasons:

(A) Failure to comply with the continuing education provisions;

(B) Inadequate application or supporting documentation;

(C) Failure to instruct on the topic approved, or

(D) Unsatisfactory assessments of the course, instructor, or materials from previous classes.

(3) If an application is refused or disapproved, written notice detailing the basis of the decision shall be provided to the applicant.

(4) The Committee may at any time reconsider and grant or revoke approval of an application or course.

(A) The Committee may at any time review courses for quality in instruction. The Committee shall also investigate and take appropriate action, up to and

including revocation of authority to provide CE, regarding complaints involving approved courses.

(B) A provider's failure to comply with the provisions of this Section constitutes grounds for disciplinary action, up to and including revocation of authority to provide CE, against the provider or for denial of future applications for coursework.

(5) Approval of any course, including a correspondence or online course, is rescinded upon the adoption of a different statewide code and a new application showing updated course subject matter and materials is necessary in order to obtain updated course approval.

(d) **Course advertisement.**

(1) All advertising must include the course identification number.

(2) Approved program courses may be advertised.

(3) The provider of an approved continuing education program may announce or indicate as follows: Course # _____ has been approved by the Construction Industries Board Plumbing Examiners Committee for _____ hours of CE credit.

(e) **Correspondence or online course approval.**

(1) Entities seeking to offer correspondence courses for continuing education shall submit a course curriculum and study material for review and approval by the Committee prior to the courses being offered as continuing education. Approved correspondence courses shall be required to comply with all requirements for other continuing education courses except for sign-in sheets. Providers shall provide a student with a document of completion which certifies completion of approved correspondence courses.

(2) Providers seeking to offer online courses for continuing education shall submit a course curriculum and study material for review and approval by the Committee prior to the courses being offered as continuing education. An access code and password shall be provided to the Committee, or its designee, for an online course for the purpose of review and approval. Providers of an on-line course shall submit verification of six (6) hours of real time on-line instruction. Correspondence or online courses shall have sufficient explanation and or graphics to expound the concepts being taught. The format of the online course shall be constructed so as to elicit interaction between the student and the material presented. Each page of text shall be designed with a question that must be answered before advancing to the next page or a test at the end of a subject matter before the course is considered complete. Providers shall provide a student with a document of completion that shall certify completion of an approved online course.

~~(3) Approval of any correspondence or online course is rescinded upon the adoption of a different statewide code and a new application showing updated course subject matter and materials is necessary in order to obtain updated course approval.~~

(4) Applications for correspondence or online courses shall be resubmitted annually, from date of approval, for review and approval.

(f) **Alternate Credit accrual.**

(1) Credit may be earned through teaching in an approved continuing education class. The Committee may award up to six (6) hours of CE credit not to exceed the number of approved hours for that CE class.

(2) Credit may also be earned through teaching a course in an accredited trade school or a trade-specific program approved by the Committee. The Committee may award up to six (6) hours of CE credit for each semester of academic credit awarded by the academic institution for the course.

(g) **Complaint procedure.**

(1) A person, government, or private organization may submit a written complaint to the Committee, or its designee, charging a provider of continuing education with a violation of this Section, and specifying the grounds for the complaint.

(2) Complaints must be in writing and include contact information, and shall be filed on the proper complaint form prescribed by the Construction Industries Board, or its designee.

(3) The Committee may consider an unsigned or anonymous complaint for further investigation.

(4) Upon receipt of a signed complaint form, a copy shall be sent to the continuing education provider addressed in the complaint. The continuing education provider shall provide a written response within fifteen (15) days. Upon receipt of the continuing education provider's written response, both complaint and response shall be considered by the Committee, or its designee, for appropriate action including dismissal of the complaint, further investigation, or a finding of violation of the Act or this Chapter. The Committee, or its designee, shall notify both complainant and continuing education provider of the determination made by the Committee. Failure of the continuing education provider to respond will be considered as a violation of this Section.

(5) If a reasonable cause violation determination is made by the Committee, the Oklahoma Administrative Procedure Act shall be followed for all disciplinary proceedings undertaken.

[OAR Docket #17-593; filed 7-7-17]

**TITLE 158. CONSTRUCTION INDUSTRIES BOARD
CHAPTER 40. ELECTRICAL INDUSTRY REGULATIONS**

[OAR Docket #17-594]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions

158:40-1-2 [AMENDED]

Subchapter 5. Licensing Requirements, Display of License, and Firm Name, and Bond Requirements

158:40-5-5 [AMENDED]

Permanent Final Adoptions

Subchapter 9. Examination Applications, Examinations and License and Registration Fees and Renewals
158:40-9-2 [AMENDED]
158:40-9-4 [AMENDED]

AUTHORITY:

Construction Industries Board; 59 O.S. §§ 1000.4(A)(1), 1000.5, and 1681.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

November 21, 2016

COMMENT PERIOD:

December 16, 2016, through January 17, 2017

PUBLIC HEARING:

January 18, 2017

ADOPTION:

January 18, 2017

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

January 26, 2017

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 13, 2017

FINAL ADOPTION:

June 13, 2017

EFFECTIVE:

October 1, 2017

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

Gist: The changes to the Electrical Industry Regulations add language clarifying existing rules and statutory authority; remove obsolete language; and provide applicants options on licensing renewal categories and partial exam completion.

Analysis: The amendments clarify and add definitions to provide the public a description of terms as the statutes have historically been applied by the agency; clarify the result of a contractor failing to maintain the required bond and insurance; establish a time limit for completing both portions of the contractor exam before an applicant is required to retake a portion they may have previously passed; establish procedures which allow an applicant for a contractor license who passes only the trade portion of the contractor exam to apply the passing score of the trade portion to an application for a journeyman license; allow an individual who has a current active or inactive contractor license to pursue other category contractor applications in the electrical trade without being required to retake the business and law portion of the exam if the business and law portion was successfully passed previously; allow an active or inactive contractor to elect to have a permanent change of license category and renew as a journeyman; amend and clarify the procedures/requirements related to an applicant who violates exam procedures; remove obsolete, outdated verbiage and clarify the manner in which continuing education programs must be conducted; rescind approval of continuing education courses upon the adoption of a different statewide code; amend the deadline for submission of applications for continuing education course approval; and provide that applications for correspondence or online courses must be resubmitted annually, from date of approval, for review and approval. The proposed amendments may result in amendments/clarifications on existing forms or the creation of new forms.

CONTACT PERSON:

Linda Ruckman, Board Secretary/Executive Assistant, 405-521-6550.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF OCTOBER 1, 2017:

SUBCHAPTER 1. GENERAL PROVISIONS

158:40-1-2. Definitions

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

"Act" means the Electrical License Act as found at 59 O.S. § 1680, *et seq.*

"Administrator" means the Administrator of the Board as described in the Construction Industries Board Act found at 59 O.S. § 1000.1, *et seq.*

"Alarm Endorsement" or **"Alarm Endorsement registration"** means a licensed electrician or registered electrical apprentice who has met the endorsement registration requirements may install, service, or repair alarm or security systems or electronic security devices such as residential or commercial burglar alarms or security systems, electronic access control, closed circuit television, nurse call systems and the like.

"Applicant" means any person applying for an examination, for a license or registration, for continuing education approval, for review of plans and specifications, or for an electrical code variance from the standard of installation as described in OAC 158:40-1-4 by the Board under the Act.

"Apprentice" means an electrical worker registered pursuant to OAC 158:40-5-1 who is limited to working for a contractor and is directly supervised by a licensed contractor or journeyman with the appropriate license classification for the work being performed.

"Associated with and responsible for" means the relationship between an electrical contractor and electrical firm based on the electrical contractor being a permanent employee, owner, partner, or officer in a corporate firm, and whereby the electrical contractor shall give full time to the supervision and control of operations necessary to secure full compliance with the provisions of the Electrical License Act and this Chapter.

"Board" means the Oklahoma Construction Industries Board.

"Bonds and Insurance Unit" means the consolidated unit that processes bonds and insurance under the direction of the Construction Industries Board.

"Cheating" means any unapproved deviation from any official instruction given before, during or after a license examination, for the purpose of affecting or influencing the examination results or otherwise providing an undue advantage to any examinee.

"Committee" means the Committee of Electrical Examiners.

"Contracting" means engaging or offering to engage in, on behalf of oneself or on behalf of another, any electrical work which requires a valid and appropriate license from the Construction Industries Board as required by the Electrical License Act, regardless if said work is in exchange for monetary payment or otherwise.

"Contractor" means a person who meets the definition of 59 O.S. § 1682(5) and is licensed in the appropriate category for any electrical work performed.

"Continuing Education Credit Hour" means at least sixty (60) minutes of classroom instruction.

"Direct supervision" means the on-the-job presence by the supervisor who must be a licensed electrical contractor

or electrical journeyman in the appropriate category for any electrical work supervised.

"Electrical facility" means wiring, fixtures, appurtenances and appliances used for and in connection with a supply of electricity, but excludes the connection with a power meter or other supply source.

"Electrical firm" means any firm, corporation, partnership, sole proprietorship, joint venture or any other business entity engaged in the business of planning, contracting, supervising or furnishing labor or labor and materials for the installation, repair, maintenance or renovation of electrical facilities according to the Act.

"Electrical License Unit" means the staff and administrative support unit to the Committee of Electrical Examiners and the Electrical Hearing Board.

"Electrical maintenance" means electrical work limited to maintaining existing electrical systems, facilities or equipment by an employee of a person, company, corporation or entity owning the electrical systems, facilities or equipment. Maintenance shall not include any alterations or additions to existing systems, facilities or equipment.

"Electrical work" means work on "electrical facilities" as that term is defined in 59 O.S. § 1682.

"Hearing Board" means the Electrical Hearing Board created by the Act.

"Inactive contractor" means any class of licensed electrical contractor who has formally and voluntarily placed their contractor's license in an inactive status.

"Journeyman electrician" or **"journeyman"** means any person, other than a contractor or apprentice, who engages in the installation, repair, maintenance or renovation of electrical facilities according to the Act, in the category in which the person is licensed.

"Limited electrical contractor" means any person who has qualified and become licensed in accordance with OAC 158:40-7-4. Such person is prohibited from engaging in the work of a journeyman electrician.

"Military electrical experience" means verifiable military experience in electrical work which is the same as or similar to electrical construction work as defined in the Act.

"Oklahoma Uniform Building Code Commission" or **"OUBCC"** means the state agency created under 59 O.S. § 1000.20, *et. seq.*, and authorized to adopt all building codes and standards for residential and commercial construction to be used as minimum standards by all entities within this State.

"Reciprocity agreement" means an agreement whereby a person holding an electrical license or registration who is licensed in other states with substantially similar or greater licensure requirements may be licensed in this State after payment of a fee for licensing by reciprocity.

"Refinery Electrical Journeyman" means an electrician licensed as a refinery electrical journeyman electrician pursuant to OAC 158:40-7-6 and is limited to performing electrical work only in refinery facilities.

"Residential contractor" means an electrician licensed as a residential contractor pursuant to OAC 158:40-7-2 and is limited to performing residential electrical construction work.

"Residential journeyman" means an electrician licensed as residential journeyman electrician pursuant to OAC 158:40-7-2 and limited to performing residential electrical construction work.

"Temporary electrical journeyman" means an electrician temporarily licensed by the Oklahoma Construction Industries Board as a journeyman electrician and is limited to electrical construction per the equivalent temporary journeyman classification determined by the Board.

"Variance" means the use of an alternative material or method of construction from that prescribed in the standard of installation as described in OAC 158:40-1-4 for use at a particular location or project specified in the variance application; and

"Variance and Appeals Board" means the Oklahoma State Electrical Installation Code Variance and Appeals Board.

SUBCHAPTER 5. LICENSING REQUIREMENTS, DISPLAY OF LICENSE, AND FIRM NAME, AND BOND REQUIREMENTS

158:40-5-5. Bond and insurance requirements

(a) Each active electrical contractor must furnish a license bond in the amount of \$5,000.00 to the Bonds and Insurance Unit. This bond is to be a continuous bond with a thirty (30)-day cancellation notice. Such bond shall be conditioned upon faithful and lawful performance of all work entered upon by the contractor within the State of Oklahoma and shall be for the benefit of persons injured or suffering financial loss by reason of failure of such performance. The bond will be filed with the Bonds and Insurance Unit of the Oklahoma Construction Industries Board and be in lieu of all other license bonds to any political subdivision.

(b) Each active electrical contractor must maintain insurance coverage and furnish and maintain in effect in the Bonds and Insurance Unit of the Oklahoma Construction Industries Board, Electrical Licensing Unit, a certificate of insurance therefore which indicates that the electrical contractor has a comprehensive general liability policy including manufacturers and contractors, completed operations, and independent contractors liability coverage. Limits of liability are to be no less than \$50,000.00 combined single limit for bodily injury and property damage.

(c) Each active electrical contractor shall be aware of the requirements of Titles 85 and 85A of the Oklahoma Statutes (Workers' Compensation Acts and the Rules and Regulations of the Workers' Compensation Court of the State of Oklahoma), and indicate in the space provided on the application compliance therewith.

(d) Failure to provide the complete information with current bond and insurance certificate will result in an inactive electrical contractor's license being issued until such time as the requirements are met. Failure to maintain the bond and insurance in force, as required, will result in the summary suspension of the electrical contractor's active license and the issuance of an inactive license to said electrical contractor.

Permanent Final Adoptions

(e) Electrical contractors shall pay all fines and penalties imposed by penalty orders of the Board and fines and penalties imposed by courts of competent jurisdiction for the violation of municipal ordinances. The Board may seek payment through the surety bond of any fines or penalties which the licensee fails to pay.

(f) Exceptions. The bond and insurance requirement will be waived if the electrical contractor is employed by a corporation, partnership, public entity, or political subdivision and said corporation, partnership, public entity or political subdivision submits an affidavit on behalf of the contractor that the employee will only perform electrical work on property owned by said corporation, partnership, public entity, or political subdivision and the employer assumes all financial responsibility in lieu of the contractor providing bond and insurance. The affidavit must include a statement by the employer that the Board will be notified if the contractor is no longer employed by said employer, or if the employer no longer wishes to assume financial responsibility for the contractor.

SUBCHAPTER 9. EXAMINATION APPLICATIONS, EXAMINATIONS AND LICENSE AND REGISTRATION FEES AND RENEWALS

158:40-9-2. Examinations and licensure

(a) Electrical license examinations may include, without limitation, the following parts:

(1) Written questions, consisting of open book, closed book and problems, based on the standard of installation as described in OAC 158:40-1-4 and other related questions; and

(2) Practical shop, which for contractors shall also include written questions on job estimating and the laws and regulations relating to electricians as found in the Act and this Chapter.

(b) Applicants for a contractor license must pass both portions (business/law and trade) of the contractor license exam. If an applicant for a contractor license passes only one of the two portions of the required exam, the applicant need only retake the portion of the exam not passed if done within three (3) years of the date the Applicant is approved and eligible to sit for the contractor's exam. Otherwise, the Applicant will need to retake both portions of the contractor license exam.

(c) If an applicant for an unlimited contractor license passes only the trade portion of the contractor exam, the applicant may choose to apply the passing score of the trade portion of the contractor exam to a journeyman license application. All other requirements in the Act and this Chapter for a journeyman license are required, including but not limited to, completing the journeyman application form and submitting any applicable fee, both of which must be received by the Board no more than one year after passing the trade portion of the contractor exam. The timeframe to complete both portions of the contractor exam as provided in (b) of this Section is applicable even if a journeyman license is obtained under this subsection.

(d) A contractor license, whether active or inactive, must be renewed annually including completing the renewal form and paying the renewal license fee for a contractor license. An inactive contractor status may be changed to active contractor status at any time by providing proof of compliance with bond and insurance requirements as provided in this Chapter. A contractor, whether active or inactive, can elect to renew as a journeyman with filing of a journeyman renewal application and fee which election will be considered a permanent change of license category. If a permanent license category change occurs and the individual wants to change from journeyman to contractor category, either active or inactive, the individual must retake and pass the contractor license exam and meet all other contractor license requirements in the Act and this Chapter.

(e) If an active or inactive contractor license is current, the Applicant may pursue other category contractor applications in the same trade without being required to retake the business and law portion of the exam if the business and law portion was successfully passed previously.

~~(bf)~~ The maximum grade value of each part of the examination shall be 100 points. A passing score is 75% or more on each part.

~~(eg)~~ Each applicant shall pay all examination and license fees before undertaking any examination. If the applicant fails to meet the minimum qualifications to take the examination, the application fee will be forfeited. Reexamination fees shall be the same as the initial examination fees.

~~(dh)~~ Applicants for a contractor license must be capable of reading without assistance.

~~(ei)~~ Unless authorized by the Administrator, only examinees shall be permitted in the examination area.

~~(ej)~~ Any applicant who fails a first examination must wait thirty (30) days before taking any other electrical examination. All subsequent failures will result in a waiting period of at least ninety (90) days.

~~(ek)~~ Applicants shall present positive identification before undertaking an examination.

~~(hl) An examinee cheating or fraudulently representing an applicant shall immediately be expelled from the examination. A written record of the proceedings shall be made and become a part of the applicant's file. The Administrator shall determine when the applicant may retake the exam, which time shall be no fewer than thirty (30) days and no longer than three hundred sixty five (365) days. Any applicant who violates exam procedures as determined by the examination provider, including but not limited to cheating, misrepresenting oneself as another, or inappropriate actions during an examination may be immediately notified and expelled from the examination. Furthermore, the applicant's exam will be considered invalid and the applicant will be disqualified from retaking the exam for a period of time no less than 30 days and no more than 365 days as determined by the Administrator of the Construction Industries Board.~~

~~(im)~~ Any previously certified examination may be used to meet an examination requirement pursuant to the Act and this Chapter.

158:40-9-4. Continuing education

(a) Continuing Education Requirements.

(1) ~~By July 1, 2014, no~~ No contractor or journeyman license shall be renewed unless the licensee has completed at least six (6) hours of continuing education (CE); ~~and thereafter, the licensee shall complete six (6) hours every three (3) years or thirty-six (36) months preceding the license expiration date.~~ The continuing education course and instructor shall be approved in advance by the Committee. Exceptions to advance approval, or post-course approval, may be allowed by the Committee, or its designee, for substitute instructors in emergency situations when written notice of the emergency is provided to the Committee or its designee within seven (7) days of the course. The continuing education material shall cover codes and revisions adopted by the OUBCC and/or other trade related subject matters appropriate for topics of continuing education for licensees and approved by the Committee including: examination materials, manufacturers' installation of equipment or parts, the licensing Act, the trade regulations as set forth in this Chapter as well as the rules of the Construction Industries Board in OAC 158:10, and other trade or safety related subject matters approved by the Committee.

(2) If a license expires before the licensee completes the CE requirement, any CE that is completed while the license is expired will be applied to the CE requirement for the thirty-six (36) months preceding the date the license expired. Six (6) hours of CE will still have to be completed in order to meet the CE requirement for the subsequent thirty-six (36) month period.

(3) Credit will be given for CE programs approved by the Committee or its designee.

(4) Except as provided herein this Section shall apply to every journeyman or contractor licensed by the Construction Industries Board.

(5) A licensee is exempt from the educational requirements of this Section for three (3) years from the date he or she passed their current licensing exam.

(b) The following standards will govern the approval of continuing education programs by the Committee.

(1) The program must be offered by a provider having substantial, recent experience in offering continuing education or demonstrated ability to organize and present effectively continuing education. Demonstrated ability arises partly from the extent to which individuals with trade training or educational experience are involved in the planning, instruction and supervision of the program.

(2) If written materials are provided, the materials must be thorough, high quality, readable, and must be made available to all participants at or before the time the course is presented.

(3) The program must be conducted in a comfortable physical setting which is conducive to learning.

(4) The program itself must be conducted by an individual or group qualified by practical or academic experience. The program including the named advertised participants must be conducted substantially as ~~planned~~

approved, including lunch and breaks shown on the approved agenda, subject to emergency withdrawals and alterations.

(5) Changes including but not limited to location, date, instructors, or cancellations must be requested from the Committee or its designee in writing prior to the start of class. All requests for changes must include the Course ID number.

(6) The training location shall be outside the regular work place or after regular working hours.

(7) Each attendee of a continuing education course shall have, or otherwise be provided with, a copy of the OUBCC's most recently adopted edition of the National Electrical Code and revisions for use during the duration of the course.

(8) Sixty (60) minutes constitutes one (1) instructional hour.

(9) CE courses shall be presented in one of the following formats:

- (A) Six instructional hours presented on one day
- (B) Two sessions of three instructional hours each presented within a seven day period
- (C) An approved correspondence or online course, or
- (D) Another format approved by the Committee.

(10) Verification of Credit.

(A) The Course Provider shall verify the total number of continuing education hours completed by each attendee.

(B) Continuing education providers shall require attendees to present a photo I.D. prior to the attendee signing the sign-in sheet provided by the Construction Industries Board. Sign-in sheets shall include the name and license number of each licensee in attendance.

(C) As soon as practicable but in any event on or before seven (7) days following an approved education program, the provider shall furnish to the Electrical License Unit the original sign-in sheets.

(D) Providers must maintain copies of all sign-in sheets for a period of two (2) years following the conclusion of the course.

(11) Course providers or instructors may not advertise or promote the sale of any goods, products or services between the opening and closing of any Continuing Education Course.

(12) Approval of any course, including a correspondence or online course, is rescinded upon the adoption of a different statewide code and a new application showing updated course subject matter and materials is necessary in order to obtain updated course approval.

(c) **Submission of application for course approval.** Any organization desiring approval of a course shall apply to the Committee by submitting an application on a form to be obtained from the Construction Industries Board and supporting documentation at least fifteen (15) days prior to the date of the Regular meeting of the Committee from which the provider wants the course to be considered for approval, and

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at least thirty (30) days prior to the date for which the course is scheduled. An application is to be submitted for each date or set of dates that constitute a single class. Each class must be included on a separate application. The Committee or its designee will review each application for completeness of form and supporting documentation as well as course content. The applicant will be notified in writing by mail whether the program is approved or disapproved. Applicants denied approval of a course may appeal such a decision by submitting a letter of appeal to the Committee within fifteen (15) days of the receipt of the notice of disapproval. All appeals will be heard by the Committee at its next regularly scheduled meeting.

- (1) Supporting documentation includes:
 - (A) resumes or a brief summary of qualifications for all instructors providing instruction for the class,
 - (B) a class agenda designating beginning and ending of actual instructional times, sign-in times, breaks, lunch time, and
 - (C) A class curriculum indicating the subject or code areas to be taught with sufficient detail to determine which code revisions are to be addressed.
 - (2) The Committee or its designee may refuse to accept any application for approval if the supporting documentation is insufficient or incomplete. The Committee may deny or revoke approval of an application for any of the following reasons:
 - (A) Failure to comply with the continuing education provisions;
 - (B) Inadequate application or supporting documentation;
 - (C) Failure to instruct on the topic approved; or
 - (D) Unsatisfactory evaluations of the course, instructor, or materials from previous classes.
 - (3) If an application is refused or disapproved, written notice detailing the basis of the decision shall be provided to the applicant.
 - (4) The Committee may at any time re-evaluate and grant or revoke approval of an application or course.
 - (A) The Committee or its designee shall be granted access to attend, observe and audit any continuing education course approved by the Committee.
 - (B) The Committee may at any time review courses for quality in instruction. The Committee shall also investigate and take appropriate action, up to and including revocation of authority to provide CE, regarding complaints involving approved courses.
 - (C) A provider's failure to comply with this Section constitutes grounds for disciplinary action, up to and including revocation of authority to provide CE, against the provider or for denial of future applications for coursework.
- (d) **Course Advertisement.**
- (1) All advertising must include the course identification number.
 - (2) Approved program courses may be advertised.
 - (3) The provider of an approved continuing education program may announce or indicate as follows: Course

_____ has been approved by the Construction Industries Board Electrical Examiners Committee for _____ hours of CE credit.

- (e) **Correspondence or Online course approval.**
- (1) Providers seeking to offer correspondence or online courses for continuing education shall submit a course curriculum and study material for review and approval by the Committee, or its designee, prior to the courses being offered as continuing education. An access code and password shall be provided to the Committee, or its designee, for an online course for the purpose of review and approval. Correspondence or online courses shall have sufficient explanation and or graphics to expound the concepts and changes being taught. The format of the online course shall be constructed so as to elicit interaction between the student and the material presented. Each page of text shall be designed with a question that must be answered before advancing to the next page or a test at the end of a subject matter before the course is considered complete. Approved correspondence and online courses shall be required to comply with all requirements for other continuing education courses except for sign-in sheets. Providers shall provide a student with a document of completion that shall certify completion of an approved correspondence or online course.
 - (2) Applications for correspondence or online courses shall be resubmitted annually, from date of approval, for review and approval.
- (f) **Alternate Credit accrual.**
- (1) Credit may be earned through teaching in an approved continuing education class. The Committee may award up to six (6) hours of CE credit not to exceed the number of approved hours for that CE class.
 - (2) Credit may also be earned through teaching a course in an accredited trade school or a trade-specific program approved by the Committee. The Committee may award up to six (6) hours of CE credit for each semester of academic credit awarded by the academic institution for the course.
- (g) **Complaint procedure.**
- (1) A person, government, or private organization may submit a written complaint to the Committee, or its designee, charging a provider of continuing education with a violation of this Section, and specifying the grounds for the complaint.
 - (2) Complaints must be in writing and include contact information, and shall be filed on the proper complaint form prescribed by the Construction Industries Board, or its designee.
 - (3) The Committee may consider an unsigned or anonymous complaint for further investigation.
 - (4) Upon receipt of a signed complaint form, a copy shall be sent to the continuing education provider addressed in the complaint. The continuing education provider shall provide a written response within fifteen (15) days. Upon receipt of the continuing education provider's written response, both complaint and response shall be considered by the Committee, or its designee, for

appropriate action including dismissal of the complaint, further investigation, or a finding of violation of the Act or this Chapter. The Committee, or its designee, shall notify both complainant and continuing education provider of the determination made by the Committee. Failure of the continuing education provider to respond will be considered as a violation of this Section.

(5) If a reasonable cause violation determination is made by the Committee, the Oklahoma Administrative Procedure Act shall be followed for all disciplinary proceedings undertaken.

[OAR Docket #17-594; filed 7-7-17]

**TITLE 158. CONSTRUCTION INDUSTRIES BOARD
CHAPTER 50. MECHANICAL INDUSTRY REGULATIONS**

[OAR Docket #17-595]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions

158:50-1-2 [AMENDED]

Subchapter 9. Qualifications for Mechanical Licensure, License and Registration Fees, Duration of License, Mechanical License Application, and Apprentice Registration

158:50-9-1 [AMENDED]

158:50-9-6 [AMENDED]

158:50-9-7 [AMENDED]

AUTHORITY:

Construction Industries Board; 59 O.S. §§ 1000.4 and 1850.3.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

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January 26, 2017

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 13, 2017

FINAL ADOPTION:

June 13, 2017

EFFECTIVE:

October 1, 2017

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

Gist: The changes to the Mechanical Industry Regulations add language clarifying existing rules and statutory authority; remove obsolete language; and provide applicants options on licensing renewal categories and partial exam completion.

Analysis: The amendments clarify and add a definition to provide the public a description of terms as the statutes have historically been applied by the agency; establish a time limit for completing both portions of the contractor exam before an applicant is required to retake a portion they may have previously passed; establish procedures which allow an applicant for a contractor license who passes only the trade portion of the contractor exam to apply the passing score of the trade portion to an application for a journeyman

license; allow an active or inactive contractor to elect to have a permanent change of license category and renew as a journeyman; allow an individual who has a current active or inactive contractor license to pursue other category contractor applications in the mechanical trade without being required to retake the business and law portion of the exam if the business and law portion was successfully passed previously; amend and clarify procedures/requirements related to an applicant who violates exam procedures; clarify requirements for obtaining a mechanical license by reciprocity; remove obsolete, outdated verbiage; amend the deadline for submission of applications for continuing education course approval; clarify the manner in which continuing education programs must be conducted; and allow continuing education credit to be earned through teaching a course in an accredited trade school or a trade-specific program approved by the Committee of Mechanical Examiners. The amendments may result in amendments/clarifications on existing forms or the creation of new forms.

CONTACT PERSON:

Linda Ruckman, Board Secretary/Executive Assistant, 405-521-6550.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF OCTOBER 1, 2017:

SUBCHAPTER 1. GENERAL PROVISIONS

158:50-1-2. Definitions

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

"**Act**" means Mechanical Licensing Act as found at 59 O.S. § 1850.1, *et seq.*

"**Administrator**" means the Administrator of the Board as described in the Construction Industries Board Act found at 59 O.S. § 1000.1, *et seq.*

"**Applicant**" means any person applying for an examination, for a license or registration, for continuing education approval, for review of plans and specifications or for a mechanical code variance from the standard of installation described in OAC 158:50-1-4 by the Construction Industries Board under the Act.

"**Associated with and responsible for**" means the relationship between a mechanical contractor and mechanical firm based on the mechanical contractor being a permanent employee, owner, partner, or officer in a corporate firm, and whereby the mechanical contractor shall give full time to the supervision and control of operations necessary to secure full compliance with the provisions of the Mechanical Licensing Act and this Chapter.

"**Board**" means the Oklahoma Construction Industries Board.

"**Bonds and Insurance Unit**" means the consolidated unit that processes bonds and insurance under the direction of the Construction Industries Board.

"**Cheating**" means any unapproved deviation from any official instruction given before, during or after a license examination, for the purpose of affecting or influencing the examination results or otherwise providing an undue advantage to any examinee.

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"Chemical plant" means a chemical plant within the context of 59 O.S. §1850.10(D) including a fertilizer plant engaged in formulating chemicals ultimately used generally in the agricultural fertilizer industry.

"Committee" means the Committee of Mechanical Examiners.

"Contracting" means engaging or offering to engage in, on behalf of oneself or on behalf of another, any mechanical work which requires a valid and appropriate license from the Construction Industries Board as required by the Mechanical Licensing Act, regardless if said work is in exchange for monetary payment or otherwise.

"Credit Hour" or **"Hour"** means at least 50 minutes of classroom instruction with a 10 minute break.

"Direct supervision" means the on-the-job presence by the supervisor who must be a licensed mechanical contractor or mechanical journeyman.

"Gas piping" means and includes all natural gas piping within or adjacent to any building, structure, or conveyance, on the premises up to the connection with a natural gas meter, regulator, or other source of supply.

"Ground source piping" means piping buried below the earth's surface or submerged in a water well, lake or pond and used in conjunction with a heat pump to provide heating, ventilation and/or air conditioning to a structure.

"Health care facility" includes but is not limited to hospitals, nursing homes, limited care facilities, clinics, medical or dental offices, and ambulatory care centers, whether permanent or moveable.

"Hearing Board" means the Mechanical Hearing Board.

"Humidification" when applied to air conditioning, means and includes an increase or decrease in moisture content of the air being conditioned and supplied to the space for human occupancy by means of that integral part of the entire air conditioning system, equipment, and control devices; when applied to refrigeration, means and includes an increase or decrease in the moisture content of the air or product being conditioned for a food preservation measure or manufacturing process by means of the integral part of the entire refrigeration system, equipment, and control devices.

"HVAC" or **"heating, ventilation and air conditioning"** means the process of treating air by controlling its temperature, humidity, and cleanliness and of supplying such air to spaces for human occupancy by means of an integrated system of air conditioning and ventilation equipment, accessories and control devices.

"ICC" means the International Code Council.

"Limited residential journeyman" means a type and category of mechanical license that is restricted to new installations in new construction for detached one or two family dwellings and multiple single family dwellings (townhouses) not more than three stories in height with a separate means of egress as regulated by this Chapter.

"Mechanical License Unit" means the staff and administrative support unit to the Committee of Mechanical Examiners and the Mechanical Hearing Board.

"Mechanical work" means the installation, maintenance, repair, or renovation, in whole or in part, of any heating system,

exhaust system, cooling system, mechanical refrigeration system, ventilation system, medical gas system, medical-surgical vacuum systems, or any equipment or piping carrying chilled water, air for ventilation purposes, or natural gas, or the installation, maintenance, repair, or renovation of process piping used to carry any liquid, substance, or material, including steam and hot water used for space heating purposes not under the jurisdiction of the Department of Labor or Department of Health, provided that minor repairs and maintenance are excluded.

"Medical gas piping work" means the lay out, assembly, installation, and maintenance of pipe systems used in health care facilities for oxygen, nitrous oxide, medical air, carbon dioxide, helium, nitrogen, instrument air, medical-surgical vacuum, waste anesthetic gas disposal, mixtures thereof, or any other gaseous, partly gaseous substance, material or any mixtures thereof used in a health care facility. Replacing cylinders and filters, and performing routine and preventive maintenance that does not breach the integrity of the medical gas piping system and does not constitute the installation, repair, or replacement of medical gas piping shall not require a medical gas piping licensee.

"Medical gas journeyman" means a type and category of mechanical license that is restricted to medical gas piping.

"Minor repairs and maintenance" means minor repairs or maintenance as each are prescribed in the manufacturer's operating instructions to be performed by the equipment owner or his authorized agent, and shall not include replacement and repairs of any nature on natural gas piping, natural gas controls, the manufacturer installed controls and components, the vent system of fuel burning appliances, a breach of the integrity of a refrigeration system or any repair or maintenance which would violate the safe operation of the equipment.

"Oklahoma Uniform Building Code Commission" or **"OUBCC"** means the state agency created under 59 O.S. § 1000.20, *et seq.*, and authorized to adopt all building codes and standards for residential and commercial construction to be used as minimum standards by all entities within this State.

"Petroleum refinery" means an industrial plant which processes petroleum for purposes of creating products derived from petroleum and includes industrial plants which produce and/or refine alternative fuels or petroleum additives. "Petroleum refinery" shall not mean gas processing plant or gas gathering pipeline operations.

"Petroleum refinery journeyman" means a type and category of mechanical license that is restricted to petroleum refinery process piping.

"Petroleum refinery process piping work" means the lay out, assembly, installation, and maintenance of pipe systems used in the petroleum refining process or product refining systems of a petroleum refinery.

"Process" means a series of operations performed in the making or treatment of a product.

"Process piping" means lay out, assembly, installation, and maintenance of pipe systems, pipe supports, and related hydraulic and pneumatic equipment for steam, hot water, heating, cooling, lubricating and fire sprinklers, not subject to regulation pursuant to the Alarm Industry Act, and industrial

production and processing systems, and piping used to carry any gaseous, or partly gaseous, substance or material as part of a medical gas piping system.

"Reciprocity" means an agreement whereby a person holding a mechanical license or registration who is licensed in other states with substantially similar or greater licensure requirements may be licensed in this State after payment of a fee for licensing by reciprocity.

"Refrigeration system" means installation, repairing and servicing of a system employing fluid which normally is vaporized and liquefied in an air conditioning system, food preservation measure or manufacturing process.

"Variance" means the use of an alternative material or method of construction from that prescribed in the standard of installation as described in OAC 158:50-1-4 and/or other approved documents by the OUBCC for use at a particular location or project specified in the variance application; and

"Variance and Appeals Board" means the Oklahoma State Mechanical Installation Code Variance and Appeals Board.

"Verifiable experience" means mechanical experience obtained while employed by a licensed Mechanical contractor, or by other means approved by the Committee of Mechanical Examiners including equivalent experience earned while serving in the U.S. Military, for which one (1) year of verifiable experience equals two thousand (2,000) hours.

**SUBCHAPTER 9. QUALIFICATIONS FOR
MECHANICAL LICENSURE, LICENSE AND
REGISTRATION FEES, DURATION OF LICENSE,
MECHANICAL LICENSE APPLICATION, AND
APPRENTICE REGISTRATION**

158:50-9-1. Qualifications for mechanical licensure

(a) **Application.** A person desiring to be licensed under this Chapter shall file an application with the application fee, examination fee (unless the examination fee is paid directly to a testing provider), and the initial License fee to the Administrator. The fees must be received no less than three (3) working days before the examination date. If the applicant fails to meet the minimum qualifications to take the examination, the application fee will be forfeited.

(b) **Experience.** All persons applying for a license must provide proof of experience in the mechanical trade. Applicants for mechanical license examinations who are not licensed and wish to include experience gained in Oklahoma must maintain an apprentice registration on file with the Oklahoma Construction Industries Board for all experience obtained in Oklahoma. The Construction Industries Board will not consider experience obtained in or outside of Oklahoma as verifiable experience for periods in which an apprentice is unregistered, except for experience lawfully obtained according to any applicable federal or state laws, and must be comprised of mechanical work as defined under the Act and in this Chapter.

(1) Applicants for a journeyman license must be at least eighteen (18) years of age and have:

(A) three (3) years of verifiable experience in the mechanical trade in the category for which he or she is applying, or

(B) an associate's degree or vocational diploma certifying completion of an educational program consisting of one thousand (1,000) hours or more from a school, approved by the Committee, which exhibits knowledge of the trade in the category of license applied for and one (1) year of verifiable experience in the mechanical trade, or

(C) a vocational diploma certifying completion of an educational program consisting of five hundred (500) or more hours from a school, approved by the Committee, which exhibits knowledge of the trade in the category of license applied for, and two (2) years of verifiable experience in the mechanical trade, or

(D) a vocational diploma certifying completion of an educational program consisting of a minimum of three hundred and seventy five (375) or more hours from a school, approved by the Committee, which exhibits knowledge of the trade and in the category of license applied for, and two and one-fourth (2 1/4) years of verifiable experience in the mechanical trade, or

(E) a vocational diploma certifying completion of an educational program consisting of a minimum of three hundred and thirty four (334) or more hours from a school, approved by the Committee, which exhibits knowledge of the trade and in the category of license applied for, and two and one-third (2 1/3) years of verifiable experience in the mechanical trade, or

(F) a vocational diploma certifying completion of an educational program consisting of a minimum of two hundred and fifty (250) or more hours from a school, approved by the Committee, which exhibits knowledge of the trade and in the category of license applied for, and two and one-half (2 1/2) years of verifiable experience in the mechanical trade, or

(G) equivalent, verifiable experience in the mechanical trade while serving in the U.S. military, or

(H) experience sufficient to obtain the special certification required for the mechanical category sought by the tendered application, such as Ground Source Piping and Medical Gas, or

(I) a verifiable out-of-state license in the mechanical classification for which the applicant is applying. The license must:

- (i) be current,
- (ii) be in good standing, and
- (iii) meet qualifications listed in (A) through (E) above.

(2) Applicants for a contractor license must meet the same requirements as a journeyman with an additional one (1) year of experience.

(c) **Examination.** A license cannot be issued until the applicant has passed the appropriate examination for the license type and category. Examinations and the passing score for each

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examination shall be approved by the Committee. Applicants for the Ground Source Piping category shall provide proof of being certified by examination in the proper installation of ground source piping by an organization approved by the Committee. Applicants for the Petroleum Refinery journeyman category shall provide proof of being certified by examination in the area of industrial pipefitter by an organization approved by the Committee. Applicants for the Medical Gas category shall provide proof of being certified by examination in accordance with the most current NFPA 99 standard or certified in the proper installation of medical gas piping by an organization approved by the Committee.

(1) If the applicant does not pass the exam, the applicant may reapply for the exam and pay an additional retesting fee. However, no person will be allowed to retake an exam within thirty (30) days of the first failed exam or within ninety (90) days of the second or subsequent failed exam.

(2) Applicants for a contractor license must pass both portions (business/law and trade) of the contractor license exam. If an applicant for a contractor license passes only one of the two portions of the required exam, the applicant need only retake the portion of the exam not passed if done within three (3) years of the date the Applicant is approved and eligible to sit for the contractor's exam. Otherwise, the Applicant will need to retake both portions of the contractor license exam.

(3) If an applicant for a contractor license passes only the trade portion of the contractor exam, the applicant may choose to apply the passing score of the trade portion of the contractor exam to a journeyman license application within the same license category as the trade portion of the contractor exam that the applicant passed. All other requirements in the Act and this Chapter for a journeyman license are required, including but not limited to, completing the journeyman application form and submitting any applicable fee, both of which must be received by the Board no more than one year after passing the trade portion of the contractor exam. The timeframe to complete both portions of the contractor exam as provided in (c)(2) of this Section is applicable even if a journeyman license is obtained under this subsection.

(4) A contractor license, whether active or inactive, must be renewed annually including completing the renewal form and paying the renewal license fee for a contractor license. An inactive contractor status may be changed to active contractor status at any time by providing proof of compliance with bond and insurance requirements as provided in this Chapter. A contractor, whether active or inactive, can elect to renew as a journeyman with filing of a journeyman renewal application and fee which election will be considered a permanent change of license category. If a permanent license category change occurs and the individual wants to change from journeyman to contractor category, either active or inactive, the individual must retake and pass the contractor license exam and meet all other contractor license requirements in the Act and this Chapter.

(5) If an active or inactive contractor license is current, the Applicant may pursue other category contractor applications in the same trade without being required to retake the business and law portion of the exam if the business and law portion was successfully passed previously.

~~(26) Any person suspected of cheating during an examination shall be immediately notified of the suspicion and shall not be allowed to finish the examination. He or she shall be called before the Committee during the next scheduled meeting for discussion of the incident. If the Committee determines that the person did in fact cheat, the examinee's application for licensure shall be denied and the Committee shall determine when the applicant can next apply for an examination. Any applicant who violates exam procedures as determined by the examination provider, including but not limited to cheating, misrepresenting oneself as another, or inappropriate actions during an examination may be immediately notified and expelled from the examination. Furthermore, the applicant's exam will be considered invalid and the applicant will be disqualified from retaking the exam for a period of time no less than 30 days and no more than 365 days as determined by the Administrator of the Construction Industries Board.~~

(37) No person shall be allowed any assistance in reading the contractor's examination, nor shall any persons other than the examinees or the Committee members be allowed in the examination area. However, an applicant may request that the Committee make reasonable accommodations for any disability.

(d) **Outstanding fines.** A license cannot be issued or renewed until the applicant has paid any and all outstanding fines due and owing to any division of the Construction Industries Board.

158:50-9-6. Mechanical journeyman and contractor licenses by reciprocity

(a) **General procedures for application.** Any person holding a valid mechanical journeyman license or mechanical contractor license issued by another state who is seeking to obtain a license by reciprocity shall first submit an application to the Construction Industries Board on a form provided by the Board and confirm that a written reciprocity agreement exists between the applicant's state and Oklahoma for the license the applicant is seeking. The application shall include all documentation necessary to show the applicant meets the requirements established by this Chapter. All applications shall first be directed to the Committee or its designee for an initial review to determine if the applicant meets the qualifications for a license by reciprocity as set forth in this Section and in 59 O.S. § 1000.5a or any subsequent enactment of the Legislature. Following this review, the Committee or its designee shall make a recommendation to the Board or its designee as to whether the application should be approved or disapproved. The Board or its designee shall make the final determination as to whether an application shall be approved or disapproved. If an application is disapproved by the Board or its designee, the application shall be returned to the applicant with the reason for the disapproval.

(b) **Application fees.** Before an application will be considered, a person applying for a mechanical journeyman license by reciprocity must pay the journeyman application fee and the initial journeyman license fee as set forth in OAC 158:50-9-2(b). If the person is applying for a mechanical contractor license, the person must pay the contractors application fee and the initial contractor license fee as set forth in OAC 158:50-9-2(b). These fees shall not be refundable under any circumstances.

(c) **Requirements for issuance of a license by reciprocity.** An application for a license by reciprocity may be approved upon a satisfactory showing by the applicant of the following:

(1) That the requirements for licensure from the state in which the applicant is licensed is determined to be substantially the same or equivalent to the requirements for obtaining a license by examination in this State. In making this determination the following shall be considered:

(A) Whether the other state regulates and issues licenses for mechanical trade categories in a manner that is substantially the same or equivalent to the State of Oklahoma;

(B) Whether the experience required by the other state to be eligible to sit for the license examination is substantially the same or equivalent to the Board's requirements;

(C) Whether the continuing education requirements of the other state are substantially the same or equivalent to the Board's requirements;

(D) Whether the codes adopted by the other state are substantially the same or equivalent to the Board's requirements;

(E) Whether the examination of the other state is substantially the same or equivalent to the Board's requirements. This shall include the score required to pass the examination, whether examinations are given for specific mechanical trade categories, and whether the examination is in written form.

(2) That the other state will recognize licenses issued by the State of Oklahoma through the Construction Industries Board. Paragraphs (1) and (2) of this subsection may be satisfied by the existence of a reciprocity agreement between the Board and the state issuing the applicant's current license as provided in (d) of this Section.

(3) That the applicant is currently licensed by a state that meets the requirements of (c)(1) of this Section and that one year immediately prior to the application, the applicant lawfully practiced an applicable trade within and under the laws of that state.

(4) That no disciplinary matters are pending against the applicant in any jurisdiction in which the applicant is currently licensed. This requirement will be considered satisfied upon presentation of a certified statement from the licensing authorities of all jurisdictions in which the applicant is currently licensed that no disciplinary matters are pending against applicant.

(5) That the applicant obtained the license to be reciprocated by examination in the applicable mechanical trade category.

(d) **Reciprocity agreements.** The Board may enter into a reciprocity agreement with another state if the requirements for licensure in the other state are deemed by the Board to be substantially the same or equivalent to the requirements for obtaining an original license by examination in this State.

(e) **Additional requirements for contractor applicants.** Applicants seeking a mechanical contractor license by reciprocity who meet the necessary qualifications for a license as required in this Section and for which there is a written reciprocity agreement for contractors, will be granted a journeyman license by reciprocity. The applicant will be issued a contractor license upon successfully passing the Oklahoma Mechanical Contractor Business and Law portion of the full contractor examination and satisfaction of the requirements of OAC 158:50-5-3.

(f) **Additional requirements for ground source piping license applicants.** Applicants seeking a mechanical license by reciprocity in the ground source piping category must provide proof of being certified in the proper installation of ground source piping by an organization approved by the Committee.

158:50-9-7. Continuing Education

(a) **Continuing Education Requirements:**

(1) ~~By July 1, 2014, no~~ No contractor or journeyman license shall be renewed unless the licensee has completed at least six (6) hours of continuing education ("CE"); ~~and thereafter, the licensee shall complete six (6) hours every~~ three (3) years or thirty-six (36) months preceding the license expiration date. The continuing education course and instructor shall be approved in advance by the Committee. Exceptions to advance approval, or post-course approval, may be allowed by the Committee, or its designee, for substitute instructors in emergency situations when written notice of the emergency is provided to the Committee or its designee within seven (7) days of the course. The continuing education material shall cover codes and revisions adopted by the OUBCC and/or other trade related subject matters appropriate for topics of continuing education for licensees and approved by the Committee including: examination materials, manufacturers' installation of equipment or parts, the licensing Act, the trade regulations as set forth in this Chapter as well as the rules of the Construction Industries Board in OAC 158:10, and other trade or safety related subject matters approved by the Committee.

(2) If a license expires before the licensee completes the CE requirement, any CE that is completed while the license is expired will be applied to the CE requirement for the thirty-six (36) months preceding the date the license expired. Six (6) hours of CE will still have to be completed in order to meet the CE requirement for the subsequent thirty-six (36) month period.

(3) Credit will be given for CE programs approved by the Committee, or its designee.

(4) Except as provided herein, this Section shall apply to every licensed mechanical journeyman or contractor.

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- (5) A licensee is exempt from the education requirements of this Section for three (3) years from the date he or she passed their current licensing exam.
- (b) **Standards.** The following standards will govern the approval of continuing education programs by the Committee.
- (1) The program provider shall submit evidence that the provider and instructional staff are qualified by reason of education, experience or training. The training provider and instructors will be of good reputation and of good moral character.
- (2) Any written material that is distributed during the session shall be readable, of high quality and shall be made available to all attendees.
- (3) The program shall be presented in a comfortable location such as hotel/motel conference room, corporate meeting room, or regular classroom.
- (4) The training session shall be presented outside the regular workplace or after regular working hours. An on-site conference room, that meets standards imposed by (3) of this subsection, shall be considered outside the regular workplace.
- (5) A credit hour means at least fifty (50) minutes of classroom instruction with a ten (10) minute break.
- (6) CE courses shall be presented in one of the following formats.
- (A) Six (6) credit hours presented in one (1) day.
- (B) Two (2) sessions of three (3) credit hours each presented within a seven (7) day period.
- (C) One (1) session of two (2) credit hours of trade related instruction, Mechanical Licensing Act and/or Mechanical Industry Regulations.
- (D) An approved correspondence course.
- (E) Another format approved by the Committee.
- (7) **Verification of Credit.**
- (A) The Course Provider shall verify the total number of continuing education hours completed by each attendee.
- (B) Continuing education providers shall require attendees to present a photo I.D. prior to the attendee signing the sign-in sheet provided by the Construction Industries Board. Sign-in sheets shall include the name and license number of each licensee in attendance.
- (C) As soon as practicable but in any event on or before seven (7) days following an approved continuing education program, the provider shall furnish the original sign-in sheets from the course to the Mechanical License Unit of the Construction Industries Board.
- (D) Providers shall maintain copies of all sign-in sheets for a period of two (2) years following the conclusion of the course.
- (E) **Complaint Procedure.**
- (i) A person, government, or private organization may submit a written complaint to the Committee, or its designee, charging a provider of continuing education with a violation of this Section, and specifying the grounds for the complaint.
- (ii) Complaints must be in writing and include contact information, and shall be filed on the proper complaint form prescribed by the Construction Industries Board, or its designee.
- (iii) The Committee may consider an unsigned or anonymous complaint for further investigation.
- (iv) Upon receipt of a signed complaint form, a copy shall be sent to the continuing education provider addressed in the complaint. The continuing education provider shall provide a written response within fifteen (15) days. Upon receipt of the continuing education provider's written response, both complaint and response shall be considered by the Committee, or its designee, for appropriate action including dismissal of the complaint, further investigation, or a finding of violation of the Act or this Chapter. The Committee, or its designee, shall notify both complainant and continuing education provider of the determination made by the Committee. Failure of the continuing education provider to respond will be considered as a violation of this Section.
- (v) If a reasonable cause violation determination is made by the Committee, the Oklahoma Administrative Procedure Act shall be followed for all disciplinary proceedings undertaken.
- (8) Course providers or instructors may not advertise or promote the sale of any goods, products or services between the opening and closing of any Continuing Education Course.
- (c) **Application Procedures.**
- (1) A completed application form, with all supporting documentation, shall be submitted to the Construction Industries Board at least fifteen (15) days prior to the date of the Regular meeting of the Committee from which the provider wants the course to be considered for approval, and at least thirty (30) days prior to the scheduled start date. Supporting documents shall include the following:
- (A) A resume or brief summary of qualifications of all course developers and instructors.
- (B) A course agenda designating the beginning and ending of actual instruction times, sign-in times, breaks, lunches and evaluation time.
- (C) A course curriculum indicating the subject or code areas to be taught with sufficient detail to determine which code revisions are to be addressed or the trade related instruction being provided.
- (2) An application is to be submitted for each date, or dates, that constitute a single course.
- (3) Each course must be included on a separate application.
- (d) **Mechanical Examiners Committee Acceptance.**
- (1) The Committee, or its designee, will review each application for completeness of form and supporting documentation, as well as course content.
- (2) The approval of any course will be made by a majority vote of the Committee at a regularly scheduled meeting of the Mechanical Examiners Committee.

- (3) The Committee's designee may approve additional dates and locations after the course has been approved by Committee vote. Substantive change to course content must be brought before the Committee.
- (4) The applicant will be notified in writing whether the program is approved or disapproved, detailing the basis of the decision if disapproved.
- (5) Approval is rescinded upon the adoption of a different statewide code and a new application showing updates of new code is necessary.
- (e) **Committee Rejection and Reevaluation of a Course.**
- (1) The Committee, or its designee, may refuse to accept any application for approval if the supporting documentation is insufficient or incomplete. The Committee may deny or revoke approval of an application for any of the following reasons.
- (A) Failure to comply with the continuing education provisions.
- (B) Inadequate application or supporting documentation.
- (C) Failure to instruct on topic approved.
- (D) Inadequate experience of program developer or instructor.
- (E) Unsatisfactory evaluation of the course instructor or materials from previous classes.
- (2) The Committee may, at any time, re-evaluate and grant or revoke approval of application or course.
- (A) The Committee may, at any time, review courses for quality of instruction. The Committee may also investigate complaints regarding approved courses. The Committee may then take appropriate action, up to and including revocation of authority to provide CE courses.
- (B) A provider's failure to comply with this Section constitutes grounds for disciplinary action, up to and including revocation of authority to provide CE, against the provider or for denial of future applications for course work.
- (3) The Committee, or its designee, will notify the provider, in writing, of any changes in approval status.
- (f) **Appeals.**
- (1) Applicants denied approval of a course may appeal such a decision by submitting a written letter of appeal to the Committee within fifteen (15) days of the receipt of the notice.
- (2) All appeals will be heard by the Committee at its next regularly scheduled meeting.
- (g) **Course Presentation.**
- (1) The program, including the named advertised participants, shall be conducted as approved ~~by the Committee, including lunch and breaks shown on the approved agenda,~~ subject to emergency withdrawals and minor alterations.
- (2) Changes including but not limited to location, date, instructors, or cancellations must be requested from the Committee, or its designee, in writing prior to start of class. All requests for change must include the course ID number.
- (h) **Course Advertisement.**
- (1) All advertising must include the course ID number.
- (2) Approved program courses may be advertised.
- (3) The provider of an approved continuing education program may announce or indicate as follows: Course #____ has been approved by the Construction Industries Board Mechanical Examiners Committee for ____ hours of CE credit.
- (i) **Correspondence and Online Courses.**
- (1) Applications, approvals and rejections, and appeals of all correspondence and online courses shall be the same as for classroom-based courses.
- (2) Correspondence courses shall be required to comply with all requirements of continuing education courses, except sign-in sheets.
- (3) Providers of an on-line course shall submit verification of six (6) hours of real time on-line instruction.
- (4) Course providers shall provide a student with a document of completion which certifies completion of approved correspondence course.
- (5) Applications shall be resubmitted annually, from date of approval, for review and approval.
- (j) **Alternate Credit Method Accrual.**
- (1) Credit may be earned through teaching an approved continuing education course. The Committee may award up to six (6) hours of CE credit, not to exceed the number of approved hours for that CE course.
- (2) Credit may also be earned through teaching a course in an accredited trade school or a trade-specific program approved by the Committee. The Committee may award up to six (6) hours of CE credit for each semester of academic credit awarded by the academic institution for the course.
- (k) **Continuing Education Not Required for Petroleum Refinery Journeyman.** Subsections (a) through (j) of this Section shall not apply to the license category of Petroleum Refinery Journeyman. The Petroleum Refinery Journeyman license may be renewed without continuing education.
- (l) **Continuing Education Not Required for Ground Source Piping.** Subsections (a) through (j) of this Section shall not apply to the license category of Ground Source Piping. The Ground Source Piping category license may be renewed without continuing education provided that a current approved certification is submitted.
- (m) **Continuing Education Not Required for Medical Gas.** Subsections (a) through (j) of this Section shall not apply to the license category of Medical Gas. The Medical Gas category may be renewed without continuing education provided that a current approved certification is submitted.

[OAR Docket #17-595; filed 7-7-17]

Permanent Final Adoptions

TITLE 158. CONSTRUCTION INDUSTRIES BOARD CHAPTER 60. INSPECTORS REGULATIONS

[OAR Docket #17-596]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 5. Categories and Classifications of Inspector Licenses, Qualifications for Inspector Licensure, License Requirements for Inspectors, Fees, Certification and Continuing Education for Inspectors, and Continuing Education Courses
158:60-5-3 [AMENDED]
158:60-5-5 [AMENDED]

AUTHORITY:
Construction Industries Board; 59 O.S. §§ 1000.4 and 1032.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
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n/a

INCORPORATIONS BY REFERENCE:
n/a

GIST/ANALYSIS:
Gist: The changes to the Inspectors Regulations add language clarifying existing rules and statutory authority.

Analysis: The amendments clarify existing rule requirements for an unlimited inspector license; clarify the deadline for submission of applications for continuing education course approval; clarify the manner in which continuing education courses must be presented; require that an access code and password be provided to the Inspector Examiners Committee for an online course for the purpose of review and approval; require that applications for correspondence or online courses be resubmitted annually from date of approval for review and approval; establish requirements for advertisement of continuing education courses; and clarify that approval of all types of continuing education courses is rescinded upon the adoption of a different statewide code by the OUBCC. The amendments may result in amendments/clarifications on existing forms or the creation of new forms.

CONTACT PERSON:
Linda Ruckman, Board Secretary/Executive Assistant, 405-521-6550.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF OCTOBER 1, 2017:

SUBCHAPTER 5. CATEGORIES AND CLASSIFICATIONS OF INSPECTOR LICENSES, QUALIFICATIONS FOR INSPECTOR LICENSURE, LICENSE REQUIREMENTS FOR INSPECTORS, FEES, CERTIFICATION AND CONTINUING EDUCATION FOR INSPECTORS, AND CONTINUING EDUCATION COURSES

158:60-5-3. License requirements for inspectors

- (a) The licensee shall notify the Construction Industries Board in writing within fifteen (15) days of any change in address or change in employment status related to the license.
- (b) The licensee shall, in addition to any local procedures or requirements, notify the Administrator as to persons suspected of performing building, electrical, mechanical, or plumbing work within their jurisdiction who are not properly licensed by the State. All licensed building and construction inspectors shall require all persons doing work in his/her jurisdiction to meet all requirements for licensing and code standards.
- (c) Any person who voluntarily surrenders their license during an investigation by the licensing authority shall be treated as if their license had been revoked by the Administrator on the day of surrender.
- (d) The licensee shall not attempt to retain licensure by making false statements concerning C.E.U.'s.
- (e) In political subdivisions where licensing is required by the Act, no person may perform building and construction inspections in a category in which he or she is not licensed.
- (f) To receive an unlimited inspector license, one must take and pass both the residential certification examination and the commercial certification examination.

158:60-5-5. Continuing education

- (a) **Continuing education requirements:**
- (1) No license shall be renewed unless the licensee has completed at least six (6) hours of continuing education within twelve (12) months preceding the application for renewal.
- (2) Credit will only be given for continuing education programs approved by the Committee.
- (3) A licensee is exempt from the continuing education requirements of this Chapter for one (1) year from the date he or she passed their current licensing exam.
- (b) **Application procedures for continuing education course approval.** Any provider or instructor which desires to sponsor education to licensees in compliance with the continuing education requirements of OAC 158:60-5-4 shall file an application for approval on the form prescribed by the Committee, or its designee at least fifteen (15) days prior to the date of the Regular meeting of the Committee from which the organization wants the course to be considered for approval, and at least thirty (30) days prior to the date for which the course is scheduled. The application shall include a list of the course instructors and their qualifications, an agenda detailing the material to be presented, the location of the training, the program objectives, and the number of credit hours of classroom and supervised instruction. Licensees shall

not receive continuing education credit for attending classes that are not approved by the Committee. Within seven (7) days of the completion of the course, the provider or instructor shall submit the original sign-in sheets for all sessions to the Inspector Examiners Unit of the Construction Industries Board. The sign-in sheets shall include the signature and state inspector license number of each person in attendance. The provider or instructor shall verify the total number of continuing education hours completed by each attendee. All programs shall be presented as submitted and approved, including lunch and breaks shown on the approved agenda, unless changes have been approved. Changes to the program shall be submitted to the Committee, or its designee, within ten (10) days of the training session for review by the Committee. Failure to obtain approval of changes may result in loss of CEU approval.

(c) **Standards for continuing education.** The following standards will govern the approval of continuing education programs by the Inspector Examiners Committee:

- (1) The program provider shall submit evidence that the provider and instructional staff are qualified by reason of education, experience or training.
- (2) All material and information presented shall pertain to the discipline in which the person is licensed.
- (3) All courses must be of at least two (2) credit hours in length.
- (4) The training location must be outside the regular work place or after hours.
- (5) Correspondence or online course approval standards:

(A) Providers or instructors seeking to offer correspondence courses for continuing education shall submit a course curriculum and study material for review and approval by the Committee prior to the courses being offered as continuing education. An access code and password shall be provided to the Committee, or its designee, for an online course for the purpose of review and approval. Approved correspondence courses shall be required to comply with all requirements for other continuing education courses except for sign-in sheets. Providers shall provide a student with a document of completion which certifies completion of approved correspondence courses.

(B) Only licensees meeting one or more of the following requirements may receive CEU credit for taking a correspondence or online course;

- (i) Any licensee residing outside of Oklahoma,
- (ii) Any licensee that has an expired license which requires a continuing education course that is no longer available in the classroom,
- (iii) Any licensee who is currently incarcerated, or
- (iv) Any licensee who submits written proof to the Committee from a physician stating the medical reason that the licensee is unable to attend a continuing education class.

(C) Applications for correspondence or online courses shall be resubmitted annually, from date of approval, for review and approval.

(6) Along with a course application, a video presentation may be submitted for course material and instructor approval by the Committee if the video presentation is closely related to the subject matter of the course and meets the following:

(A) All video presentations must be submitted in electronic format at least thirty (30) days in advance of the Committee meeting reviewing the course application, except for manufacturer's videos generally accepted in the industry covering accepted industry practices or standards. If the electronic format does not allow forwarding by email, then seven (7) copies of a portable storage format are required.

(B) Video segments shall be no more than thirty (30) minutes, followed by a discussion and no more than fifty percent (50%) of the total course time.

(C) The required copies of each individual video presentation training segment must be submitted with the CEU class approval request for review and approval by the Committee of the course material and instructor. However, if the video is a manufacturer's video, the Committee is not required to approve of the instructor in the video as long as the video course material and video presentation is approved by the Committee.

(D) An approved instructor will be present during the viewing of any video and will monitor the class for questions. Prior to any video presentation, class participants shall be instructed to raise their hand if they have a question or comment during the video presentation. When a class participant has a question or comment during the video presentation, the instructor must be able to stop or pause the video to accommodate live interactive discussion.

(E) Audio and video equipment shall be arranged in advance or otherwise provided to assure that class participants are able to see and hear all portions of any video presentation. In the case of audio or video failure, the time of the video presentation may be presented by the approved instructor over subject matter previously approved for that instructor.

(d) **Course Advertisement.**

- (1) All advertising must include the course ID number.
- (2) The provider of an approved continuing education program may announce or indicate as follows: Course # _____ has been approved by the Construction Industries Board Inspector Examiners Committee for _____ hours of CE credit.

(de) **Approval Limitations.**

(1) The Committee's designee may approve additional course dates and locations after the course has been approved by Committee vote. Substantive change to course content must be brought before the Committee.

(2) Approval of all courses, including correspondence and online courses, is rescinded upon the adoption of a

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different statewide code by OUBCC, and a new application showing updates of new code is necessary.

(ef) **Complaint procedure:**

- (1) A person, government, or private organization may submit a written complaint to the Committee, or its designee, charging a provider of continuing education with a violation of the rules, and specifying the grounds for the complaint.
- (2) Complaints must be in writing and include contact information, and shall be filed on the proper complaint form prescribed by the Construction Industries Board, or its designee.
- (3) The Committee may consider an unsigned or anonymous complaint for further investigation.
- (4) Upon receipt of a signed complaint form, a copy shall be sent to the continuing education provider addressed in the complaint. The continuing education provider shall provide a written response within fifteen (15) days. Upon receipt of the continuing education provider's written response, both complaint and response shall be considered by the Committee, or its designee, for appropriate action including dismissal of the complaint, further investigation, or a finding of violation of a statute or rule. The Committee, or its designee, shall notify both complainant and continuing education provider of the determination made by the Committee. Failure of the continuing education provider to respond will be considered as a violation of this rule.
- (5) If a reasonable cause violation determination is made by the Committee, the Oklahoma Administrative Procedure Act shall be followed for all disciplinary proceedings undertaken including but not limited to all parts of this subsection.

[OAR Docket #17-596; filed 7-7-17]

TITLE 158. CONSTRUCTION INDUSTRIES BOARD CHAPTER 70. HOME INSPECTION INDUSTRY REGULATIONS

[OAR Docket #17-597]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions

158:70-1-2 [AMENDED]

Subchapter 9. Examination Applications, Examinations, Course Approval Requirements, Instructor Requirements, Continuing Education, Denied Application Appeal, Submission of Records, Substantial Compliance and Reciprocity

158:70-9-2 [AMENDED]

158:70-9-3 [AMENDED]

158:70-9-5 [AMENDED]

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INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

Gist: The changes to the Home Inspection Industry Regulations add language clarifying existing rules and statutory authority.

Analysis: The amendments clarify definitions to provide the public a description of terms as the statutes have historically been applied by the agency; clarify and amend procedures related to an applicant who violates exam procedures; amend the deadline for submission of applications for continuing education course approval; clarify that the requirement for applications for continuing education course approval to be resubmitted annually applies to online and correspondence courses; clarify the manner in which continuing education courses must be conducted; and allow a designee of the Committee of Home Inspector Examiners to consider an unsigned or anonymous complaint regarding continuing education for further investigation, and to make a determination as to appropriate action related to an anonymous complaint regarding continuing education. The amendments may result in amendments/clarifications on existing forms or the creation of new forms.

CONTACT PERSON:

Linda Ruckman, Board Secretary/Executive Assistant, 405-521-6550.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF OCTOBER 1, 2017:

SUBCHAPTER 1. GENERAL PROVISIONS

158:70-1-2. Definitions

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

"Act" means the Home Inspection Licensing Act, found at 59 O.S. § 858-621, *et seq.*

"Alarm systems" means warning devices, installed or free-standing, including but not limited to: carbon monoxide detectors, flue gas and other spillage detectors, security equipment, ejector pumps and smoke alarms.

"Applicant" means any person applying for an examination for a license or registration, or for continuing education approval, under the Act.

"Architectural service" means any practice involving the art and science of building design for construction of any structure or grouping of structures and the use of space within and surrounding the structures or the design for construction, including but not specifically limited to, schematic design,

design development, preparation of construction contract documents, and administration of the construction contract.

"Board" means the Construction Industries Board.

"Certificates of course completion" means a document acceptable to the Committee which signifies satisfactory completion of course work and reflects the hours of credit earned.

"Cheating" means any unapproved deviation from any official instruction given before, during or after a home inspector license examination for the purpose of affecting or influencing the examination results or otherwise providing an undue advantage to any examinee.

"Classroom hour", **"credit hour"**, and **"clock hour"** are each equal to means at least fifty (50) minutes out of each sixty (60) minute segment of classroom instruction with a ten (10) minute break.

"Client" means a person with a direct material interest in the outcome of a home inspection who hires and compensates a home inspector for the performance of a home inspection.

"Committee" means the Committee of Home Inspector Examiners established by the Home Inspection Licensing Act, 59 O.S. § 858-624.

"Component" means a part of a system.

"Continuing education" and **"CE"** means education that is approved by the Committee to satisfy education requirements in order to renew licensure as a home inspector.

"Continuing education verification form" means a form acceptable to the Committee and completed by the course provider, that documents compliance with the continuing education requirements.

"Cosmetic" means a condition that affects appearance but not the manner in which the system or component functions.

"Decorative" means ornamental; not required for the operation of the essential systems and components of a home.

"Defect" means a condition, malfunction or problem, which is not decorative or cosmetic, that would have a materially adverse effect on the value of a system or component, or would impair the health or safety of the occupants or client.

"Describe" means to report a system or component by its type or other observed, significant characteristics to distinguish it from other systems or components.

"Dismantle" means to take apart or remove any component, device or piece of equipment that would not be taken apart or removed by a homeowner in the course of normal and routine homeowner maintenance.

"Engineering service" means any professional service or creative work requiring engineering education, training, and experience and the application of special knowledge of the mathematical, physical and engineering sciences to such professional service or creative work as consultation, investigation, evaluation, planning, design and supervision of construction for the purpose of assuring compliance with the specifications and design, in conjunction with structures, buildings, machines, equipment, works or processes.

"Further evaluation" means examination and analysis by a qualified professional, tradesman or service technician beyond that provided by the home inspection.

"Home" or **"residence"** means any dwelling, from one to four (1-4) units in design, intended principally for residential purposes by one (1) or more individuals.

"Home inspection" or **"inspection"** means a visual examination of any or all of the readily accessible physical real property and improvements to real property consisting of four or fewer dwelling units, including structural, lot drainage, roof, electrical, plumbing, heating and air conditioning and such other areas of concern as are specified in writing to determine if performance is as intended. [59 O.S. § 858-622(3)]

"Home inspection license unit" means the staff and administrative support unit to the Committee of Home Inspector Examiners.

"Home inspection report" means a written opinion of the functional and physical condition of property written by the licensed home inspector pursuant to home inspection.

"Home Inspection Training" means prelicense education that is approved by the Committee to satisfy the education requirements to qualify an applicant to take a home inspector examination for licensure as a home inspector.

"Home inspector" means an individual licensed pursuant to the Home Inspection Licensing Act who, for compensation, conducts home inspections.

"Inspect" means to examine readily accessible systems and components of a building in accordance with these Standards of Practice, using normal operating controls and opening readily openable access panels.

"Installed" means attached such that removal requires tools.

"Instructor" means a person who presents course materials approved for qualifying education and continuing education credit hours that has the experience, training, and/or education in the course subject matter and has been approved by the Committee.

"Normal working order" means the system or component functions without defect for the primary purpose and manner for which it was designed.

"Normal operating controls" means devices such as thermostats, switches or valves intended to be operated by the homeowner.

"Practice of Architecture" means that practice defined in 59 O.S. § 46.3(2) and exempt from the Home Inspection Licensing Act under 59 O.S. § 858-623(B).

"Professional craftsman" means a person who can demonstrate by certification, education or experience, specialized skill in the construction or repair of homes, duplexes, apartment buildings or similar structures. Persons demonstrating specialized skill by experience alone must be able to show that they have been actively engaged in their profession, trade or craft for at least one (1) year prior to the performance of a single item inspection.

"Provider" means a person, corporation, professional association or its local affiliates, or any other entity, which is approved by the Committee and provides approved home inspection training or continuing education to home inspectors.

"Readily accessible" means available for visual inspection without requiring moving of personal property,

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dismantling, destructive measures, or any action which will likely involve risk to persons or property.

"Readily openable access panel" means a panel provided for homeowner inspection and maintenance that is within normal reach, can be removed by one person, and is not sealed in place.

"Reciprocity agreement" means an agreement whereby a home inspector who is licensed in other states with substantially similar or greater licensure requirements may be licensed in this State after payment of a fee for licensing by reciprocity.

"Recreational facilities" means spas, saunas, steam baths, swimming pools, exercise, entertainment, athletic, playground or other similar equipment and associated accessories.

"Report" means to communicate in writing.

"Roof drainage systems" means components used to carry water off a roof and away from a building.

"Shut down" means a state in which a system or component cannot be operated by normal operating controls.

"Solid fuel burning appliances" means a hearth and fire chamber or similar prepared place in which a fire may be built and which is built in conjunction with a chimney; or a listed assembly of a fire chamber, its chimney and related factory-made parts designed for unit assembly without requiring field construction.

"Structural component" means a component that supports non-variable forces or weights (dead loads) and variable forces or weights (live loads).

"System" means a combination of interacting or interdependent components, assembled to carry out one or more functions.

"Technically exhaustive" means an investigation that involves dismantling, the extensive use of advanced techniques, measurements, instruments, testing, calculations, or other means.

"Under-floor crawl space" means the area within the confines of the foundation and between the ground and the underside of the floor.

"Unsafe" means a condition in a readily accessible, installed system or component which is judged to be a significant risk of personal injury during normal operation. The risk may be due to damage, deterioration, improper installation or a change in accepted residential construction standards.

"Wiring methods" means identification of electrical conductors or wires by their general type, such as "non-metallic sheathed cable" ("Romex"), "armored cable" ("bx") or "knob and tube", etc.

158:70-9-2. Examinations

(a) Home inspection license examinations may include, without limitation, written questions, consisting of open book, closed book and problems, based on current national standards, and other related questions.

(b) The maximum grade value of each part of the examination shall be 100 points. A passing score is 70% or more on each part.

(c) Each applicant shall pay the examination fee before undertaking any examination. Reexamination fees shall be the same as the initial examination fees.

(d) Unless authorized by the Committee, only examinees shall be permitted in the examination area.

(e) Applicants shall present positive identification before undertaking an examination.

(f) Any applicant who fails an examination must wait thirty (30) days before retaking the home inspection examination.

(g) ~~An examinee cheating or fraudulently representing an applicant shall immediately be expelled from the examination. A written record of the proceedings shall be made and become a part of the applicant's file. The Committee shall determine when the applicant may retake the exam, which time shall be no fewer than three hundred sixty five (365) days. Any applicant who violates exam procedures as determined by the examination provider, including but not limited to cheating, misrepresenting oneself as another, or inappropriate actions during an examination may be immediately notified and expelled from the examination. Furthermore, the applicant's exam will be considered invalid and the applicant will be disqualified from retaking the exam for a period of time no less than 30 days and no more than 365 days as determined by the Administrator of the Construction Industries Board.~~

158:70-9-3. Course approval requirements

(a) Any person or entity seeking to conduct an approved course for home inspection training or continuing education credits shall make application and submit documents, statements and forms as may reasonably be required by the Committee in accordance with OAC 158:70-5-2, at least fifteen (15) days prior to the date of the Regular meeting of the Committee from which the person or entity wants the course to be considered for approval, and at least thirty (30) days prior to the date for which the course is scheduled.

(b) Applications shall include the following information:

- (1) Name and address of the provider;
- (2) Contact person and his or her address, telephone number and fax number;
- (3) The location of the courses or programs;
- (4) The number and type of education credit hours requested for each course;
- (5) Topic outlines, which list the summarized topics, covered in each course and upon request a copy of any course materials;
- (6) If a prior approved course has substantially changed, a summarization of these records;
- (7) The names and qualifications of each instructor who is qualified in accordance with OAC 158:70-9-4;

SUBCHAPTER 9. EXAMINATION APPLICATIONS, EXAMINATIONS, COURSE APPROVAL REQUIREMENTS, INSTRUCTOR REQUIREMENTS, CONTINUING EDUCATION, DENIED APPLICATION APPEAL, SUBMISSION OF RECORDS, SUBSTANTIAL COMPLIANCE AND RECIPROCIITY

(8) Information demonstrating the proposed home inspection training program meets the education standards for licensing; and,

(9) Information demonstrating the proposed continuing education course meets the standard provided in OAC 158:70-9-5(b).

(c) The Board may automatically accept without further review, courses pre-approved by the Committee.

(d) The Committee may withhold or withdraw approval of any provider for violation of or non-compliance with any provision of this section.

(e) No person or entity sponsoring or conducting a course shall advertise that it is endorsed, recommended, or accredited by the Committee. All advertising must include the course ID number and the number of hours of CE credit approved by the Committee, except for advertising that refers or links to a website that displays the required information including the course ID in the website material that advertises or refers to the home inspection class.

(f) The Committee may decline to renew, or revoke the approval of any qualifying course or any instructor or entity previously approved to conduct a home inspection training course upon a showing or demonstration that the course, instructor or entity has substantially failed to adequately prepare its attendees or participants to pass the national Home Inspection Examination or similar qualifying examination.

(g) Each course is to be submitted on a separate application for each date, or dates, that constitute a single course.

(h) Applications for approval of online or correspondence courses shall be resubmitted annually, from date of approval, for review and approval.

(i) The course, including the named advertised participants, must be conducted substantially as approved, including lunch and breaks shown on the approved agenda, subject to emergency withdrawals and alterations.

158:70-9-5. Continuing education

(a) **Continuing education hours.** No home inspection license shall be renewed unless the licensee has completed at least eight (8) credit hours, consisting of no more than two (2) hours of Ancillary Systems topics per year, of continuing education prior to the date of renewal.

(b) **Special approval requirements for continuing education.** All continuing education providers shall abide by the following requirements:

(1) Course content should be designed to update knowledge and improve inspection skills directly related to the components and systems described in Subchapter 1 of this Chapter.

(2) All courses shall be at least two (2) hours in length. Recommended curriculum for Committee approval may cover, but it is not limited to, the following topics related to residential real property of four or fewer residences: (Approval of Continuing Education material is not an endorsement or underwriting of the subject content or the presentation.)

(A) structural systems

(B) foundations, basements, grading and drainage

(C) interior walls, windows, doors, stairways, ceilings and floors

(D) exterior walls, windows, doors, and stairways

(E) exterior coatings, claddings and glazing

(F) roof structure, coverings, penetrations, drainage and attics

(G) porches, decks, driveways and walkways

(H) railings and assistive devices

(I) thermal insulation, air penetration, and moisture barriers

(J) electrical service entrances, panels, branch electrical circuits, connected devices

(K) environmental heating, cooling ventilation, and air conditioning devices, controls and distribution systems

(L) solid, liquid, and gas fuel heating systems

(M) electrical heating and cooling systems chimneys, ductwork, vents, fans and flues (including dryer vents)

(N) home inspection administrative subjects

(i) Oklahoma home inspection laws and regulations

(ii) Oklahoma Standards of Practice

(iii) ethics

(iv) Home Inspection documentation, forms and contracts

(v) Report writing and legal ramifications of report content

(O) Ancillary Systems

(i) Plumbing systems, controls, and components (including septic systems)

(ii) Water supply system, capacities, and components (drilled wells/community water supplies)

(iii) Swimming pools, spas and hot tubs

(iv) Solar/wind/generator energy systems

(v) Lawn irrigation systems

(vi) Energy auditing

(3) Unless provided after regular working hours, the training location shall be outside the regular work place.

(4) The CE provider shall return the sign-in sheets to the home inspection license unit.

(5) Complaint procedure.

(A) A person, government, or private organization may submit a written complaint to the Committee, or its designee, charging a provider of continuing education with a violation of the rules, and specifying the grounds for the complaint.

(B) Complaints must be in writing and include contact information, and shall be filed on the proper complaint form prescribed by the Construction Industries Board, or its designee.

(C) The Committee or its designee may consider an unsigned or anonymous complaint for further investigation.

(D) Upon receipt of a signed complaint form, a copy shall be sent to the continuing education provider addressed in the complaint. The continuing education provider shall provide a written response

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within fifteen (15) days. Upon receipt of the continuing education provider's written response, both complaint and response shall be considered by the Committee, or its designee, for appropriate action including dismissal of the complaint, further investigation, or a finding of violation of a statute or rule. The Committee, or its designee, shall notify both complainant and continuing education provider of the determination made by the Committee, or its designee for an anonymous complaint. Failure of the continuing education provider to respond will be considered as a violation of this rule.

(E) If a reasonable cause violation determination is made by the Committee, the Oklahoma Administrative Procedure Act shall be followed for all disciplinary proceedings undertaken including but not limited to all parts of this subsection.

[OAR Docket #17-597; filed 7-7-17]

TITLE 158. CONSTRUCTION INDUSTRIES BOARD CHAPTER 85. ROOFING CONTRACTOR REGISTRATION REGULATIONS

[OAR Docket #17-598]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 1. General Provisions
158:85-1-2 [AMENDED]
Subchapter 2. Registration and Endorsement Application and Renewal Requirements, Procedures, Fees, Duration, Military and Reciprocity
158:85-2-1 [AMENDED]
158:85-2-4 [AMENDED]
Subchapter 9. Endorsement Qualifications, Requirements, Examination and Continuing Education
158:85-9-3 [AMENDED]
158:85-9-4 [AMENDED]

AUTHORITY:
Construction Industries Board; 1000.4, 1151.2a, and 1151.4
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SUPERSEDED EMERGENCY ACTIONS:
n/a

INCORPORATIONS BY REFERENCE:
n/a

GIST/ANALYSIS:

Gist: The changes to the Roofing Contractor Registration Regulations add language clarifying existing rules and statutory authority; remove outdated, obsolete language; and add provisions required by Senate Bill 1083.

Analysis: The amendments correct punctuation and add definitions to provide the public a description of terms as the statutes have historically been applied by the agency; amend requirements for Workers' Compensation coverage pursuant to Senate Bill 1083 which became effective November 1, 2016; correct a scrivener's error which had resulted in conflicting rules related to the length of time that a commercial roofing endorsement can be expired before the former endorsement holder is required to make an initial application and retest to obtain the endorsement; establish a time limit by which an applicant for a commercial roofing endorsement must pass both portions of the commercial roofing endorsement exam before the applicant would be required to retake a portion they may have previously passed; clarify and amend procedures related to an applicant who violates exam procedures; remove obsolete, outdated verbiage; amend the deadline for submission of applications for continuing education course approval; clarify that approval of any type of continuing education course is rescinded upon the adoption of a different statewide code; clarify the manner in which continuing education programs must be conducted; and allow continuing education credit to be earned through teaching a course in an accredited trade school or a trade-specific program approved by the Committee of Roofing Examiners. The amendments may result in amendments/clarifications on existing forms or the creation of new forms.

CONTACT PERSON:

Linda Ruckman, Board Secretary/Executive Assistant, 405-521-6550.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF OCTOBER 1, 2017:

SUBCHAPTER 1. GENERAL PROVISIONS

158:85-1-2. Definitions

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

"Act" means Roofing Contractor Registration Act as found at 59 O.S. § 1151, *et seq.*

"Administrator" means the Administrator of the Board as described in the Construction Industries Board Act found at 59 O.S. § 1000.1, *et seq.*

"Advertise" means any written publication, dissemination, solicitation, contract, bid, promotional item, or circulation which is intended to directly or indirectly induce any person to contract for roofing construction services with the advertiser, including, but not limited to, business cards, telephone directory display advertisements, vehicle signage, radio, television and electronic solicitations.

"Applicant" means the qualifying party, or if no qualifying party, any person applying under the Roofing Contractor Registration Act for a roofing contractor registration to be issued by the Construction Industries Board. Applicant also means any person making application under the Act for endorsement, examination, roofing code variance, or continuing education program and instructor approval.

"Board" means the Oklahoma Construction Industries Board.

"Bonds and Insurance Unit" means the staff unit that processes bonds and insurance for all trades, under the direction of the Construction Industries Board.

"Business entity" means a person as defined in this Subchapter.

"Certificate of insurance" means a general liability policy in the amounts specified in 59 O.S. Section 1151.5(C)(4) for roofing contractor work for which the general liability policy includes the registration number, if any, the roofing firm name, and that the policy specifically covers roofing work, with the Construction Industries Board added as a certificate holder to be immediately provided notice in the event such liability policy is cancelled for any reason or expires for non-payment of premiums.

"Cheating" means any unapproved deviation from any official instruction given before, during or after a commercial endorsement examination, for the purpose of affecting or influencing the examination results or otherwise providing an undue advantage to any examinee.

"Commercial roofing contractor work" means work done on roofing systems or structures as defined as commercial in the International Building Code, as adopted by the Oklahoma Uniform Building Code Commission; except it does not mean buildings used for commercial purposes having equivalent or substantially the same roofing requirements as a "residence" defined herein, including but not limited to business offices converted from a structure that formerly was a residence.

"Committee" means the Committee of Roofing Examiners.

"Contracting" means engaging or offering to engage in any roofing work which requires a valid and appropriate registration or endorsement from the Construction Industries Board as required by the Roofing Contractor Registration Act.

"Credit Hour" or **"Hour"** means at least fifty (50) minutes of classroom instruction with a ten (10) minute break.

"Excluded from registration" means those for whom no registration or endorsement is required pursuant to 59 O.S. § 1151.2(18)(a) through (d) and 59 O.S. § 1151.9(B).

"Handyman" means, a person who is receiving compensation from the owner in an amount less than \$10,000.00 or a repair area covering less than 25% of the roofing surface and who is performing roofing work in conjunction with other repairs to the property and who does not perform more than two roofing repair jobs per calendar year. Any roofing repair jobs performed by a handyman in excess of two per calendar year are not excluded from the provisions of the Act. Roofing repair jobs estimated at \$10,000.00 or more or repair of an area covering 25% or more of the roofing surface and paid out at less than \$10,000.00 are not excluded.

"Hearing Board" means the Roofing Hearing Board created by the Act.

"Homeowner" means one who owns and resides in, or who resides in, or who contracts for the purchase, construction, remodeling or repairing of a residence.

"ICC" means the International Code Council.

"Nonresident contractor" means any contractor who has not established and maintained a place of business as a roofing

contractor in this state within the preceding year, or who claims residency in another state, or who has not submitted an income tax return as an Oklahoma resident within the preceding year.

"Oklahoma Uniform Building Code Commission" or **"OUBCC"** means the state agency created under 59 O.S. § 1000.20, *et seq.*, and authorized to adopt all building codes and standards for residential and commercial construction to be used as minimum standards by all entities within this State.

"Owner" means the person who owns the property or is a lessee of the property.

"Person" means any natural person, firm, limited or general partnership, corporation, association, limited liability company, trust, association, other legal entity and any organization capable of conducting business, or any combination thereof acting as a unit, unless the intent to give a more limited meaning is disclosed clearly by the Roofing Contractor Registration Act.

"Prime contractor" means a general contractor, commercial contractor, or other contractor who contracts directly with the owner for construction trade work in multiple trade areas.

"Project manager" means one who manages construction projects consisting of work involving multiple trades.

"Public contract" means a contract with the State of Oklahoma, its political subdivisions, or any board, commission, or department thereof, or with any board of county commissioners, or with any city council, school board, or with any state or municipal agency, or with any other public board, body, commission, or agency authorized to award contracts for the construction or reconstruction of public works and includes subcontracts undertaken to perform works covered by the original contract or any part thereof.

"Qualifying party" means a natural person who is an officer or owner of the corporation, a member of the limited liability company, or a general partner of the limited liability partnership, and who is actively engaged in the work undertaken by the registrant for which a registration is required pursuant to the Roofing Contractor Registration Act who meets the experience and ability requirements for registration on behalf of the registrant.

"Reciprocity agreement" means a written agreement between states whereby a person holding a roofing registration, endorsement or license in another state with substantially similar or greater requirements than Oklahoma may be registered and endorsed for commercial roofing work, if any, in this State after application and payment of a fee for registration and endorsement by reciprocity.

"Registrar" means the Construction Industries Board or any person designated by the Board to administer the provisions of the Roofing Contractor Registration Act.

"Registration" means the process of applying for an initial or renewal registration which upon approval is exhibited by a registration number and card issued pursuant to the Roofing Contractor Registration Act.

"Registration number" means the roofing registration number issued by the registrar to the registrant's qualifying party.

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"Registrant" means a holder of a registration issued pursuant to the Roofing Contractor Registration Act.

"Residence" means a single structure for residential occupancy or use which is a detached one- to four-family dwelling or a multiple single-family dwelling (townhouse) not more than three (3) stories/floors above grade plane in height with a separate means of egress, and which is intended for use as a primary habitation, and any appurtenances thereto shall be in compliance with the International Residential Code, as adopted by the Oklahoma Uniform Building Code Commission.

"Residential roofing contractor work" means work done on roofing systems as defined in the International Residential Code, as adopted by the Oklahoma Uniform Building Code Commission, or as defined as a "residence" herein; except for buildings used for commercial purposes having equivalent or substantially the same roofing requirements as a "residence" defined herein, including but not limited to business offices converted from a structure that formerly was a residence.

"Roofing contractor" means any person, including a subcontractor and nonresident contractor, engaged in the business of commercial or residential roofing contractor work as that term is defined and exclusions listed in 59 O.S. § 1151.2 and this Chapter.

"Roofing contractor work" means the installation, fabrication or assembly of equipment or systems included in commercial or residential roofing systems as defined in the International Building Code and the International Residential Code, as adopted by the Oklahoma Uniform Building Code Commission, and roofing construction work including, but not limited to, installation, renovation, remodeling, reroofing, reconstructing, repair, maintenance, improvement, alteration, and waterproofing, unless specifically excluded in the Roofing Contractor Registration Act.

"Roofing firm" means any person, as defined by the Act, offering to engage or engaging in roofing contractor work.

"Roofing Hearing Board" means the Hearing Board enacted pursuant to 59 O.S. § 1151.28 which shall consist of a designee of the Construction Industries Board, as chair, and the members of the Committee of Roofing Examiners acting in compliance with the provisions of the Construction Industries Board Act, rules and Article II of the Administrative Procedures Act

"Roofing Unit" means the staff and administrative support unit to the Committee of Roofing Examiners and the Roofing Hearing Board.

"Subcontractor" means one who contracts with a prime contractor, general contractor, residential contractor, project manager, property manager, another subcontractor, or another entity for roofing contractor work.

"Variance" means the use of an alternative material or method of construction from that prescribed in the International Building Code or the International Residential Code or other approved documents by the Oklahoma Uniform Building Code Commission, described as the standard of installation at OAC 158:85-1-4, for use at a particular location or project specified in the variance application.

"Variance and Appeals Board" means the Oklahoma State Roofing Installation Code Variance and Appeals Board enacted pursuant to 59 O.S. § 1151.29.

SUBCHAPTER 2. REGISTRATION AND ENDORSEMENT APPLICATION AND RENEWAL REQUIREMENTS, PROCEDURES, FEES, DURATION, MILITARY AND RECIPROCITY

158:85-2-1. Registration, insurance, and workers compensation coverage

(a) **Registration Requirement.**

(1) All persons performing roofing contractor work are required to apply and obtain from the Board a roofing registration number before advertising or engaging in the performance of roofing contractor work unless excluded under the Act. All persons performing commercial roofing contractor work as defined in this Chapter are required to apply and obtain from the Board a commercial endorsement to a roofing registration before advertising or engaging in the performance of commercial roofing contractor work unless excluded under the Act. The commercial endorsement is in addition to the registration. Roofing contractors who do not perform commercial roofing contractor work and only perform residential roofing contractor work do not need to obtain a commercial endorsement.

(2) Each roofing firm must have a person who is currently registered as a roofing contractor, and employed, full time, and who shall give full time to the supervision and control of operations necessary to ensure full compliance with the provisions of the Act and these Rules. Such contractor shall be an officer, partner or owner of that roofing firm, and shall be responsible for the work, registered, and endorsed if applicable, on behalf of that roofing firm.

(3) Applications for registration and commercial endorsement for any commercial roofing work shall be made to the Construction Industries Board in writing and under oath on forms approved and provided by the Board and shall be accompanied by the proper fee. If the registrar deems it appropriate or necessary, the registrar may also require other information to be included on the application form to assist the registrar in registering the person as a contractor.

(b) **Insurance.**

(1) Prior to engaging in roofing work, each person on an initial application process, and all roofing contractors submitting renewal applications, shall provide proof of financial responsibility by providing a certificate of insurance which indicates a minimum general liability policy of \$500,000.00 for residential roofing contractor work and \$1,000,000.00 for endorsement of commercial roofing contractor work. Proof that the general liability policy specifically includes coverage of roofing work must be provided by the insurance policy carrier to the registrar.

(2) Any insurance company issuing a liability policy to a roofing contractor pursuant to the provisions of the

Roofing Contractor Registration Act shall include the registration number, if any, the roofing firm name, and sufficient information to demonstrate the policy specifically covers roofing work; shall add the Construction Industries Board as a certificate holder; and shall be required to notify the Construction Industries Board in the event such liability policy is cancelled for any reason or expires for non-payment of premiums.

- (c) **Workers Compensation.** The residential roofing contractor shall submit proof that the residential roofing contractor has secured workers' compensation coverage satisfactory under the Workers' Compensation Act, or an affidavit of exemption or self-insurance as authorized pursuant to the Workers' Compensation Act which shall be maintained during all times of engaging in and performing residential roofing contractor work. All commercial roofing contractors shall maintain worker's compensation insurance coverage satisfactory under the Workers' Compensation Act and pursuant to Title 59 § 1151.22 on all commercial roofing contractor work. Any insurance company issuing a workers' compensation coverage policy to a roofing contractor pursuant to the provisions of the Roofing Contractor Registration Act shall include the registration number, if any, the roofing firm name, and sufficient information to demonstrate the policy specifically covers roofing work, add the Construction Industries Board as a certificate holder and shall be required to notify the Construction Industries Board in the event such liability policy is cancelled for any reason or expires for nonpayment of premiums.
- (d) **Failure to Provide.** Any person failing to provide certificate of insurance or worker's compensation information at the time of initial application may be refused registration or endorsement for incomplete information, and all current registrations and endorsements under the Roofing Contractor Registration Act shall be placed not in good standing on the date of the policy cancellation. The registrar must receive proof of insurance and workers compensation prior to restoring the registration and endorsement. Any registrations and endorsements remaining in not good standing may be suspended or revoked according to the Act.

158:85-2-4. Renewal of registration and endorsement

- (a) Applications for renewal of a registration and commercial endorsement shall be made to the Construction Industries Board in writing and under oath on forms approved and provided by the Board and shall be accompanied by the proper fee.
- (b) Any registration issued may be renewed by submitting the completed registration form, requirements and fee for the next year before the birth month expiration date.
- (c) Any endorsement issued may be renewed by submitting the completed registration and endorsement form, requirements and fee for the next year before the birth month expiration date, along with providing any applicable continuing education and insurance requirements. Before any commercial endorsement may be renewed, all applicable continuing education requirements must be met. Any endorsement which remains expired for longer than ~~two (2) years~~ one (1) year shall not be renewed. The former endorsement holder shall be

required to make an initial application and retest to obtain the endorsement.

- (d) A registration or endorsement renewed under the provision of this Chapter is effective when notice of such renewal is issued by the Construction Industries Board.

**SUBCHAPTER 9. ENDORSEMENT
QUALIFICATIONS, REQUIREMENTS,
EXAMINATION AND CONTINUING
EDUCATION**

158:85-9-3. Commercial endorsement examination

- (a) **Exam required.** A commercial endorsement cannot be issued until the applicant's roofing registration has been approved, all endorsement requirements met, and the qualifying party has passed the examination.
- (b) **Exam content.** The commercial endorsement examination may include, without limitation, the following parts:
- (1) Written questions consisting of open book problems based on the standards of installation for roofing adopted by the Oklahoma Uniform Building Code Commission at OAC 158:85-1-4.
 - (2) Practical shop, which shall also include written questions on job estimating and the laws and regulations relating to roofing contractors.
 - (3) The maximum grade value of each part of the examination shall be 100 points. A passing score is 70% or more on each part.
 - (4) The qualifying party shall present current identification before undertaking an examination.
- (c) **Exam procedures.**
- ~~(51) If the qualifying party does not pass the exam, the qualifying party may reapply for the exam and pay an additional retesting fee. However, no person will be allowed to retake an exam within thirty (30) days of the first failed exam or within ninety (90) days of the second or subsequently failed exam.~~
- (2) Applicants for a commercial endorsement must pass both portions (business/law and trade) of the roofing contractor endorsement exam. If an applicant for a commercial endorsement passes only one of the two portions of the required exam, the applicant need only retake the portion of the exam not passed if done within three (3) years of the date the Applicant is approved and eligible to sit for the commercial endorsement exam. Otherwise, the Applicant will need to retake both portions of the commercial endorsement exam.
- ~~(63) An examinee that is caught cheating during the course of an examination shall be deemed to have failed the examination. Any applicant who violates exam procedures as determined by the examination provider, including but not limited to cheating, misrepresenting oneself as another, or inappropriate actions during an examination may be immediately notified and expelled from the examination. Furthermore, the applicant's exam will be considered invalid and the applicant will be disqualified from retaking the exam for a period of~~

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time no less than 30 days and no more than 365 days as determined by the Administrator of the Construction Industries Board.

(ed) **Examination fees.** The Construction Industries Board, or its designated representative, may collect for the actual cost of any examination provided by the Act and this Chapter. Every person whose application for examination is approved shall be informed of the specific fee prior to sitting for the examination. The testing fee shall be the amount negotiated by the Administrator with a third-party provider in accordance with the provisions of the Oklahoma Central Purchasing Act. Documentation confirming the contractual fee shall be available upon request.

158:85-9-4. Continuing education

(a) **Continuing education required for endorsement renewal.** ~~Beginning on July 1, 2016, no~~ No roofing contractor commercial endorsement shall be renewed unless the endorsee has completed at least four (4) hours of continuing education within thirty-six (36) months preceding the ~~application for renewal~~ commercial endorsement expiration date; and thereafter, the endorsee shall complete four (4) hours every three (3) years or thirty-six (36) months preceding the commercial endorsement expiration date.

(b) Continuing education course requirements.

(1) The continuing education course and instructor shall be approved in advance by the Committee. Exceptions to advance approval, or post-course approval, may be allowed by the Committee, or its designee, for emergency situations when written notice of the emergency is provided to the Committee within seven (7) days of the course. The continuing education material shall cover codes and revisions adopted by the Oklahoma Uniform Building Code Commission or other trade related subject matters appropriate for topics of continuing education for endorseees and approved by the Committee including manufacturers' installation of materials or equipment, the registration act, the trade rules and regulations, and other trade or safety related subject matters approved by the Committee.

(2) Course content should be designed to update knowledge and improve roofing contracting knowledge and skills.

(3) Credit will be given for CE courses approved by the Committee of Roofing Examiners, or its designee.

(4) Except as provided herein, these rules shall apply to every registered roofing contractor commercial endorsement.

(5) An endorsee is excluded from the education requirements of these rules for three (3) years from the date he or she passed their current endorsement exam.

(c) **Standards.** The following standards will govern the approval of continuing education programs by the Committee of Roofing Examiners.

(1) The program provider shall submit evidence that the provider and instructional staff are qualified by reason of education, experience or training.

(2) Any written material that is distributed during the session shall be readable, of high quality and shall be made available to all attendees.

(3) The program shall be presented in a comfortable location such as hotel/motel conference room, corporate meeting room, or regular classroom.

(4) The training session shall be presented outside the regular workplace or after regular working hours. An on-site conference room, that meets standards imposed by (3) of this subsection, shall be considered outside the regular workplace.

(5) A credit hour means at least 50 minutes of classroom instruction with a 10 minute break.

(6) CE courses shall be presented in one of the following formats.

(A) Four (4) credit hours presented in one day.

(B) Two sessions of two credit hours each presented within a seven day period.

(C) One session of two credit hours of trade related instruction, Roofing Contractor Registration Act and/or Roofing Contractor Industry Regulations.

(D) An approved correspondence or online course.

(E) Another format approved by the Committee.

(7) Verification of Credit.

(A) The Course Provider shall verify the total number of continuing education hours completed by each attendee.

(B) Continuing education providers shall require attendees to present a current photo I.D. prior to the attendee signing the sign-in sheet form approved by the Construction Industries Board. Sign-in sheets shall include the name and registration number of each registrant in attendance.

(C) As soon as practicable but in any event on or before seven (7) days following an approved continuing education program, the provider shall furnish the original sign-in sheets from the course to the Roofing Unit of the Construction Industries Board.

(D) Providers shall maintain copies of all sign-in sheets for a period of two (2) years following the conclusion of the course.

(8) Course providers or instructors may not advertise or promote the sale of any goods, products or services between the opening and closing of any Continuing Education Course.

(d) Application procedures and requirements.

(1) In order to receive continuing education credit, a course must be approved by the Committee.

(2) A completed application form, with all supporting documentation, shall be submitted to the Construction Industries Board at least ~~sixty (60)~~ fifteen (15) days prior to the date of the Regular meeting of the Committee from which the applicant wants the course to be considered for approval, and at least thirty (30) days prior to the date for which the course is scheduled-start date.

(3) An application is to be submitted for each date, or dates, that constitute a single course.

- (4) Each course must be included on a separate application.
- (5) The application shall include the following information:
 - (A) Name and address of the provider.
 - (B) Contact person and his or her address, telephone number and fax number.
 - (C) The location of the courses or program.
 - (D) The number and type of education credit hours requested for each course.
 - (E) Topic outlines listing the summarized topics covered in each course.
 - (F) If a prior approved course has substantially changed, a summarization of these records.
 - (G) The names and qualifications of each instructor who is qualified in accordance with this Chapter.
 - (H) Information as to how the proposed course meets the standard in accordance with this Chapter.
 - (I) Supporting documents which shall include the following:
 - (i) A resume or brief summary of qualifications of all course developers and instructors.
 - (ii) A course agenda designating the beginning and ending of actual instruction times, sign-in times, breaks, lunches and any evaluation time.
 - (iii) A course curriculum indicating the subject or code areas to be taught with sufficient detail to determine which codes and codes revisions are to be addressed or the trade related instruction being provided and, if requested, a copy of any course materials.
- (6) Entities seeking to offer correspondence courses for continuing education must comply with the application procedures and requirements of this Subchapter and shall submit a course curriculum and study material for review and approval by the Committee prior to the courses being offered as continuing education. Approved correspondence courses shall be required to comply with all requirements for other continuing education courses except for sign-in sheets. Providers shall provide a student with a document of completion which certifies completion of approved correspondence courses.
- (7) Providers seeking to offer online courses for continuing education must comply with the application procedures and requirements of this Subchapter and shall submit a course curriculum and study material for review and approval by the Committee prior to the courses being offered as continuing education. An access code and password shall be provided to the Committee, or its designee, for an online course for the purpose of review and approval. Providers of an on-line course shall submit verification of four (4) hours of real time on-line instruction. Correspondence or online courses shall have sufficient explanation and or graphics to expound the concepts being taught. The format of the online course shall be constructed so as to illicit interaction between the student and the material presented. Each page of text shall be designed with a question that must be answered before advancing

to the next page or a test at the end of a subject matter before the course is considered complete. Approved online courses shall be required to comply with all requirements for other continuing education courses except for sign-in sheets. Providers shall provide a student with a document of completion that shall certify completion of an approved online course.

- (8) Approval of any course, including a correspondence or online course, is rescinded upon the adoption of a different statewide code and a new application showing updated course subject matter and materials is necessary in order to obtain updated course approval.
- (9) Applications for correspondence or online courses shall be resubmitted annually, from date of approval, for review and approval.
- (e) **Instructor requirements.** An instructor must be qualified and approved by the Committee. An instructor should have one of the following qualifications:
 - (1) Three (3) years of recent experience in the subject matter being taught, or
 - (2) A degree related to the subject area being taught, and two (2) years of recent experience in the subject area being taught, or
 - (3) Other educational, teaching, or professional qualifications determined by the Committee to constitute equivalent qualification to one or more of the qualifications in the previously stated sub-paragraphs of this paragraph.
- (f) **Committee of Roofing Examiners acceptance.**
 - (1) The Committee, or its designee, will review each application for completeness of form and supporting documentation, as well as course content.
 - (2) The approval of any course or instructor will be made by a majority vote of the Committee at the regularly scheduled meeting of the Committee of Roofing Examiners.
 - (3) The Committee's designee may approve additional dates and locations after the course and instructor have been approved by Committee vote. Substantive change to course content must be brought before the Committee for approval.
 - (4) The applicant will be notified in writing whether the program is approved or disapproved, and the reason for disapproval.
- (g) **Committee rejection and reevaluation of a course.**
 - (1) The Committee, or its designee, may refuse to accept any application for approval if the supporting documentation is insufficient or incomplete. The Committee may deny or revoke approval of an application for any of the following reasons.
 - (A) Failure to comply with the continuing education provisions.
 - (B) Inadequate application or supporting documentation.
 - (C) Failure to instruct on topic approved.
 - (D) Inadequate experience of program developer or instructor.
 - (E) Unsatisfactory evaluation of the course instructor or materials from previous classes.

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- (2) The Committee may, at any time, re-evaluate and grant or revoke approval of application, course, or instructor.
- (3) The Committee may, at any time, review courses for quality of instruction. The Committee may also investigate complaints regarding approved courses. The Committee may then take appropriate action, up to and including revocation of authority to provide CE courses.
- (4) A provider's failure to comply with any continuing education rule constitutes grounds for disciplinary action, up to and including revocation of authority to provide CE, against the provider or for denial of future applications for course work.
- (5) The Committee, or its designee, will notify the provider, in writing, of any changes in approval status.
- (h) **Appeals.**
- (1) Applicants denied approval of a course may appeal such a decision by submitting a written letter of appeal to the committee within fifteen days of the receipt of the notice.
- (2) All appeals will be heard by the Committee at its next regularly scheduled meeting.
- (i) **Course presentation.**
- (1) The course program, including the named advertised participants, ~~shall~~ must be conducted substantially as approved by the committee, including lunch and breaks shown on the approved agenda, subject to emergency withdrawals and minor alterations.
- (2) Changes including but not limited to location, date, instructors, or cancellations must be requested from the Committee, or its designee, in writing prior to start of class. All requests for change must include the course ID number.
- (j) **Course advertisement.**
- (1) All advertising must include the course ID number.
- (2) Approved program courses may be advertised.
- (3) The provider of an approved continuing education program may announce or indicate as follows: Course # has been approved by the Construction Industries Board Committee of Roofing Examiners for "x" hours of CE credit.
- (k) **Correspondence and online courses.**
- (1) Applications, approvals and rejections, and appeals of all correspondence and online courses shall be the same as for classroom-based courses.
- (2) Correspondence courses shall be required to comply with all requirements of continuous education courses, except sign-in sheets.
- (3) An access code and password shall be provided to the Committee, or its designee, for an online course for the purpose of review and approval. Correspondence or online courses shall have sufficient explanation and or graphics to expound the concepts and changes being taught. The format of the online course shall be constructed so as to illicit interaction between the student and the material presented. Each page of text shall be designed with a question that must be answered before advancing to the next page or a test at the end of a subject matter before the course is considered complete.
- (4) Providers of an on-line course shall submit verification of four (4) hours of real time on-line instruction.
- (5) Course providers shall provide a student with a document of completion which certifies completion of approved correspondence course.
- (6) Applications shall be resubmitted annually, from date of approval, for review and approval.
- (l) **Alternate credit method accrual.**
- (1) Credit may be earned through teaching an approved continuing education course. The Committee may award up to four (4) hours of CE credit, not to exceed the number of approved hours for that CE course.
- (2) Credit may also be earned through teaching a course in an accredited trade school or a trade-specific program approved by the Committee. The Committee may award up to four (4) hours of CE credit for each semester of academic credit awarded by the academic institution for the course.
- (m) **Exception to continuing education requirement.** Continuing education is not required for roofing registration (residential work) only.
- (n) **Course, instructor, and provider complaint procedure.**
- (1) A person, government, or private organization may submit a written complaint to the Committee, or its designee, charging a provider of continuing education with a violation of the rules, and specifying the grounds for the complaint.
- (2) Complaints must be in writing and include contact information, and shall be filed on the proper complaint form prescribed by the Construction Industries Board, or its designee.
- (3) The Committee may consider an unsigned or anonymous complaint for further investigation.
- (4) Upon receipt of a signed complaint form, a copy shall be sent to the continuing education provider addressed in the complaint. The continuing education provider shall provide a written response within fifteen days. Upon receipt of the continuing education provider's written response, both complaint and response shall be considered by the Committee, or its designee, for appropriate action including dismissal of the complaint, further investigation, denying future course or instructor approval, or a finding of violation of a statute or rule. The Committee, or its designee, shall notify both complainant and continuing education provider of the determination made by the Committee. Failure of the continuing education provider to respond will be considered as a violation of this rule and an admission of the allegations in the complaint.
- (5) If a reasonable cause violation determination is made by the Committee, the Oklahoma Administrative

Procedure Act shall be followed for all disciplinary proceedings undertaken including but not limited to all parts of this subsection.

[OAR Docket #17-598; filed 7-7-17]

**TITLE 165. CORPORATION COMMISSION
CHAPTER 5. RULES OF PRACTICE**

[OAR Docket #17-511]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 1. General Provisions
 - Part 1. General
 - 165:5-1-3. Definitions [AMENDED]
 - 165:5-1-4. Office location; office hours; records [AMENDED]
 - 165:5-1-5. Filing of documents [AMENDED]
 - 165:5-1-9. Telephonic or videoconferencing testimony [AMENDED]
 - Part 3. Review of Environmental Permit Applications
 - 165:5-1-17. Application submittal [AMENDED]
 - 165:5-1-18. Extension of review period [AMENDED]
 - Part 5. Response to Citizen Environmental Complaints
 - 165:5-1-26. Receipt of pollution complaints [AMENDED]
 - 165:5-1-27. Review of pollution complaints [AMENDED]
 - 165:5-1-28. Closure [AMENDED]
 - 165:5-1-29. Pollution complaint resolution [AMENDED]
 - 165:5-1-30. Reporting [AMENDED]
 - Subchapter 3. Fees
 - Part 1. General Provisions
 - 165:5-3-1. Fees [AMENDED]
 - Subchapter 5. Dockets
 - 165:5-5-1. Dockets; identifying initials [AMENDED]
 - Subchapter 7. Commencement of a Cause
 - Part 1. General
 - 165:5-7-1. General application and notice requirements [AMENDED]
 - Part 3. Oil and Gas
 - 165:5-7-15. Tertiary crude oil recovery project certification [REVOKED]
 - 165:5-7-30. Amending existing orders or permits authorizing injection for enhanced recovery, saltwater disposal, or LPG storage wells [AMENDED]
 - 165:5-7-40. Oil and gas conservation and pollution rulemakings [AMENDED]
 - Part 5. Public Utilities
 - 165:5-7-60. Reciprocity of final orders between states-electric companies [AMENDED]
 - Subchapter 13. Initial and Subsequent Proceedings
 - 165:5-13-1. Sessions and hearings [AMENDED]
 - 165:5-13-3. Hearings [AMENDED]
 - 165:5-13-3.1. Optional procedure for spacing related applications [AMENDED]
 - 165:5-13-4. Report of Administrative Law Judge [AMENDED]
 - Subchapter 15. Orders
 - 165:5-15-1. General form and procedure [AMENDED]
 - Subchapter 21. Procedure for the Petroleum Storage Tank Docket
 - 165:5-21-3.1. Applications to close a storage tank in place [NEW]
 - Appendix J. Witness Identification Form [REVOKED]
 - Appendix J. Witness Identification Form [NEW]

AUTHORITY:

Oklahoma Corporation Commission; 17 O.S. § 52, 17 O.S. §§ 139.101 *et seq.*, 17 O.S. § 152, 17 O.S. § 166.1, 17 O.S. § 166.1a, 17 O.S. §§ 301 *et seq.*, 20 O.S. § 106.4, 27A O.S. § 1-3-101, 52 O.S. § 97, 52 O.S. § 139, Article IX, Sections 18 and 19 of the Oklahoma Constitution, and OAC 165:5-1-7

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

Although the Oklahoma Corporation Commission is not subject to the requirements of Executive Order No. 2013-34, the proposed rules were submitted to the Governor and Cabinet Secretary on January 25, 2017

COMMENT PERIOD:

January 25, 2017, through March 10, 2017

PUBLIC HEARING:

March 27, 2017

ADOPTION:

March 27, 2017

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

March 30, 2017

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 13, 2017

FINAL ADOPTION:

June 13, 2017

EFFECTIVE:

September 11, 2017

SUPERSEDED EMERGENCY ACTIONS:

Superseded rules:

Subchapter 21. Procedure for the Petroleum Storage Tank Docket 165:5-21-3.1. Applications to close a storage tank in place [NEW]

Gubernatorial approval:

September 30, 2016

Register Publication:

34 Ok Reg 53

Docket number:

16-760

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

As the Crude Oil Windfall Profit Tax Act was repealed on August 23, 1988, in Pub. Law 100-418, OAC 165:5-7-15 regarding applications for certification of tertiary recovery projects pursuant to the provisions of the Crude Oil Windfall Profit Tax Act of 1980 is revoked. Other rules were adopted in efforts to update, streamline, clarify, and establish new rules concerning the Rules of Practice, including, but not limited to, designation of a new Oklahoma Universal Service Fund (OUSF) docket for causes relating to funding from the Oklahoma Universal Service Fund, the Oklahoma Lifeline Fund, submissions regarding OUSF administrative preapproval requests and the OUSF fee assessment, addressing procedures for the presentation of telephonic and videoconferencing testimony during hearings, modify processes concerning reciprocity of final orders between states with respect to electric companies, and to provide for an administrative review procedure regarding applications to permanently close underground storage tanks in place.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 1. GENERAL PROVISIONS

PART 1. GENERAL

165:5-1-3. Definitions

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

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

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"Applicant" means any person commencing a proceeding.

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

"Attorney" means a licensed attorney currently admitted to practice before the Supreme Court of Oklahoma, or an attorney currently licensed to practice in another state who is granted under principles of reciprocity permission to appear in proceedings of the Commission.

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

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

"Commissioner" means a member of the Commission.

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

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

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

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

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

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

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

"File(d)" or "filing" means tender of documents in Commission proceedings to, and acceptance by, the Court Clerk. Upon implementation of the Electronic Filing System, electronic filing will be the Commission's preferred filing method pursuant to OAC 165:5-1-5, and all persons tendering documents to the Court Clerk will be expected to tender them electronically to the greatest extent possible as directed by the Court Clerk. Facsimile transfers pursuant to OAC 165:5-1-5(f) shall not be construed as electronic filing.

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

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

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

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

"Oil and Gas Appellate Referee" means a duly licensed attorney in the State of Oklahoma who is familiar with statutes

and rules governing oil and gas operations in Oklahoma who shall provide central support to the Commission en banc in the hearing of oil and gas matters before the Commission en banc.

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

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

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

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

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

- (A) Preliminary exhibits, including pleadings, motions, notices, and proof of publication;
- (B) Transcript of proceedings at all hearings or the electronic recording of hearings or proceedings as provided by OAC 165:5-13-1(d);
- (C) Depositions, stipulations, interrogatories and answers, written testimony, offers of proof, and similar matters;
- (D) Exhibits, together with attachments, appendices, and amendments thereto;
- (E) Initial Report of the Administrative Law Judge and Report of the Oil and Gas Appellate Referee, if any;
- (F) Exceptions and motions subsequent to the hearing;
- (G) Orders or rules of the Commission; and
- (H) Any other document or matter relevant to the issues ordered to be included by the Commission.

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

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

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

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

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

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

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

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

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

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

"**Website**" means the Commission website.

165:5-1-4. Office location; office hours; records

(a) **Principal office.** The principal office of the Oklahoma Corporation Commission is in the Jim Thorpe Building, 2101 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105. The mailing address is P. O. Box 52000, Oklahoma City, Oklahoma, 73152-2000.

(b) **Regional service areas.** The Commission has two regional service areas described as the Eastern Regional Service Area and the Western Regional Service Area. The Eastern Regional Service Area shall consist of the land east of Oklahoma State Highway 99. The Western Regional Service Area shall consist of the land west of that highway. The establishment of these regional service areas shall not limit the services available from either regional service office.

(c) **Eastern regional service office.** In the Eastern Regional Service Area, the Commission maintains a regional service office located at 440 South Houston, Suite 114, Tulsa, Oklahoma, 74127.

(d) **Western regional service office.** In the western regional service area, the Commission's principal office serves as the regional service office.

(e) **Telephonic communication service.** The Office of Administrative Proceedings shall develop and maintain a system for providing telephonic communication service for all hearings.

(f) **Office hours.** For each regional service office or other office described in (a) through (d) of this Section, office hours shall be from 8:00 a.m. to 4:30 p.m., each day except Saturday, Sunday, and any legal holiday proclaimed by the Governor or official agency closing. Public records may be viewed during

regular office hours. Copies of public records may be obtained from 8:00 a.m. to 4:00 p.m.

(g) **Exercise of Commission authority.** The Commission, or any person exercising its authority, may meet and exercise its official powers and functions at any location in the State of Oklahoma.

(h) **Oil and gas filings.** Applications for oil and gas development, administrative applications, and any other related oil and gas matters may be filed in any regional service office.

(i) **Central records.** The central record of all filings with all regional service offices shall be maintained in the regional service office of the Corporation Commission located in Oklahoma City.

(j) **Court Clerk.** Every oil-and-gas-related document or order tendered to the Court Clerk shall be filed, deposited with, or mailed to the Court Clerk at a regional service office unless the Commission directs otherwise. All documents related to other matters shall be filed, deposited with, or mailed to the Court Clerk at the Commission's principal office unless the Commission directs otherwise. All persons filing, mailing or presenting documents, including orders, to the Court Clerk or Office of Administrative Proceedings shall enclose a self-addressed postage paid envelope large enough for the return of a file-stamped or processed copy, provided that a document other than a proposed order may be hand-delivered to the Court Clerk during normal business hours without such an envelope so long as a file-stamped copy of the document is immediately obtained by the presenter. Failure to enclose a self-addressed postage paid envelope will result in a file-stamped or processed document not being returned. No document will be mailed to anyone who obtains an immediate file-stamped copy. All documents shall be deemed received upon the date file-stamped by the Court Clerk, subject to the provisions of 165:5-1-5(f). Filing of any document shall not be complete except upon payment of all applicable fees required by law or by the rules of this Chapter. Filing of any document with the Court Clerk shall be deemed filing with the Secretary.

165:5-1-5. Filing of documents

(a) **Document form.** Electronic filing is the Commission's preferred filing method. All persons filing documents with the Court Clerk ~~are encouraged to~~ shall file electronically to the greatest extent possible as directed by the Court Clerk. Documents filed with the Court Clerk in paper format may be printed, typewritten or reproduced by any legible method. All documents filed in paper format must be single-sided on 8 1/2" x 11" paper and ready for digital processing by the Court Clerk. Exceptions to the required document size may be allowed by the Court Clerk for good cause shown. Exact duplicates of any allowed documents must be filed in sections on 8 1/2" X 11" paper to allow for digital processing by the Court Clerk. Quotations shall be indented. Subsequent to the filing of the original application, every page of documents filed with the Court Clerk shall contain a page number, the applicable subject matter docket listed in OAC 165:5-5-1(a), the docket number assigned to the cause by the Court Clerk, and document type, e.g., application, motion, response, or brief. All filed documents must have a continuous pagination for the entire

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document, including exhibits and attachments. The original application shall include all this information, except the docket number, on each page.

(b) **Filing refused/stricken by motion.** ~~The Court Clerk is authorized to refuse to accept for~~ Upon the motion of the Commission or Administrative Law Judge, or the filing of a motion pursuant to OAC 165:5-9-2(b), the Administrative Law Judge is authorized to recommend to the Commission an order to strike the filing of any document containing defamatory, scurrilous or improper language, or otherwise in violation of any of the rules of this Chapter. In case of such ~~refusal, recommendation to grant a motion to strike a filed document, upon request,~~ the subject document shall be presented to the Commission for ruling on acceptability for filing.

(c) **Required information.** The requirements of this subsection shall not be jurisdictional. All documents shall include the party's or attorney's actual or electronic signature, typed name, business mailing address, telephone number, facsimile number and electronic mail address, if any. A registered user must provide an electronic mail address at the time the registered user files his or her entry of appearance or other initial filing. All documents, except notices of hearing, signed by an attorney shall contain the name of the State Bar Association to which the attorney belongs and his/her State Bar Association number.

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

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

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

165:5-1-9. Telephonic or videoconferencing testimony

(a) In an unopposed hearing, testimony may be offered by telephone or videoconferencing connection, unless the Commission or Administrative Law Judge determines that the

presence of the witnesses in the courtroom is necessary for the effective and efficient presentation of evidence.

(b) In a protested hearing, testimony may be offered by telephone or videoconferencing connection with the consent of all parties of record and the Commission or Administrative Law Judge. It shall be the responsibility of the proponent of telephonic or videoconferencing testimony to obtain the required consent before the hearing. No continuance shall be granted for failure to obtain the required.

(c) The cost of telephonic or videoconferencing communication shall be paid by the party requesting its use. If participation through a videoconferencing connection in a proceeding is sought by consent, the proponent must indicate the capability to establish the videoconference using its own digital device or other means of access.

(d) Each witness testifying by telephone or videoconferencing connection shall be required to sign an affidavit verifying the witness' identity, unless the circumstances of the videoconferencing testimony enable the Commission or Administrative Law Judge to verify the identity of the witness. Said affidavit, if necessary, shall be filed in the cause prior to the issuance of an order. A copy of the filed affidavit shall be submitted to the Commission or Administrative Law Judge. Appendix "J" to this Chapter contains a sample affidavit.

(e) If an interested party intends to participate in the hearing by telephone or videoconferencing connection, said party shall so notify the Applicant, prior to the hearing date.

(f) Applicant or applicant's attorney shall be responsible for announcing at docket call those parties who plan to testify or otherwise participate by telephone or videoconferencing connection.

PART 3. REVIEW OF ENVIRONMENTAL PERMIT APPLICATIONS

165:5-1-17. Application submittal

Each Division shall make available to the public, for each type of environmental permit required, permit application forms and instructions that clearly delineate the information necessary for a permit application to be deemed administratively complete. Upon determining that an application is not administratively complete, the Division shall immediately notify the applicant by mail, facsimile or electronic mail and shall indicate with reasonable specificity the inadequacies and measures necessary to complete the application. Upon such notification, and until receipt of the supplemental information requested, the sixty (60) day environmental permit review period shall be suspended.

165:5-1-18. Extension of review period

The 60-day administrative review period set forth in 165:5-1-16 may be extended:

- (1) By written agreement with the applicant pending submission of Division requested supplemental information deemed necessary for adequate Division review.
- (2) If circumstances beyond the Division's control prevents it from reaching a determination within sixty (60)

days. The applicant shall be notified in writing by mail, facsimile, or electronic mail of the reasons for delay and of the anticipated date of review completion.

PART 5. RESPONSE TO CITIZEN ENVIRONMENTAL COMPLAINTS

165:5-1-26. Receipt of pollution complaints

- (a) Any pollution complaint received by the Commission or any of its Divisions, including any regional or district offices, shall be recorded immediately upon receipt in such format as the Commission may designate.
- (b) A written acknowledgement of pollution complaint receipt will be sent by mail, facsimile, or electronic mail to the complainant, alleged violator, and other relevant parties, if known, within two (2) business days following receipt of the pollution complaint and shall provide the status of the pollution complaint at that time.

165:5-1-27. Review of pollution complaints

- (a) The appropriate Divisions of the Commission shall immediately review each pollution complaint and immediately, in writing, by mail, facsimile, or electronic mail, refer any pollution complaint concerning a site or facility permitted by or clearly within the jurisdiction of another state or federal environmental agency, to that agency or agencies for resolution.
- (b) Pollution complaints that are not referred shall be reasonably and sufficiently investigated, which may include on site inspection, to determine whether or not a response action or actions should be initiated by the Commission.

165:5-1-28. Closure

Pollution complaints referred to other agencies, pollution complaints that involve issues not within the Commission's jurisdiction, and pollution complaints that involve issues for which an adequate remedy has already been implemented to the extent possible shall be closed in writing and a copy of the referral or other closure document shall be sent by mail, facsimile, or electronic mail to the complainant, alleged violator, and other relevant parties, if known, within seven (7) days of closure.

165:5-1-29. Pollution complaint resolution

- (a) All pollution complaints received by the Commission that are not closed pursuant to 165:5-1-28, and that involve issues over which the Commission has jurisdiction, shall be handled in such manner as to ensure that pollution complaint resolution shall be achieved within 180 days of receipt of the pollution complaint.
- (b) Pollution complaint resolution is not achieved until a written determination is made by the Commission, or any duly authorized representative of the Commission, that:
 - (1) the facts and circumstances of a pollution complaint do not constitute a violation of law or rule within the Commission's jurisdiction; or

- (2) the facts and circumstances of a pollution complaint constitute a violation of law or rule within the Commission's jurisdiction but for which an adequate remedy including abatement and mitigation of pollution or appropriate punishment has been implemented to the extent possible; or
- (3) the facts and circumstances of a pollution complaint constitute a violation of law or rule within the Commission's jurisdiction and for which an individual proceeding has been initiated before the Commission, an Administrative Law Judge of the Commission, or before a court of competent authority; or
- (4) a long term site remediation has been initiated that is expected to take longer than 180 days from receipt of the pollution complaint to complete, and such remediation is being performed pursuant to an administrative or judicial order.
- (c) A copy of the written determination shall be sent, by mail, facsimile, or electronic mail, within seven (7) days of its preparation, to the complainant, alleged violator, and other relevant parties, if known.

165:5-1-30. Reporting

- (a) All pollution complaints as defined in this Part shall be summarized monthly and the previous month's summary reported to the Conservation Commission as required by 27A O.S. § 3-2-107. When a pollution complaint has been resolved as provided in this Part, it shall be reported to the Conservation Commission as resolved and removed from all subsequent monthly reports.
- (b) All final judicial decisions regarding pollution complaints will be conveyed by mail, facsimile, or electronic mail to the complainant, alleged violator, and other relevant parties, if known, within seven (7) days of Commission knowledge of the decision and shall also be reported to the Oklahoma Conservation Commission.
- (c) All remediations completed in accordance with an administrative or judicial order shall be summarized in writing, including a description of the final outcome and the results of any required final environmental analyses performed on site, and a copy of the summary conveyed to the complainant, alleged violator, and other relevant parties, if known. The completion of the remediation shall also be reported to the Conservation Commission.

SUBCHAPTER 3. FEES

PART 1. GENERAL PROVISIONS

165:5-3-1. Fees

- (a) **General.**
 - (1) **Exceptions to filing fees.** For each initial application in each category listed in (b) of this Section, a filing fee shall be paid by the person seeking to file or submit the

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document, unless the document is filed under authorization of and in the name of an instrumentality of the State of Oklahoma.

(A) Filing fees shall not apply to any subsequent pleading or amended application except a Form 1000 required in OAC 165:10-3-1(b)(1)(A) through (E) and OAC 165:10-3-1(c).

(B) No filing fee shall be required for any application filed pursuant to OAC 165:5-3-31, Use of vacuum.

(C) No filing fee applicable to the conservation docket shall be required for any Notice of Intent to Mediate filed with the Office of Administrative Proceedings pursuant to OAC 165:5-23-1 et seq. A per participant fee provided in OAC 165:5-3-1(b)(1)(H) shall be charged for any informal dispute resolution procedure that commences.

(D) No filing fee shall be paid by a party filing a protest to an adverse action of the Commission pursuant to the International Fuel Tax Agreement ("IFTA") or the International Registration Plan ("IRP").

(E) No filing fee shall be paid by a customer filing a Consumer Services docket application against a public utility.

(F) No filing fee shall be required for any application filed on the Oklahoma Universal Service Fund ("OUSF") docket.

(2) **Filing fees.** Any filing fee assessed by this Section shall be due and paid at the time of filing of the document. Neither the Court Clerk's Office nor any division of the Commission shall accept an application subject to a filing fee until the required fee is paid. No filing fee shall be refundable. For documents that are being filed in paper form, all associated filing fees must be paid and the documents submitted to the Court Clerk's Office for filing prior to 4:00 p.m. to allow for document processing within established hours of operation.

(3) **Other fees.** Any other fee assessed by this Section shall be due and payable at the time the service is requested. No service shall be rendered before payment of the prescribed fee. No such other fee shall be refundable.

(4) **Negotiable instruments.** Fees paid by negotiable instruments shall be made payable to the "Oklahoma Corporation Commission." Negotiable instruments include personal checks, cashier checks, certified checks, and money orders. Foreign checks must be payable through a United States bank in United States funds.

(5) All fees pertaining to the Petroleum Storage Tank Division are listed in OAC 165:5-3-2.

(b) **Schedule of filing fees.**

(1) **Oil and gas fees.**

(A) Commercial disposal well application - \$1,000.00

(B) Commercial earthen pit application - \$1,000.00

(C) Commercial soil farming site application - \$1,000.00

(D) Commercial recycling facility application - \$1,000.00

(E) Conservation docket and pollution docket base applications - \$100.00

(F) Permit to drill - \$175.00

(G) Emergency walk-thru permit to drill - \$500.00

(H) Notice of Intent to Mediate pursuant to Chapter 23 of this Chapter - \$5.00 per participant

(I) Permit for one-time land application of water based fluids - \$100.00

(J) Emergency walk-through of permit for one-time land application water based fluids - \$200.00

(K) Application for non-commercial injection or disposal well - \$100.00

(L) Emergency application on the conservation or pollution docket - \$100.00

(M) Tax exemption application filed pursuant to OAC 165:10-21 - \$100.00

(N) Transfers of well operatorship - Forms 1073 and 1073I B single well - \$25.00

(O) Transfers of well operatorship - Forms 1073IMW and 1073MW B multiple wells - \$250.00

(P) Notification of intent to plug B Form 1001 - \$100.00

(2) **Transportation fees.**

(A) Transportation docket application - \$100.00

(B) Other transportation fees:

(i) Intrastate license and certificate fees.

(I) Original application filing fee - \$100.00

(II) Sub application filing fee - \$100.00

(III) Renewal application filing fee - \$50.00

(IV) Reinstatement application filing fee - \$100.00

(V) Name change application filing fee - \$50.00

(VI) Identification device or per vehicle fee - \$7.00

(ii) Deleterious Substance License Permit application filing fee - \$350.00

(iii) International Fuel Tax Agreement (IFTA) fees.

(I) IFTA decal - \$2.00 per vehicle per decal set

(II) IFTA reinstatement fee - \$100.00

(iv) Trailer registration processing fee per trailer registered through the IRP System - \$2.00

(v) Temporary registration and fuel permit fees.

(I) Temporary registration (72 hour trip permit) - \$12.00

(II) Temporary fuel permit (120 hours) - \$25.00

(III) Unladen or hunters permit (45 days) - \$25.00

(vi) Harvest permit fees (power units only).

(I) Thirty day permit - \$20.00 per axle

- (II) Sixty day permit - \$35.00 per axle
- (III) 15 day extension - \$8.75 per axle
- (vii) Transportation Network Company annual permit fee - \$5,000.00
- (3) **Utility fee.** Public utility docket application - \$100.00
- (4) **Enforcement fee.** Enforcement docket application - \$100.00
- (c) **Certified copies.** A fee of \$1.00 per copied page is charged for each copy of an order or other document on file with the Commission certified by the Secretary, in addition to the fees specified in (d) of this Section.
- (d) **Other fees.** The following fees shall be charged and collected at the time of request for same; none of which shall ever be refundable:
 - (1) Certificate of non-development (maximum of one quarter section) - \$10.00
 - (2) Copies of any file or order -
 - (A) Non-certified copies - \$0.25 per page; certified copies \$1.00 per page
 - (B) Postage B actual cost
 - (3) Microfilmed images from coin-operated microfilm reader (coin box) - \$0.25
 - (4) Batch reproduction on continuing basis (per page) - \$0.25
 - (5) Copy of any document prepared in OCC offices (per page) - \$0.25
 - (6) Copy of any Chapter of Commission rules and regulations - \$10.00
 - (7) Copy of Oil and Gas Conservation rules - \$20.00
 - (8) Current ownership/lienholder information - \$1.00 per vehicle record page
 - (9) Computer generated title history - \$5.00 per vehicle
 - (10) Manual title history - \$7.50 per vehicle
 - (11) Copy of lien release - \$7.50 per vehicle
 - (12) Certified copy of lien release - \$10.00 per vehicle
 - (13) Certified copy of title history - \$10.00 per vehicle
- (e) **Computer data processing documents.** Reproduction of documents or informational searches involving computer data processing services will be in accordance with the rates established by the Oklahoma Office of Management and Enterprise Services.
- (f) **Document search fee.** Except where provided otherwise by law, where the request for document copying and/or mechanical reproduction is solely for commercial purpose or clearly would cause excessive disruption of the Commission's essential functions, then a fee of \$10.00 per hour (minimum of one hour) shall be charged to recover the direct cost of document search.
- (g) **Fax.** A service charge of \$5.00 plus \$1.00 per page will be assessed for all outgoing faxes. All incoming faxes for persons not associated with the Commission shall be assessed a copy fee of \$0.25 per page including the cover page.
- (h) **Payments by Credit Card and other means of electronic funds transfer.**
 - (1) "Nationally recognized" credit card means any instrument or device, whether known as a credit card,

- credit plate, charge plate, debit card, or by any other name, issued with or without fee by an issuer for the use of the cardholder in lieu of a check, as defined by 12A Oklahoma Statute § 3-104(f), in obtaining goods, services or anything else of value or for the use of the cardholder in obtaining such goods, services, or anything else of value on credit and which, in either case, is accepted by over one thousand merchants in this state. The Oklahoma Corporation Commission shall determine which nationally recognized credit card will be accepted for any payments due and owing to the Oklahoma Corporation Commission.
- (2) Implementation of payment by nationally recognized credit card and other means of electronic funds transfer will be phased in over a period of time as determined by the Commission.
- (3) The Oklahoma Corporation Commission will verify that sufficient credit is available before acceptance of credit card to insure that no loss of state revenue will occur by the use of such card.
 - (A) If a person is at a designated receiving point and credit is not available, the person then has the opportunity to pay by other methods accepted by the Commission.
 - (B) If a person mails in the credit card information and credit is not available, the transaction will be handled as one with no remittance and a bill will be forthcoming.
- (4) The Oklahoma Corporation Commission may add an amount equal to the amount of the service charge incurred, not to exceed four percent (4%) of the amount of such payment as a service charge for the acceptance of such nationally recognized card.
- (5) Persons wishing to pay by credit card must be willing to submit normally required credit card information to the Commission. This includes, but is not limited to: card type (VISA, etc.), card number, card expiration date, card holder name as shown, and three digit security personal identification number (PIN). The Commission assumes no liability for unauthorized use of this information.
- (6) "Electronic funds transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct or authorize a financial institution to debit or credit an account.
- (7) "Electronic terminal" means an electronic device, other than a telephone operated by a person, through which a person may initiate an electronic funds transfer.
- (8) "Financial institution" means a State or National bank, a State or Federal savings and loan association, a mutual savings bank, a State or Federal credit union, or any other person who, directly or indirectly, holds an account belonging to another person.
- (9) "State" means any State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any political subdivision of any of the foregoing.

SUBCHAPTER 5. DOCKETS

165:5-5-1. Dockets; identifying initials

(a) **Subject matter dockets.** Subject matter dockets shall be maintained by the Court Clerk, with identifying initials preceding the docket number as follows:

- (1) General Docket (GD), which shall consist of causes not coming within the purview of any other docket listed below.
- (2) Conservation Docket (CD), which shall consist of causes to prevent waste and protect or adjust the correlative rights of parties owning interests in the common source of supply or unitized management of a common source of supply including, but not limited to, spacing, increased density, location exception, pooling and unitization.
- (3) Consumer Services Docket (CS), which shall consist of causes initiated by (A) the Director of the Consumer Services Division against a retail public utility or (B) a customer against the customer's regulated utility provider of telecommunications, electricity, natural gas, water, steam or other regulated service of a public utility seeking to require the utility to abide by approved tariffs, state statutes, Commission rules, or Commission orders. Public utility includes public utilities and telecommunications carriers as defined by 17 Okla. Stat. §§ 41, 139.102 and 151.
- (4) Enforcement Docket (EN), which shall consist of causes initiated by the Commission or any of its directors, the Attorney General of Oklahoma, or other affected parties to find parties in contempt of Commission rules or to require compliance of parties with applicable statutes, rules, and Commission orders.
- (5) Gas Gathering Docket (GG), which shall consist of causes initiated for determination of reasonable fees and terms or conditions of service related to open access to natural gas gathering systems.
- (6) Motor Carrier Citation Docket (MCC), which shall consist of causes initiated by issuance of citations by Commission motor carrier/vehicle officers at roadside, weigh stations or on-site, for alleged violation of state statutes, Commission rules or federal regulations regarding the registration, licensing, certification, or operation of motor carriers or commercial motor vehicles.
- (7) Oil and Gas Citation Docket (OGC), which shall consist of causes initiated by the Director of the Oil and Gas Conservation Division, seeking to find parties in contempt of Commission rules as listed in Appendices E and F of OAC 165:10 and to impose the penalties therein.
- (8) Oklahoma Universal Service Fund Docket (OUSF), which for causes filed on or after January 1, 2018, shall consist of causes relating to funding from the Oklahoma Universal Service Fund or the Oklahoma Lifeline Fund (OLF), including, but not limited to, requests for OUSF or OLF funding, submissions relating to OUSF administrative preapproval requests and the OUSF fee assessment.
- (89) Petroleum Storage Tank Docket (PSD), which shall consist of causes initiated by the Director of the Petroleum

Storage Tank Division or other party seeking relief from Commission rules, disputing PSD decisions regarding jurisdiction, corrective action, licensing, system shutdown, Petroleum Storage Tank Indemnity Fund eligibility or reimbursement.

~~(910)~~ Petroleum Storage Tank Division Citation Docket (PSC), which shall consist of causes initiated by issuance of citations by Commission fuel inspectors for alleged violation of state statutes or Commission rules regarding operation of petroleum storage tank systems.

~~(1011)~~ Pollution Docket (PD), which shall consist of causes initiated and related to the protection of the environment regarding oil and gas production or the disposal, injection, remediation or storage of deleterious substances produced from oil and gas related activities including, but not limited to, applications for injection wells, commercial disposal wells, disposal pits and recycling.

~~(1112)~~ Public Utility Docket (PUD), which shall consist of causes initiated by the Director of the Public Utility Division, a public utility, or other party with standing concerning any matter relating to public utilities, except rulemaking and, effective January 1, 2018, the Oklahoma Universal Service Fund.

~~(1213)~~ Rulemaking Docket (RM), which shall consist of causes initiated by the Commission or any of its directors for the promulgation, amendment, or repeal of a Commission statement or group of related statements of general applicability and future effect that implements, interprets or prescribes law or policy, or describes the procedure or practice requirements of the Commission. [75 Okla. Stat. § 250.3(17)] Formal petitions by the public for rulemaking shall be part of the General Docket. If the Commission orders a rulemaking proceeding as a result of such petition, the rulemaking proceeding shall be part of the Rulemaking Docket.

~~(1314)~~ State Fund Plugging Docket (SF), which shall consist of causes initiated by the Director of the Oil and Gas Conservation Division seeking authorization to use monies from the Commission's Plugging Fund to plug or replug abandoned wells in the State of Oklahoma.

~~(1415)~~ Transportation Docket (TD), which shall consist of causes initiated by:

- (A) an applicant protesting a Transportation Division determination denying a motor carrier's application seeking a license, certificate, or permit from the Transportation Division to lawfully operate as a for-hire or private motor carrier or for a special permit or registration;
- (B) an applicant protesting a Transportation Division determination denying its registration or fuel tax application or proposed audit assessment;
- (C) an application by the Transportation Division modifying, suspending, canceling or revoking an existing certificate, permit, registration, or license;
- (D) an application by the Transportation Division modifying a previously issued order;

(E) an application by the Transportation Division to effect an operational change in a transportation regulated entity;

(F) an interested party protesting a license, certificate, permit or registration being issued or renewed;

(G) an interested party seeking to modify, suspend, cancel, or revoke an existing certificate, permit, registration or license or to assess penalties to a motor carrier, registrant or licensee;

(H) a pipeline operator seeking a pipeline acceptance;

(I) any individual, entity or railroad seeking approval to update, open or close a railroad crossing; or

(J) any interested party seeking relief from the Commission in transportation matters relating to its jurisdiction.

(1516) "Oil and gas dockets" as used in these Rules includes the following dockets: CD, PD, GG, SF and OGC.

(b) **Docket assignment.** Every cause shall be assigned a docket number by the Court Clerk, and all documents filed in the cause shall bear the docket number, including the year prefix. The Court Clerk shall:

(1) File-stamp each document received with the date of receipt.

(2) Record every document filed in the cause.

(3) Maintain a complete file of all original documents filed in every cause.

(c) **Improper docketing.** If the Commission or an Administrative Law Judge, ~~or after consultation with~~ the Court Clerk, determines that an application has been filed on an improper docket as set forth in (a) of this Section, the Commission shall enter an order transferring the application to the proper docket. The Office of Administrative Proceedings shall send the order transferring the application to the proper docket to the applicant by mail, facsimile, or electronic mail, who shall be responsible for sending the order to all parties of record.

(d) **Procedural dockets.** In addition to the subject matter dockets described in (a) of this Section, the Commission may, from time to time, designate procedural dockets.

(e) For the purposes of documentation produced by the case management feature of the Electronic Filing System, individual applications or causes may be denoted as dockets and daily and weekly court calendars may be denoted as agendas.

SUBCHAPTER 7. COMMENCEMENT OF A CAUSE

PART 1. GENERAL

165:5-7-1. General application and notice requirements

(a) **Scope.** Except where otherwise specifically provided in this Subchapter, including the Petroleum Storage Tank Division at OAC 165:5-21-3, and the Oil and Gas Conservation Division at OAC 165:5-7-27 (injection and disposal wells), the provisions of this Section shall govern the commencement of

a cause filed with the Commission and over which the Commission may exercise jurisdiction, including applications for declaratory rulings as to the applicability of any rule or order of the Commission.

(b) **Form.** Every cause shall be commenced by:

(1) An application.

(2) A complaint.

(3) An order of the Commission commencing a cause.

(c) **Caption.** The application or complaint shall be headed by a caption, which shall contain:

(1) The heading, "Before the Corporation Commission of the State of Oklahoma".

(2) The applicant.

(3) The relief sought. In the case of a conservation docket or pollution docket cause, the statement shall contain the legal description of the lands involved in the cause.

(4) The docket identifying initials, year prefix, and cause number, pursuant to OAC 165:5-5-1.

(5) The title of the document.

(6) In the case of an enforcement docket cause, the caption shall contain the name(s) of the respondent(s).

(d) **Body.** The body of the application or complaint shall consist of five numbered paragraphs, if applicable, as follows:

(1) **Applicants and respondents identified.** The applicant shall be identified, including name, address, and telephone number of his attorney or designated representative and the nature of the applicant's interest in the subject matter of the cause; and the name and address of each person (if any) named as respondent.

(2) **Allegation of facts.** The allegation of fact stated in the form of ultimate facts, without unnecessary detail, upon which the right to relief is based. The allegations will be stated in numbered subparagraphs as necessary for clarity.

(3) **Legal authority.** Citations of statutes, rules, orders, and decided cases authorizing the relief sought; including, in the case of a complaint, the laws, rules, regulations, or orders alleged to have been violated. Statutes shall be cited by title and section. Rules and orders of the Commission shall be cited by number. Decided cases shall be cited by citation to official reports. Quotations from legal authorities shall not be required.

(4) **Relief sought.** A brief statement of the provisions of the order, authority, or other relief sought. An application relating to oil and gas conservation shall seek only one type of relief. Formal prayer for relief shall not be required.

(5) **Specify order to be affected.** An application to vacate, alter, modify, or amend an order shall state the specific order in the body which is sought to be vacated, altered, modified, or amended.

(e) **Certification.** The application shall be signed by the applicant, or an authorized agent of the applicant, or by the attorney for the applicant, and shall set out the mailing address, telephone number, facsimile number, electronic mail address and bar identification number of the person so signing it, as applicable. The person signing the application shall be deemed, on signing same, to be certifying that:

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- (1) He has read the application.
 - (2) To the best of his knowledge, information, and belief formed after reasonable inquiry the facts and allegations contained in the application are true and correct.
 - (3) The application is not filed to harass or to cause unnecessary delay or needless expense.
- (f) **Service of an application.** Except as hereinafter provided in this Subchapter, every application and notice of hearing stating the date on which the cause is set for hearing, if required, in which a person is named a respondent shall be served by regular mail on each respondent named therein and Commission staff counsel by the person filing the application.
- (g) **Manner of service.** All documents subsequent to the application in a cause may be served on a party of record by regular mail, facsimile, electronic mail or in person, except where the rules of this Subchapter or a statute requires a specific mode of service which shall be followed. Service on a corporation may be by delivery to the registered corporate agent, or by delivery to the principal place of business of the corporation. Service outside the United States and its territories shall be by any means provided by Federal Rule of Civil Procedure 4(f). For purposes of this Section, a corporation may designate its principal place of business by filing a notice thereof with the Court Clerk. When an attorney has appeared of record for a person, all subsequent service shall be on the attorney. Service by mail, facsimile or electronic mail shall be complete on the date and time of transmittal except where otherwise provided in this Subchapter; provided, that a person may be granted appropriate relief upon showing that a document so served was not received, or delivery thereof was delayed.
- (h) **Certificate of service.** Except where an affidavit of mailing is required by law or by this Subchapter, a certificate of service shall be filed following or with the filing of every document. The certificate of service shall contain a list of the persons served and the certification that on the date stated a copy of the document was mailed, postage prepaid, transmitted by facsimile, mailed electronically or delivered to each person listed.
- (i) **Service not jurisdictional.** Service prescribed by the rules of this Subchapter shall not be jurisdictional except where so provided by the Constitution or by statute. Failure to comply with the provisions of this Section as to mailing and service of notice shall not deprive the Commission of jurisdiction of the application or complaint, but shall be grounds for such appropriate relief as the Commission may order.
- (j) **Publication of notice.** Every application, except as provided in this Chapter for motor carrier and public utility applications, shall be accompanied by a notice of hearing, which date shall be set by the Commission. The notice of hearing shall be published as provided in the rules of this Subchapter.
- (k) **Signatures.** The notice of hearing of an application shall be signed by the Secretary certifying to the Commissioners' signatures. The signatures of the Secretary and the Commissioners may be electronic signatures as provided by OAC 165:5-1-14.
- (l) **Content of notice.** The notice shall ~~specify~~ contain:
- (1) The caption from the application.
 - (2) The time, date, and place of hearing.

- (23) Briefly the general nature of the order, rule, regulation or other relief sought.
 - (34) In oil and gas causes, where applicable, the names or description of all common sources of supply affected by the order sought; or that the entire state would be affected.
 - (45) Who to contact for additional information.
- (m) **Form of notice.** The notice shall conform substantially to the form shown in Appendix A to this Chapter.
- (n) **Notice by publication.**
- (1) When a cause other than an oil and gas or Petroleum Storage Tank Division cause is commenced, the applicant shall cause the notice of hearing prescribed in (j) through (l) of this Section to be published in one or more newspapers of general circulation, on dates and for periods as required by law, or this Subchapter, or as the Commission shall order.
 - (2) In oil and gas causes, unless otherwise provided in this Subchapter, the notice of hearing shall be published one time at least fifteen (15) days prior to the hearing in a newspaper of general circulation published in Oklahoma County, Oklahoma and in a newspaper of general circulation published in each county in which the lands embraced in the application are located.
 - (3) Publication shall be at the expense of the applicant, and shall be made in a newspaper which has met the statutory requirements for publication of legal notices. Written proof of publication shall be filed in the cause.
 - (4) Proof of publication shall be established by an original proof of publication.
- (o) **Effective date prior to date of issuance of order.** No order may be made effective prior to its date of issuance without evidence placed into the record that the approval of such effective date is necessary. An effective date prior to the date of issuance of the order shall be requested in the application and placed in the special relief paragraph of the notice of hearing.
- (p) **Notice of motor carrier motions and applications.** Notice of all motor carrier motions and applications shall be printed on the Commission docket as prescribed by law for circulation to the public.

PART 3. OIL AND GAS

165:5-7-15. Tertiary crude oil recovery project certification [REVOKED]

- ~~(a) Each application for certification of a tertiary recovery project under the provisions of the Crude Oil Windfall Profit Tax Act of 1980 shall be verified by an authorized person and shall be on a form prescribed by the Commission.~~
- ~~(b) The application, with additional copies as may be required by the Court Clerk, shall be filed with the Court Clerk. A true copy of each document or record required to support the application for certification shall be attached to the application and to each copy of the application.~~
- ~~(c) Notice that an application has been filed shall be published by the applicant pursuant to 165:5-7-1(n)(2). This notice must specify that a party may protest the certification sought~~

by filing said protests with the Commission within fifteen (15) days of the publication of the notice.

(d) If written objection to the application is filed within fifteen (15) days after the notice is published, the application shall be set for hearing and notice thereof shall be given in the same manner as required for the filing of an application. If no objection is filed and the applicant does not request a hearing, the matter shall be presented administratively to the Conservation Division. The Conservation Division shall verify the authenticity and correctness of each material statement in the application and the authenticity of each supporting document and file the report and recommendation with the Court Clerk.

165:5-7-30. Amending existing orders or permits authorizing injection for enhanced recovery, saltwater disposal, or LPG storage wells

(a) Each application for an amendment to an existing order or permit shall be filed on Form 1015 and comply with the requirements of OAC 165:5-7-27(a) and (b).

(b) The application shall also include a statement of facts explaining in detail the nature of and the reason for the amendment, and shall be signed by a duly authorized agent of the operator.

(c) Notice of the application relating to the nature of the amendment shall be published pursuant to OAC 165:5-7-1(n)(2). The notice shall include:

- (1) UIC tracking number.
- (2) Name and address of applicant.
- (3) Location of proposed well to nearest 10-acre tract.
- (4) Well name.
- (5) The geological name of the injection formation.
- (6) The top and bottom of the injection interval.
- (7) Maximum injection pressures.
- (8) Maximum B/D or MCF/D injection rate.
- (9) The type of well (injection, disposal, commercial, LPG storage).

(d) If a written objection to the application is filed with the Commission within fifteen (15) days after notice of the application is published or if hearing is required by the Commission, the application shall be set for hearing and notice thereof shall be given in the same manner as required in OAC 165:5-7-1. If no objection is filed and if the Commission does not require a hearing, the application may be approved administratively by the Manager of Underground Injection Control

165:5-7-40. Oil and gas conservation and pollution rulemakings

Notice of an application to make or prescribe or to alter, amend, or modify a permanent rule or regulation relating to oil and gas conservation or to pollution matters shall be published one time at least fifteen (15) days prior to the hearing or prior to the commencement of the comment period, whichever is applicable, in a newspaper of general circulation published in Oklahoma County, Oklahoma, and in a newspaper of general circulation published in Tulsa, Oklahoma.

PART 5. PUBLIC UTILITIES

165:5-7-60. Reciprocity of final orders between states - electric companies

WhenTo facilitate the efficient use of resources for the benefit of ratepayers, when any electric company serves less than ten percent (10%) of its total customers or five hundred (500) of its members for rural electric cooperatives within the State of Oklahoma, the electric company may elect to allow all or a portion of the rates, charges, and terms and conditions of service within the Oklahoma portion of such service territory shall be those prescribed by the regulatory agency of the adjacent state within which the central office of the electric company is located; provided that, to demonstrate this election:

(1) The electric company shall file before the Commission an application to adopt the rates, charges, and terms and conditions of service prevailing in an adjacent state within ten (10) business days after the initiation of a ratemaking proceeding before the regulatory agency of the adjacent state. The electric company shall also file all pleadings and exhibits with this Commission and provide to the Office of the Attorney General of Oklahoma within ten (10) days subsequent to filing the pleadings and exhibits with the adjacent state where such central office or offices are located.

(2) The electric company shall ~~publish~~ or provide actual notice to the individual customers located within Oklahoma, ~~stating that the customer may contact the Commission regarding any objection to the proposed rate increase by direct mail and/or bill insert, concerning any hearing set before the Commission to adopt the rates, charges, and terms and conditions of service pursuant to this Section, including notice that a protest may be filed with the Director of the Public Utility Division, Oklahoma Corporation Commission, Jim Thorpe Office Building, 2101 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105.~~

~~(3) The consumers shall be individually notified of the date when the thirty day time period will lapse and that any protest must be entered prior to that date with the Director of Public Utilities, Oklahoma Corporation Commission, Jim Thorpe Office Building, Oklahoma City, Oklahoma 73105.~~

~~(4) The electric company shall comply with all rules and regulations prescribed by the Commission or in the absence of that compliance shall clearly indicate by footnoting on the filed tariffs and/or terms and conditions of service, any and all departures from the Commission's Rules and Regulations Governing Electric Utilities, OAC 165:35, which are currently in effect.~~

~~(5) Such rates, and charges, and terms and conditions prescribed by an order of the Regulatory Agency of such adjacent state, after hearing on the merits have been held in such adjacent state, shall be filed with the Corporation Commission of the State of Oklahoma, along with the final order and~~

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recommendation of the administrative law judge, if any, of the regulatory agency of the adjacent state.

(4) To ensure that rates and terms and conditions of service resulting from this Section are just and reasonable and consistent with Oklahoma law and prevailing Corporation Commission policy, the electric company shall also file the following:

(A) A statement or testimony clearly describing the methods and standards relied upon in the ratemaking proceeding in the adjacent state, specifying any distinctions between the methods and standards prevailing in Oklahoma and in that adjacent state;

(B) A statement or testimony clearly describing how costs were allocated between Oklahoma customers and customers in other jurisdictions during the proceedings in the adjacent state; and

(C) A statement or testimony clearly describing any deviation from the Electric Utility Rules, OAC 165:35, or other applicable rules prescribed by the Commission, that would result from the use of the rates, charges, and terms and conditions of service in the adjacent state.

(5) Upon the submission of all filings identified in paragraphs 3 and 4 above, the Commission shall hold a hearing to receive testimony and/or statements from interested parties concerning if adjustments should be made to the rates, charges, and terms and conditions of service set in the adjacent state to set just and reasonable rates, charges, and terms and conditions of service consistent with Oklahoma law and prevailing Corporation Commission policy.

(6) If the Commission fails to enter a final order determining the rates, charges, and terms and conditions of service of an electric company pursuant to this Section within one hundred twenty (120) days after the submission of all filings identified in paragraphs 3 and 4 above, the electric company may impose interim rates not to exceed the rates listed on the filed rates and charges approved by the final order of the regulatory agency of the adjacent state, subject to being refunded by order of the Commission once a final order has been entered.

(7) The rates, charges, and terms and conditions of service prescribed by a final order of the regulatory agency of an adjacent state shall not be adopted by the Commission if:

(A) The electric company has not filed before the Commission, within the last four (4) years, an application under this Section or an application under the Commission's Minimum Standard Filing Requirements In Support of a Request by a Public Utility Doing Business in Oklahoma for a Proposed General Rate Change, OAC 165:70; or

(B) The rates resulting from the order would result in an average increase of more than ten percent (10%) above the currently applicable rates for the electric company's customers in Oklahoma.

(6) Unless this Commission, within thirty (30) days after filing of the rates and charges approved by the adjacent

state, determines that additional hearings are required to either accept or reject such rates and charges, then such rates and charges shall be lawfully effective for the next regular billing for the Oklahoma customers served by the rural electric distribution cooperative.

SUBCHAPTER 13. INITIAL AND SUBSEQUENT PROCEEDINGS

165:5-13-1. Sessions and hearings

(a) **Open to public.** All official sessions and public hearings of the Commission or any Administrative Law Judge will be open to the public and will be held in its official courtrooms at the principal office in Oklahoma City, Oklahoma, the regional service office in Tulsa, Oklahoma, or at such other place as provided by law or designated by the Commission.

(b) **Time.** All hearings shall commence at the time designated in the notice of hearing or by order of the Commission.

(c) **Courtroom conduct.** Conduct of attorneys before the Commission shall be governed by the applicable rules of the Supreme Court of Oklahoma. All parties, witnesses, and observers will at all times maintain decorum, and will conduct themselves in such manner as to reflect respect for the authority and dignity of the Commission and its Administrative Law Judges. Upon violation of this provision, any person, witness, attorney, or other representative may be subject to punishment for contempt.

(d) **Record of hearing.** A stenographic ~~and~~ or electronic record will be made of all proceedings before the Commission or an Administrative Law Judge pursuant to 20 O.S. §106.4(A). Audio and video recordings of all proceedings are official electronic records to be kept by the Commission of which a copy may be kept by the court reporter present during the proceeding. A transcript of proceedings will be made by a court reporter at the request and expense of the person ordering it; or at the request of the Commission, in which case a copy will be made for any person requesting it, at that person's expense.

165:5-13-3. Hearings

(a) **Conduct of hearing.** Every hearing shall be conducted by the Commission, by an Administrative Law Judge or as provided at OAC 165:5-13-2.1. The Commission or Administrative Law Judge shall call the cause for hearing, after which proceedings shall be had as provided in this Section.

(b) **Scope of hearings.** The Commission, Administrative Law Judge or Public Utility Referee may state the purpose and scope of the hearing, or the issues upon which evidence will be heard.

(c) **Appearances.** Every person appearing shall enter his appearance by stating his name and address. Thereafter, such person shall be deemed a party of record, unless specified otherwise. An individual may appear on his own behalf. A corporation may appear only by its attorney; provided, that a representative other than an attorney may appear on behalf of a corporation for the sole purpose of making a statement or

~~indicating~~indicating corporate policy. Such a representative may not assume an advocate's role or introduce evidence or examine witnesses in the proceeding.

(d) **Preliminary matters.** The following shall be addressed prior to receiving evidence:

(1) The applicant, or staff counsel, may offer preliminary exhibits, including documents necessary to present the issues to be heard, notices, proof of publication and orders previously entered in the cause.

(2) Ruling may be made on any pending motions, including requests pertaining to discovery.

(3) Stipulations of fact and stipulated exhibits shall be received. No stipulation, settlement, or agreement between the parties of record, their attorneys, or representatives with regard to any matter involved in any cause shall be enforced unless it shall have been reduced to writing and signed by the parties of record or the representatives authorized by the rules of this Chapter to appear for them and thereafter made a part of the record, or unless it shall have been dictated into the record by them during the course of a hearing or incorporated into an order bearing their written approval. This Section does not limit a party of record's ability to waive, modify, or stipulate any right or privilege afforded by the rules of this Chapter, unless precluded by law.

(4) Parties of record may, in the discretion of the Commission or Administrative Law Judge, make opening statements where appropriate.

(5) Any other preliminary matters appropriate for disposition prior to presentation of evidence.

(e) **Rules of evidence.** The Commission and Administrative Law Judges shall follow the rules of evidence applied in the district courts of Oklahoma, except that such rules may be relaxed where the Commission or the Administrative Law Judge deems it in the public interest to do so. The Commission or Administrative Law Judge may exclude evidence upon objection made thereto, or the evidence may be received subject to final ruling by the Commission. An exception will be deemed to be preserved by a party of record objecting to evidence upon an adverse ruling thereon. The Commission or Administrative Law Judge may exclude inadmissible evidence on his own motion and may direct cumulative evidence be discontinued.

(f) **Order of proof.** The applicant or complainant who institutes a cause may open and close the proof. Staff counsel may open and close a cause instituted by the Commission or a staff member. Intervenors may be heard immediately following parties of record with whom allied in interest. In all cases, the Commission or Administrative Law Judge shall designate the order of proof.

(g) **Examination of witnesses.** Every witness shall be examined and cross-examined orally and under oath by not more than one attorney for each party of record. The Commission or Administrative Law Judge shall designate the order of examination and may limit the scope of examination and cross-examination.

(h) **Adverse party.** A party of record may call an adverse person or an officer or employee of an adverse person, in which

case the witness may be impeached and otherwise cross-examined.

(i) **Record.** All testimony shall be taken on the record.

(j) **Prepared testimony.** Written testimony of a witness in form of questions and answers, or a narrative statement may be received in lieu of direct examination upon authentication by the witness under oath. In order to be received and relied upon at the hearing, such testimony and exhibits shall be filed and served upon all parties of record not less than five (5) days prior to the hearing, unless otherwise ordered by the Commission for good cause shown. The witness shall be subject to cross-examination. A written or oral statement by or a communication from any person, or a statement or resolution of a political subdivision, trade association, civic organization, or other organization may be received without cross-examination, but will be considered only as argument and not as proof of any recitation of facts contained therein.

(k) **Documents.**

(1) A photographic copy of a document which is on file as part of the official records of the Commission will be received without further authentication.

(2) A photographic copy of a public record certified by the official custodian thereof will be received without further authentication. A written statement by such custodian of records that no record or entry of described character is found in his records shall be received as proof of absence of such record.

(3) A photographic copy of a document may be substituted for the original at the time the original is offered in evidence.

(4) A document may not be incorporated in the record by reference except by permission of the Commission or Administrative Law Judge. Any document so received must be precisely identified.

(5) The Commission or Administrative Law Judge may require that documents such as rate compilations, statistical or technical data, and tabulated material be filed at a designated time prior to the hearing.

(6) The Commission or Administrative Law Judge may require that additional copies of exhibits be furnished for use by the Commission, staff counsel, and other parties of record.

(7) When evidence is offered which is contained in a book or document containing material not offered, the person offering the same shall extract or clearly identify the portion offered.

(8) The Commission or Administrative Law Judge may permit a party of record to offer a document as part of the record within a designated time after conclusion of the hearing.

(l) **Exhibits.** All exhibits shall be identified by docket and cause number prior to submitting to the Commission.

(m) **Summary exhibits.** An exhibit consisting of a compilation or summary of evidence, records, data, statistics, or other similar information may be received in evidence in addition to or in lieu of the evidence summarized, provided:

(1) The evidence summarized has been admitted in evidence, or is admissible; and

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(2) If the evidence summarized has not been admitted, the person offering the summary exhibit has made the evidence summarized available for inspection by all other parties of record, or the information is published in a generally recognized publication which is available to all parties of record. It shall be the responsibility of a person offering a summary exhibit to comply with this subsection in advance of the hearing, and failure to make the evidence summarized available for inspection shall be grounds for refusal to admit the exhibit.

(n) **Closing the record.** The record shall be closed when all parties of record have had an opportunity to be heard and to present evidence, and the Commission or Administrative Law Judge announces that the record of testimony and exhibits is closed. Unless a decision is then announced, the matter will be taken under advisement for later decision.

(o) **Briefs.** The Commission or Administrative Law Judge may require or allow the filing of briefs by the parties of record, and may designate the order and time for filing briefs and reply briefs.

(p) **Reopening the record.** Any person may file and serve, by regular mail, facsimile or electronic mail on all parties of record a motion to reopen the record for further hearing or to offer additional evidence. The Commission, at any time prior to final order in the cause, may, upon such motion or upon the motion of the Commission, order the record to be reopened for the purpose of taking testimony and receiving evidence which was not or could not have been available at the time of the hearing on the merits or for the purpose of examining its jurisdiction. A motion to reopen shall be filed and served in the same manner as provided in OAC ~~165:5-9-1(b)~~ 165:5-9-2(b). The motion and notice shall include a statement that if the Administrative Law Judge grants the motion, the record may be reopened the same day or on some other day as the Commission may determine.

(q) **Corrections to transcript.** ~~In all proceedings~~ Except as provided in OAC 165:5-13-1(d), an official reporter shall make a stenographic and electronic record of the hearing. Errors claimed to be in a transcription of either a contested or uncontested hearing shall be noted in writing and suggested corrections may be offered to the Commission or Administrative Law Judge who presided at such hearing within ten (10) days after the transcript is filed, unless the Commission or Administrative Law Judge shall permit suggested corrections to be offered thereafter. Suggested corrections shall be served in writing upon each party of record and the Commission or Administrative Law Judge. If not objected to within twelve (12) days after being offered, the Commission or Administrative Law Judge shall direct that such suggested corrections be made and the manner of making them. In the event that parties disagree on suggested corrections, the Commission or Administrative Law Judge, with the aid of argument and testimony from the parties of record, shall then determine the manner in which the record shall be changed, if at all.

(r) **Preparation of report or order.** The Commission or Administrative Law Judge may permit or direct any party or parties of record to prepare a proposed report or order in any

protested cause. In unprotested causes, the applicant shall prepare and submit a proposed Commission order.

165:5-13-3.1. Optional procedure for spacing related applications

(a) If no protest to a spacing related application is announced at docket call, an applicant for spacing, despadding, increased well density, or location exception may elect for consideration of the merits of the cause without a full evidentiary hearing. Such review of the cause shall be referred to as the optional procedure.

(b) After electing the optional procedure, the applicant shall provide the Administrative Law Judge with a proposed order and documentation supporting the application. With respect to documentation, any written testimony shall be presented in the form of a sworn, notarized affidavit which shall be marked as exhibits and entered into the record.

(c) The Administrative Law Judge shall prescribe the time period for completing the record and may request additional evidence as deemed appropriate.

(d) After closing the record, the Administrative Law Judge shall have seven (7) business days in which to make a recommendation to the Commission concerning disposition of the application.

(e) If the Administrative Law Judge's recommendation is unfavorable, the matter will be automatically set for a full evidentiary hearing before the same ~~administrative~~ Administrative Law Judge. Any exceptions from the report issuing after the full evidentiary hearing will proceed pursuant to OAC 165:5-13-5.

165:5-13-4. Report of Administrative Law Judge

(a) At the conclusion of a hearing before an Administrative Law Judge, such officer shall, at the earliest practicable date, file a written report in the proceeding. The report shall contain the following:

(1) Names of parties of record and their attorneys.

(2) Brief statement of facts establishing jurisdiction of the cause.

(3) Brief summary of the evidence of each party of record who offered evidence.

(4) The pertinent facts as found by the officer upon consideration of all evidence offered.

(5) Recommended conclusions of law and recommendations as to action to be taken or relief to be granted or denied.

(6) In oil and gas conservation causes and pollution causes, such report shall be prepared only when a party of record in the hearing before the Administrative Law Judge has formally, either orally or in writing, protested the granting of the application, or, in the judgment of the Administrative Law Judge, the issuance of a report is required.

(b) The Administrative Law Judge shall send a copy of the report by regular mail, facsimile, electronic mail or in person to each party of record.

(c) At the expiration of ten (10) business days after the report is filed, if no exceptions are filed, the Commission shall enter such order as shall be deemed appropriate upon consideration of the report.

(d) In any conservation or pollution cause in which the Administrative Law Judge has recommended that an order issue, but the approval of staff counsel or technical staff is withheld after all efforts have been exhausted to resolve technical or legal problems with the applicant and Administrative Law Judge, the Administrative Law Judge shall issue a report in accordance with this Section, allowing any person time to file exceptions.

(e) Upon request by a Commissioner, an Administrative Law Judge shall appear at any scheduled signing agenda, Commission hearing or public deliberation to respond to questions from the Commissioners concerning the proposed order or report of the Administrative Law Judge.

the making of the order may be electronic signatures as provided in OAC 165:5-1-14.

(9) Seal of the Commission.

(10) Date of filing, and effective date where appropriate.

(b) **Duty to send orders.** The Court Clerk shall immediately mail or otherwise deliver a copy of the order to the applicant. Except where otherwise specifically provided in this Chapter, the applicant shall thereafter mail or otherwise deliver a copy of the order within five (5) days of the receipt of the order to all parties of record and to each respondent in the cause. Where an attorney has appeared of record for a person, service shall be on the attorney.

(c) **Effectiveness of order.** The issuance of or effectiveness of an order or its enforcement will not be stayed or postponed by the filing of any motion for rehearing or for other relief therefrom. The Commission may by order stay any order pending further hearing, and may stay or postpone the effective date thereof, or enforcement thereof for such time and on such terms as may be just.

(d) **Order titles and numbers.** An order of the Commission, descriptively titled, shall be issued for all motions and other matters set for hearing, except for continuances, and all such orders shall be given an order number.

SUBCHAPTER 15. ORDERS

165:5-15-1. General form and procedure

(a) **Contents of orders.** The Commission may prescribe a standardized format for all orders. Every order of the Commission shall contain the following where appropriate or except where the Commission determines otherwise:

- (1) Caption, cause number on the appropriate docket and order number. Every page of the order shall also contain a page number, the applicable subject matter docket listed in OAC 165:5-5-1(a), the docket number assigned to the cause by the Court Clerk, and order type, e.g., emergency order, final order, etc.
- (2) Appearances.
- (3) Date and place of all hearings.
- (4) Summary of allegations of applicant, and of all other parties of record.
- (5) Summary of evidence of applicant, and of all other parties of record.
- (6) Findings of fact, containing all ultimate facts found to have been established.
- (7) Conclusions of law, containing:
 - (A) All legal conclusions found to be applicable to the facts; and
 - (B) The directive of the order stated in concise and mandatory language.
- (8) Signature of the Secretary certifying as to all Commissioners participating in making the order. The signatures of the Secretary and Commissioners participating in

SUBCHAPTER 21. PROCEDURE FOR THE PETROLEUM STORAGE TANK DOCKET

165:5-21-3.1. Applications to close a storage tank in place

(a) **Administrative review.** For an application for a variance to close a storage tank in place, the Petroleum Storage Tank Division shall review the application administratively without the necessity of a hearing. If the Petroleum Storage Tank Division approves the relief requested by the application, it shall submit a proposed order to the Commissioners to determine whether the variance and/or other relief, if any, should be granted.

(b) **Remedies after denial or modification.** If the Petroleum Storage Tank Division denies the relief requested by the application, or the Petroleum Storage Tank Division cannot agree to a modification, the applicant may withdraw its application or file a notice of hearing before an Administrative Law Judge and present their application for a recommendation on the merits of the variance sought. If the application for the variance is denied by the Administrative Law Judge, the Applicant may file exceptions as more fully defined under OAC 165:5-13-5.

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APPENDIX J. WITNESS IDENTIFICATION FORM [REVOKED]

APPENDIX J. WITNESS IDENTIFICATION FORM [NEW]

I, _____, did hereby testify under oath in Cause Number _____,
(name)

before Administrative Law Judge _____ on _____.
(date)

My unassisted testimony was presented by phone or by videoconferencing connection
from _____.
(location)

(Witness Signature)

Subscribed and sworn to before me this _____ day of _____, 20____.

Notary Public

My Commission expires:

[OAR Docket #17-511; filed 6-23-17]

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

[OAR Docket #17-512]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 1. Administration
 - Part 1. General Provisions
 - 165:10-1-4. Citation effective date [AMENDED]
 - 165:10-1-7. Prescribed forms [AMENDED]
 - Subchapter 3. Drilling, Developing, and Producing
 - Part 3. Completions
 - 165:10-3-10. Well completion operations [AMENDED]
 - Part 5. Operations
 - 165:10-3-25. Completion Reports [AMENDED]
 - Subchapter 5. Underground Injection Control
 - 165:10-5-5. Application for approval of enhanced recovery injection and disposal operations [AMENDED]
 - 165:10-5-6. Testing and monitoring requirements for enhanced recovery injection wells and disposal wells [AMENDED]
 - 165:10-5-7. Monitoring and reporting requirements for wells covered by 165:10-5-1 [AMENDED]
 - 165:10-5-10. Transfer of authority to inject [AMENDED]
 - 165:10-5-15. Application for permit for simultaneous injection well [AMENDED]
 - Subchapter 7. Pollution Abatement
 - Part 3. Storage and Disposal of Fluids
 - 165:10-7-19. Land application of water-based fluids from earthen pits, tanks and pipeline construction [AMENDED]
 - 165:10-7-26. Land application of contaminated soils and petroleum hydrocarbon based drill cuttings [AMENDED]
 - 165:10-7-33. Use of truck wash pits [AMENDED]
 - Subchapter 9. Commercial Disposal Facilities
 - 165:10-9-1. Use of commercial pits [AMENDED]
 - 165:10-9-2. Commercial soil farming [AMENDED]
 - 165:10-9-3. Commercial disposal well surface facilities [AMENDED]
 - 165:10-9-4. Commercial recycling facilities [AMENDED]
 - Subchapter 11. Plugging and Abandonment
 - 165:10-11-3. Duty to plug and abandon [AMENDED]
 - 165:10-11-6. Plugging and plugging back procedures [AMENDED]
- Appendix F. Schedule B Fines [REVOKED]
- Appendix F. Schedule B Fines [NEW]

AUTHORITY:

Oklahoma Corporation Commission; 17 O.S. § 52, 17 O.S. § 53, 27A O.S. § 1-3-101, 52 O.S. § 139, and OAC 165:5-1-7

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

Although the Oklahoma Corporation Commission is not subject to the requirements of Executive Order No. 2013-34, the proposed rules were submitted to the Governor and Cabinet Secretary on December 2, 2016

COMMENT PERIOD:

December 1, 2016, through February 10, 2017

PUBLIC HEARING:

February 28, 2017

ADOPTION:

February 28, 2017

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

March 10, 2017

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 13, 2017

FINAL ADOPTION:

June 13, 2017

EFFECTIVE:

September 11, 2017

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

Certain amendments to OAC 165:10-3-10 requiring an operator to obtain the approval of the Conservation Division to use diesel fuel as the base fluid for hydraulic fracturing operations were made to conform to the Environmental Protection Agency's Permitting Guidance for Oil and Gas Hydraulic Fracturing Activities Using Diesel Fuels: Underground Injection Control Program Guidance No. 84 pursuant to 40 CFR 144.6. OAC 165:10-1-7 was amended to require operators of commercial disposal wells to file a new Form 1012C fluid disposal report pursuant to OAC 165:10-5-7. OAC 165:10-1-7 was also amended to require operators of wells authorized for disposal within areas of interest designated by the Oil and Gas Conservation Division to file a new Form 1012D at a minimum on a weekly basis regarding daily volumes and pressures pursuant to OAC 165:10-5-7. Other rules were amended in efforts to update, clarify and streamline language and procedures appearing in OAC 165:10, as well as to address reporting regarding well operations impacted by hydraulic fracturing operations, establish procedures for fluid level monitoring required by underground injection control orders or permits and specify corrective action, standardize procedures for land application of deleterious substances, impose notice requirements and procedures concerning applications to permit pits with capacities in excess of 50,000 barrels at commercial disposal well sites, and require installation of both leachate collection systems and monitor wells for new commercial disposal well pits and semiannual sampling of such systems and monitor wells.

CONTACT PERSON:

Susan Dennehy Conrad, Deputy General Counsel, Office of General Counsel, Oklahoma Corporation Commission, 2101 North Lincoln Boulevard, PO Box 52000, Oklahoma City, OK 73152-2000, telephone: (405) 521-3939, s.conrad@occcmail.com.

DUE TO EXCESSIVE LENGTH OF THESE RULES (AS DEFINED IN OAC 655:10-7-12), THE FULL TEXT OF THESE RULES WILL NOT BE PUBLISHED. THE RULES ARE AVAILABLE FOR PUBLIC INSPECTION AT THE OKLAHOMA CORPORATION COMMISSION, WESTERN REGIONAL SERVICE OFFICE, JIM THORPE OFFICE BUILDING, 2101 NORTH LINCOLN BOULEVARD, OKLAHOMA CITY, OKLAHOMA, AT THE OKLAHOMA CORPORATION COMMISSION, EASTERN REGIONAL SERVICE OFFICE, KERR BUILDING, 440 SOUTH HOUSTON, SUITE 114, TULSA, OKLAHOMA, AND AT THE SECRETARY OF STATE'S OFFICE OF ADMINISTRATIVE RULES. THE FOLLOWING SUMMARY HAS BEEN PREPARED PURSUANT TO 75 O.S., SECTION 255(B):

SUMMARY:

OAC 165:10-1-4 is amended to update the list of effective dates for OAC 165:10 rulemakings; OAC 165:10-1-7 to update the list of Oil and Gas Conservation Division prescribed forms and to add new forms; OAC 165:10-3-10 regarding the use of diesel fuel as the base fluid for hydraulic fracturing operations and reporting of impacts of hydraulic fracturing operations on other wells; OAC 165:10-3-25 concerning Completion Reports and amended Completion Reports; OAC 165:10-5-5 with respect to applications for approval of enhanced recovery injection and disposal operations; OAC 165:10-5-6 regarding testing and monitoring requirements for enhanced recovery injection wells and disposal wells; OAC 165:10-5-7 concerning monitoring and reporting requirements for enhanced recovery injection wells, disposal wells and storage wells, and to include a reference to 17 O.S. § 52 and provisions appearing therein; OAC 165:10-5-10 with respect to transfer of authority to inject concerning underground injection wells; OAC 165:10-5-15 regarding reporting requirements for simultaneous injection wells, and OAC 165:10-7-19 is amended concerning land application of water-based fluids from earthen pits, tanks and pipeline construction.

In addition, OAC 165:10-7-26 is amended with respect to land application of contaminated soils and petroleum hydrocarbon based drill cuttings; OAC 165:10-7-33 regarding truck wash pits; OAC 165:10-9-1 concerning use of commercial pits; OAC 165:10-9-2 with respect to commercial soil farming; OAC 165:10-9-3 regarding commercial disposal well surface facilities; OAC 165:10-9-4 concerning operation of commercial recycling facilities; OAC 165:10-11-3 with respect to plugging of wells; OAC 165:10-11-6 regarding plugging and plugging back procedures for wells, and Appendix F is revoked and a new Appendix F proposed regarding a schedule of fines.

The full text of these rules may be obtained by interested parties at the Oklahoma Corporation Commission's Oklahoma City Court Clerk's Office located in the Jim Thorpe Office Building, 2101 North Lincoln Boulevard, Oklahoma City, Oklahoma, 73105, at the Commission's Tulsa

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Court Clerk's Office located in the Kerr Building at 440 South Houston, Suite 114, Tulsa, Oklahoma, 74127, and on the Commission's website at <http://www.occeweb.com>.

[OAR Docket #17-512; filed 6-23-17]

TITLE 165. OKLAHOMA CORPORATION COMMISSION CHAPTER 15. FUEL INSPECTION

[OAR Docket #17-499]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 1. General Provisions
 - 165:15-1-1. Purpose [AMENDED]
 - 165:15-1-2. Definitions [AMENDED]
 - 165:15-1-3. Application of rules [AMENDED]
- Subchapter 3. Fuel Specialists, Testing, Accessibility, and Assistance
 - Part 3. Motor Fuels and Antifreeze
 - 165:15-3-12. Fuel deliveries [AMENDED]
 - Part 5. Liquid Measuring Devices
 - 165:15-3-16. Inspection for compliance [AMENDED]
 - Part 7. Storage Tanks and Ancillary Equipment
 - 165:15-3-21. Containment of petroleum products [AMENDED]
 - 165:15-3-22. Equipment installation [AMENDED]
- Subchapter 15. Liquid Measuring Devices
 - Part 7. Money Values and Volumes Dispensed
 - 165:15-15-28. Position of equipment and money value divisions [AMENDED]
 - 165:15-15-31. Primary elements [AMENDED]
 - Subchapter 19. Violations and Contempt
 - 165:15-19-2. Enforcement procedure [AMENDED]
 - 165:15-19-4. Re-inspection, Enforcement and Fine Citation [AMENDED]

AUTHORITY:

The Commission's statutory authority is found in Article IX, Section 18 of the Oklahoma Constitution, and 17 O.S. §§ 52, 306, 307, 321, 325, and 47 O.S. §466.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

Although the Oklahoma Corporation Commission is not subject to the requirements of Executive Order No. 2013-34, the proposed rules were submitted to the Governor and Cabinet Secretary on September 21, 2016.

COMMENT PERIOD:

September 20, 2016 to December 23, 2016

PUBLIC HEARING:

January 24, 2017

ADOPTION:

January 24, 2017

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

February 1, 2017

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 13, 2017

FINAL ADOPTION:

June 13, 2017

EFFECTIVE:

September 11, 2017

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

OAC 165:15-1-1 is amended to include "antifreeze, motor oil, motor fuel", all of which are Petroleum Storage Tank Division ("PSTD") regulated substances. OAC 165:15-1-2 is amended to incorporate by reference the terms defined in 17 O.S. § 301 et seq., 47 O.S. § 466 et seq., and 52 O.S. § 325.1 et seq; to clarify the definition of "Above ground storage tank" or "AST" for tanks that contain any PSTD regulated substance; to give an example of "Cathodic protection"; to clarify the meaning of "Change in service"; and to include the

underground piping under the definition of "Underground storage tank" or "UST." OAC 165:15-1-3 is amended to apply OAC 165:15 to all regulated substances. This amendment also requires that manufacturers of regulated substances test their products to ensure compliance with Commission rules, and that the results of the tests are available upon Commission request. OAC 165:15-3-12 is amended to match the federal regulations in 40 CFR 280.30 to ensure that available volume in the tank is greater than the volume of product to be transferred into the tank, and that violations of this Chapter may result in fines or contempt. OAC 165:15-3-16 is amended to clarify wholesale liquid measuring device calibration requirements. OAC 165:15-3-21 is amended to change "monthly" to "every thirty (30) days" for all methods of release detection per 40 CFR 280.41, and to clarify the specific requirements for statistical inventory reconciliation ("SIR") per 40 CFR 280.43. OAC 165:15-3-22 is amended to remove non-universal sentiment towards vaults, and amend a rule citation regarding corrosion protection. OAC 165:15-15-28 is amended to require liquid measuring devices to automatically and accurately reflect the total money value of the petroleum product delivered. OAC 165:15-15-31 is amended to correct grammatical errors and spelling. OAC 165-15-19-2 is amended to cite 40 Okla. Stat. §466 et seq. OAC 165-15-19-4 is amended to add a potential administrative penalty for violations that are not corrected.

CONTACT PERSON:

Zach Duvall, Assistant General Counsel, Office of General Counsel, Oklahoma Corporation Commission, 2101 N. Lincoln Blvd., P.O. Box 52000, Oklahoma City, OK 73152-2000, (405)521-4749, z.duvall@occemail.com.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 1. GENERAL PROVISIONS

165:15-1-1. Purpose

The purpose of this Chapter is to provide a comprehensive regulatory program governing the sale and storage of regulated substances such as antifreeze, motor oil, motor fuel, gasoline, kerosene, aviation fuel, and diesel fuel, and specify standards governing the measuring devices and facilities used to sell, dispense, or deliver these products. This Chapter is intended to protect the end user by regulating the integrity and quantity of the product sold; protect the public and the environment from fire, explosion and pollution; assist the tank owner/operator regarding how to maintain a petroleum storage tank system to avoid damages or deterioration of the system, economic loss to the owner/operator, and damages to others.

165:15-1-2. Definitions

In addition to the terms defined in 17 O.S. § 301 et seq., 47 O.S. § 466 et seq., and 52 O.S. § 325.1 et seq., the following words or terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise.

"API (American Petroleum Institute) gravity scale" means the gravity scale in general use by the petroleum industry in the United States.

"ASTM" means the American Society for Testing and Materials. The latest ASTM revision must be the test used and is expressly incorporated in this Chapter.

"ATG" means an automatic tank gauging system.

"Aboveground storage tank" or **"AST"** means any stationary tank not included within the definition of an underground storage tank in OAC 165:25-1-11, which is designed to contain, ~~any PSTD regulated substances without structural support of earthen material, antifreeze, motor oil, gasoline, diesel, aviation fuel and/or volatile blending materials used in motor fuels, like kerosene and ethanol.~~

"Aboveground storage tank system" means an aboveground storage tank and any connected aboveground or underground piping, dispensers and associated equipment and fixtures.

"Airport" means landing facility for aircraft that is routinely available for public use (whether routinely used or not). Airports as used in this Chapter do not include private residential airstrips or private airports.

"Analog type" means an indicating element or a system of indication or recording in which values are presented as a series of numbered graduations in combination with an index, and in which the most sensitive element of the indicating system moves continuously during the operation of the device.

"Ancillary equipment" means any device including, but not limited to, devices such as piping, fittings, flanges, valves, and pumps that are used to distribute, meter, or control the flow of regulated substances to or from an underground storage tank.

"Approval seal" means an inspection label or tag pasted on the face of a dispenser indicating its official approval, showing day, month, and year.

"Aviation gasoline" means a volatile hydrocarbon fuel suitable for use in an aircraft internal combustion engine.

"Bulk plant" means a petroleum storage tank facility where regulated substances are received by tank vessels, pipelines, tank cars or tank vehicles and are stored or blended in mass quantities or bulk for the purpose of distribution by a tank vessel, pipeline, tank car, tank vehicle, portable tank or other container, for wholesale or retail sale.

"Calibrate" or **"Calibration"** means the comparison of the indicated volume to the volume actually delivered by a retail or wholesale device into a certified test measure, prover, or through a second accurate meter.

"Cathodic protection" means a technique designed to prevent the corrosion of a metal surface by making it the cathode of an electrochemical cell. For example, protection can be accomplished with an impressed current system or a galvanic anode system.

"Change in service" means ~~discontinuing the use of a storage tank system for purposes regulated by the Commission~~ a change in the status of a storage tank (i.e., from currently in use to temporarily out of use); change of regulated substance that a storage tank contains.

"Commission" ~~means the Corporation Commission of Oklahoma.~~

"Computing type" means a device designed to indicate and measure the total money value of product for one of a series of unit prices.

"Diesel fuel" ~~means a hydrocarbon or biodiesel fuel suitable for use in a diesel engine.~~

"Digital type" means a system of indicating or recording that advances intermittently in which all values are presented digitally and without graduations.

"Director" ~~means the Director of the Petroleum Storage Tank Division of the Corporation Commission.~~

"Division" ~~means the Petroleum Storage Tank Division of the Corporation Commission.~~

"Dry hose type" means a device in which the discharge hose must be completely drained following the mechanical operations involved in each delivery.

"Face of the pump" means that side of a measuring device that displays the quantity measured. The face must include an indicator and a series of graduations or present values digitally. It is the side of the pump where the unit price, volume dispensed, and dollar amount of the sale appear.

"Fuel" means any petroleum product, oxygenate, or blend of products suitable for use in an internal combustion or diesel engine.

"Fuel Specialist" means any field inspector employed by the Compliance and Inspection Department of the Petroleum Storage Tank Division of the Oklahoma Corporation Commission.

"Gasoline" means a volatile unleaded fuel that is suitable for use in a spark ignition, internal combustion engine.

"Gravity type" means a type of device designed for discharge by gravity.

"Gum" means the evaporation residue of aircraft gasoline or the heptane insoluble portion of the evaporation residue of motor gasoline.

"Index of an indicator" means that particular portion of an indicator that is directly used in making a reading.

"Indicating element" means that component located on the face of the pump that signifies the amount relative to a quantity measured by a measuring device.

"Isooctane" means a pure hydrocarbon 2,2,4-trimethylpentane used as a reference fuel that has an octane rating of one hundred.

"Kerosene" means a refined hydrocarbon fuel intended for use in heating and illumination.

"Liquid measuring device" or **"liquid fuel device"** means any and all measuring devices (retail, wholesale, or vehicle tank measure) with which gasoline, motor fuel, kerosene, burning oil, diesel fuel, or aviation gasoline is sold, dispensed, or delivered to the public or to any person for any purpose.

"MtBE" means methyl tertiary butyl ether for use as a component in gasoline.

"Manufacturer" ~~means any person engaged in the manufacture of gasoline, motor fuel, kerosene, aviation gasoline, diesel fuel, burning oil, or oxygenate offered for sale or use in the State of Oklahoma, whether such products are manufactured by the method of processing crude petroleum or natural gas or collecting natural or drip gasoline or the blending or mixing of any two or more products obtained from these processing methods. Blending or mixing, as used in this Chapter, does not include the multi-blend pumps at service stations.~~

"Measuring device" or **"meter"** means all measuring devices (retail, wholesale, or vehicle tank measure) with which gasoline, motor fuel, kerosene, burning oil, diesel fuel, or

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aviation gasoline is sold, dispensed, or delivered to the public or to any person for any purpose.

"Motor fuel" means any petroleum product, oxygenate, or blend of products, that is suitable for use as a fuel in an internal combustion or diesel engine.

"NACE" means the National Association of Corrosion Engineers.

"N-heptane" means a pure hydrocarbon used as a reference fuel with an assigned octane rating of zero.

"Octane", "octane number", or "octane rating" means the antiknock quality of gasoline as determined by either the ASTM Research Method or the ASTM Motor Method.

"Owner or operator" means the person responsible for and in control of a facility's day-to-day operations, whether the person actually possesses a title to the facility or controls it as a lessee or by any other agreement. The term also includes a past operator at the time of a release or a violation of state statutes or Commission rules.

"Oxygenate" means ethyl alcohol, MtBE, TAME, or other oxygen-containing, ashless organic compounds.

"Permanent out of use" or "POU" means a petroleum storage tank system that is not in service/use, does not contain regulated substances, and is not intended to be placed back in service/use.

"Petroleum products" means antifreeze, motor oil, gasoline, kerosene, ethanol, diesel and biodiesel fuel and aviation gasoline.

"Primary indicating elements" or "recording elements" means those principal visual indicating elements and recording elements that may be used by the operator in the normal commercial use of a device and which are readily visible to the public.

"Private airport" means an airport used only by its owner and regulated as a fleet and commercial facility.

"Private airstrip" means a personal residential takeoff and landing facility attached to the airstrip owner's home, analogous to a garage and driveway used only by the owner.

"PSTD" means Petroleum Storage Tank Division.

"(R+M)/2" means the arithmetic mean of the ASTM Research Method (R) and the ASTM Motor Method (M) octane numbers, and is the octane rating.

"Regulated substance" means antifreeze, motor oil, motor fuel, gasoline, kerosene, diesel or aviation fuel. It does not include compressed natural gas, liquid natural gas and propane.

"Retail device" means a measuring device or mechanism designed for single deliveries of motor fuels to individual land, air, and water vehicles.

"Retail level" means all places of business where gasoline, motor fuel, kerosene, diesel fuel, or aviation gasoline is dispensed or delivered directly into the tank of the consuming vehicle or receptacle, and may include bulk agents, consignment agents, distributors, or jobbers.

"SIR" means Statistical Inventory Reconciliation.

"Security Seal" or "seal" or "lock/locking mechanism" means a lead and wire seal, lock or locking device, or similar device, attached to a petroleum storage tank system for protection against access, removal, or adjustment.

"TAME" means tertiary amyl methyl ether for use as a component in gasoline.

"Temporary out of use" or "TOU" means the status of a petroleum storage tank system that has been taken out of service/use, but not removed, with the intent to return to service.

"Tolerance" means a value fixing the limit of allowable error or departure from the highest performance or value.

"Transport calibration" or "truck calibration" means the volume held to the designated marker as determined by the addition of a calibration fluid to the compartment from an accurate meter or from provers.

"Underground storage tank" or "UST" means a regulated storage tank, including underground piping, that has 10 percent (10%) or more of its volume beneath the surface of the ground.

"Underground storage tank system" means an underground storage tank and any connected aboveground or underground piping, dispensers and ancillary equipment.

~~**"Unleaded gasoline"** means a refined gasoline to which no lead has been intentionally added during the refining or blending process.~~

"Visible type" means a type of device in which the measurement takes place in visible glass measuring chambers.

"Wet-hose type" means a device designed to be operated with the discharge hose full of liquid at all times.

"Wholesale device" means any device other than a retail device.

165:15-1-3. Application of rules

- (a) The rules contained in this Chapter apply to:
 - (1) All manufacturers and handlers of fuel subject to the jurisdiction of the Commission.
 - (2) All persons who sell or distribute any ~~petroleum product, motor fuel~~ regulated substance, oxygenate, or blend of products.
- (b) All persons who use liquid measuring devices in the sale or distribution of motor fuel, as defined by applicable statutes and (a) of this Section, must comply with this Chapter.
- (c) Motor fuel in transit or manufactured in Oklahoma for consumption in other states is not subject to inspection under the rules of this Chapter.
- (d) The tolerances on metric equipment must be equivalent to those specified in English units for similar equipment.
- (e) All regulated substances manufactured in, or imported into, the State of Oklahoma for use or sale must be tested by the manufacturer or importer to ensure its compliance with the rules of this Chapter.
- (f) The results of these tests, together with any other information required by the Commission, must be maintained by the manufacturer in accordance with usual and customary business practices, and copies must be furnished to the Petroleum Storage Tank Division upon request. These test results, excluding trade secrets and proprietary information, must also be furnished to the wholesale dealer of the manufacturer upon request.

**SUBCHAPTER 3. FUEL SPECIALISTS,
TESTING, ACCESSIBILITY, AND ASSISTANCE**

PART 3. MOTOR FUELS AND ANTIFREEZE

165:15-3-12. Fuel deliveries

Deliveries of fuel made for all facilities must be conducted as follows:

- (1) No facility owner or operator may accept delivery of lower octane fuel into a higher octane tank, except when the tank's resulting octane level meets or exceeds the tank's labeled octane level.
- (2) When delivering fuel into a storage tank, no person may purposefully disable a tank's overfill valve for any reason.
- (3) ~~Any violation of this Section will be subject to the enforcement procedures of this Chapter and any other fines or contempt proceedings as provided by law. Owners, operators, their employees or agents, or transporters must ensure that the volume available in the tank (ullage) is greater than the volume of product to be transferred to the tank before the transfer is made and that the transfer operation is monitored constantly to prevent spilling and overfilling.~~
- (4) Any violation of this Section will be subject to the enforcement procedures of this Chapter and any other fines or contempt proceedings as provided by law.

PART 5. LIQUID MEASURING DEVICES

165:15-3-16. Inspection for compliance

- (a) Retail liquid measuring devices subject to the rules of this Chapter are calibrated with a five (5) gallon test measure by the Fuel Specialist from time to time or as often as deemed necessary. High volume dispensers (those that are used to pump at a rate of at least twenty (20) gallons per minute) used to fill large tanks must be calibrated using a fifty (50) or one hundred (100) gallon prover.
- (b) All wholesale liquid measuring devices subject to the rules of this Chapter must be calibrated ~~by the Fuel Specialist no more than before~~ 10 million gallons of use, or more often if ~~the Fuel Specialist~~ PSTD deems it necessary.
- (c) Before a new facility is open for business and before new dispensers are put into service at a pre-existing facility, the owner or operator must have the dispensers calibrated and be able to show written proof when requested by the Fuel Specialist.
- (d) These tests may be ordered or directed by the Commission at any time.
- (e) When a liquid measuring device is found not to be in compliance with this Chapter, the owner or operator will be advised of the problem and the device placed out of service.
- (f) A Fuel Specialist has the responsibility to place or to direct that a lock or seal be placed on a measuring device. The lock or seal must remain in place until the defective measuring

device is repaired or replaced and complies with Commission standards.

- (g) The owner or operator of a locked measuring device may obtain permission to remove the lock or seal after repair by:
 - (1) Written permission from the Fuel Specialist who placed the lock or seal on the device; coupled with written confirmation to PSTD by the person removing the seal or lock; or
 - (2) Written or verbal permission from the Petroleum Storage Tank Division Director or the Director's designee; or
 - (3) Order of the Commission.

PART 7. STORAGE TANKS AND ANCILLARY EQUIPMENT

165:15-3-21. Containment of petroleum products

Because petroleum product releases can pose a threat to the public health and safety and the environment, Fuel Specialists must ensure that the proper mechanisms are in place and standards met to prevent releases.

- (1) **Spill and overfill protection.** Fuel Specialists must ensure that appropriate spill and overfill protection devices are in place and operational.
- (2) **Leak detection on tanks.** Fuel specialists must check the condition of an owner or operator's selected method(s) of leak detection at a location. The requirements of each method listed below are offered as a general outline; a complete list of leak detection requirements is in Chapter 25 and Chapter 26 of Commission rules.
 - (A) **Vapor monitoring wells.** If vapor monitoring wells are an owner or operator's selected method of leak detection, the Fuel Specialist must ensure that the requirements listed below are met:
 - (i) Wells must be correctly installed and sufficient in number for the particular facility.
 - (ii) A monitoring well site assessment must be completed with documentation of Commission acceptance kept on site for review.
 - (iii) Wells must be properly monitored and the results recorded every 30 days on the appropriate OCC form.
 - (iv) Any single vapor monitoring well reading above 4,000 units/ppm for gasoline and 1,500 units/ppm for diesel shall be reported to a Commission Project Environmental Analyst by telephone at (405) 521-4683 (if after hours or on weekends or holidays, call the PSTD emergency number at (405) 823-0994) within 24 hours of the owner or operator, agents, Monitor Well Technicians, or any of his or her employees at the facility knowing the reading. If gasoline and diesel tanks are in the same tankpit, any reading above 1,500 units/ppm shall be reported. If this has not been reported, the Fuel Specialist shall report it.
 - (B) **Groundwater monitoring wells.** The Fuel Specialist must ensure, if groundwater monitoring

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wells are an owner or operator's method of leak detection, that the requirements listed below are met:

- (i) Wells must be correctly installed and sufficient in number for the particular facility.
- (ii) A monitoring well site assessment must be completed with documentation of Commission acceptance kept on site for review.
- (iii) Wells must be properly monitored and the results recorded every 30 days on the appropriate OCC form.
- (iv) Any indication of product discovered shall be reported to a Commission Project Environmental Analyst by telephone at (405) 521-4683 (if after hours or on weekends or holidays, call the PSTD emergency number at (405) 823-0994) within 24 hours of the owner or operator, agents, Monitor Well Technicians, or any of his or her employees at the facility knowing of its presence. If this has not been reported, the Fuel Specialist shall report it.

(C) **Tank system tightness testing with monthly inventory control.** When performed in accordance with the following requirements, this combination of functions is a stand-alone method of leak detection for tanks. This method expires ten (10) years after the corrosion protection upgrade of your tank(s) to 1998 standards or ten (10) years after a new tank is installed. This will expire June 30, 2018.

(i) **Tank tightness testing.** Tank tightness testing (or another test of equivalent performance) must be capable of detecting a 0.1 gallon per hour leak rate from any portion of the tank while accounting for the effects of thermal expansion or contraction of the product, vapor pockets, tank deformation, evaporation or condensation, and the location of the water table. The test must be performed by a tester certified by the manufacturer of the testing equipment, and completed once every five years.

(ii) **Inventory control.**

(I) Product inventory control (or another test of equivalent performance) must be conducted monthly to detect a release of at least 1.0 percent of flow-through plus 130 gallons ~~on a monthly basis~~ every thirty (30) days.

(II) Inventory volume measurements for regulated substance inputs, withdrawals, and the amount remaining in the tank are recorded each operating day.

(III) The equipment used is capable of measuring the level of product over the full range of the tank's height to the nearest one-eighth inch (1/8").

(IV) The regulated substance inputs are reconciled with delivery receipts by measurement of the tank inventory volume before and after delivery.

(V) Deliveries are made through a drop tube that extends to within 6 inches (6") of the tank bottom.

(VI) Product dispensing is metered and recorded within an accuracy of 6 cubic inches for every 5 gallons of product withdrawn.

(VII) The measurement of any water level in the bottom of the tank is made to the nearest one-eighth inch (1/8") at least once a month.

(VIII) Use of OCC Monthly Inventory Reconciliation Form or an electric equivalent is required.

(D) **Statistical Inventory Reconciliation (SIR).**

(i) Deliveries, withdrawals and balance remaining must be recorded each operating day on the PSTD Inventory Reconciliation Form or an electronic equivalent and data must be reconciled every thirty (30) days. Product deliveries must be reconciled with an appropriate device, and data must be reconciled ~~monthly~~ every thirty (30) days. SIR records must demonstrate the following:

(I) Report a quantitative result with a calculated leak rate;

(II) Be capable of detecting a leak rate of 0.2 gallon per hour or a release of one hundred fifty (150) gallons within thirty (30) days, with a probability of detection of 0.95 and a probability of false alarm of 0.05; and

(III) Use a threshold that does not exceed one-half (1/2) the minimum detectible leak rate.

(ii) The tank must be equipped with a drop tube and measured for water at least ~~monthly~~ every thirty (30) days.

(iii) Records must be submitted to a certified SIR vendor for ~~monthly~~ evaluation. Only third party certifications that have been reviewed and approved by the National Work Group on Leak Detection Evaluations (NWGLDE), found at the NWGLDE website, will be accepted (www.nwglde.org).

(iv) Results of ~~monthly~~ SIR analysis must be on premises ~~no later than the last day of the following month~~ for inspector review every thirty (30) days.

(v) The equipment used must be capable of measuring the level of product over the full range of the tank's height to the nearest one-eighth inch (1/8").

(vi) The regulated substance inputs are reconciled with delivery receipts by measurement of the tank inventory volume before and after delivery.

(vii) SIR analysis reports must include a summary report of the quantitative results and copies of all Inventory Reconciliation Forms.

(E) **Automatic tank gauging (ATG).**

(i) The ATG must be in operating condition. It must perform a ~~monthly~~ test at least once every thirty (30) days capable of detecting a 0.1 or 0.2 gallons per hour (gph) leak rate; and if the system

detects a 0.2 gph leak rate, monthly inventory reconciliation must be completed in conjunction with it.

(ii) If the Fuel Specialist has concerns about the operation of the system, they may require notice and be present when an authorized person is printing relevant reports from the ATG.

(F) **Manual tank gauging.** If manual tank gauging is the selected form of release detection Fuel Specialists must determine that the test duration is appropriate, and that tank tightness testing is performed in conjunction with manual tank gauging in accordance with Chapter 25 or Chapter 26 of Commission rules. Manual tank gauging is only accepted as a method of leak detection on tanks with a capacity of up to 2,000 gallons.

(G) **Interstitial monitoring.** Sampling or testing must be capable of detecting a ~~release leak monthly at~~ least every thirty days in accordance with the manufacturer's instructions.

(H) **Other methods.** If a method of leak detection other than those listed in this Chapter is used, it must be approved by the Commission and checked by the Fuel Specialist.

(3) **Leak detection on pressurized lines.** The Fuel Specialist must check for leak detection on pressurized piping. A complete list of requirements is in Chapter 25 and Chapter 26 of Commission rules. All pressurized piping must have electronic/automatic or mechanical line leak detectors capable of detecting a three gallons per hour leak. New installations and facilities replacing a piping system must have double-walled piping. An annual line tightness test is required unless the alternative criteria listed in (C) below are met.

(A) **Electronic/automatic and mechanical line leak detectors; sump sensors, floats and similar mechanical devices.**

(i) Automatic electronic or mechanical line leak detectors must be installed on all pressurized lines. Double-walled piping systems must have dispenser and tank sumps with a sensor, float or similar mechanical device installed at each submersible pump or at the lowest sump at the lowest island for each tank, whichever is at the lowest end of the piping gradient.

(ii) The line leak detectors, floats and other devices must be tested annually according to manufacturer's specifications.

(B) **Annual line tightness testing.** An annual line tightness test, either hydrostatic or electronic, must be performed unless the requirements of (C) below are met.

(C) **Alternative to line tightness testing.** A certified electronic line leak detector may be used in lieu of an automatic mechanical line leak detector and annual tightness test only if:

(i) The system is capable of detecting and tests for a leak of 3 gallons per hour before or after each operation of the submersible turbine pump; and

(ii) The system is capable of detecting and tests for a leak of 0.2 gallons per hour at least once every month; and

(iii) The system is capable of detecting and tests for a leak of 0.1 gallons per hour annually, and the system is tested annually in accordance with manufacturer's specifications.

(D) **Vapor monitoring wells.** If vapor monitoring wells are an owner or operator's selected method of leak detection, the Fuel Specialist must ensure that the requirements listed below are met:

(i) There must be a sufficient number of wells limited to a 20-foot radius around the lines, and the wells must be properly marked and secured.

(ii) Wells must be correctly installed, and the OCC approved monitoring well site assessment must be made available to the Fuel Specialist.

(iii) Wells must be properly monitored and the results recorded every 30 days.

(E) **Interstitial monitoring.**

(i) All double-walled piping must be sloped to allow a leak to flow to the sump at the tank or dispensers.

(ii) Containment sumps connected to product piping must be equipped with at least one sump sensor at the lowest end of the piping gradient.

(iii) Sump sensors must detect any liquid or leaking petroleum product in accordance with the manufacturer's specifications.

(4) **Suction piping.** A line tightness test must be performed every 3 years according to manufacturer's specifications unless one of the line leak detection methods listed above is used, or unless it is safe suction piping that meets the specifications of (5) below.

(5) **Safe suction piping.** No annual line tightness test and no leak detection method is required if piping meets these specifications: below-grade piping must operate under vacuum, be sloped to allow product to drain back into the tank, and have only one check valve installed on each line directly below the pump. Compliance with these standards must be readily determined by the Fuel Specialist.

(6) **Cathodic protection.** The Fuel Specialist must ensure that cathodic protection is installed and in proper working order for all metal tanks and piping that routinely contain regulated substances or product and are in contact with the ground. Cathodic protection can be an impressed current or galvanic system with these requirements:

(A) A site map and anode information should be made available to the Fuel Specialist and all tanks and lines must be protected.

(B) Continuity tests must be conducted, and the soil-to-structure potential must be at least -0.85 volts.

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(C) Rectifier and cathodic protection tests must be performed by a qualified cathodic protection tester once every three years.

(D) Rectifier readings on impressed current systems must be recorded at least every 60 days and kept on site for review.

165:15-3-22. Equipment installation

Fuel Specialists must ensure that tanks and ancillary equipment are installed properly and conform to Commission standards. These standards apply to all facilities. Requirements are listed in detail in Chapter 25 and Chapter 26 of Commission rules.

(1) Unattended self-service stations.

(A) Operating instructions must be conspicuously posted.

(B) There must be a properly placed emergency shutoff device and conspicuously posted emergency instructions. A telephone or other approved means of communication to notify the fire department.

(2) **Emergency pressure release venting.** Above-ground storage tanks must have some form of construction or device that will relieve excessive internal pressure caused by exposure to fires, and have some form of emergency pressure venting. This applies to all compartments and interstitial spaces of tanks, and any enclosed spaces around tanks that can contain liquid.

(3) **Release vent construction.** An aboveground tank must have some form of pressure-relieving construction to appropriately control and direct a tank rupture. The tank owner or operator must present, upon request, evidence certifying the construction if the owner has the information.

(4) **Venting and venting specifications.** The Fuel Specialist will ensure that vent piping size, height, width, placement and construction meet approved standards, vent vapors upward and do not present collision or fire hazards.

(5) **Piping requirements.** The Fuel Specialist must ensure piping is appropriately constructed and protected from physical damage and corrosion where appropriate. Appropriate valves must be in place in piping to prevent leaks and fires. Aboveground storage tank piping and associated parts such as flanges and bolts must be constructed to resist fire to the appropriate extent.

(A) All new aboveground or underground piping must be installed in accordance with requirements of either Chapter 25 or Chapter 26 of Commission rules.

(B) Pressurized piping must have automatic line leak detectors with one sensor, float or similar mechanical device at each submersible pump, or at the lowest sump at the lowest island for each tank, whichever is at the lowest end of the piping gradient.

(6) **Equipment and materials.** All pipes, valves, couplings, faucets, flexible connectors, fittings and other pressure-containing parts must meet material specifications and pressure and temperature limitations, adhering to Commission standards. Underground equipment must

be cathodically protected where appropriate and above-ground equipment must resist fire to the approved extent. Impact/shear valves and breakaway valves must be in place to prevent leaks and stop their flow in an emergency.

(7) **Electrical equipment.** All electrical equipment must meet the requirements NFPA 70, the National Electrical Code, as it applies to wet, damp and hazardous conditions. All electrical wiring and equipment must be suitable for the locations in which it is installed, and required emergency switches must be provided and appropriately placed.

(8) **Vault requirements.** Vaults are ~~superior installation systems that are~~ not required, but can be used above or below grade and must meet standards listed in 165:26-2-71 of Commission rules. The Fuel Specialist will ensure that those standards are met.

(9) **Fill pipes.** Fill pipes must be properly installed and labeled, and overfill sump lids must be color-coded or properly labeled with permanent markings.

(10) **Collision barriers.** Aboveground storage tanks and all dispensers exposed to traffic must be resistant to damage from the impact of a motor vehicle or be protected by suitable collision barriers. Secondary containment may serve as a collision barrier.

(11) **Fencing requirements.** All aboveground tanks must be enclosed by an appropriate security fence.

(12) **Spill Prevention Control and Countermeasure Plan.** Owners or operators of aboveground storage tanks must have a Spill Prevention Control and Countermeasure Plan (SPCC Plan) completed in strict accordance with the requirements of Environmental Protection Agency 40 CFR 112, and updated every five years. Each facility location must have its own plan.

(13) **Corrosion protection.** Any portion of a tank or its piping system that routinely contain regulated substances or product and in contact with the soil must be protected from corrosion by a properly engineered, installed and maintained cathodic protection system in accordance with recognized standards of design listed in ~~165:26-3-80, 3-81, and 3-82~~OAC 165:26 Subchapter 2, Part 4 of Commission rules. A tank sitting on a concrete pad will be considered in contact with the soil unless it is insulated from the concrete by some dielectric material.

(14) Storage tank spacing and buffer distances.

(A) Aboveground storage tanks must be appropriately spaced; the Fuel Specialist will determine whether the spacing is in accordance with Chapter 26 of Commission rules.

(B) Minimum distances from aboveground storage tanks must also be maintained between tanks and the nearest important building on the same property, fuel dispensers, public ways, and property lines.

(15) **Secondary containment requirements for aboveground storage tanks.** Double-walled tanks do not require additional containment if conditions listed in OAC 165:26-2-31 are satisfied.

SUBCHAPTER 15. LIQUID MEASURING DEVICES

PART 7. MONEY VALUES AND VOLUMES DISPENSED

165:15-15-28. Position of equipment and money value divisions

- (a) A measuring device equipped with a primary indicating element, as described in 165:15-15-31 and used in direct sales to the public, must be positioned so that its indications may be accurately read and the measuring operation may be observed from some reasonable "customer" position.
- (b) The money value and dispensed liquid volume readings on the primary indicating elements must be the ones used for determining the money and volume amounts in any sale to the public. ~~The value of the graduated intervals representing money values on a computing type liquid measuring device with analog indications must be not more than one (1) cent at all unit prices up to and including \$2.99.~~ The device must automatically and accurately compute the total money value of the petroleum product delivered at the posted unit price.
- (c) On a computing type liquid measuring device with digital indications, the money values, mathematical agreement, and the total price computation must be based on quantities not exceeding 0.001 gallon intervals for devices indicating in inch-pound units and 0.002 liters for devices indicating in metric units.

165:15-15-31. Primary elements

- (a) **General.** A liquid measuring device must be equipped with a primary indicating element and may also be equipped with a primary recording element.
- (b) **Units.** ~~A liquid~~ A liquid measuring device must indicate, ~~and if the device is~~ be equipped to ~~must~~ record, its deliveries in terms of gallons, liter, or decimal subdivisions of the gallon or liter.
- (c) **Value of smallest unit.** The value of the smallest unit of indicated delivery, and recorded delivery if the device is equipped to record, must not exceed:
 - (1) One thousandth (.001) gallon or two thousandth (.002) liter on digital type retail devices, or one-tenth (0.1) gallon or one-tenth (0.1) liter on analog type systems.
 - (2) One gallon or one liter on wholesale devices.
- (d) **Return to zero.** Primary indicating and recording elements must advance only by the mechanical or electronic operation of the measuring device. However, a measuring device may be cleared by advancing its elements to zero, but only if:
 - (1) The advancing movement, once started, cannot be stopped until zero is reached; or
 - (2) In the case of indicating elements only, such elements are automatically obscured until the elements reach the correct zero position.
- (e) **Return to zero (key-lock).** The primary indicating elements, and primary recording elements if the device is equipped to record, must be readily returnable to a definite zero

indication. However, a key-lock or other self-operated device may be equipped with cumulative indicating or recording elements, provided that it is also equipped with a zero-return indicating element. Means must be provided to prevent the return of primary indicating elements, and of primary recording elements if the device is so equipped, beyond their correct zero position.

SUBCHAPTER 19. VIOLATIONS AND CONTEMPT

165:15-19-2. Enforcement procedure

In addition to the contempt procedures described in Chapter 5 of Commission rules, the following procedure for violations may be followed:

- (1) The PSTD Director or designee may issue a Field Citation for any violation or violations of the rules of this Chapter, and/or 17 O.S. §301 et seq., 47 O.S. §466 et seq., and/or 52 O.S. §321 et seq., ~~and/or 83 O.S. §111 et seq.~~, and amendments thereto.
- (2) A copy of the Field Citation must be furnished to the owner or operator.
- (3) The Field Citation must be authorized by the PSTD Director.
- (4) Prior to issuing a Field Citation to an owner or operator, the approval of the Director of the Petroleum Storage Tank Division must be obtained.

165:15-19-4. Re-inspection, Enforcement and Fine Citation

- (a) After the date that the violation is to be corrected, a Fuel Specialist will re-inspect the storage tank facility to verify that the violation has been corrected.
- (b) If the re-inspection shows that the violation has not been corrected, the Fuel Specialist will:
 - (1) Refer the violation to the Division's Compliance and Inspection Manager for enforcement action; and/or
 - (2) If the storage tank facility constitutes an immediate hazard, it may be shut down pending a correction of the problem or a hearing on the issue.
 - (3) Re-inspection of violations that are uncorrected shall be subject to an administrative penalty set forth in OAC 165:25 Appendix S or 165:26 Appendix G.

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**TITLE 165. CORPORATION COMMISSION
CHAPTER 16. ANTIFREEZE**

[OAR Docket #17-500]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 1. General Provisions
- 165:16-1-1. Purpose [AMENDED]
- 165:16-1-2. Definitions [AMENDED]

Permanent Final Adoptions

- 165:16-1-3. Applicability [AMENDED]
- 165:16-1-4. Authority of the Commission [AMENDED]
- Subchapter 3. Applications and Permits
 - 165:16-3-1. General requirements [AMENDED]
 - 165:16-3-2. Application for ~~special permits~~variance [AMENDED]
 - 165:16-3-3. Cancellation of permit [REVOKED]
- Subchapter 5. Testing of Antifreeze
 - 165:16-5-1. Testing of ethylene glycol antifreeze [AMENDED]
 - 165:16-5-2. Testing of methanol type antifreeze [AMENDED]
 - 165:16-5-3. Testing of prediluted aqueous ethylene glycol antifreeze [AMENDED]
 - 165:16-5-4. Testing of propylene glycol antifreeze [AMENDED]
- Subchapter 7. Adulteration and Misbranding
 - 165:16-7-1. Adulteration [AMENDED]
 - 165:16-7-2. Misbranding and labeling [AMENDED]
- Subchapter 9. Advertising
 - 165:16-9-1. Advertising [AMENDED]
- Subchapter 11. Penalty for Violation
 - 165:16-11-1. Penalty [AMENDED]

AUTHORITY:

The Commission's statutory authority is found in Article IX, Section 18 of the Oklahoma Constitution, and 47 O.S. §466.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

Although the Oklahoma Corporation Commission is not subject to the requirements of Executive Order No. 2013-34, the proposed rules were submitted to the Governor and Cabinet Secretary on September 21, 2016.

COMMENT PERIOD:

September 20, 2016 through December 23, 2016

PUBLIC HEARING:

January 24, 2017

ADOPTION:

January 24, 2017

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

February 1, 2017

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 13, 2017

FINAL ADOPTION:

June 13, 2017

EFFECTIVE:

September 11, 2017

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

- 165:16-5-1. Testing of ethylene glycol antifreeze
- 165:16-5-2. Testing of methanol type antifreeze
- 165:16-5-3. Testing of prediluted aqueous ethylene glycol antifreeze
- 165:16-5-4. Testing of propylene glycol antifreeze

INCORPORATED STANDARDS:

The American Society for Testing and Materials (ASTM): Standard Number D3306 Specification for Glycol Base Engine Coolant for Automobile and Light-Duty Service (2014); Standard D-1120 Standard Test Method for Boiling Point of Engine Coolants (2016); Standard D-1287 Standard Test Method for pH of Engine Coolants and Antirusts (2011); Standard D-1121 Standard Test Method for Reserve Alkalinity of Engine Coolants and Antirusts (2011); Standard D-1384, Standard Test Method for Corrosion Test for Engine Coolants in Glassware (2012); and Standard D-1177 Standard Test Method for Freezing Point of Aqueous Engine Coolants (2016).

INCORPORATING RULES:

- 165:16-5-1
- 165:16-5-2
- 165:16-5-3
- 165:16-5-4

AVAILABILITY:

8:00 am to 4:30 pm, Monday through Friday at Oklahoma Corporation Commission, Office of Petroleum Storage Tank Division, 4th Floor, Jim Thorpe Office Building, 2101 N. Lincoln Blvd., Oklahoma City, OK 73152-2000, 405-521-4683.

GIST/ANALYSIS:

OAC 165:16-1-1 is amended to correct punctuation. OAC 165:16-1-2 is amended to include language requested by the OAR whenever there are definitions listed in the rules, to update and clarify, and to match the language used in OAC 165:15; OAC 165:25; and OAC 165:26. OAC 165:16-1-3

is amended to include all entities subject to the requirements of OAC 165:16. OAC 165:16-1-4 is amended to outline and detail the authority of the Commission pertaining to enforcing antifreeze rules. OAC 165:16-3-1 is amended to set forth the specific requirements for an application to sell antifreeze in Oklahoma; to correct rule citations; and to outline the guidelines for antifreeze permitting. OAC 165:16-3-2 is amended to correct grammar. OAC 165:16-3-3 is revoked because it is already in the statute as set forth in 75 Okla. Stat. § 251. OAC 165:16-5-1 is amended to include the current edition of the standards incorporated in the rules as provided in 75 Okla. Stat. § 251. OAC 165:16-5-2 is amended to include the current edition of the standards incorporated in the rules as provided in 75 Okla. Stat. § 251. OAC 165:16-5-3 is amended to include the current edition of the standards incorporated in the rules as provided in 75 Okla. Stat. § 251. OAC 165:16-5-4 is amended to include the current edition of the standards incorporated in the rules as provided in 75 Okla. Stat. § 251. OAC 165:16-7-1 is amended to correct the name of the department for permit approval. OAC 165:16-7-2 is amended to correct the name of the department for permit approval; to make a grammatical correction for clarification; to include all entities subject to the rule; and to require a copy to be provided to PSTD when a label changes. OAC 165:16-9-1 is amended to include all entities subject to the rule. OAC 165:16-11-1 is amended to clarify what constitutes an offense.

CONTACT PERSON:

Travis Weedn, Senior Attorney, Office of General Counsel, Oklahoma Corporation Commission, 2101 N. Lincoln Blvd., P.O. Box 52000, Oklahoma City, OK 73152-2000, (405)521-4137, t.weedn@occcmail.com.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 1. GENERAL PROVISIONS

165:16-1-1. Purpose

The purpose of this Chapter is to implement the provisions of 47 O.S. (1995) §§ 461 et seq., regarding the sale of antifreeze in the State of Oklahoma.

165:16-1-2. Definitions

~~The following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:~~ In addition to the terms defined in 47 O.S. § 461 et seq., the following words or terms, when used in this Chapter, shall have the following meaning unless the context clearly indicates otherwise:

"Antifreeze" means all substances and preparations intended for use as the cooling medium, or to be added to the cooling liquid, in the cooling system of an internal combustion engine to prevent freezing or to raise the boiling point.

"Certified" means to attest that the analysis is as represented and meets the required standards of this Chapter.

"Commission" means the Oklahoma Corporation Commission and includes its designated divisions, departments, agents or representatives.

"Ethylene glycol antifreeze" means an antifreeze containing ethylene glycol as the major component.

"Licensee" means the name and address of the person who is selling, distributing, manufacturing, marketing, producing, selling or transporting antifreeze under a specific brand name.

"**Manufacturer**" means any person engaged in the manufacture of any antifreeze sold, offered for sale, ~~used, displayed, distributed, produced, used,~~ or consumed in the State of Oklahoma.

"**Methanol**" means an antifreeze with an alcohol base.

"**Person**" means any and all persons, including any individual, firm, partnership, corporation, company, trust, LLC, LLP, and association, whether such persons are acting as owner, bailee, or agent.

"**Propylene glycol antifreeze**" means an antifreeze containing propylene glycol as the major component.

"**Prediluted aqueous ethylene glycol**" means an antifreeze containing a 50 volume percent aqueous solution.

"**PSTD**" means the Petroleum Storage Tank Division.

165:16-1-3. Applicability

This Chapter shall apply to persons who display, distribute, manufacture, market, produce, store, transport, warehouse, sell, barter, use, or offer for sale or resale antifreeze of any brand or type in the State of Oklahoma. This Chapter does not apply to antifreeze used in manufacturing processes and consumptive use on the premises.

165:16-1-4. Authority of the Commission

In addition to other authority prescribed by law, the Commission shall have the authority to:

- (1) Enforce this Chapter by ~~certification~~ licensing, inspections, chemical analysis, or any other appropriate methods.
- (2) Call upon and take samples of antifreeze from the stocks of any applicant for or any holder of an antifreeze permit or any other persons suspected of ~~selling or distributing, displaying, manufacturing, marketing, producing, selling, storing, or transporting~~ antifreeze.
- (3) Access, by ~~legal~~ any means, all places of businesses of such persons, including buildings, vehicles, cars, and vessels used in the ~~manufacture, transportation, sale, or storage~~ display, distribution, manufacturing, marketing, producing, sale, storage, or transporting of antifreeze during regular business hours.
- (4) Open, by ~~legal~~ any means, any box, carton, parcel, or package containing or supposed to contain antifreeze, take possession of a representative container signed by receipt, for the purpose of taking samples ~~therefrom.~~
- (5) Require, request, and demand a bill of lading or other proof of delivery of antifreeze that on it's face appears to be unlicensed.

SUBCHAPTER 3. APPLICATIONS AND PERMITS

165:16-3-1. General requirements

Before any antifreeze can be ~~bartered, displayed, distributed, manufactured, marketed, produced, sold, used~~

~~and/or offered for sale or resale, or held with intent to sell, or transported~~ within the State of Oklahoma, a permit, bearing an official permit number of the Commission shall be obtained by the manufacturer of the antifreeze from the ~~Fuel Compliance and Inspection Department of the Commission~~ Petroleum Storage Tank Division.

(1) Application for antifreeze permits shall be ~~made on forms supplied by the Fuel Inspection Department and a certified analysis of the antifreeze covering the specification and standards as set out in 165:16-5-1, 165:16-5-2, and 165:16-3-2 shall be submitted with each application. The applicant shall further certify that the antifreeze is not misbranded and is properly labeled as set out in 165:16-7-2 and such certification shall be submitted with each applicationsubmitted with certified laboratory analysis, copies of the labels, and \$100.00 per brand and per type. If PSTD has previously approved the formula, a new laboratory analysis is not needed.~~

(2) ~~The initial application of the seller, manufacturer, packer, or distributor shall include the payment of a fee of One Hundred Dollars (\$100.00) for each brand of antifreeze submitted.~~

(3) ~~If said antifreeze meets the specifications and standards as set out in 165:16-5-1, 165:16-5-2, 165:16-5-3 and 165:16-5-4165:16-3-2, and 165:16-7-2, an annuala permit shall be issued to the applicant authorizing the sale of such antifreeze for the fiscal year, July 1 to until the end of the fiscal year, June 30.~~

(4) ~~On approval of an application for renewal of a permit, the fee shall not exceed One Hundred Dollars (\$100.00) per annum. Renewal invoices will be sent sixty (60) days before the fiscal year expires. The renewal fee is \$100.00 per brand and per type. Licensees do not need to resubmit information on individual brands and types each year unless the formula, name of the brand or the type has changed.~~

(5) ~~The original permit and/or renewal issued by the Commission shall bear the same permit number.~~

(6) ~~No permits shall be transferable.~~

165:16-3-2. Application for special permitsvariance

(a) Application ~~may~~ shall be made for an order establishing standards for any antifreeze product which does not fall within any classification established by this Chapter. The application shall be accompanied by a certified analysis setting out the chemical composition of the product and test data, including boiling point, pH, reserve alkalinity, and freezing point as measured by applicable ASTM or other appropriate methods.

(b) After notice as prescribed by the Commission and public hearing, the Commission ~~shall~~ may enter its order prescribing appropriate minimum standards applicable to the product and authorizing issuance of permit for the product pursuant to 165:16-3-1.

(c) A permit issued pursuant to such an order may be renewed annually, without further hearing, as provided in 165:16-3-1.

Permanent Final Adoptions

165:16-3-3. Cancellation of permit [REVOKED]

If the Commission finds after the issuance of a permit that the antifreeze product has been materially altered without written permission of the Commission or a change has been made in the name, brand, or trademark under which the antifreeze is sold or the applicant has violated any provision of this Chapter, the Commission shall notify the applicant and the permit shall be cancelled.

SUBCHAPTER 5. TESTING OF ANTIFREEZE

165:16-5-1. Testing of ethylene glycol antifreeze

The American Society for Testing and Materials (ASTM) standards standard D3306 (2014) shall be used to make the following tests of antifreeze.

(1) **Boiling point test.** The boiling point of an antifreeze shall be determined by the ASTM designation D-1120 (2016) test. The boiling point of a concentrated antifreeze shall not be below 311°F or 155°C. When added to the cooling system of a motor vehicle, at atmospheric pressure, an antifreeze shall increase the boiling point to a degree not less than the following:

- (A) 50% antifreeze: 226° F or 108° C
- (B) 40% antifreeze: 221° F or 105° C
- (C) 33 1/3% antifreeze: 219° F or 104° C
- (D) 20% antifreeze: 214° F or 101° C

(2) **pH test.** The pH of an antifreeze shall be determined by the ASTM designation D-1287 (2011) test. The pH of an antifreeze shall be run by using a solution composed of 50% concentrated antifreeze and 50% water, by volume. The pH of this antifreeze solution shall not be below 7.5.

(3) **Corrosion inhibition test.** The reserve alkalinity of antifreeze as determined by ASTM D-1121 (2011) shall be reported. The corrosion inhibitive properties of antifreeze shall be determined by ASTM D-1384 Test Method (2012). The average weight loss of each metal coupon shall not exceed the maximums stated as follows: copper 10 mg, solder 30 mg, brass 10 mg, steel 10 mg, cast iron 10 mg, and aluminum 30 mg.

(4) **Freezing point test.** The freezing point of antifreeze shall be determined by the ASTM designation D-1177 (2016) test. The freezing points of the various water antifreeze solutions shall be such as to protect according to the chart in Appendix A of this Chapter.

165:16-5-2. Testing of methanol type antifreeze

The American Society for Testing and Materials (ASTM) standards shall be used to make the following tests of antifreeze.

(1) **Boiling point test.** The boiling point of an antifreeze shall be determined by the ASTM designation D-1120 (2016) test. The boiling point of a concentrated antifreeze when added to the cooling system of a motor vehicle at atmospheric pressure shall not be below 133° F or 56° C.

(2) **pH test.** The pH of an antifreeze shall be determined by the ASTM designation D-1287 (2011) test. The pH of an antifreeze shall not be below 7.5. The pH of an antifreeze shall be run by using a solution composed of 50% concentrated antifreeze and 50% water, by volume.

(3) **Reserve alkalinity test.** The reserve alkalinity of an antifreeze shall be determined by the ASTM designation D-1121 (2011) test. The reserve alkalinity shall not be below 10.0.

(4) **Freezing point test.** The freezing point of an antifreeze shall be determined by the ASTM designation D-1177 (2016) test. The freezing point of the various water antifreeze solutions shall be such as to protect according to the chart in Appendix B of this Chapter.

165:16-5-3. Testing of prediluted aqueous ethylene glycol antifreeze

The American Society for Testing and Materials (ASTM) standards shall be used to make the following tests of antifreeze.

(1) **Boiling point test.** The boiling point of an antifreeze shall be determined by the ASTM D-1120 (2016) test. The boiling point of the prediluted coolant as packaged shall be at least 226°F or 108°C.

(2) **pH test.** The pH of an antifreeze shall be determined by the ASTM designation D-1287 (2011) test. The pH of an antifreeze shall be run by using a sample of the prediluted coolant as packaged. The pH of this antifreeze solution shall not be below 7.5.

(3) **Corrosion inhibition test.** The reserve alkalinity of antifreeze as determined by ASTM D-1121 (2011) shall be reported. The corrosion inhibitive properties of antifreeze shall be determined by ASTM D-1384 Test Method (2012). The average weight loss of each metal coupon shall not exceed the maximums stated as follows: copper 10 mg, solder 30 mg, brass 10 mg, steel 10 mg, cast iron 10 mg, and aluminum 30 mg.

(4) **Freezing point test.** The freezing point of antifreeze shall be determined by the ASTM designation D-1177 (2016) test. The freezing point of the concentrated antifreeze solution shall be at least to -34° F or -37° C.

165:16-5-4. Testing of propylene glycol antifreeze

The American Society for Testing and Materials (ASTM) standards shall be used to make the following tests of antifreeze.

(1) **Boiling point test.** The boiling point of an antifreeze shall be determined by the ASTM designation D-1120 (2016) test. The boiling point of a concentrated antifreeze shall not be below 305° F or 152° C. When added to the cooling system of a motor vehicle, a 50% antifreeze solution at atmospheric pressure shall increase the boiling point to a degree not less than 219° F or 104° C.

(2) **pH test.** The pH of an antifreeze shall be determined by the ASTM designation D-1287 (2011) test. The

pH of an antifreeze shall be run by using a solution composed of 50% concentrated antifreeze and 50% distilled water, by volume. The pH of this antifreeze solution shall not be below 7.5.

(3) **Corrosion inhibition test.** The reserve alkalinity of antifreeze as determined by ASTM D-1121 (2011) shall be reported. The corrosion inhibitive properties of antifreeze shall be determined by ASTM D-1384 Test Method (2012). The average weight loss of each metal coupon shall not exceed the maximums stated as follows: copper 10 mg, solder 30 mg, brass 10 mg, steel 10 mg, cast iron 10 mg, and aluminum 30 mg.

(4) **Freezing point test.** The freezing point of antifreeze shall be determined by the ASTM designation D-1177 (2016) test. The freezing points of a 50% concentrated antifreeze and 50% distilled water solution shall not be above -26°F or -32°C.

SUBCHAPTER 7. ADULTERATION AND MISBRANDING

165:16-7-1. Adulteration

Any antifreeze submitted to the ~~Fuel Compliance~~ and Inspection Department for permit approval and testing shall be deemed to be adulterated if the certified analysis or other testing indicates:

- (1) It consists in whole or in part of any substance which will render it injurious to the cooling system of an internal combustion engine or will make the operation of the engine dangerous to the user.
- (2) Its strength, quality, or purity falls below the professed standard of strength, quality, or purity under which it is sold.
- (3) It is a product intended to be used without further dilution and does not provide freezing point protection to -34° Fahrenheit.

165:16-7-2. Misbranding and labeling

Any antifreeze submitted to the ~~Fuel Compliance~~ and Inspection Department for permit approval shall be deemed to be misbranded if:

- (1) Labeling is false or misleading in any particular manner.
- (2) In package form it does not bear a label containing the name and place of business of the ~~manufacturer, packer, seller or distributor~~ distributor, manufacturer, marketer, packer, producer, seller, warehouse or wholesaler, and an accurate statement of the quantity of contents in terms of weight or volume and these facts are not stated plainly and correctly on the outside.
- (3) The product is to be diluted with another substance for use and does not bear on the label or in an accompanying instruction sheet, folder, or booklet a statement or chart showing appropriate amounts of each substance to be used to provide protection from freezing at various degrees of

temperature down to at least thirty degrees (30°) below zero Fahrenheit.

(4) The product is intended to be used without further dilution and the freezing point is not stated on the label and the front and back labels do not bear the words "Ready to Use" in minimum one quarter (1/4) inch high letters.

(5) Antifreeze manufacturers and licensees must provide a copy of any new version of any label change not previously submitted and approved by PSTD.

SUBCHAPTER 9. ADVERTISING

165:16-9-1. Advertising

No advertising literature relating to any antifreeze sold, or to be sold, in the State of Oklahoma shall contain any statement that the antifreeze advertised for sale has been approved by the Commission unless a current permit from PSTD has been issued to the ~~wholesaler, manufacturer, packer, or distributor~~ distributor, manufacturer, marketer, packer, producer, seller, warehouse or wholesaler, in which event such statement, together with the permit number, may be contained in any labeling and advertising literature where such brand or trademark or antifreeze is being advertised for sale.

SUBCHAPTER 11. PENALTY FOR VIOLATION

165:16-11-1. Penalty

- (a) Any person who violates or fails to comply with the provisions of this Chapter or the laws of the State, or any person who aids and abets in the violation thereof, shall, in addition to the penalties provided by law, be deemed guilty of contempt of order of the Commission and be subject to a fine not to exceed \$500.00 for each offense.
- (b) Each day such violation occurs shall constitute a separate offense.
- (c) Each container of antifreeze not conforming to all requirements set forth in this Chapter shall constitute a separate offense.

[OAR Docket #17-500; filed 6-23-17]

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

[OAR Docket #17-501]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 5. Safety Regulations for Gas Pipelines
- Part 5. Minimum Safety Standards for Gas
- 165:20-5-21. Adoption of federal safety regulations [AMENDED]
- Subchapter 7. Safety Regulations for Hazardous Liquids
- 165:20-7-1. Adoption of federal safety and reporting regulations [AMENDED]

Permanent Final Adoptions

Subchapter 13. Enforcement

Part 1. General

165:20-13-1. Scope and fines [AMENDED]

Subchapter 15. Regulations for Grants to Aid State Pipeline Safety Programs

165:20-15-1. Regulations for grants to aid state pipeline safety programs [AMENDED]

AUTHORITY:

The Commission's statutory authority is found in Title 52 O.S. § 5, Title 52 O.S. § 47.3, Article IX, Sections 18 and 18a of the Oklahoma Constitution and OAC 165-5-1-7.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

Although the Oklahoma Corporation Commission is not subject to the requirements of Executive Order No. 2013-34, the proposed rules were submitted to the Governor and Cabinet Secretary on December 30, 2016.

COMMENT PERIOD:

December 29, 2016 to February 21, 2017

PUBLIC HEARING:

March 9, 2017

ADOPTION:

March 9, 2017

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

March 16, 2017

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 13, 2017

FINAL ADOPTION:

June 13, 2017

EFFECTIVE:

September 11, 2017

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

Incorporated standards as they existed on January 1, 2017:

Adoption of federal safety regulations, 49 C.F.R. Part 192. Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards.

Adoption of federal safety and reporting regulations, 49 C.F.R. Part 195. Transportation of Hazardous Liquids by Pipeline.

Regulations for grants to aid state pipeline safety programs, 49 C.F.R. Part 198. Regulations for Grants to Aid State Pipeline Safety Programs.

Incorporating rules:

165:20-5-21

165:20-7-1

165:20-15-1

Availability:

8:00 am to 4:30 pm, Monday through Friday at Oklahoma Corporation Commission, Gas & Hazardous Liquid Pipeline Safety, 2nd Floor, Jim Thorpe Office Building, Room 232, 2101 N. Lincoln Blvd., Oklahoma City.

GIST/ANALYSIS:

OAC 165:20-5-21 is amended to adopt an updated version of the Code of Federal Regulations, 49 C.F.R. Part 192. OAC 165:20-7-1 is amended to adopt an updated version of the Code of Federal Regulations, 49 C.F.R. Part 195. OAC 165:20-13-1 is amended to remove outdated rule provisions based on changes in Oklahoma statute. OAC 165:20-15-1 is amended to adopt an updated version of the Code of Federal Regulations, 49 C.F.R. Part 198.

CONTACT PERSON:

Mark A. Willingham, Deputy General Counsel, Office of General Counsel, Oklahoma Corporation Commission, 2101 N. Lincoln Blvd., P.O. Box 52000, Oklahoma City, OK 73152-2000, (405)522-1638, m.willingham@occcemail.com.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 5. SAFETY REGULATIONS FOR GAS PIPELINES

PART 5. MINIMUM SAFETY STANDARDS FOR GAS

165:20-5-21. Adoption of federal safety regulations

The Commission adopts the provisions of 49 C.F.R. Part 192, as such exist on January 1, ~~2014~~2017, and all those amendments and appendices adopted thereafter, subject to the following amendments:

- (1) 49 C.F.R. § 192.1 is replaced by the following:
 - (A) This Part prescribes minimum safety requirements for intrastate pipeline facilities and the transportation of gas subject to the jurisdiction of the Commission.
 - (B) This Part shall not apply to:
 - (i) Interstate transmission facilities; and
 - (ii) Onshore gathering of gas through a pipeline that operates at less than 0 psig or through a pipeline that is not a regulated onshore gathering line as determined by 49 C.F.R. § 192.8.
- (2) The definition of "Administrator" and "State" are deleted and replaced as follows:
 - (A) All references to the "Administrator" are replaced with the "Commission".
 - (B) All references to the "State" refer to the State of Oklahoma.

SUBCHAPTER 7. SAFETY REGULATIONS FOR HAZARDOUS LIQUIDS

165:20-7-1. Adoption of federal safety and reporting regulations

The Commission adopts the provisions of 49 C.F.R. Part 195, as such exist on January 1, ~~2014~~2017, and all those amendments and appendices adopted thereafter subject to the following amendments:

- (1) 49 C.F.R. § 195.0 is replaced by the following: "This Part prescribes safety standards and accident reporting requirements for pipeline facilities used in the intrastate transportation of hazardous liquids subject to the jurisdiction of the Commission."
- (2) 49 C.F.R. § 195.1(a) is replaced by the following: "Except as provided in paragraph (b) of 49 C.F.R. § 195.1(b), this Part applies to pipeline facilities and the transportation of hazardous liquids associated with those facilities used in the intrastate transportation of hazardous liquids subject to the jurisdiction of the Commission."
- (3) The definition of "Administrator" shall be deleted and all references to the "Administrator" are replaced with the "Commission".
- (4) 49 C.F.R. § 195.52(b) is replaced by the following: "(b) Reports made under paragraph (a) of 49 C.F.R. § 195.52(a) are made by telephone to 405-521-2258 (Pipeline Safety Department in Oklahoma City, OK) and 800-424-8802 (in Washington, D.C. 202-462-2675), and must include the following information:
 - (A) Name and address of the operator.

- (B) Name and telephone number of the reporter.
- (C) The location of the failure.
- (D) The time of the failure.
- (E) The fatalities and personal injuries, if any.
- (F) All other significant facts known by the operator that are relevant to the cause of the failure or extent of the damages."

(5) 49 C.F.R. § 195.54(a) is replaced by the following: "Each carrier that experiences an accident that is required to be reported under this subpart, as soon as practicable but not later than 30 days after discovery of the accident, shall prepare and file an accident report on DOT Form 7000-1, or a facsimile, with the Pipeline Safety Department, Oklahoma Corporation Commission, in accordance with OAC 165:20-1-6 of this Chapter, and the Information Resources Manager, Office of Pipeline Safety, Department of Transportation, Washington, D.C. 20590."

(6) 49 C.F.R. § 195.54(b) is replaced by the following: "Whenever an operator receives any changes in the information reported or additions to the original report on DOT Form 7000-1, it shall file a supplemental report within 30 days with the Pipeline Safety Department, Oklahoma Corporation Commission, in accordance with OAC 165:20-1-6 of this Chapter, and the Information Resources Manager, Office of Pipeline Safety, Department of Transportation, Washington, D.C. 20590."

SUBCHAPTER 13. ENFORCEMENT PART 1. GENERAL

165:20-13-1. Scope and fines

This Subchapter prescribes the procedures utilized by the Oklahoma Corporation Commission in carrying out its responsibilities regarding pipeline safety under 52 O.S. 1981, Section 5 and 52 O.S. Supp. Sections 47.1 through 47.8, and is designed to utilize enforcement procedures already in place by hereby adopting the Commission's Rules of Practice, OAC 165:5, that are pertinent and necessary to carry out the enforcement of pipeline safety rules and regulations.

(1) For each violation of a Commission rule in Subchapters 5 and 10, the Commission may issue an order pursuant to 17 O.S. Section 1 et seq. fining an operator up to ~~ten thousand dollars (\$10,000.00) per day plus prosecution costs for each violation for each day the violation continues provided that the maximum fine shall not exceed five hundred thousand dollars (\$500,000.00) for any related series of violations~~ the maximum amount provided by 17 O.S. Section 6.1.

(2) For each violation of a Commission rule for hazardous liquid pipelines, the Commission may issue an order pursuant to 52 O.S. Section ~~47.647.1~~ et seq. fining an operator up to ~~ten thousand dollars (\$10,000.00) per day plus prosecution costs for each day the violation continues provided that the maximum fine shall not exceed five hundred thousand dollars (\$500,000.00) for any related series of violations~~ the maximum amount provided by 52 O.S. Section 47.6.

SUBCHAPTER 15. REGULATIONS FOR GRANTS TO AID STATE PIPELINE SAFETY PROGRAMS

165:20-15-1. Regulations for grants to aid state pipeline safety programs

The Commission adopts the provisions of 49 C.F.R. Part 198, with all amendments and appendices thereto as such exist January 1, ~~2009~~2017, and all amendments and appendices adopted thereafter.

[OAR Docket #17-501; filed 6-23-17]

TITLE 165. CORPORATION COMMISSION CHAPTER 25. UNDERGROUND STORAGE TANKS

[OAR Docket #17-502]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 1. General Provisions
- Part 3. Definitions
- 165:25-1-11. Definitions [AMENDED]
- Part 9. Notification and Reporting Requirements
- 165:25-1-41. General reporting requirements [AMENDED]
- 165:25-1-51. Transfer of ownership [AMENDED]
- Part 11. Recordkeeping
- 165:25-1-53. Availability of records [AMENDED]
- 165:25-1-56. Release detection and cathodic protection records [AMENDED]
- 165:25-1-58. Piping records [AMENDED]
- 165:25-1-60. Walkthrough inspections and records [AMENDED]
- Part 15. Shutdown of Operations
- 165:25-1-67. Shutdown of operations [AMENDED]
- Part 17. Licensing Procedures
- 165:25-1-107. License penalties
- Subchapter 2. General Requirements for Underground Storage Tank Systems
- Part 1. Codes and Standards
- 165:25-2-2. Incorporated codes and standards [AMENDED]
- 165:25-2-4. Financial responsibility [AMENDED]
- 165:25-2-6. Lender liability [NEW]
- Part 3. Design and Installation
- 165:25-2-33. Approved tanks, tank design [AMENDED]
- 165:25-2-36. Tank system installation [AMENDED]
- 165:25-2-39. Spill and overfill protection [AMENDED]
- 165:25-2-40. Installation testing [AMENDED]
- Part 5. Protection Against Corrosion
- 165:25-2-51. Corrosion protection [AMENDED]
- 165:25-2-52. Compliance with corrosion protection requirements and manufacturer's specifications [AMENDED]
- 165:25-2-53. Frequency and criteria of inspections and tests [AMENDED]
- Part 6. Piping
- 165:25-2-55.1. Underground storage tank piping materials [AMENDED]
- Part 13. Removal and Closure of Underground Storage Tank Systems
- 165:25-2-131. Tank removal and closure [AMENDED]
- 165:25-2-133. Temporary removal from service [AMENDED]
- 165:25-2-134. ~~Temporary closure: requirements~~ Requirements for returning to service [AMENDED]
- 165:25-2-135. Permanent closure [AMENDED]
- 165:25-2-136. Assessing the site at closure or change in service [AMENDED]
- Subchapter 3. Release Prevention and Detection Requirements
- Part 2. Release Detection Requirements and Methods
- 165:25-3-6.20. General monitoring requirements [AMENDED]

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165:25-3-6.21. General release detection methods and devices [AMENDED]
165:25-3-6.22. Tank system tightness testing with monthly inventory control [AMENDED]
165:25-3-6.23. Testing or monitoring for vapors [AMENDED]
165:25-3-6.24. Testing or monitoring for liquids on the groundwater [AMENDED]
165:25-3-6.25. Interstitial monitoring [AMENDED]
165:25-3-6.26. Automatic tank gauging systems [AMENDED]
165:25-3-6.28. Statistical Inventory Reconciliation (SIR) [AMENDED]
165:25-3-6.29. Monitoring requirements for piping [AMENDED]
Part 3. Release Investigation Requirements
165:25-3-8. Release investigation and confirmation [AMENDED]
Subchapter 18. Inspections, Notices of Violation, and Citations
Part 1. Inspections
165:25-18-4. Inspection for compliance [AMENDED]
Part 3. Notices of Violation and Citations
165:25-18-13. Payment of fine or hearing [AMENDED]
Appendix S. Fine Citations Table [REVOKED]
Appendix S. Fine Citations Table [NEW]

AUTHORITY:

The Commission's statutory authority is found in Article IX, Section 18 of the Oklahoma Constitution, 17 O.S. §§ 52, 306, 307, 321, 325 and 47 O.S. § 466.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

Although the Oklahoma Corporation Commission is not subject to the requirements of Executive Order No. 2013-34, the proposed rules were submitted to the Governor and Cabinet Secretary on September 21, 2016.

COMMENT PERIOD:

September 20, 2016 through December 23, 2016.

PUBLIC HEARING:

January 24, 2017

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January 24, 2017

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

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June 13, 2017

EFFECTIVE:

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SUPERSEDED EMERGENCY ACTIONS:

Superseded rules:

Subchapter 1. General Provisions

Part 3. Definitions

165:25-1-11. [AMENDED]

Subchapter 3. Release Detection Requirements and Methods

Part 2. Release Detection Requirements and Methods

165:25-3-6.28. [AMENDED]

Gubernatorial approval:

October 24, 2016

Register Publication:

34 Ok Reg 121

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16-777

INCORPORATIONS BY REFERENCE:

Incorporated standards:

Title 40 Code of Federal Regulations (CFR) 280 Environmental Protection Agency.

American Petroleum Institute (API): RP 1621 (2012) Bulk Liquid Stock Control at Retail Outlets; Publication 2200 (2015) Repairing Crude Oil, Liquefied Petroleum Gas, and Product Pipelines, Fourth Edition and Publication 2015 (2014) Requirements for Safe Entry and Cleaning of Petroleum Storage Tanks.

National Association of Corrosion Engineers (NACE): International Test Method, TM 0101, Measurement Techniques Related to Criteria for Cathodic Protection of Underground Storage Tank Systems; International Test Method, TM 0497, Measurement Techniques Related to Criteria for Cathodic Protection on Underground or Submerged Metallic Piping Systems; International Standard Practice SP 0169, Control of External Corrosion on Underground or Submerged Metallic Piping Systems; RP0285 External

Corrosion Control of Underground Storage Tank Systems by Cathodic Protection and International Standard Practice SP 0285 External Control of Underground Storage Tank Systems by Cathodic Protection.

Petroleum Equipment Institute (PEI): RP 1200 Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities.

Steel Tank Institute (STI): ACT 100 F894 Specification for External Corrosion Protection of FRP Composite Underground Steel Storage Tanks; STI-ACT-100-U*, F961, Specification for External Corrosion Protection of Composite Steel Underground Storage Tanks; STI-F841, Standard for Dual Wall Underground Steel Storage Tanks; STI-F922, Specification for Permatank*; STI-P3* Specification and Manual for External Corrosion Protection of Underground Steel Storage Tanks; and RP-R051, Cathodic Protection Testing Procedures for STI-P3* Underground Storage Tank Systems.

Underwriters Laboratories (UL): 1746 External Corrosion Protection Systems for Steel Underground Storage Tanks.

Incorporating rules:

165:25-1-56

165:25-1-60

165:25-2-2

165:25-2-4

165:25-2-6

165:25-2-33

165:25-2-40

165:25-2-51

165:25-3-6.21

Availability:

8:00 am to 4:30 pm, Monday through Friday at Oklahoma Corporation Commission, Office of Petroleum Storage Tank Division, 4th Floor, Jim Thorpe Office Building, 2101 N Lincoln Blvd., Oklahoma City, OK 73152-2000, 405-521-4683.

GIST/ANALYSIS:

OAC 165:25-1-11 is amended to illustrate different types of cathodic protection; define previously undefined "change in service" as used in the Chapter; define previously undefined "inert material" as used in this Chapter. OAC 165:25-1-41, OAC 165:25-1-51 are amended to alert owners/operators/purchasers of the requirement to provide address changes within 30 days. OAC 165:25-1-53 is amended to require leak detection record retention from one (1) year to three (3) years, and provide documentation of tank/substance compatibility when storing regulated substance with greater than 10% ethanol and 20% biodiesel. OAC 165:25-1-56 is amended to require release detection record retention from one (1) year to three (3) years, documentation of all calibration, maintenance and repair of release detection equipment must be kept at least three (3) years, and schedules of calibration and maintenance of release detection equipment from the manufacturer must be kept for five (5) years. OAC 165:25-1-58 is amended to change discretionary language to mandatory language for a map of the facility. OAC 165:25-1-60 is amended to add additional requirements for walkthrough inspections. This amendment is to conform the previous rule to 40 CFR 280.36. OAC 165:25-1-67 is amended to conform the current rule language to statute by adding the word "requirement" (17 O.S. § 1). OAC 165:25-1-107 is amended to strike the word "installation". The practical effect of the change broadens license penalties to any work performed, not just installation. OAC 165:25-2-2 is amended to include current dates of standards and adds seven (7) new standards. OAC 165:25-2-4 is amended to strike specific reference to federal regulation and Oklahoma statute, and inserting the new federal regulation 40 CFR 280, Subpart H. OAC 165:25-2-6 is a new rule referencing and incorporating the federal rule regarding lender liability, 40 CFR 280, Subpart I. OAC 165:25-2-33 is amended to reference the new standards incorporated in OAC 165:25-2-2. OAC 165:25-2-36 is amended to change "licensed tank installer" to "Licensed UST Installer" to clarify who may perform Underground Storage Tank ("UST") installations. OAC 165:25-2-39 is amended to add who is responsible for making sure fuel deliveries will not exceed tank capacity; ensuring that overfill protection devices function; and provide guidance on what to do if an overfill occurs. OAC 165:25-2-40 is amended to include how to test containment sumps. OAC 165:25-2-51 is amended to include five (5) additional standards and regulated parties may choose one (1) standard to comply with corrosion protection requirements. OAC 165:25-2-52 is amended to clarify that the Commission has jurisdiction over storage tanks that only contain regulated substances. OAC 165:25-2-53 is amended to require scheduling of cathodic protection testing, repair, or recertification. OAC 165:25-55.1 is amended to clarify when underground piping must be replaced. OAC 165:25-2-131 is

amended to clarify that a Licensed UST Remover perform UST removal and closures, and the UST remover must be present when concrete cutting and removal over any part of the tank system is performed. OAC 165:25-2-133 is amended to reflect a date certain (10/13/18) for when owners/operators must perform certain duties for temporarily out of service tanks systems. OAC 165:25-2-134 is amended to require additional testing of return to service tank systems in certain circumstances. OAC 165:25-2-135 is amended to require removal or closure in place with an inert material of underground storage tanks and piping if out of use for more than twelve (12) months. OAC 165:25-2-136 is amended to reference the sampling document for change of service/closure/removal. OAC 165:25-3-6.20 is amended to provide for release detection on compartmentalized tanks that are not in use. OAC 165:25-3-6.21 is amended to require testing of release detection devices and other components of a storage tank system no later than October 18, 2018, pursuant to 40 CFR 280. OAC 165:25-3-6.22 is amended to change the reference to inventory control from "every month" to "every thirty (30) days" in accordance with 40 CFR 280. OAC 165:25-3-6.23 is amended to confirm that fuel storage site assessments are to be performed by Commission Licensed Environmental Consultants and vapor observation wells must be checked every thirty (30) days by a Commission Licensed Observation Well Technician. OAC 165:25-3-6.24 is amended to change the reference from "Licensed remediation consultants" to "Licensed Environmental Consultants" and requires retention of a site assessment performed by the same to be kept onsite. Further, the amendment requires retention on site of observation well checks performed every thirty (30) days. OAC 165:25-3-6.25 is amended from monthly interstitial monitoring to every thirty (30) days in conformance with 40 CFR 280. OAC 165:25-3-6.26 is amended to require automatic tank gauging every thirty (30) days in accordance with 40 CFR 280. OAC 165:25-3-6.28 is amended to require statistical inventory reconciliation every thirty (30) days and the requirements for testing as provided in 40 CFR 280. OAC 165:25-3-6.29 is amended to strike "monthly" tests for product piping and substitute "every thirty (30) days" testing as required by 40 CFR 280. OAC 165:25-3-8 is amended to clarify language of system testing for secondary containment of double walled tanks. OAC 165:25-18-4 is amended to expand records retention in accordance with 40 CFR 280. OAC 165:25-18-13 is amended to allow for electronic payment. OAC 165:25 Appendix S is amended to correct three (3) rule numbers in the table.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 1. GENERAL PROVISIONS

PART 3. DEFINITIONS

165:25-1-11. Definitions

In addition to the terms defined in 17 O.S. § 303, the following words or terms, when used in this Chapter, shall have the following meaning unless the context clearly indicates otherwise:

"Agent" means a person authorized by another to act on their behalf, either out of employment or contract.

"Airport" means landing facility for aircraft that are routinely available for public use (whether routinely used or not). Airports as used in this Chapter do not include private airstrips or private airports.

"Airport hydrant system" means an underground storage tank system which fuels aircraft and operates under high pressure with large diameter piping that typically terminates into one (1) or more hydrants (fill stands). The airport hydrant system begins where fuel enters one or more tanks from an external source, such as a pipeline, barge, rail car, or other motor fuel carrier.

"ATG" means automatic tank gauge.

"Ball float functionality" means the ball float is operational as designed.

"BTEX" means benzene, toluene, ethylbenzene and xylene.

"Bulk plant" means a petroleum storage tank facility where gasoline, aviation fuel, diesel and/or volatile blending materials used in motor fuels, like kerosene and ethanol, are received by tank vessels, tank cars or tank vehicles and are stored or blended in mass quantities or bulk for the purpose of distribution by a tank vessel, tank car, tank vehicle, portable tank or other container, for wholesale or retail sale.

"Cathodic protection" means a technique designed to prevent the corrosion of a metal surface by making that surface the cathode of an electrochemical cell. For example, protection can be accomplished with an impressed current system or a galvanic anode system.

"Change in service" means a change in the status of a storage tank (i.e., from currently in use to temporarily out of use); change of regulated substance that a storage tank contains.

"Commission" means the Oklahoma Corporation Commission (OCC) and includes its designated agents or representatives.

"Construction tank" means a fuel tank used for twelve months or less at a construction site.

"Division" means the Petroleum Storage Tank Division (PSTD) of the Corporation Commission.

"EPA" means the United States Environmental Protection Agency.

"Farm tank" is a tank located on a tract of land devoted to the production of crops or raising animals, including fish, and associated residences and improvements. A farm tank must be located on the farm property. "Farm" includes but is not limited to fish hatcheries, rangeland, and nurseries with growing operations.

"Field constructed tank" means a tank constructed in the field such as a tank constructed of concrete that is poured in the field, or a steel or fiberglass tank primarily fabricated in the field.

"Financial responsibility" shall have the same meaning in this Chapter as in 40 CFR 280 Subpart H.

"Financial security" means holding financial security in a tank system or facility site and is not considered ownership of a tank system unless certain criteria of 40 CFR 280 Subpart H is met.

"Fleet and Commercial" means any facility as defined in this Chapter that uses underground storage tanks to store regulated substances for use in its own vehicles or equipment.

"Flow-through process tank" means a tank that forms an integral part of a production process through which there

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is a steady, variable, recurring or intermittent flow of material during the operation of the process. Flow-through process tanks do not include tanks used for the storage of materials prior to their introduction to the process or for the storage of finished products or by-products from the production process.

"Inert material" means a solid, motionless substance that is neither chemically nor biologically reactive, is denser than water, and will not decompose. Examples of inert material include sand and concrete, or as otherwise approved by PSTD staff.

"Lender liability" shall have the same meaning in this Chapter as in 40 CFR 280 Subpart I.

"Licensed Environmental Consultant" means an individual who has a current license issued by PSTD to perform corrective action.

"Marina" means any fuel storage tank system located on or by the water for the purpose of fueling watercraft.

"Out of Order tag" means tag, device or mechanism on the tank fill pipe that clearly identifies an underground storage tank as ineligible for delivery of product.

"Permanent out of use" or **"POU"** means a petroleum storage tank system that is not in service/use, does not contain regulated substances, and is not intended to be placed back in service/use.

"Private airport" means an airport used only by its owner and regulated as a fleet and commercial facility.

"Private airstrip" means a personal residential takeoff and landing facility part of the airstrip owner's residential property.

"PST" means petroleum storage tank.

"PSTD" means Petroleum Storage Tank Division.

"Public Utility" means any entity providing gas, electricity, water, or telecommunications services for public use.

"Regulated substance" means antifreeze, motor oil, motor fuel, gasoline, kerosene, diesel or aviation fuel. It does not include compressed natural gas, liquid natural gas and propane.

"Release detection" means determining whether a release of regulated substances has occurred from a petroleum storage tank or system into the environment or into the interstitial area between the underground storage tank system and its secondary barrier.

"Residential tank" is a tank located on property used primarily for dwelling purposes.

"Retail facility" means a service station, convenience store or any other facility selling motor fuel that is open to the general public.

"Secondary containment" means an underground storage tank and/or piping with inner and outer barriers which provide a space for interstitial (the space between the inner and outer walls of a double walled tank or piping) monitoring.

"Tampering" means willful intention which makes an attempt to deceive, cheat or misrepresent the facts to the public. It also presents a risk to environmental welfare as well as public health, safety and welfare.

"Tank tightness testing" or **"precision testing"** means a procedure for testing an underground storage tank system's integrity.

"Temporary out of use" or **"TOU"** means the status of an underground storage tank system that has been taken out of service/use but not removed with the intent to return to service.

"TPH" means total petroleum hydrocarbons.

"Underground storage tank" or **"UST "** or **"tank"** means a regulated storage tank, including underground piping, that has ten percent or more of its volume beneath the surface of the ground. ~~Piping is also included in this definition when referring to an airport hydrant system tank.~~

"Underground storage tank system" means an underground storage tank and any connected aboveground or underground piping, dispensers, containment sump, if any, and ancillary equipment or transport truck connected to the storage tank system.

"Used Motor Oil" is any spent motor oil removed from a motor vehicle.

PART 9. NOTIFICATION AND REPORTING REQUIREMENTS

165:25-1-41. General reporting requirements

PSTD requires owners or operators of underground storage tank systems to provide information it deems necessary for the protection of human health, safety, property and the environment. Use of the designated PSTD form(s) is required for scheduling, tank registration, change in ownership, monthly release detection, testing, temporary change in service, permanent closure, or return to service. Owners and operators must notify PSTD within thirty (30) days when their mailing address changes. Owners and operators of underground petroleum storage tank systems must notify PSTD at least thirty (30) days prior to switching to regulated substances containing greater than ten (10) percent ethanol or regulated substances containing greater than twenty (20) percent biodiesel using the PSTD notification form. These forms are available at the OCC website, PSTD webpage: www.occeweb.com, follow link to Petroleum Storage Tank Division and link to PSTD Compliance Forms.

165:25-1-51. Transfer of ownership

When the owner of an underground storage tank transfers ownership of the facility or tank to another person, the new owner must notify PSTD within 30 days of the transfer, by submitting the appropriate PSTD form. The former owner must advise the Commission of the name and address of the new owner. All records required by PSTD must be transferred at no cost to the new owner. Owners and operators must notify PSTD within thirty (30) days when their mailing address changes.

PART 11. RECORDKEEPING

165:25-1-53. Availability of records

- (a) Owners and operators of underground storage tank systems regulated by this Chapter must cooperate with PSTD requests for submission of records.
- (b) Each owner/operator must provide written notice of any address change within 30 days to the PSTD office.
- (c) All leak detection records, including but not limited to, sampling, testing, inventory and monitoring records, must be available on site for each tank for the preceding ~~12 months~~ three (3) years. Emergency generator tanks at unmanned locations are not required to keep leak detection records at the facility, and may forward any required records to the PSTD office or upon request to the PSTD Fuel Specialist.
- (d) Copies of the following records must be readily available to the PSTD Fuel Specialist:
 - (1) Tank tightness tests, monthly inventory reconciliation, statistical inventory reconciliation, vapor or groundwater monitoring, automatic tank gauge tests, and interstitial monitoring results that demonstrate compliance with release detection for tanks. ~~Statistical inventory reconciliation (SIR) records must demonstrate the following:~~
 - ~~(A) Report a quantitative result with a calculated leak rate;~~
 - ~~(B) Be capable of detecting a leak rate of 0.2 gallon per hour or a release of one hundred fifty (150) gallons within thirty (30) days; and~~
 - ~~(C) Use a threshold that does not exceed one half the minimum detectable leak rate.~~
 - (2) Line tightness tests, electronic line tests, all sensor and alarm history results, and line leak detector function tests that demonstrate compliance with release detection for lines.
 - (3) Installation and repair records for spill containment, overfill prevention, tank and piping construction must be maintained for three (3) years and readily available to PSTD.
 - (4) Cathodic protection records specified in 25-1-56, tank lining certificates, and any other records that demonstrate compliance with corrosion protection for the tank system must be maintained and readily available to PSTD.
 - (5) Current owner and tank system registration and current permit for all tanks located at the facility.
 - (6) Certificate(s) of training for all classes of operators.
 - (7) Records that document compatibility with underground petroleum storage tank systems storing regulated substances containing greater than ten (10) percent ethanol or twenty (20) percent biodiesel. These records must be maintained at the facility for as long as the tank system is used to store these substances. Additionally, the documents that prove compatibility must be submitted to PSTD within at least thirty (30) days of prior to the owner or operator receiving the records, switching to a regulated substance containing greater than ten percent (10%) ethanol or twenty percent (20%) biodiesel.
 - (8) Beginning October 13, 2018, owners and operators must maintain records of annual operation and maintenance tests on the electronic and mechanical components

- of release detection equipment. Records must be maintained for three (3) years and at a minimum must list each component tested, indicate whether each component needed to have action taken and describe any action taken to correct an issue.
- (9) A copy of the site assessment for groundwater or vapor monitoring must be kept at the facility for as long as this method is used as release detection.
- (e) Failure to have the required records available upon request by PSTD may result in enforcement action.
- (f) Release detection records must be maintained on forms specified by the Commission.

165:25-1-56. Release detection and cathodic protection records

- (a) Owners and operators of underground storage tank systems regulated by this Chapter must maintain release detection records for ~~a minimum of one year~~ three (3) years.
- (b) Owners and operators of underground storage tank systems regulated by this Chapter who use cathodic protection must maintain the following records.
 - (1) Original cathodic protection design with drawings, plans, description of materials used, and suitability study depicting all of the cathodic protection system components in accordance with National Association of Corrosion Engineers (NACE) RP0285.-
 - (2) Rectifier readings for impressed current systems conducted at least every 60 days on the appropriate OCC form.
 - (3) Results of the last three inspections or cathodic protection system tests completed by a corrosion tester.
- (c) If observation wells are used as release detection, the PSTD approved site assessment must be maintained on site.
- (d) Written documentation of all calibration, maintenance, and repair of release detection equipment permanently located on-site must be maintained for at least three (3) years after the servicing work is completed. Any schedules of required calibration and maintenance provided by the release detection equipment manufacturer must be retained for five (5) years from the date of installation.

165:25-1-58. Piping records

Tank owners ~~should~~ shall maintain a current map of their underground tank system and update it within 30 days of any changes.

165:25-1-60. Walkthrough inspections and records

- (a) Owners and operators must conduct walkthrough inspections according to the requirements in 40 CFR 280.36. Owners and operators of underground storage tank systems must maintain a record of 30-day and annual walkthrough inspections according to EPA requirements with the first inspection due by October 13, 2018.
 - (1) Every 30 days all spill prevention equipment and release detection equipment must be inspected (except spill prevention equipment at UST systems receiving deliveries at intervals greater than 30 days may be checked prior to

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delivery). Containment sumps and any hand-held release detection equipment, such as tank gauge sticks, must be inspected annually.

(2) Records should include a list of each area checked, whether each area checked was acceptable or needed action taken, a description of any actions taken to correct issues, and delivery records if spill prevention equipment is checked less frequently.

(b) In addition, airport hydrant systems must meet the additional walkthrough inspection requirement in 40 CFR 280.252(c).

(c) All walkthrough inspection records must be maintained on site for three (3) years.

PART 15. SHUTDOWN OF OPERATIONS

165:25-1-67. Shutdown of operations

(a) PSTD may close (shut down) a UST system:

- (1) If the system poses an imminent threat to health, safety, or the environment.
- (2) If the owner or operator is operating tanks for which permit fees have not been paid.
- (3) If the owner or operator fails to comply with a Commission requirement or order.
- (4) For failure to properly install, operate and/or maintain leak detection, spill, overfill, or corrosion equipment if the owner/operator has been issued a written notice of violation and has failed to take corrective action.
- (5) Failure to protect a buried metal flexible connector from corrosion if the owner/operator has been issued a written notice of violation and has failed to take corrective action.

- (6) Failure to perform, maintain, have readily available or present records for the previous twelve (12) months.
- (7) Failure to have a Class A, B, or C operator on premises during business hours.
- (8) Tampering with equipment.

(b) PSTD must close (shut down) a UST system:

- (1) If required spill prevention equipment is not installed.
- (2) If required overfill protection equipment is not installed.
- (3) If required leak detection equipment is not installed.
- (4) If required corrosion equipment is not installed.
- (5) If 2" or more of water is found in the tank where conventional gasoline or diesel fuel is stored and if 1/2" or more of water is found in the tank of gasoline blended with alcohols, E85 fuel ethanol, or diesel blended with biodiesel.
- (6) If a meter is found to be off in calibration by more than -15 cubic inches per every 5 gallons.
- (7) If a Fuel Specialist makes two (2) scheduled visits to a facility and the violation(s) is/are not corrected.

(c) Only PSTD designated employees have the authority to lock or seal dispensers and/or fill pipes of any UST system violating subsection (a) or (b) of this Section. The PSTD

employee must explain to the owner or operator the reason the UST system is being locked or sealed.

(d) The PSTD "Out of Order" tag attached to each fill pipe of the tank(s) in violation shall serve to clearly identify the tank(s) as ineligible for delivery, deposit, or acceptance of product. Tank owners/operators and product deliverers are responsible for ensuring that product is not delivered into the tagged tank(s).

(e) Owners, operators, or any persons who remove a lock or seal without permission from PSTD will be subject to penalties imposed by this Chapter, or formal enforcement proceedings.

(f) Upon confirmation that the UST system no longer poses an imminent threat to health, safety, or the environment, permit fees paid, violation(s) corrected, or Commission order requirements satisfied, the authority to remove a lock or seal by the owner or operator may be obtained as follows:

- (1) Written permission from the PSTD employee who placed the lock or seal on the device; or
- (2) Verbal or written permission from the Manager of Compliance and Inspection; or
- (3) Application to and order of the Commission.

(g) If a facility is closed under the provisions of this Section, the owner or operator of the facility will be afforded a hearing within ten (10) days of receipt by PSTD of the owner's or operator's application for a hearing.

PART 17. LICENSING PROCEDURES

165:25-1-107. License penalties

(a) The PSTD has the responsibility to deny, suspend, refuse to renew or revoke the license, or reprimand any licensee who is found guilty of:

- (1) The practice of any fraud or deceit in obtaining a license or in performing work pursuant to this Chapter.
- (2) Any gross negligence, incompetence or misconduct in ~~installation~~ work performed pursuant to this Chapter.
- (3) Knowingly making false statements or signing false statements, certificates or affidavits to the PSTD or to clients with the intention to induce payment.
- (4) Aiding or assisting another person in violating any provision of this Chapter.
- (5) Signing a verification statement for work performed pursuant to this Chapter that was not performed by the licensee.
- (6) Engaging in dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm a customer or the public.
- (7) Failure to comply with this Chapter, Chapters 26, 27, 29, ~~and~~ the Oklahoma Petroleum Storage Tank Regulation Act (17 O.S. § 301 et seq.), and the Oklahoma Petroleum Storage Tank Release Indemnity Program will result in PSTD seeking a suspension and/or revocation of the license.
- (8) Being under indictment or convicted of any criminal offense.
- (9) Failure to submit required PSTD ~~installation~~ paperwork within ~~30 days~~ the time allowed.

(b) Prior to any license suspension, revocation, or refusal to renew, the Director of PSTD will have the matter investigated and a report made for his or her consideration. If the Director elects to proceed with suspension, revocation, or refusal to renew, a Notice of Intent will be mailed to the licensee. If the Director elects to pursue suspension, revocation, or refusal to renew, PSTD will schedule a hearing before an Administrative Law Judge and the licensee will be officially notified. The burden of clear and convincing proof of violations of this Chapter, applicable state law, or other rules, regulations or Commission orders rests upon the PSTD.

(c) This Section in no way exempts the licensee from having to meet other applicable requirements as set by state and federal statutes and regulations from other state and federal agencies.

(d) Any licensee in violation of state law, enabling statutes, PSTD rules and/or Commission orders may be subject to fines assessed by the Commission after notice and hearing.

SUBCHAPTER 2. GENERAL REQUIREMENTS FOR UNDERGROUND STORAGE TANK SYSTEMS

PART 1. CODES AND STANDARDS

165:25-2-2. Incorporated codes and standards

Specific references to documents are made in this Chapter. Each of these documents or part thereof is included by reference as a standard. New editions of codes and standards supersede all previous editions. Commission rules will supersede in all conflicts between PSTD rules and any industry standard. These codes and standards will be updated periodically through a formal rulemaking procedure initiated by PSTD to reflect any substantive or relevant changes.

- (1) National Fire Protection Association Standards:
 - (A) Standard Number 30, 2015, "Flammable and Combustible Liquids Code."
 - (B) Standard Number 329, 2015, "Handling Releases of Flammable and Combustible Liquids and Gases."
 - (C) Standard Number 385, 2012, "Tank Vehicles for Flammable and Combustible Liquids."
 - (D) Standard Number 326, 2015, "Safeguarding Tanks and Containers for Entry, Cleaning and Repair."
 - (E) Standard Number 30A, 2015, "Motor Fuel Dispensing Facilities and Repair Garages."
- (2) American Petroleum Institute Standards
 - (A) Recommended Practice 1615, 2011, "Installation of Underground Hazardous Substances or Petroleum Storage Systems, Sixth Edition."
 - (B) Recommended Practice 1632, 2002, "Cathodic Protection of Underground Storage Tank and Piping Systems."
 - (C) Recommended Practice 1604, (R2010), "Closure of Underground Petroleum Storage Tanks, Third Edition."

- (D) Recommended Practice 1631, 2001, "Interior Lining and Periodic Inspection of Underground Storage Tanks."
 - (E) Recommended Practice 1621, ~~(R2001)~~(R2012), "Bulk Liquid Stock Control at Retail Outlets."
 - (F) Recommended Practice 1626, 2010, "Storing and Handling Ethanol and Gasoline - Ethanol Blends at Distribution Terminals and Service Stations."
 - (G) Recommended Practice 1627, 1993, "Storing and Handling of Gasoline - Methanol/Cosolvent Blends at Distribution Terminals and Service Stations."
 - (H) Publication 1628, 1996, "A Guide to the Assessment and Remediation of Underground Petroleum Releases."
 - (I) Publication 2200, ~~2010~~2015, "Repairing Crude Oil, Liquefied Petroleum Gas, and Product Pipelines, Fourth Edition."
 - (J) Publication 2015, ~~2004~~2014, "Requirements for Safe Entry and Cleaning of Petroleum Storage Tanks."
 - (K) Recommended Practice 1637, (R2012), "Using the API Color Symbol System to Mark Equipment and Vehicles for Product Identification at Gasoline Dispensing Facilities and Distribution Terminals, Third Edition."
- (3) National Association of Corrosion Engineers:
- (A) Standard Number SP0169-2013, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems."
 - (B) Standard Number SP0285-2011, "External Corrosion Control of Underground Storage Tank Systems by Cathodic Protection."
 - (C) Standard Number SP0286-2007, "Electrical Isolation of Cathodically Protected Pipelines."
 - (D) International Test Method, TM 0101, "Measurement Techniques Related to Criteria for Cathodic Protection of Underground Storage Tank Systems."
 - (E) International Test Method, TM 0497, "Measurement Techniques Related to Criteria for Cathodic Protection on Underground or Submerged Metallic Piping Systems."
- (4) Underwriter's Laboratory Standards:
- (A) Standard UL58, 9th Edition, 1996, "Steel Underground Tanks for Flammable and Combustible Liquids."
 - (B) Standard UL1316 Bulletin 2013, "Glass-Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products, Alcohols, and Alcohol-Gasoline Mixtures."
 - (C) Standard UL1746 Bulletin 2013, "External Corrosion Protection Systems for Steel Underground Storage Tanks."
 - (D) Standard UL567 Bulletin-2012, "Emergency Breakaway Fittings, Swivel Connectors and Pipe-Connection Fittings for Petroleum Products and LP-Gas."

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- (E) Standard UL971 Bulletin 2011, "Nonmetallic Underground Piping for Flammable Liquids."
- (5) American Society for Testing Materials:
(A) ASTM E1739-95 (2015), "Standard Guide for Risk-Based Corrective Action Applied at Petroleum Release Sites."
(B) ASTM G158-98 ~~(2010)~~(2016), "Three Methods of Assessing Buried Steel Tanks."
- (6) Petroleum Equipment Institute:
(A) PEI/RP 100 (2011 Edition) "Recommended Practices for Installation of Underground Liquid Storage Systems."
(B) PEI/RP 400-02 (2012 Edition), "Recommended Practices for Inspection and Maintenance of Motor Fuel Dispensing Equipment."
(C) PEI/RP 500-05 (2011 Edition), "Recommended Practice for Inspection and Maintenance of Motor Fuel Dispensing Equipment."
(D) PEI/RP 900-07 (2008 Edition), "Recommended Practices for the Inspection and Maintenance of UST Systems."
(E) PEI/RP 1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities."
- (7) Steel Tank Institute:
(A) STIP3®, "Specification and Manual for External Corrosion Protection of Underground Steel Storage Tanks."
(B) STI-R892-91, "Recommended Practice for Corrosion Protection of Underground Piping Networks Associated with Liquid Storage and Dispensing Systems."
(C) STI-R894-91, "Specification for External Corrosion Protection of FRP Composite Underground Steel Storage Tanks."
(D) RP-972-10, "Recommended Practice For The Addition of Supplemental Anodes to STI-P3 USTs."
(E) STI-ACT-100-U®, F961, "Specification for External Corrosion Protection of Composite Steel Underground Storage Tanks".
(F) STI-F841, "Standard for Dual Wall Underground Steel Storage Tanks."
(G) STI-F922, "Specification for Permatank®."
(H) RP-R051, "Cathodic Protection Testing Procedures for STI-P3® Underground Storage Tank Systems."
- (8) Association of Composite Tanks, ACT 100, "Specifications for the Fabrication of FRP Clad/Composite Underground Storage Tanks."
- (98) Factory Mutual 1920, "Flexible Pipe Couplings."
(109) National Leak Prevention Association Standard 631, "Spill Prevention, Minimum 10 Year Life Extension, Existing Steel UST by Lining without Additional Cathodic Protection."
(110) National Groundwater Well Association, 1986, "RCRA Ground Water Monitoring Technical Enforcement Guidance Document (TEGD)."

~~(11)~~ U.S. Environmental Protection Agency Office of Water, 1997, Drinking Water Advisory: "Consumer Acceptability Advice on Health Effects Analysis on Methyl Tertiary-Butyl Ether (MTBE)."

~~(12)~~ Ken Wilcox Associates, Inc., First Edition: "Recommended Practice for Inspecting Buried Lined Steel Tanks Using a Video Camera."

165:25-2-4. Financial responsibility

(a) An owner/operator ~~may~~**must** satisfy the requirements of Title 40 Code of Federal Regulations (CFR), ~~280.90 through 280.111~~280, Subpart H by use of the Petroleum Storage Tank Indemnity Fund (Indemnity Fund) ~~(ref: Okla. Stat. Tit. 17 §350 et seq.)~~ (ref: Okla. Stat. Tit. 17 §350 et seq.). A co-pay must be paid for which compliance may be demonstrated by use of any of the mechanisms outlined in 40 CFR ~~280.90 through 280.111~~280, Subpart H, including, but not limited to Self-insurance, Guarantee, Insurance, Surety Bond, Letter of Credit, Trust fund or standby trust fund, Securities pledge, Cash or cash equivalent pledge. For releases that occurred before June 4, 2004 the co-pay is \$5,000; for releases that occurred after June 4, 2004 the co-pay is 1% of fund expenditures not to exceed \$5,000.

(b) Financial responsibility regulations promulgated on or before November 9, 1989 by the United States Environmental Protection Agency are hereby adopted as provisions of this Chapter as though set forth herein with the exception that, and unless the context otherwise dictates, all references therein to "Implementing Agency" shall be considered references to the "Oklahoma Corporation Commission," and all references to "Administrator," "Regional Administrator," "Director," or "State Director" shall be considered references to the "Director of the Petroleum Storage Tank Division of the Oklahoma Corporation Commission."

165:25-2-6. Lender liability

PTSD incorporates by reference the lender liability requirements specified in 40 CFR 280, Subpart I.

PART 3. DESIGN AND INSTALLATION

165:25-2-33. Approved tanks, tank design

(a) Tanks must be properly designed and constructed, and any portion underground that routinely contains a regulated substance must be protected from corrosion as specified in referenced codes and standards. All new or replacements tanks except those excluded by regulation in this Chapter must be double wall or jacketed secondarily contained in construction to prevent the release of regulated substances to the environment during the operational life of the system.

(1) Fiberglass-reinforced plastic tanks must conform to the standards contained in UL 1316 or ASTM D4021-86.

(2) Steel tanks clad with fiberglass-reinforced plastic must conform to the standards contained in UL 1746, ~~or ACT-100 F894, ACT-100-U F961, or STI F922.~~

(3) Tanks constructed of steel and cathodically protected must conform to the standards in UL 58, UL 1746, STI-P3, STI F841, and NACE RP-0285 and must be protected in the following manner:

- (A) The tank must be coated with a suitable dielectric material.
- (B) Field-installed cathodic protection systems must be designed by a corrosion expert.
- (C) Impressed current systems must be designed to allow determination of current operating status as required by this Chapter and manufacturer's specifications.
- (D) Cathodic protection systems must be operated and maintained according to this Chapter and manufacturer's specifications.

(b) PSTD may permit alternative types of tank construction, design, and corrosion protection if the owner demonstrates to PSTD's satisfaction that the proposed system will prevent the release of any stored regulated substance to the environment during the operational life of the system.

(c) All underground storage tank systems must be properly installed in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory and in accordance with the manufacturer's instructions.

165:25-2-36. Tank system installation

(a) **Backfill material.** Backfill material used below, around, and/or above a new underground storage tank system installation must be clean, unused, non-corrosive porous material such as sand, crushed rock or pea gravel specified by the tank manufacturer. ~~The licensed tank installer~~ Licensed UST Installer must be present and continuously supervise backfilling operations to ensure that proper procedures are followed.

(b) **UST installation.**

(1) Owners/operators of all underground storage tank systems must notify PSTD at least 24 hours prior to the installation of underground storage tanks and/or lines by submitting the PSTD scheduling form and receiving confirmation of the installation and the Temporary Authorization for Receipt of Fuel from PSTD. Following the required 24-hour notification of new UST installations, an on-site inspection may be required at the following critical junctures. The PSTD Fuel Specialist may observe and/or inspect:

- (A) The air/soap test of tanks.
- (B) The tank pit prior to the placement of tank(s).
- (C) The backfilling of the lower quadrant of tank(s).
- (D) The air/soap test and layout of piping prior to backfilling.
- (E) The tightness test of tanks and piping, and leak detector tests prior to startup.
- (F) The pit must contain a smooth, evenly graded bed of manufacturer approved material extending the full length of the tank bottom.

(2) Precautions must be taken to prevent damage to the tank or piping coating during installation. Any damage to

the coating must be repaired in accordance with the manufacturer's instructions prior to the completion of the installation.

(3) Piping must be arranged to minimize crossed lines and interference with conduits and other tank system components. If crossing is unavoidable, factory specifications must be provided to prevent contact between piping segments.

(4) Underground piping must have a minimum slope of one-eighth inch (1/8") per foot toward the tank and must be buried below ground a minimum of 18" (inches).

(5) If a tank is installed in an area subject to a high water table or flooding, anchoring must be used to prevent tank flotation. Anchoring straps and associated equipment must be installed in a manner that will prevent damage to the tank and/or its coating.

(6) ~~The licensed installer~~ Licensed UST Installer must follow PEI RP-100 recommended practice for ballasting to prevent tank flotation during installation.

(7) Licensed UST Installers must be certified by the tank and line manufacturer, if applicable, and must be on site during all installation activities, including preparation for and placement of concrete over any part of the tank system.

(8) Photos of installation and other required documentation must be submitted with the PSTD registration form within 30 days and tank fees must be paid before a permit will be issued.

165:25-2-39. Spill and overfill protection

(a) Owners and operators of underground storage tank systems, as well as those who transport regulated substances to these systems must do everything reasonably possible to ensure that releases due to spilling and overfilling do not occur.

(b) Owners, operators, their employees or agents, or transporters must ensure that the volume available in the tank (ullage) is greater than the volume of product to be transferred to the tank before the transfer is made and that the transfer operation is monitored constantly to prevent overfilling and spilling.

~~(bc)~~ Tight fill connections must be used on all deliveries made to underground storage tanks.

~~(ed)~~ Tampering with overfill protection is not permitted. Any violation of this Section will be subject to the enforcement procedures of this Chapter resulting in fines, contempt proceedings, and/or shutdown of operations as provided by law.

~~(de)~~ Except as provided in (e) of this Section, in order to prevent spilling and overfilling associated with product transfer to the petroleum storage tank system, the following prevention equipment must be used:

(1) Spill prevention equipment that will prevent release of product to the environment when the transfer hose is detached from the fill pipe (for example, a spill bucket).

(2) Overfill prevention equipment that will automatically shut off flow into the tank when the tank is no more than 95 percent full.

(A) A drop tube with overfill device is required on all tank systems installed after July 1, 2001.

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- (B) Tanks installed before July 1, 2001, must be upgraded to meet these standards before July 1, 2002, unless equipped with an operational ball float overflow device. Use of ball floats is prohibited with suction systems. Staff may require a ball float functionality test.
- (C) Ball float valves that are inoperable cannot be repaired and instead must be replaced with a drop tube with flapper valve, or
- (D) A mechanism to prevent overflowing by sounding an alarm when the liquid level in the tank reaches 90 percent of capacity and by automatically stopping the delivery of liquid to the tank when the level in the tank reaches 95 percent of capacity.
- (ef) On new installations, overflow prevention equipment must be inspected for proper operation at installation and at least once every three (3) years thereafter. Existing systems must inspect overflow prevention equipment for proper operation by October 13, 2018 and at least once every three (3) years thereafter. When inspecting, owners and operators must at a minimum ensure the overflow prevention equipment is set to activate at the correct level in the tank and will activate when regulated substances reach that level.
- (fg) On new installations, spill prevention equipment must be tested for liquid tightness at installation and at least once every three (3) years thereafter or use a double-walled spill bucket with periodic interstitial monitoring that is monitored at least every thirty (30) days. Existing systems must test spill prevention equipment for liquid tightness by October 13, 2018 and at least once every three (3) years thereafter or use a double-walled spill bucket with periodic interstitial monitoring that is monitored at least every thirty (30) days.
- (gh) The spill and overflow prevention equipment specified in (d) of this Section is not required if the underground storage tank system is filled by transfers of no more than twenty-five (25) gallons at one time.
- (i) Owners and operators must contain and immediately clean up any spill or overflow of regulated substances less than 25 gallons within 24 hours of incident occurrence. If the spill or overflow cannot be cleaned up within 24 hours, is more than 25 gallons, or it causes a sheen on nearby surface water, then owners and operators must report to the PSTD within 24 hours and begin corrective action in accordance with Part 5 (Corrective Action Requirements) in Chapter 29 of Commission rules.

165:25-2-40. Installation testing

- (a) All tanks must be tested with air pressure prior to installation, and/or tested according to manufacturer's specifications. Pressure must not exceed 5 pounds per square inch (psi). The entire tank must be soaped during this period and inspected for bubbling.
- (b) All suction piping must be tested while disconnected from the tank, pumps, and dispensing units. The piping must be subjected to an air test with the following specifications:
- (1) The piping must be subjected to an air test of at least 50 psi for a period of one hour.

- (2) All piping joints must be soaped while the system is under pressure, in order to detect any possible leaks.
- (3) As an alternative to the preceding methods in (1) and (2) above, the piping may be subjected to a vacuum test while connected to tanks, pumps and dispensing units.
- (c) Pressurized piping must be tested while connected to tanks and pumps. The piping must be subjected to an air test of at least 50 psi.
- (1) Air test secondary piping for a period of one hour, using the test pressure prescribed by the piping manufacturer.
- (2) Apply soap solution to all joints and piping surfaces and inspect for leaks.
- (d) All piping should be air tested and monitored continuously during the installation.
- (e) Tightness (also called precision) testing of the entire system must be performed after all paving over the tanks and piping has been completed and before the system is placed in operation:
- (1) A precision tightness test must be performed by a certified tester, and in accordance with manufacturer's instructions; or
- (2) The following alternative to a precision tightness test will be accepted, but only if conducted before the system is put into service:
- (A) A certified ATG capable of detecting a leak of 0.10 gallons per hour must be used to test the filled portion of the tank and
- (B) A precision tightness test of the ullage portion of the tank must be completed.
- (3) Testing of both interstice and primary tank of a double wall tank as specified by tank manufacturer must be performed.
- (4) Primary tank openings, manways and risers must be tested during the installation of all double wall tanks.
- (5) The product line(s) must be hydrostatically tested by a NWGLDE approved testing device capable of detecting a leak of 0.10 gallons per hour with a test pressure of 50 psi or $1\frac{1}{2}$ times the operating pressure, whichever is greater. The lines must be tested for a minimum of one hour.
- (6) Mechanical and electronic leak detector(s) must be tested for function by simulating a leak and operate in accordance with manufacturer's specifications.
- (7) If an ATG system with electronic line leak detector(s) is installed, it must complete a leak detector test in each of the modes in which it is certified as capable of detecting a leak (e.g. 3 gph, 0.2 gph and 0.1 gph).
- (8) Containment sumps must be tested after all piping and conduit has been installed by filling sumps with water and monitoring the liquid level for an 8 hour period along with spill prevention equipment (spill buckets) by using vacuum, pressure, or liquid testing in accordance with one of the following criteria:
- (A) Requirements developed by the manufacturer (owners and operators may use this option only if the manufacturer has developed requirements):

(B) Code of practice developed by a nationally recognized association or independent testing laboratory, e.g., PEI RP 1200.

PART 5. PROTECTION AGAINST CORROSION

165:25-2-51. Corrosion protection

Any portion of a metallic tank or piping system in contact with the soil must be protected from corrosion. A cathodic protection system must be designed by a corrosion expert, installed and maintained in accordance with recognized standards of design, such as: American Petroleum Institute Publication 1632, Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems. One of the following codes of practice shall be used to comply with this section:

- (1) NACE International Test Method TM 0101, "Measurement Techniques Related to Criteria for Cathodic Protection of Underground Storage Tank Systems";
- (2) NACE International Test Method TM 0497, "Measurement Techniques Related to Criteria for Cathodic Protection on Underground or Submerged Metallic Piping Systems";
- (3) Steel Tank Institute Recommended Practice R051, "Cathodic Protection Testing Procedures for STI-P3® Underground Storage Tanks";
- (4) NACE International Standard Practice SP 0169, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems"; or
- (5) NACE International Standard Practice SP 0285, "External Control of Underground Storage Tank Systems by Cathodic Protection.

165:25-2-52. Compliance with corrosion protection requirements and manufacturer's specifications

Corrosion protection systems shall be operated and maintained in accordance with manufacturer's instructions and specifications to provide continuous corrosion protection to the metal components of the storage tank system that ~~are~~ routinely contain regulated substances and are in contact with the ground.

165:25-2-53. Frequency and criteria of inspections and tests

- (a) All cathodic protection systems must be tested within 6 months of installation and/or repair, and at least every ~~3~~three (3) years thereafter.
- (b) Cathodic protection testing, repair, or three (3) year recertification must be scheduled at least 24 hours before by submitting the PSTD scheduling form and PSTD staff may be present.
- (bc) Every 60 days impressed current cathodic protection systems must be inspected by the owner or owner's designated representative to ensure the equipment is working properly.
- (ed) The criteria that are used to determine whether cathodic protection is adequate must be in accordance with a code of

practice developed by a nationally recognized organization, such as NACE RP-0285.

(de) All personnel performing cathodic protection system testing must have the required education, experience, knowledge and competence to correctly perform testing services in accordance with a certified course and applicable industry standards or codes.

PART 6. PIPING

165:25-2-55.1. Underground storage tank piping materials

- (a) All new or replacement underground pressurized piping must be installed as follows:
 - (1) Nonmetallic;
 - (2) Double-walled;
 - (3) A tracer locator wire must be installed in all piping trenches; and
 - (4) Tank, dispenser, and transition sumps must be installed and monitored per 165:25-3-6.29.
- (b) All new or replacement suction product piping must meet the requirements of 165:25-3-6.29 as follows:
 - (1) Nonmetallic;
 - (2) Double-walled;
 - (3) A tracer locator wire must be installed in all piping trenches; and
 - (4) Tank, dispenser, and transition sumps must be installed and monitored per 165:25-3-6.29.
- (c) Existing facilities that are replacing ~~more than~~the lesser of twenty feet (20') or fifty percent (50%) of underground piping must upgrade pursuant to (a) or (b) of this Section. If a metallic line fails due to corrosion, all metallic product lines at the facility must be immediately removed, and cannot be repaired.
- (d) Existing facilities that are making any alteration to a fuel island when concrete removal is required must install dispenser sumps and monitor as pursuant 165:25-3-6.29.
- (e) Existing facilities that are replacing dispensers must install dispenser sumps and monitor as pursuant to 165:25-3-6.29 if modifications are made below the dispenser cabinet.
- (f) Existing facilities that are replacing underground storage tanks or making repairs at a submersible pump that require excavation of dirt or concrete removal must install tank sumps and they must be monitored pursuant 165:25-3-6.29.
- (g) Existing facilities that are replacing underground storage tanks must replace all single walled piping per (a) or (b) of this section.
- (h) Piping installed as a siphon or to manifold tanks may be single wall non-metallic pipe.
- (i) Ball valves must be installed on new safe suction lines to isolate lines for testing purposes.

PART 13. REMOVAL AND CLOSURE OF UNDERGROUND STORAGE TANK SYSTEMS

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165:25-2-131. Tank removal and closure

- (a) Owners/operators of all underground storage tank systems must notify PSTD at least 14 days prior to the removal or permanent closure of underground storage tanks and/or lines by submitting the PSTD scheduling form and receiving confirmation of the scheduled removal from PSTD. If events require a change in the date of removal, PSTD shall be given 48 hours notice of the new date.
- (b) An authorized agent of PSTD may be present to observe the removal and to inspect the closed tank system and the surrounding environment prior to backfilling.
- (c) Tanks and lines must be removed upon closure unless a Commission order grants a variance that allows the tanks to be closed in place. Tank systems that are removed from the ground must be transported from the site and a certificate of destruction must be submitted to PSTD with the UST Closure Report. After closure activities are completed, the excavation must be backfilled no later than seven (7) days upon completion of tank removal.
- (d) ~~The licensed~~Licensed UST Remover must be on the job site during all removal activities, beginning with break-out of concrete. This includes while cutting and removing concrete over any part of the tank system.
- (e) Photos must be taken of tank(s), line(s) and soil at removal. In the event there is a hole in tank(s) or line(s), further photographic evidence is required. If tank(s), line(s) or excavated soil show evidence of a release, photos of the apparent release must be taken that indicate the release source.

165:25-2-133. Temporary removal from service

- (a) When an underground storage tank system is taken temporarily out of service for three (3) months or less, the owner or operator must:
- (1) Continue the operation, testing, and maintenance of corrosion protection as required by this Chapter. Electricity must be maintained for an impressed current CP system to be operational.
 - (2) Continue release detection and release detection testing as required by this Chapter;
 - (3) Comply with the requirements of this Chapter concerning release reporting and corrective action; and
 - (4) Notify PSTD of a change in service on the prescribed TOU form.
- (5) Beginning October 13, 2018, tank systems that are temporary closed for three (3) months or less are not required to meet spill testing and overfill inspections, however, they are required to:
- (A) Continue to monitor for leaks by performing release detection,
 - (B) Perform monthly walkthrough inspections,
 - (C) Perform annual inspections and tests of release detection equipment, and
 - (D) Perform three (3) year containment sump testing on containment sumps used for interstitial monitoring of piping.
- (b) When an underground storage tank system is taken out of service for three (3) months or more, but less than twelve (12)

months, the owner/operator must meet the following additional requirements:

- (1) All tanks must be drained to less than one inch (1") of residue remaining in the tank. Release detection is not required as long as the underground storage tank is emptied to less than one inch (1").
 - (2) All vent lines must be left open and functioning.
 - (3) All other lines, pumps, manways, and ancillary equipment must be capped and secured.
 - (4) Lock all fill caps.
- ~~(bc) Release detection is not required as long as the underground storage tank system is empty. The underground storage tank system is empty when all regulated substances have been removed so that no more than 1 inch (1") of residue remains in the tank. Beginning October 13, 2018, tank systems that are empty to less than one inch (1") of residual fluids are not required to maintain the following:~~
- (1) Spill prevention testing,
 - (2) Overfill prevention inspections,
 - (3) Release detections,
 - (4) Annual release detection equipment testing and inspections,
 - (5) Monthly walkthrough inspections, and
 - (6) Three (3) year containment sump testing on containment sumps used for interstitial monitoring of piping.
- ~~(ed) Tanks must be permanently closed if they do not meet PSTD requirements in 165:25-2-133 as set forth above.~~

165:25-2-134. ~~Temporary closure:~~ ~~requirements~~Requirements for returning to service

- ~~(a) When an underground storage tank system is taken out of service for 3 months or more, but less than 12 months, the owner/operator must meet the following additional requirements:~~
- ~~(1) All tanks must be drained.~~
 - ~~(2) All vent lines must be left open and functioning.~~
 - ~~(3) All other lines, pumps, manways, and ancillary equipment must be capped and secured.~~
- (b) When an underground storage tank system is returned to service a tank tightness test, and line tightness test, and a leak detector test must be performed by a certified tester, and must be completed on the underground portion of temporarily closed systems prior to returning the system to service if it has been out of service for more than 12 months. Additional testing shall be required on any portion of the tank system considered detrimental to release detection depending upon the type of tank system installed. Notify PSTD on the prescribed "Return to Service" form when returning a system to service along with copies of all testing and the tank registration fees.

165:25-2-135. Permanent closure

All ~~systems~~underground storage tanks and associated piping out of service for more than 12 months must be removed or closed in place with a PSTD approved inert material in accordance with a variance by Commission order if they do not comply with the requirements as stated in 165:25-2-133

and 165:25-2-134. A closure in place variance will be accomplished by an application for variance and an administrative review by PSTD. The variance applicant will be notified prior to a hearing whether the variance application is approved or disapproved by staff. If the application for variance is approved, no further action by applicant is necessary. If the variance application is disapproved by staff, staff will notify applicant of disapproval in sufficient time for the applicant to present evidence supporting the variance at a Commission hearing.

165:25-2-136. Assessing the site at closure or change in service

- (a) When a change in service, tank or line repair, and/or replacement is completed, the owner/operator must measure for the presence of a release where contamination is most likely to be present at the underground storage tank system site.
- (b) Please refer to the PSTD ~~removal guidance document relating to UST closure sampling removal/closure/change of service sampling document on PSTD's website.~~
- (c) If contaminated soils, contaminated groundwater, or free product as a liquid or vapor is discovered, the owner must immediately begin corrective action in accordance with Chapter 29 of Commission rules.
- (d) All sampling at closures must be under the supervision of a Licensed Environmental Consultant.

SUBCHAPTER 3. RELEASE PREVENTION AND DETECTION REQUIREMENTS

PART 2. RELEASE DETECTION REQUIREMENTS AND METHODS

165:25-3-6.20. General monitoring requirements

Tanks, including any compartments within a compartmentalized tank that are not in use, must be monitored at least every 30 days for releases using one of the methods or combinations of methods listed in this Chapter.

165:25-3-6.21. General release detection methods and devices

- (a) Owners/operators of new and existing underground storage tank systems must use a release detection method, or a combination of release detection methods, that is:
 - (1) Capable of detecting a release of regulated substances from any portion of the underground storage tank system that routinely contains product.
 - (2) Designed, installed, calibrated, operated, and maintained in accordance with the manufacturer's instructions, including routine maintenance and service checks for operability or running conditions.
 - (3) Capable of meeting the performance requirements of this Chapter, with any performance claims and their manner of determination described in writing by the equipment manufacturer or installer.

(4) Sampled, tested, or checked for a release at least once every 30 days.

(b) Owners/operators must keep all written manufacturer and installer performance specifications and the manner in which those specifications are determined.

(c) Interstitial monitoring must be used as the method of release detection for secondarily contained tanks and/or piping installed after July 1, 2008.

(d) Beginning October 13, 2018, the electronic and mechanical components of release detection equipment must be tested for proper operation in accordance with manufacturer's instructions or use a code of practice developed by a nationally recognized association or independent testing laboratory. A test of proper operation must be performed at least annually and, at a minimum, cover the following components and criteria as applicable to the facility:

- (1) Automatic tank gauge and other controllers: test alarm, verify system configuration; test battery backup;
- (2) Probes and sensors: inspect for residual buildup, ensure floats move freely, ensure shaft is not damaged, ensure cables are free of kinks and breaks, test alarm operability and communication with controller;
- (3) Automatic line leak detector: test operation to meet criteria in 40 CFR §280.44(a) by simulating a leak;
- (4) Vacuum pumps and pressure gauges: ensure proper communication with sensors and controller; and
- (5) Hand-held electronic sampling equipment associated with groundwater and vapor monitoring: ensure proper operation.

(e) Owners and operators must maintain records of the annual operation tests for three (3) years. At a minimum, records must list each component tested, indicate whether each component needed to have action taken and describe any action taken to correct the issue.

165:25-3-6.22. Tank system tightness testing with monthly inventory control

When performed in accordance with the following requirements, this combination of functions is a stand-alone method of leak detection for tanks. This method expires ten (10) years after the corrosion protection upgrade of your tank(s) to 1998 standards or ten (10) years after a new tank is installed. This will expire June 30, 2018.

- (1) **Tank tightness testing.** Tank tightness testing must be capable of detecting a 0.1 gallon per hour leak rate from any portion of the tank.
- (2) **Requirements for tank tightness testing.** If tank tightness testing is part of the chosen method of release detection, it must be conducted in accordance with the requirements of this Subchapter, performed by a tester certified by the manufacturer of the testing equipment, and completed once every five years.
- (3) **Inventory control.** Monthly inventory control must be conducted to detect a release of at least 1.0 percent of flow-through plus 130 gallons ~~on a monthly basis~~ every thirty (30) days in the following manner:

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- (A) Inventory volume measurements for regulated substance inputs, withdrawals, and the amount remaining in the tank are recorded each operating day.
- (B) The equipment used is capable of measuring the level of product over the full range of the tank's height to the nearest one-eighth inch (1/8").
- (C) The regulated substance inputs are reconciled with delivery receipts by measurement of the tank inventory volume before and after delivery.
- (D) Deliveries are made through a drop tube that extends to within 6 inches (6") of the tank bottom.
- (E) Product dispensing is metered and recorded within an accuracy of 6 cubic inches for every 5 gallons of product withdrawn.
- (F) The measurement of any water level in the bottom of the tank is made to the nearest one-eighth inch (1/8") at least once a month.
- (G) Use of PSTD Monthly Inventory Reconciliation Form or an electronic equivalent is required.

165:25-3-6.23. Testing or monitoring for vapors

(a) Before installing a new vapor monitoring system or continuing to use an existing vapor monitoring system for monthly release detection a site-specific site assessment must be conducted to determine the following:

- (1) The exact location and total depth of the tank(s) and piping to avoid damage to the UST system during well installation and to determine the number and placement of wells.
 - (2) That the backfill is sufficiently porous to allow diffusion of vapors from a release to migrate readily to the observation wells (i.e., sand, pea gravel or crushed rock).
 - (3) That background levels of contamination or naturally occurring organic hydrocarbons are low enough to allow a release from the tank(s) or piping to be detected. To determine background concentrations, a temporary vapor well can be installed in the UST excavation area and the device that will be used for monitoring can be used to get an initial reading.
 - (4) The location and historical levels of groundwater at the site. If the backfill is saturated with water, because of a perched water table, fluctuating water table, rainfall, etc. above the tank burial depth, a vapor monitoring system should not be used because dispersion of vapors would be restricted and a release could go undetected.
 - (5) Volatility of the stored product and its compatibility with the monitoring device that will be used.
- (b) Individuals performing this site assessment must be a ~~PSTD licensed remediation consultant~~ Licensed Environmental Consultant and a copy of the site assessment must be maintained at the facility.
- (c) The vapor observation wells must be installed within the tank excavation. A minimum of 2 wells is required for multi-tank excavations, with at least one of the wells on the downgradient side. Wells must be spaced to cover a maximum 20-foot radius. One well is acceptable for single tanks of 3,000 gallons or less capacity, or for not more than 2-2,000 gallon

tanks in one excavation provided the well is near the center of the excavation.

(d) Observation wells must be installed in accordance with OAC 785:35, Oklahoma Water Resources Board (OWRB), Well Driller and Pump Installer Licensing. OWRB rules allow a PSTD-licensed UST Installer to install observation wells during tank installations only. An OWRB-licensed driller must perform all other well installations.

(e) In addition to 165:25-3-6.23(e), vapor observation wells must meet these minimum requirements:

- (1) Be constructed from two- or four-inch polyvinyl chloride (PVC) or stainless steel casing with factory milled well screen.
- (2) The well screen section should begin approximately two-feet below ground surface (bgs) for tank excavations. The well screen must extend to a depth of two feet below the tank bottom.
- (3) A filter pack of graded gravel or uncontaminated quartz sand, silica, or other material that will not affect the groundwater quality must be placed around the entire length of the well screen.
- (4) The area above the well screen must be sealed (annular seal) to prevent surface spills from contaminating the well, which would result in a false indication of a release. An anti-shrink concrete or grout seal must extend at least 12 inches from within the observation well manhole. The remainder of the well above the well screen must be sealed with a cement-bentonite mixture or bentonite pellets.
- (5) A concrete or cement surface pad must be installed around the casing at the surface with minimum dimensions of 3 feet in diameter by 3.5 inches thick. The surface pad must be sloped so to ensure that all surface water flows away from the well. The surface pad is not required if the well is completed in competent concrete or asphalt paving.
- (6) The well(s) must be installed within manholes competent to withstand anticipated traffic flow. The well casing must be secured with a tight fitting cap and the manhole cover bolted to prevent unauthorized tampering. The manhole cover must be clearly marked with an equilateral triangle to identify the well as a observation well or site assessment observation well.

(f) Records demonstrating compliance with this Section must be submitted to PSTD before a new vapor monitoring system may be used or before an existing vapor monitoring system may continue to be used after July 15, 2005. At a minimum, these records must include a site map that includes the location of tanks, piping, dispensers and all observation wells, copies of the OWRB Multi-Purpose Completion Report for each well, name of the company and individual performing the assessment.

(g) All vapor observation wells must be checked at least every thirty (30) days by a ~~licensed observation well technician~~ Licensed Observation Well Technician and a copy of the results must be maintained at the facility and readily available to the PSTD Fuel Specialist.

(h) The vapor monitoring equipment must be designed and operated to allow the threshold level to be preset specifically for the type of regulated substance stored in the tank system

and be capable of detecting any significant increase in the concentration of regulated substance, component or components of that substance (in a range of 0 to 10,000 units/ppm) or a tracer placed in the tank system above background levels.

(i) Observation well readings above 4,000 units/ppm for gasoline and above 1,500 units/ppm for diesel, or above 1,500 units/ppm for a tank pit containing both gasoline and diesel tanks, must be reported to PSTD by telephone at (405) 521-4683 or toll free at 1-888-621-5878 within 24 hours of the owner, operator, any of their employees, or agents knowing the reading.

(j) An increase in vapor levels of 500 units/ppm above background or historical levels detected by monthly monitoring, even though below the 24-hour reporting level, must be reported if the increase does not correct itself in the second month of monitoring. The report must be made within 24 hours of the owner or operator or any of his or her employees knowing the second month's monitoring results.

(k) If a monitoring report under the circumstances above is not made within 24 hours, the owner or operator must be prepared to show documentation or evidence that would reasonably indicate why knowledge of monitoring results or release conditions was delayed.

165:25-3-6.24. Testing or monitoring for liquids on the groundwater

(a) Before installing a new groundwater monitoring system, or continuing to use an existing groundwater monitoring system for monthly release detection a site-specific site assessment must be conducted to determine the following:

- (1) The exact location and total depth of the tank(s) and piping to avoid damage to the UST system during well installation and to determine the number and placement of wells.
- (2) That the backfill is sufficiently porous to allow migration of product from a release to the observation wells (i.e., sand, pea gravel or crushed rock).
- (3) That background levels of contamination or naturally occurring organic hydrocarbons are low enough to allow a release from the tank(s) or piping to be detected. Groundwater monitoring may not be effective if the site has had prior spills or releases.
- (4) The location and historical levels of groundwater at the site. Groundwater monitoring cannot be used if the water table is less than three feet below ground surface or more than 20 feet below ground surface.
- (5) Fluctuation of groundwater. The well screen must intercept the water table at both high and low elevations. Free product floating on top of the water surface cannot enter a well if the water level is higher than the well screen, nor can free product enter a well if the water level is below the bottom of the well screen. It must be determined that groundwater conditions are such that a release would not go undetected.
- (6) The stored product's compatibility with the monitoring device that will be used. The detection device must be able to detect the presence of at least one-eighth of an

inch of free product on top of the groundwater in the monitoring wells. Groundwater monitoring is only effective if the stored product is lighter than water (i.e., has a specific gravity less than 1.0), which allows the product to float on the water surface. The stored product must not be soluble in water. Products that are highly soluble in water would not be detected as a separate liquid phase.

(b) Individuals performing this site assessment must be a PSTD licensed remediation consultants Licensed Environmental Consultant and a copy of the site assessment must be maintained at the facility.

(c) The groundwater observation wells must be installed in the tank excavation. Two wells are sufficient for single tanks of 3,000 gallons or less capacity or for not more than 2-2,000 gallon tanks in one excavation. For multiple tanks, a minimum of 3 wells must be installed with at least one of the wells placed on the downgradient side. A sufficient number of wells must be installed so that the entire UST system is covered. Under normal circumstances, groundwater monitoring on piping runs would not be appropriate due to the depth to groundwater and the time required to detect a leak.

(d) Observation wells must be installed in accordance with OAC 785:35, Oklahoma Water Resources Board (OWRB), Well Driller and Pump Installer Licensing. OWRB rules allow a PSTD licensed UST Installer to install observation wells during tank installations only. An OWRB-licensed driller must perform all other well installations.

(e) Groundwater observation wells must meet these minimum requirements:

- (1) Be constructed from two- or four-inch polyvinyl chloride (PVC) or stainless steel casing with factory milled well screen.
- (2) The well screen section should begin approximately two-feet below ground surface (bgs) for tank excavations. The well screen must extend to a depth of two feet below the tank bottom.
- (3) A filter pack of graded gravel or uncontaminated quartz sand, silica, or other material that will not affect the groundwater quality must be placed around the entire length of the well screen unless the tank and/or piping is backfilled with pea gravel.
- (4) The well screen must begin no less than 18-inches below ground surface. The area above the well screen must be sealed (annular seal) to prevent surface spills from contaminating the well, which would result in a false indication of a release. An anti-shrink concrete or grout seal must extend at least 12 inches from within the monitoring well manhole. The remainder of the well above the well screen must be sealed with a cement-bentonite mixture or bentonite pellets.
- (5) A concrete or cement surface pad must be installed around the casing at the surface with minimum dimensions of 3 feet in diameter by 3.5 inches thick. The surface pad must be sloped so to ensure that all surface water flows away from the well. The surface pad is not required if the well is completed in competent concrete or asphalt paving.
- (6) The well(s) must be installed within manholes competent to withstand the anticipated traffic flow. The

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well casing must be secured with a tight fitting cap and the manhole cover bolted to prevent unauthorized tampering. The manhole cover must be clearly marked with an equilateral triangle to identify the well as a observation well or site assessment observation well.

(f) Records demonstrating compliance with this Section must be submitted to PSTD before a new groundwater monitoring system may be used or before an existing groundwater monitoring system may continue to be used after July 15, 2005. At a minimum, these records must include a site map that includes the location of tanks, piping, dispensers and all monitoring wells, copies of the OWRB Multi-Purpose Completion Report for each well, name of the company and individual performing the assessment.

(1) Any indication of free product floating on the water table must be reported to PSTD by telephone at (405) 521-4683 within 24 hours of the owner/operator or any of their employees or agents discovering the product.

(2) If a monitoring report under the circumstances of above is not made within 24 hours, the owner or operator must be prepared to show documentation or evidence that would reasonably indicate why knowledge of the existence of free product was delayed.

(g) All groundwater observation wells must be checked at least every thirty (30) days by a ~~PSTD licensed observation well technician~~ Licensed Observation Well Technician and a copy of the results must be maintained at the facility and readily available to the PSTD Fuel Specialist.

165:25-3-6.25. Interstitial monitoring

(a) For double-walled underground storage tank systems, the sampling or testing method must detect a ~~release leak monthly~~ at least every thirty (30) days through the inner wall in any portion of the tank that routinely contains product in accordance with the manufacturer instructions.

(b) On new installations, the containment sumps used for interstitial monitoring of piping must be tested at installation and at least once every three (3) years for liquid tightness or use double-walled containment sumps with periodic interstitial monitoring of the space between the two (2) walls of the sump at least every thirty (30) days. Records demonstrating compliance must be maintained for three (3) years.

(c) Existing systems must have the containment sumps tested for liquid tightness by October 13, 2018, and at least once every three (3) years thereafter or use double-walled containment sumps with periodic interstitial monitoring of the space between the two (2) walls of the sump at least every thirty (30) days. Records demonstrating compliance must be maintained for three (3) years.

(d) Beginning October 13, 2018, owners and operators must perform operation and maintenance tests on electronic and mechanical components of release detection equipment. This testing must be conducted according to the manufacturer's instructions or a code of practice developed by a nationally recognized association or independent testing laboratory. A test of the proper operation must be performed at least annually and, at a minimum, as applicable to the facility, cover the following components and criteria:

(1) Automatic tank gauge and other controllers: test alarm, verify system configuration, test battery backup.

(2) Probes and sensors: inspect for residual buildup, ensure floats move freely, ensure shaft is not damaged, ensure cables are free of kinks and breaks, test alarm operability and communication with controller.

(3) Vacuum pumps and pressure gauges: ensure proper communication with sensors and controller.

(4) Hand-held electronic sampling equipment associated with groundwater and vapor monitoring: ensure proper operation.

(e) Owners and operators must maintain records of the annual operation tests for three (3) years. At a minimum, records must list each component tested, indicate whether each component meets the criteria listed above or needed to have action taken, and describe any action taken to correct an issue.

165:25-3-6.26. Automatic tank gauging systems

(a) Automatic tank gauging systems (ATG's) that test for the loss of product must conduct an automatic product level monitor test at a minimum frequency of once every 30 days, and be capable of detecting at least a 0.2 gallon per hour leak rate for any portion of the tank that routinely contains product.

(b) The test must be performed with the system operating in one of the following modes:

(1) In-tank static testing conducted at least once every thirty (30) days; or

(2) Continuous in-tank leak detection operating on an uninterrupted basis or operating within a process that allows the system to gather incremental measurements to determine the leak status of the tank at least once every thirty (30) days.

~~(c)~~ ATG's that cannot detect a 0.1 gallon per hour leak rate ~~monthly~~ are also required to have ~~monthly~~ inventory ~~reconciliation~~ control.

~~(e)~~ ATGs must be third party certified for the size of tanks and for the quantity of tanks that are manifolded together. Only third party certifications that have been reviewed and approved by the National Work Group on Leak Detection Evaluations (NWGLDE), found at NWGLDE Web Site, will be accepted (www.nwglde.org).

165:25-3-6.28. Statistical Inventory Reconciliation (SIR)

(a) Deliveries, withdrawals and balance remaining must be recorded each operating day on the PSTD ~~Monthly~~ Inventory Reconciliation Form or an electronic equivalent and data must be reconciled ~~monthly~~ every thirty (30) days. Product deliveries must be reconciled with an appropriate device and data must be reconciled every thirty (30) days.

(b) SIR records must demonstrate the following:

(1) Report a quantitative result with a calculated leak rate;

(2) Be capable of detecting a leak rate of 0.2 gallon per hour or a release of one hundred fifty(150) gallons within thirty (30) days, with a probability of detection of 0.95 and a probability of false alarm of 0.05; and

(3) Use a threshold that does not exceed one-half (1/2) the minimum detectible leak rate.

(bc) The tank must be equipped with a drop tube and measured for water at least ~~monthly~~every thirty (30) days.

(ed) The equipment used is capable of measuring the level of product over the full range of the tank's height to the nearest one-eighth inch (1/8").

(de) The regulated substance inputs are reconciled with delivery receipts by measurement of the tank inventory volume before and after delivery.

(ef) Records must be submitted to a certified SIR vendor for ~~monthly~~ evaluation. Only third party certifications that have been reviewed and approved by the National Work Group on Leak Detection Evaluations (NWGLDE), found at the NWGLDE Web Site, will be accepted (nwgldc.org).

(fg) SIR analysis reports ~~may~~must include a summary report of the quantitative results and ~~must include~~ copies of all ~~Monthly~~ Inventory Reconciliation Forms.

(gh) Results of ~~monthly~~ SIR analysis must be on premises ~~no later than the end of the following month for inspector review every thirty (30) days.~~

~~(h)(i)~~ This method is approved as release detection for tanks only.

165:25-3-6.29. Monitoring requirements for piping

Underground piping that routinely contains regulated substances must be monitored for releases in a manner that meets the following requirements:

(1) **Pressurized piping.**

(A) All underground piping that conveys regulated substances under pressure must be equipped with a mechanical or electronic line leak detector installed and operated in accordance with this Chapter.

(B) New installations and facilities replacing a piping system must have a sump sensor, float or similar mechanical device at each tank, transition, and dispenser sump. Sensors should be mounted near the bottom of the sump(s) and accessible for annual testing.

(C) New installations and facilities replacing a piping system must have double-walled piping. The interstitial area of the piping must be open inside the sumps to allow fuel to drain into the sumps in the event that a leak occurs.

(D) The underground pressure piping from the master dispenser to the satellite must be designed and installed so that the satellite piping is tested by the automatic line leak detector. An annual line tightness test is required on the satellite underground piping.

(2) **Suction piping.**

(A) Suction piping installed after July 1, 2008 must be double-walled piping. The interstitial area of the piping must be open inside the sumps to allow fuel to drain into the sumps in the event that a leak occurs.

(B) New installations and facilities replacing a piping system must have a sump sensor, float or similar mechanical device at each tank, transition, and dispenser sump. Sensors should be mounted near

the bottom of the sump(s) and accessible for annual testing.

(3) **Methods of release detection for pressurized piping.** Each method of release detection for piping must be done in accordance with the following requirements.

(A) Mechanical line leak detectors and annual line tightness testing.

(i) An annual function test of the operation of the leak detector must be conducted by simulating a leak ~~in accordance with the manufacturer's requirements.~~

(ii) A hydrostatic line tightness test must be done annually by a certified tester in accordance with this chapter.

(B) Sump sensors with automatic line leak detectors.

(i) Double walled piping with sump sensors, floats or similar mechanical devices at each sump may be used in lieu of annual line tightness testing except at marinas where a line tightness test is required by April 1st of each year.

(ii) The sump sensors, floats or other mechanical devices used must be tested annually ~~according to manufacturer's requirements.~~ Sensors status and alarm history reports must be printed and retained ~~each month~~every thirty (30) days for systems installed after July 1, 2008.

(iii) An annual function test of the operation of the leak detector must be conducted by simulating a leak ~~in accordance with the manufacturer's requirements.~~

(C) Electronic line leak detection. A certified electronic line leak detector may be used in lieu of a mechanical line leak detector and annual tightness test only if:

(i) The system is capable of detecting and tests for a leak of 3 gallons per hour before or after each operation of the submersible turbine pump; and

(ii) The system is capable of detecting and tests for a leak of 0.2 or 0.1 gallons per hour at least once every month; and

(iii) The system is capable of detecting and tests for a leak of 0.1 gallons per hour annually, AND the system is function tested annually by simulating a leak, and if necessary, calibrated ~~in accordance with manufacturer's specifications.~~

(4) **Methods of release detection for suction piping.**

(A) Safe Suction Piping. No release detection is required for suction piping installed on or prior to July 1, 2008 if it is designed and constructed to meet (i) through (iv) below:

(i) The below-grade piping operates at less than atmospheric pressure.

(ii) The below-grade piping is sloped so that the contents of the pipe will drain back into the storage tank if the suction is released.

(iii) One check valve is included in each suction line.

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- (iv) The check valve is located directly below and as close as is practical to the suction pump.
- (B) Tri-annual Line Tightness Testing. Underground piping that conveys regulated substances under suction must have a line tightness test conducted at least every 3 years by a certified tester.
- (C) Sump sensors.
 - (i) Double walled piping with sump sensors, floats or similar mechanical devices at each sump may be used in lieu of tri-annual line tightness testing except at marinas where a line tightness test is required by April 1st of each year.
 - (ii) The sump sensors, floats or other mechanical devices used must be tested annually according to manufacturer's requirements. Sensors status and alarm history reports must be printed and retained ~~each month~~ every 30 days for systems installed after July 1, 2008.

PART 3. RELEASE INVESTIGATION REQUIREMENTS

165:25-3-8. Release investigation and confirmation

- (a) This Section applies to the investigation of all reportable releases unless PSTD specifically waives any part of this Section in writing.
- (b) Owners/operators must immediately investigate and confirm all suspected releases of regulated substances requiring reporting under this Chapter within 7 days of receipt of notice from PSTD using the following steps or another procedure approved by PSTD:
 - (1) **System test.** Owners/operators must conduct tightness tests and if applicable, secondary containment testing, that will determine whether a leak exists in the storage tank system or a breach of either wall of the secondary containment has occurred.
 - (A) Owners/operators must repair, ~~remove~~ or replace or permanently close as defined in OAC 165:25-2-135, the underground storage tank system and begin investigation in accordance with (b)(2) of this Section if the test results for the system, tank, ~~or~~ delivery piping or the interstice indicate indicates that a leak release exists.
 - (B) Further investigation is not required if the test results for the system, tank, ~~and~~ delivery piping and interstice do not indicate that a ~~leak release~~ exists and chemical concentrations of regulated substances detected in soil or water are not the basis for suspicion of a release.
 - (C) Owners/operators must conduct a site check as described in (b)(2) of this Section if the test results for the system, tank, ~~and~~ delivery piping and interstice do not indicate that a ~~leak release~~ exists but indicate concentrations of regulated substances detected in soil or water are above action levels cited in (c).
 - (2) **Site check.** Owners/operators must measure for the presence of a release where released chemicals are

most likely to be present at the underground storage tank system site. In selecting sample types, sample locations, sample depths, and measurement methods, owners and/or operators must consider the nature of the stored substance, the type of initial alarm or cause for suspicion, the type of native soil, the depth of groundwater, and other factors appropriate for identifying the presence and source of the release. Sample locations should be approximately 5 feet (5') from the outside of the UST system in native soil or another location approved by PSTD. Analyses for both BTEX constituents and the appropriate TPH must be obtained in all cases. Site check investigations must be conducted by an OCC licensed Environmental Consultant.

- (A) If the test results for soil and/or groundwater taken outside the excavation zone or the underground storage tank system site confirm that a release has occurred, owners and/or operators must begin corrective action in accordance with Chapter 29 of Commission rules.
- (B) If the test results for the native soil and/or groundwater or the underground storage tank system site do not indicate that a release has occurred, further investigation is not required.
- (c) Laboratory analysis of levels of chemical constituent concentrations that may be required to confirm a case are:
 - (1) Benzene
 - (A) Native Soils - 0.5 mg/kg
 - (B) Groundwater - 0.005 mg/l
 - (2) Toluene
 - (A) Native Soils - 40.0 mg/kg
 - (B) Groundwater - 1.0 mg/l
 - (3) Ethyl Benzene
 - (A) Native Soils - 15.0 mg/kg
 - (B) Groundwater - 0.7 mg/l
 - (4) Xylene
 - (A) Native Soils - 200.0 mg/kg
 - (B) Groundwater - 10.0 mg/l
 - (5) TPH
 - (A) Native Soils - 50.0 mg/kg
 - (B) Groundwater - 2.0 mg/l
 - (C) If BTEX concentrations are below action levels, a TPH concentration of 500 ppm or mg/kg in soil shall be required to confirm a case at the direction of PSTD.
- (d) Within 20 days after the reporting of a release, the owner and/or operator must submit a report to PSTD summarizing the steps taken under (a) of this Section and any resulting information or data. If a release is confirmed through performance of the steps taken under this Section, then the report must be submitted in accordance with a format established by the Commission, after which corrective action may be undertaken under the provisions of Chapter 29 of Commission rules.

SUBCHAPTER 18. INSPECTIONS, NOTICES OF VIOLATION, AND CITATIONS

PART 1. INSPECTIONS

165:25-18-4. Inspection for compliance

- (a) All storage tank systems regulated by this Chapter must be physically inspected for compliance with the provisions of this Chapter.
- (b) These inspections may include, but not necessarily be limited to, review of:
 - (1) Records of installation.
 - (2) Records of repair and retrofit operations including required tightness testing.
 - (3) Release containment practices.
 - (4) Release detection practices.
 - (5) Compliance with prior Commission orders to perform corrective action.
 - (6) Records of removal and closure.
 - (7) Records that document compatibility with underground storage tank systems storing regulated substances greater than ten percent (10%) ethanol or twenty percent (20%) biodiesel.
 - (8) Records of annual operation and maintenance tests on the electronic and mechanical components of release detection equipment.
 - (9) Site assessments for groundwater or vapor monitoring
 - (10) Current permit for all tanks located at the facility
 - (11) Current operator training certificates for all classes of operators.
- (c) In addition, PSTD may perform any other inspection, testing, or monitoring necessary to ensure compliance with this Chapter and to protect property, human health, safety and welfare and the environment.

PART 3. NOTICES OF VIOLATION AND CITATIONS

165:25-18-13. Payment of fine or hearing

- (a) The storage tank owner/operator can either pay the amount of the fine as stated in the Fine Citation or request an evidentiary hearing.
- (b) The tank owner/operator will have thirty (30) days from the date the citation was issued to pay the fine.
 - (1) A fine may be paid with cash, a money order, or check, or electronic method approved by the OCC. Any cash payment must be made at the Commission's cashier window. All checks must be made payable to the Oklahoma Corporation Commission - Petroleum Storage Tank Division. If sending payment through the mail, a copy of the citation must be sent with the payment to ensure proper credit.
 - (2) Payment of a fine within the 30-day timeframe will not be considered an agreement or disagreement with the citation.
- (c) If the storage tank owner/operator disagrees with the citation, they may appear at the Citation hearing at the Commission. If found guilty at the hearing, the tank owner or operator must pay the amount of the fine, as well as an administrative cost of \$250.00.
- (d) If a Fine Citation has not been paid within ninety (90) days of being issued or within ninety (90) days of a Commission order confirming the fine, the amount of the fine will double. Refusal to comply with an order of the Commission may result in an additional fine being levied after notice and hearing in an amount as allowed by law, and shutdown of the facility for failure to pay fines.
- (e) Failure of a tank owner/operator to appear at the hearing will result in additional enforcement action.
- (f) An appeal from the hearing must be to the Commission en banc in accordance with Chapter 5 of Commission rules.
- (g) A tank owner/operator is still responsible for following the Commission's rules regarding petroleum storage tanks regardless of paying a fine or correcting a violation.

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APPENDIX S. FINE CITATIONS TABLE [REVOKED]

APPENDIX S. FINE CITATIONS TABLE [NEW]

Rule	Violation	Fine Amount
Registration & Permit Requirements		
165:25-1-42	Failure to register tanks within 30 days of bringing the system into service	\$500
165:25-1-41 165:25-1-51	Failure to amend registration within 30 days to reflect change in ownership or tank status	\$500
165:25-1-64 165:25-1-67	Failure to pay permit fees prior to due date	Not > 50% of fee
165:25-1-126	Failure to certify training for all operator classes, per owner not facility	\$500
165:25-1-126	Second offense within 12 months Third offense, formal enforcement	\$1,000
Notification Requirements		
165:25-1-41	Failure to properly identify all storage tank systems on OCC forms after third request, including a letter advising tank owner of the penalty	\$1,000
165:25-1-41	Failure to provide installation information on OCC forms after third request, including a letter advising tank owner of the penalty	\$1,000
165:25-1-42 165:25-1-55	Failure to notify the OCC prior to tank installation or closure	\$500
165:25-1-48	Failure to report tank and line tightness test results as required	\$500
Required Reports		
165:25-1-55	Failure to submit tank closure report within 45 days	\$250
165:25-1-48 165:25-3-8 165:29	Failure to submit required reports pertaining to suspected release investigations and/or corrective action activities in a timely manner	\$250
	Second offense and thereafter for same case or tracking number	\$500
165:25-3-6.28	Failure to maintain SIR analysis on premises every thirty (30) days	\$500
General Leak Detection Requirements		
165:25-3-1	Failure to notify OCC of indicated release	\$250
165:25-3-6.20 165:25-3-6.21	Failure to provide adequate release or leak detection for storage tank system (first offense)	\$250
	Second offense	\$500
	Third offense	\$1,000

Rule	Violation	Fine Amount
165:25-3-6.20 165:25-3-6.21	Failure to use an approved method of release or leak detection method for tanks	\$250
165:25-2-55.1 165:25-3-6.29	Failure to use an approved method of release or leak detection monitoring for piping	\$250
165:25-3-6.23 165:25-3-6.24	Failure to use a licensed technician for monitoring vapor or groundwater wells as required	\$250
165:25-1-53 165:25-3-6.21	Failure to maintain records of release or leak detection monitoring	\$250
165:25-1-53	Failure to maintain results of sampling, testing, or monitoring	\$250
165:25-1-53 165:25-1-54	Failure to retain records of calibration, maintenance, and/or repair of release or leak detection equipment	\$250
165:25-2-40 165:25-3-6.29	Failure to install or test leak detection on pressurized piping	\$250
Spill Protection & Overfill Prevention		
165:25-2-39 165:25-1-57	Tank owner/operator accepting delivery into UST without spill protection	\$1,000
165:25-2-39 165:25-1-57	Tank owner/operator accepting delivery into UST that does not have overfill prevention	\$1,000
165:25-3-7	Failure to report a spill over 25 gallons	\$100
165:25-3-70	Failure to investigate a spill over 25 gallons	\$100
165:25-3-70	Failure to investigate an spill resulting from overfill	\$100
165:25-3-7	Failure to clean up any spill or overfill	\$500
Operation & Maintenance of Corrosion Protection		
165:25-2-51	Tank owner/operator accepting delivery into a UST that does not have a required corrosion protection system	\$1,000
165:25-1-56	Failure to provide cathodic protection system design or suitability study	\$1,000
165:25-2-53 165:25-2-53.1	Failure to properly operate and maintain corrosion protection, inspect tank lining, or make necessary repairs (first offense)	\$150
	Second offense	\$500
	Third offense	\$1,000
165:25-2-53	Failure to properly and/or timely test corrosion protection every 60 days	\$250
165:25-1-56	Failure to maintain records of cathodic protection installation, repair, inspections or testing	\$250
165:25-2-53	Failure to use a qualified cathodic protection tester to certify corrosion protection system	\$500

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Rule	Violation	Fine Amount
	operation at least once every 3 years (first offense)	
	Second offense	\$1,000
165:25-2-53 165:25-2-111	Failure to test cathodic protection system within 6 months of installation or repair	\$250
Release Investigation		
165:25-3-7 and 165:25-3-8	Failure to conduct tightness test(s) to investigate suspected leak(s) from the storage tank system as required	\$250
Temporary & Permanent Closure		
165:25-2-132 165:25-2-133	Failure to operate and maintain corrosion protection in a temporarily closed storage tank system as required	\$500
165:25-2-133	Failure to provide adequate release or leak detection as required in a temporarily closed storage tank system	\$250
165:25-2-134	Failure to cap and secure all storage tank related equipment for temporary closure	\$250
165:25-2-135	Failure to measure for the presence of a release before permanent closure as required	\$500
165:25-2-138	Failure to maintain proper closure records	\$250
165:25-2-131 165:25-2-136	Failure to use an OCC licensed UST Remover and/or Remediation Consultant	\$500
165:25-5-1	Failure to upgrade UST with CP by December 1998 deadline or remove tank within 12 months of December 1998 deadline	\$500/tank
Repairs Allowed		
165:25-2-42 165:25-2-111	Failure to use an OCC licensed UST Installer or repair person for installation or repair as required	\$500
	Second offense (per owner, not per facility)	\$1,000
165:25-2-40 165:25-2-111	Failure to perform tightness test on storage tank system after installation or repair	\$300
165:25-1-54	Failure to maintain repair records for operating life of storage tank	\$250
Other Violations		
165:15	Misrepresentation of octane level per location	\$500
	Second offense within one year	\$1,000
	Third offense – Closure and Hearing	\$5,000
165:25-1-41 165:25-1-53	Failure to provide records upon request	\$100

Rule	Violation	Fine Amount
	Second offense or thereafter (per owner, not per facility)	\$500
Administrative Penalty	Any owner/operator of a storage tank system who fails to comply with any requirement or order issued by the Commission for corrective or enforcement actions may be subject, after notice and hearing, to an administrative penalty in an amount as allowed by law.	

Appendix S is revised to correct rule numbers; require SIR (release detection) records be on site for inspector review; and add OCC requirements for when administrative penalties can be applied.

[OAR Docket #17-502; filed 6-23-17]

Permanent Final Adoptions

TITLE 165. CORPORATION COMMISSION CHAPTER 26. ABOVEGROUND STORAGE TANKS

[OAR Docket #17-503]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions
Part 1. Purpose and Definitions
165:26-1-1. Purpose [AMENDED]
165:26-1-2. Definitions [AMENDED]
Part 4. Administrative Provisions
165:26-1-28. Variances [AMENDED]
Part 5. Standards and Codes
165:26-1-31. Codes and standards [AMENDED]
Part 6. Financial Responsibility
165:26-1-36. Financial responsibility [AMENDED]
Part 7. Notification and Reporting Requirements
165:26-1-41. General reporting requirements [AMENDED]
Part 9. Recordkeeping
165:26-1-55. Availability of records [AMENDED]
165:26-1-58. Release detection and corrosion protection records [AMENDED]
Part 13. Shutdown of Operations
165:26-1-90. Shutdown of operations [AMENDED]
Part 17. Operator Training [REVOKED]
165:26-1-130. Training requirements [REVOKED]
165:26-1-132. Operator Class designations [REVOKED]
Subchapter 2. General Requirements for Aboveground Storage Tank Systems
Part 1. Design and Installation
165:26-2-5.1. General spill and overfill prevention requirements [AMENDED]
165:26-2-6. Vent piping requirements [AMENDED]
165:26-2-8. Installation testing [AMENDED]
Part 4. Requirements for Corrosion Protection Systems
165:26-2-40. Corrosion protection [AMENDED]
Part 5. Piping
165:26-2-52. Piping and gravity flow [AMENDED]
165:26-2-53. Valves on piping [AMENDED]
Part 7. Vault Requirements
165:26-2-71. Vaults [AMENDED]
Part 9. Dispenser Requirements
165:26-2-91. Dispensers [AMENDED]
Part 21. Removal and Closure of Aboveground Storage Tank Systems
165:26-2-214. Assessing the site at tank closure or change in service [AMENDED]
Subchapter 3. Release Prevention and Detection
Part 14. Release Reporting Requirements
165:26-3-77. Release reporting [AMENDED]
Subchapter 8. Requirements for Aboveground Storage Tank Systems Utilized by Marinas
Part 9. Over-Water Piping Requirements
165:26-8-40.2. Installation requirements for over-water piping [AMENDED]

AUTHORITY:

The Commission's statutory authority is found in Article IX, Section 18 of the Oklahoma Constitution, 17 O.S. §§ 52, 306, 307, 321, 325 and 47 O.S. §466.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

Although the Oklahoma Corporation Commission is not subject to the requirements of Executive Order No. 2013-34, the proposed rules were submitted to the Governor and Cabinet Secretary on September 21, 2016.

COMMENT PERIOD:

September 20, 2016 through December 23, 2016.

PUBLIC HEARING:

January 24, 2017

ADOPTION:

January 24, 2017

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

February 1, 2017

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 13, 2017

FINAL ADOPTION:

June 13, 2017

EFFECTIVE:

September 11, 2017

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

Incorporated standards:

National Fire Protection Association (NFPA): Standard Number 30, 2015, Flammable and Combustible Liquids Code; Standard Number 30A, 2015, Motor Fuel Dispensing Facilities and Repair Garages.

American Petroleum Institute (API): RP 652, Lining of Aboveground Petroleum Storage Tank Bottoms, Second Edition, April, 2014; RP 653, Tank Inspection, Repair, Alteration, and Reconstruction, Fifth Edition, 2014; Publication 1632-2002, Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems.

National Association of Corrosion Engineers (NACE): All NACE recommended practices for cathodic protection design; Standard RP0193-2001, Recommended Practice of External Cathodic Protection of On-Grade Metallic Storage Tank Bottoms.

Petroleum Equipment Institute (PEI): RP 1200 Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities.

Incorporating rules:

165:26-1-1
165:26-1-31
165:26-1-58
165:26-2-8
165:26-2-40
165:26-2-71

Availability:

8:00 am to 4:30 pm, Monday through Friday at Oklahoma Corporation Commission, Office of Petroleum Storage Tank Division, 4th Floor, Jim Thorpe Office Building, 2101 N Lincoln Blvd., Oklahoma City, OK 73152-2000, 405-521-4683.

GIST/ANALYSIS:

OAC 165:26-1-1 is amended to adopt NFPA 30 and 30 A as the basis of standards for Chapter 26, instead of recommending the regulated community follow the same. OAC 165:26-1-2 (Definitions) is amended to redefine change in service to allow only the storage of Commission regulated substances; "emergency venting" is a new definition regarding a device that relieves excessive internal pressure within a storage tank; "total venting capacity" is a new definition calculating the venting capacity of the wetted area of the tank and emergency vent capacity; "wetted area of a cylindrical tank" is a new definition establishing 75% of the total tank ends and shell; "wetted area of a rectangular tank" is a new definition establishing 100% of the surface area the entire tank; "wetted area of a vertical tank" is a new definition establishing the first 30' above grade as the wetted area. OAC 165:26-1-28 is amended to allow for administrative review of variances proposed by a tank owner. OAC 165:26-1-31 is amended to include a new standard API (American Petroleum Institute) Recommended Practice 653, pertaining to tank inspection, repair, alteration and reconstruction (Fifth Edition, 2014). In addition, the amendment updates certain standards by referring to new editions. OAC 165:26-1-36 is amended to reflect the current rule citation, OAC 165:26-1-37. OAC 165:26-1-41 is amended to reflect the rule has changed from discretionary information provision to mandatory information including change of address and change from a regulated substance to a regulated substance that contains either more than 10% ethanol or 20% biodiesel. OAC 165:26-1-55 and 165:26-1-58 are amended to require record retention for three (3) years. OAC 165:26-1-90 is amended to include failure to obey a Commission requirement as a reason for system shutdown. OAC 165:26-1-130 and 165:26-1-132 are revoked because operator training is not a Commission requirement or recommendation for aboveground storage tank systems. OAC 165:26-2-5.1 is amended to establish a cutoff date for certain storage tank system spill and overfill protection methods. In addition, the amended rule sets forth minimum standards that will become effective on October 13, 2018, for new installations of aboveground storage tank systems spill and overfill protection. OAC 165:26-2-6 is amended to require that vent piping must meet certain minimum standards on new installations

occurring after October 13, 2018. OAC 165:26-2-8 is amended to update the method of testing containment sumps. OAC 165:26-2-40 is amended to update standards for corrosion protection. OAC 165:26-2-52 is amended to specify that an anti-siphon valve must be installed on product piping. OAC 165:26-2-53 is amended to reflect staffs' allowance of manual shutoff valves in lieu of a pressure relief device and allows use of a steel check valve if the valve is installed upstream of the block valve if no fire valve is installed. OAC 165:26-2-71 is amended to remove gratuitous language. OAC 165:26-2-91 is amended to require dispensers at new installations with aboveground piping must be monitored. OAC 165:26-2-214 is amended to direct the regulated community to a specific document for choosing sampling locations. OAC 165:26-3-77 is amended to include prohibitory language regarding release reporting to extend to any person. OAC 165:26-8-40.2 is amended to require a specific type valve with built-in pressure relief for over water piping at marina installations.

CONTACT PERSON:

Jeff Southwick, Deputy General Counsel, Office of General Counsel, Oklahoma Corporation Commission, 2101 N. Lincoln Blvd., P.O. Box 52000, Oklahoma City, OK 73152-2000, (405) 522-4457, j.southwick@occcemail.com.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 1. GENERAL PROVISIONS

PART 1. PURPOSE AND DEFINITIONS

165:26-1-1. Purpose

The purpose of this Chapter is to provide a regulatory program for the safe operation of aboveground storage tanks in Oklahoma and to prevent and contain pollution caused by leaking aboveground storage tank systems and to reduce the hazards of fire and explosion. ~~It is recommended that all aboveground storage tanks whether regulated by these rules or not follow the NFPA guidelines, including NFPA 30 and 30A. PSTD adopts NFPA 30 and 30A, which serves as a basis for the standards in this Chapter. A copy of NFPA 30 and 30A is available for inspection at PSTD during regular business hours.~~

165:26-1-2. Definitions

In addition to the terms defined in 17 O.S. § 301 et seq., the following words or terms, when used in this Chapter, shall have the following meaning unless the context clearly indicates otherwise:

"Aboveground storage tank" or "AST" means any stationary tank not included within the definition of a petroleum storage tank in OAC 165:25-1-11, which is designed to contain any PST regulated substances without structural support of earthen material.

"Aboveground storage tank system" means an aboveground storage tank and any connected aboveground or underground piping, dispensers and associated equipment and fixtures.

"Agent" means a person authorized by another to act on their behalf, either out of employment or contract.

"Airports" mean landing facilities for aircraft which are routinely available for public use (whether routinely used or not). Airports as used in this Chapter do not include private airstrips or private airports.

"Ancillary equipment" means any device including, but not limited to: devices, such as piping, fittings, flanges, valves, and pumps that are used to distribute, meter, or control the flow of regulated substances to or from a petroleum storage tank.

"ATG" means automatic tank gauging.

"Backfill" is the material that is placed in piping excavation to support and separate the piping from the natural environment.

"BTEX" means benzene, toluene, ethylbenzene and xylene.

"Bulk plant" means petroleum storage tank facility where regulated substances are received by tank vessels, pipelines, tank cars, or tank vehicles and are stored or blended in mass quantities or bulk for the purpose of distributing them by a tank vessel, pipeline, tank car, tank vehicle, portable tank or other container, for wholesale or retail sale.

"Cathodic protection" means a technique designed to prevent the corrosion of a metal surface by making that surface the cathode of an electrochemical cell. For example, protection can be accomplished with an impressed current system or a galvanic anode system

"Change in service" means ~~discontinuing use of the petroleum storage system for purposes regulated by PSTD~~ change in the status of a storage tank (i.e., from currently in use to temporarily out of use); change of regulated substance that a storage tank contains.

"Commission" or "OCC" means the Oklahoma Corporation Commission and includes its designated agents or representatives.

"Compatible" means the ability of two or more substances to maintain their respective physical properties upon contact with one another for the design life of the PST system under conditions likely to be encountered in the system.

"Construction tank" means a fuel tank used for less than 12 months at a construction site.

"Division" means the Petroleum Storage Tank Division (PSTD) of the Corporation Commission.

"Emergency venting" means a construction method or device that relieves excessive internal pressure due to fire exposure.

"EPA" means the United States Environmental Protection Agency.

"Farm tank" is a tank located on a tract of land devoted to the production of crops or raising animals, including fish, and associated residences and improvements. A farm tank must be located on the farm property. "Farm" includes but is not limited to fish hatcheries, rangeland, and nurseries with growing operations.

"Fire protected tank" means an aboveground storage tank that is listed in accordance with UL 2085, *Standard for Insulated Aboveground Tanks for Flammable and Combustible*

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Liquids, or an equivalent test procedure that consists of a primary tank provided with protection from physical damage and fire-resistant protection from exposure to a high-intensity liquid pool fire.

"Fire resistant tank" means a UL listed aboveground storage tank that provides fire-resistant protection from exposure to a high intensity liquid pool fire.

"Fleet and Commercial" means any facility that uses aboveground storage tanks to store regulated substances for use in its own vehicles or equipment.

"Flow-through process tank" means a tank that forms an integral part of a production process through which there is a steady, variable, recurring or intermittent flow of material during the operation of the process. Flow-through process tanks do not include tanks used for the storage of materials prior to their introduction to the process or for the storage of finished products or by-products from the production process.

"Fund" means the Petroleum Storage Tank Indemnity Fund.

"Generation facilities" means those tanks that are permanently installed, which routinely contain fuel to be used in emergency generators in the event of a power failure.

"Impervious barrier" means a barrier of sufficient thickness, density, and composition that is impenetrable to the regulated substance, has a permeability of at least 1×10^{-6} cm/sec., and will prevent the discharge to the environment of any regulated substance for a period of at least as long as the maximum anticipated time during which the regulated substance will be in contact with the impervious material.

"In service" means a petroleum storage tank that contains a regulated substance, and/or has a regulated substance added to or withdrawn from it.

"Licensed Environmental Consultant" means an individual who has a current license issued by PSTD to perform corrective action.

"Marina" means any fuel storage tank system located on or by the water for the purpose of fueling watercraft.

"Permanent out of use" or "POU" means a petroleum storage tank system that is not in service/use, does not contain regulated substances, and is not intended to be placed back in service/use.

"Pier" means dock, floating dock, and wharf.

"Positive sampling, testing, or monitoring results" means the results of sampling, testing or monitoring using any of the release detection methods described in this Chapter that indicate that a release from a petroleum storage tank system may have occurred.

"Private airport" means an airport used only by its owner and regulated as a fleet and commercial facility.

"Private airstrip" means a personal residential takeoff and landing facility attached to the airstrip owner's residential property and used only by the owner.

"PSTD" means Petroleum Storage Tank Division.

"Public Utility" means any entity providing gas, electricity, water, or telecommunication services for public use.

"Regulated substances" means antifreeze, motor oil, motor fuel, gasoline, kerosene, diesel or aviation fuel. It does

not include compressed natural gas, liquid natural gas and propane.

"Release detection" means the methodology used in determining whether a release of regulated substances has occurred from a petroleum storage tank system.

"Residential tank" is a tank located on property used primarily for dwelling purposes.

"Responsible person" means a person other than a petroleum storage tank system owner or operator, such as an adjacent property owner, impacted party, or city, seeking corrective action of real property, and submits itself to the jurisdiction of the Commission.

"Retail facility" means a service station, convenience store or any other facility selling motor fuel that is open to the general public.

"Sacrificial anode" means a device to reduce or prevent corrosion of a metal in an electrolyte by galvanic coupling to a more anodic metal.

"Secondary containment" means a system installed around a petroleum storage tank or system that is designed to prevent a release from migrating beyond the secondary containment system outer wall (in the case of a double-walled tank system) or excavation area (in the case of a liner or vault system) before the release can be detected. Such a system may include, but is not limited to, impervious barriers (both natural and synthetic), double walls, or vaults.

"TPH" means total petroleum hydrocarbons.

"Tampering" means willful intention which makes an attempt to deceive, cheat or misrepresent the facts to the public. It also presents a risk to environmental welfare, as well as public health, safety and welfare.

"Tank tightness testing" or "precision testing" means a procedure for testing a petroleum storage tank system's integrity.

"Temporary out of use" or "TOU" means the status of a petroleum storage tank system that has been taken out of service/use but not removed with the intent to return to service.

"Total venting capacity" means the sum of the normal and emergency vent capacities and is determined by the wetted area of the tank as provided in Appendix I.

"Used Motor Oil" is any spent ~~engine~~ motor oil removed from a motor vehicle.

"Vault" means an enclosure consisting of four walls, a floor, and a top for the purpose of containing a liquid storage tank and not intended to be occupied by personnel other than for inspection, repair, or maintenance of the vault, the storage tank or related equipment.

"Wetted area of cylindrical tank" means seventy-five (75) percent of the total exposed area of the tank ends and shell.

"Wetted area of rectangular tank" means one hundred (100) percent of the surface area of the bottom, sides, and ends of the tank.

"Wetted area of vertical tank" means the first thirty (30) feet above grade of the exposed shell and floor.

PART 4. ADMINISTRATIVE PROVISIONS

165:26-1-28. Variances

A variance to a provision of this Chapter may be granted by the Commission after application, ~~notice and hearing~~ and administrative review by staff. If the application for variance is approved, no further action by applicant is necessary. If the application is denied, staff will notify applicant to proceed with notice and hearing.

PART 5. STANDARDS AND CODES

165:26-1-31. Codes and standards

(a) Specific references to documents listed below are made throughout the Aboveground Storage Tank Rules. Each of these documents or parts thereof is adopted and incorporated by reference as a standard. In the event these rules are in conflict with any of the standards set forth below, the provisions of these rules shall prevail. New editions of codes and standards supersede all previous editions. These codes and standards will be updated periodically through a formal rulemaking procedure initiated by PSTD to reflect any substantive or relevant changes. A copy is available for inspection at the Offices of the Petroleum Storage Tank Division during regular business hours.

- (1) American National Standards Institute (ANSI) Standards: American Society of Mechanical Engineers (ASME):
 - (A) ASME B31.3-~~2012~~2014, "Process Piping."
 - (B) ASME B31.4-2012, "Pipeline Transportation Systems for Liquids and Slurries."
- (2) American Petroleum Institute (API) Standards:
 - (A) API RP 652, "Lining of Aboveground Petroleum Storage Tank Bottoms," Second Edition, April, ~~1997~~2014.
 - (B) API 1628 SET, "A Guide to the Assessment and Remediation of Underground Petroleum Releases."
 - (C) API 653, "Tank Inspection, Repair, Alteration, and Reconstruction, Fifth Edition, 2014."
- (3) American Society for Testing and Materials (ASTM) Standards: ASTM E1739-95 (2015), "Standard Guide for Risk-Based Corrective Action Applied at Petroleum Release Sites."
- (4) National Association of Corrosion Engineers (NACE) Standards: NACE SP0169-2013, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems."
- (5) National Fire Protection Association (NFPA) Standards:
 - (A) Standard Number 30, 2015, "Flammable and Combustible Liquids Code."
 - (B) Standard Number 30A, 2015, "Motor Fuel Dispensing Facilities and Repair Garages."
- (6) Underwriter's Laboratory (UL) Standards:
 - (A) Standard UL142, 2006, "Steel Aboveground Tanks for Flammable and Combustible Liquids."
 - (B) Standard UL842, 2015, "Valves for Flammable Fluids."

- (C) Standard UL971, 2011, "Nonmetallic Underground Piping for Flammable Liquids."
 - (7) Petroleum Equipment Institute: Publication PEI/RP 200-13, "Recommended Practices for Installation of Aboveground Storage Systems for Motor Vehicle Fueling." (2013 Edition)
 - (8) "Spill Prevention, Control and Countermeasure Regulation," 40 CFR 112
- (b) The standards set forth in (a) of this Section are also available from the following sources:
- (1) American National Standards Institute (ANSI), Thirteenth Floor; 11 West 42nd Street, New York City, New York, 10036; Telephone: (212) 642-4900.
 - (2) American Society of Mechanical Engineers (ASME), Three Park Ave., 23S2, New York, NY 10016-5990; Telephone (800) 843-2763.
 - (3) American Petroleum Institute (API), Publications and Distribution, 1220 "L" Street, N.W., Washington, D.C. 20005-4070; Telephone (202) 682-8000.
 - (4) American Society for Testing and Materials (ASTM), 100 Bar Harbor Drive, West Conshohocken, Pennsylvania 19428-2959; Telephone (610) 832-9585.
 - (5) National Association of Corrosion Engineers (NACE), 1440 South Creek Drive, Houston, Texas 77084; Telephone (281) 492-0535.
 - (6) National Fire Protection Association (NFPA), 1 Batterymarch Park, Quincy, Massachusetts 02269-9101; Telephone (800) 344-3555.
 - (7) National Groundwater Association (NGWA), 601 Dempsey Road, Westerville, Ohio 43081; Telephone (614) 898-7791.
 - (8) Underwriter's Laboratory (UL), 333 Pflugsten Road, Northbrook, Illinois 60062; Telephone (847) 272-8800, extension 2612.
 - (9) Petroleum Equipment Institute, P.O. Box 2380, Tulsa, Oklahoma, 74101-2380; Telephone (918) 494-9696.

PART 6. FINANCIAL RESPONSIBILITY

165:26-1-36. Financial responsibility

- (a) This Subchapter applies to owners and operators of all petroleum aboveground storage tank (AST) systems except as otherwise provided in this Section.
- (b) State and Federal government entities whose debts and liabilities are the debts and liabilities of a state or the United States are exempt from the requirements of this Subchapter.
- (c) The requirements of this Subchapter do not apply to owners and operators of any AST system described in 165:26-1-22, "Exclusions."
- (d) If the owner and operator of a petroleum aboveground storage tank are separate persons, only one person is required to demonstrate financial responsibility; however, both parties are liable in event of noncompliance.
- (e) An owner or operator may satisfy the requirements of this Subchapter by use of the Indemnity Fund. There is a co-pay for use of this mechanism and for which compliance

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may be demonstrated by use of any of the mechanisms listed in ~~165:26-18-3~~165:26-1-37. For releases that occurred before June 4, 2004 the co-pay is \$5,000; for releases that occurred after June 4, 2004 the co-pay is 1% of fund expenditures not to exceed \$5,000.

PART 7. NOTIFICATION AND REPORTING REQUIREMENTS

165:26-1-41. General reporting requirements

PSTD ~~may require~~requires owners and operators of aboveground storage tank systems to provide information it deems necessary for the protection of human health, the environment and to assure the safety of people and property. Owners and operators must notify PSTD within thirty (30) days when their mailing address changes. Use of the designated PSTD form(s) is required for scheduling, tank registration, change in ownership, monthly release detection, testing, temporary change in service, permanent closure, or return to service. Owners and operators of aboveground storage tanks must notify PSTD at least thirty (30) days prior to switching regulated substances containing greater than ten (10) percent ethanol or twenty (20) percent biodiesel using the PSTD notification form. These forms are available at the OCC website, PST Division webpage: www.occeweb.com follow link to Petroleum Storage Tank Division and link to PST Compliance Forms.

PART 9. RECORDKEEPING

165:26-1-55. Availability of records

- (a) Owners and operators of regulated aboveground storage tank systems must cooperate with PSTD requests for submission of inventory and monitoring records. All leak detection records, including sampling, testing, inventory and monitoring records must be available for each tank for at least the preceding twelve months. Copies of all records required pursuant to this Chapter must be kept at the facility and available for immediate inspection by the PSTD Fuel Specialist or be readily available upon request.
- (b) Failure to have the required records available when requested by PSTD may result in an enforcement action.
- (c) Release detection records must be maintained for a minimum of three (3) years on forms specified by PSTD.
- (d) When a change in an owner or operator of a petroleum storage tank system occurs, all records required by PSTD must be transferred at no cost to the new owner or operator.
- (e) Each owner/operator must provide written notice of any address change within 30 days to the PSTD office.

165:26-1-58. Release detection and corrosion protection records

- (a) Owners and operators of regulated aboveground storage tank systems must maintain release detection records for a minimum of ~~one year~~three (3) years.

- (b) Owners and operators of regulated aboveground storage tank systems who use cathodic protection ("CP") must maintain the following records:

- (1) Original cathodic protection design created in accordance with National Association of Corrosion Engineers (NACE) recommended practices with drawings depicting all of the CP system components and a description of the materials used.
- (2) Suitability study performed to determine if a tank could be upgraded with corrosion protection.
- (3) Rectifier readings for impressed current systems conducted at least every 60 days.
- (4) Results of the last three inspections or CP system tests completed by a corrosion tester.

PART 13. SHUTDOWN OF OPERATIONS

165:26-1-90. Shutdown of operations

- (a) PSTD may close (shut down) a system:
 - (1) If the system poses an imminent threat to health, safety, or the environment.
 - (2) If the owner or operator is operating tanks for which permit fees have not been paid.
 - (3) If the owner or operator fails to comply with a Commission requirement or order.
 - (4) For failure to properly install, operate and/or maintain leak detection, spill, overfill, or corrosion equipment if the owner/operator has been issued a written notice of violation and has failed to take corrective action.
 - (5) Failure to protect a buried metal flexible connector from corrosion if the owner/operator has been issued a written notice of violation and has failed to take corrective action.
 - (6) Failure to perform, maintain, have readily available or present records for the previous twelve (12) months.
 - (7) Tampering with equipment.
- (b) PSTD must close (shut down) a system:
 - (1) If required spill prevention equipment is not installed.
 - (2) If required overfill protection equipment is not installed.
 - (3) If required leak detection equipment is not installed.
 - (4) If required corrosion equipment is not installed.
 - (5) If 2" or more of water is found in the tank where conventional gasoline or diesel fuel is stored and if 1/2 " or more of water is found in the tank of gasoline blended with alcohols, E85 fuel ethanol, or diesel blended with biodiesel.
 - (6) If meter is found to be off in calibration by more than -15 cubic inches per every 5 gallons.
 - (7) If a Fuel Specialist makes two (2) scheduled visits to a facility and the violation(s) is not corrected.
- (c) Only PSTD designated employees have the authority to lock or seal dispensers and/or fill pipes of any system violating subsection (a) or (b) of this Section. The PSTD employee must explain to the owner or operator the reason the AST system is being locked or sealed.

(d) The PSTD "Out of Order" tag attached to each fill pipe of the tank(s) in violation shall serve to clearly identify the tank(s) as ineligible for delivery, deposit, or acceptance of product. Tank owners/operators and product deliverers are responsible for ensuring that product is not delivered into the tagged tank(s).

(e) Owners, operators, or any persons who remove a lock or seal without permission from PSTD will be subject to penalties imposed by this Chapter, or formal enforcement proceedings.

(f) Upon confirmation that the AST system no longer poses an imminent threat to health, safety, or the environment, permit fees paid, violation(s) corrected, or Commission order requirements satisfied, the authority to remove a lock or seal by the owner or operator may be obtained as follows:

- (1) Written permission from the PSTD employee who placed the lock or seal on the device; or
- (2) Verbal or written permission from the Manager of Compliance and Inspection; or
- (3) Application to and order of the Commission.

(g) If a facility is closed under the provisions of this Section, the owner or operator of the facility will be afforded a hearing within ten (10) days of receipt by PSTD of the owner's or operator's application for a hearing.

PART 17. OPERATOR TRAINING [REVOKED]

165:26-1-130. Training requirements [REVOKED]

~~Each aboveground storage tank system or group of aboveground storage tank systems at a facility may have a Class A, Class B, and Class C operator designated. Separate individuals may be designated for each class of operator or an individual may be designated to more than one of the operator classes.~~

165:26-1-132. Operator Class designations [REVOKED]

~~(a) A Class A operator has primary responsibility to operate and maintain the aboveground storage tank system in the broader aspects of the statutory and regulatory requirements to achieve and maintain compliance.~~

~~(b) A Class B operator implements applicable requirements and standards for one or more facilities to monitor day to day aspects of operation and recordkeeping.~~

~~(c) A Class C operator is an onsite employee responsible for responding to alarms or emergencies caused by spills or release from aboveground storage tank systems.~~

SUBCHAPTER 2. GENERAL REQUIREMENTS FOR ABOVEGROUND STORAGE TANK SYSTEMS

PART 1. DESIGN AND INSTALLATION

165:26-2-5.1. General spill and overflow prevention requirements

(a) Owners and operators of aboveground storage tank systems, as well as those who transport regulated substances to these systems must do everything reasonably possible to ensure that releases due to spilling and overfilling do not occur.

(b) Tanks with a fill pipe must be filled through a liquid tight connection mounted inside at least a 5 gallon spill container. A spill bucket is not required if the fill pipe is located within the containment dike. Where an aboveground tank is filled by means of fixed piping, either a check valve and shutoff valve with a quick-connect coupling or a check valve with a dry-break coupling shall be installed in the piping at a point where connection and disconnection is made inside the spill containment between the tank and the delivery vehicle. This device shall be protected from tampering and physical damage. Tampering with equipment is not permitted. Any violation of this section may result in fines, enforcement action and/or shutdown of operations.

(c) ~~One~~For existing aboveground storage tank systems installed after July 1, 2007 any one of the following methods must be used to prevent overfilling.

(1) High liquid level alarms with an audible or visual signal that alerts personnel when the tank reaches 90% capacity at a constantly attended operation or surveillance station.

(2) High liquid level pump cutoff devices set to stop flow at a predetermined container content level.

(3) Direct audible or code signal communication between the container gauger and the pumping station.

(4) A fast response system for determining the liquid level of each bulk storage container such as digital computers, telepulse, or direct vision gauges. If this alternative is used a second person must be present to monitor gauges and the overall filling of the tank.

(d) For installations after October 13, 2018, a fill valve which automatically stops delivery of liquid when the tank reaches 95% capacity in addition to one of the following methods must be used to prevent overfilling.

(1) High liquid level alarms with an audible or visual signal that alerts personnel when tank reaches 90% capacity at a constantly attended operation or surveillance station.

(2) Direct audible or code signal communication between the container gauger and the pumping station.

(3) A fast response system for determining the liquid level of each bulk storage container such as digital computers, telepulse, or direct vision gauges. If this alternative is used, a second person must be present to monitor gauges and the overall filling of the tank.

(~~d~~e) Liquid level sensing devices must be tested at least annually to ensure proper operation.

(~~e~~f) Means shall be provided for determining the liquid level in each tank and this means shall be accessible to the delivery operator. Tank filling shall not begin until the delivery operator has determined that the tank has sufficient available capacity (ullage).

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165:26-2-6. Vent piping requirements

(a) For installations after October 13, 2018, each tank and each compartment of a compartment tank shall have both normal and emergency venting. The vent opening shall be in addition to the fill, withdrawal, and liquid level gauge opening.

(ab) Normal vents must be sized in accordance with either:

- (1) UL new tank manufacturing standards
- (2) API new tank manufacturing standards
- (43) API 2000, Venting Atmospheric and Low-Pressure Storage Tanks, or
- (24) Other accepted standards; or
- (35) Must be at least as large as the filling or withdrawal connection, whichever is larger, but in no case less than 1 1/4 in. (7 centimeters) nominal inside diameter.

(c) Emergency vents must be sized in accordance with either:

- (1) UL new manufacturing standards
- (2) API new tank manufacturing standards
- (3) API 2000, Venting Atmospheric and Low-Pressure Storage Tanks, or
- (4) Appendix I, or
- (5) Other accepted standards.

(bd) Where vent pipe outlets for tanks storing Class I liquids are adjacent to buildings or public ways, they must be located so that the vapors are released at a safe point outside of buildings and not less than 12 ft. (3.6 meters) above the adjacent ground level.

(ee) In order to aid in dispersion, vapors must be discharged upward. Vent outlets must be located so that flammable vapors will not be trapped by eaves or other obstructions and be at least 5 ft. (1.5 meters) from building openings.

(ef) Vent pipes that are provided for normal tank venting must extend at least 12 ft. (3.6 meters) above ground level or 5 ft. above the roof line at the highest point of attachment.

(g) Total venting capacity must be sized in accordance with:

- (1) UL new manufacturing standards
- (2) API new manufacturing standards
- (3) Wetted area calculations per tank design, and
- (4) Appendix I, or
- (5) Other approved method.

165:26-2-8. Installation testing

(a) A tightness test must be completed on tank and lines during construction and before being put into service after the lines have been covered.

(1) All aboveground storage tanks must be tested to manufacturers instructions. Single-wall tanks shall be air tested, soaped, and inspected for bubbling prior to installation.

(2) Aboveground product piping shall be subjected to ~~an~~ air test of at least 50 psi. The test must have a duration of not less than 60 minutes. All piping joints must be soaped while the system is under pressure, in order to detect any possible leaks. The interstice area of double-wall piping must be tested according to the manufacturer's instructions.

(3) All suction product piping must be tested while disconnected from the pumps, and dispensing units. The

piping must be subjected to an air test of at least 50 psi. The test must have a duration of not less than 60 minutes. All piping joints must be soaped while the system is under pressure, in order to detect any possible leaks. The interstice area of double-wall piping must be tested according to the manufacturer's instructions

(4) All pressurized piping must be tested while connected to tanks, pumps and dispensing units if installed at the time of installation. The piping must be subjected to an air test of at least 50 psi. The test must have a duration of not less than 60 minutes. All piping joints must be soaped while the system is under pressure, in order to detect any possible leaks. The interstice area of double-wall piping must be tested according to the manufacturer's instructions.

(5) All piping should be air tested and monitored continuously during the installation.

(6) All underground pressurized and suction piping must have a precision tightness test performed after all paving over the piping has been completed and before the system is placed in operation. The precision tightness test must be performed by a certified tester, and in accordance with manufacturer's instructions. The product line(s) must be hydrostatic tested by a NWGLDE approved testing device capable of detecting a leak of 0.10 gallons per hour with a test pressure of 50 psi or 1½ times the operating pressure, whichever is greater. The lines must be tested for a minimum of one hour.

(7) Mechanical and electronic leak detector(s) must be tested for function by simulating a leak and operate in accordance with manufacturer's instructions.

(8) If an ATG system with electronic line leak detector(s) is installed it must complete a leak detector test in each of the modes in which it is certified as capable of detecting a leak (e.g. 3gph, 0.2gph, and 0.1gph).

(9) Containment sumps must be tested after all piping and conduit has been installed ~~by filling sumps with water and monitoring the liquid level for an 8 hour period by using vacuum, pressure, or liquid testing in accordance with one of the following criteria:~~

(A) Requirements developed by the manufacturer (owners and operators may use this option only if the manufacturer has developed requirements);

(B) Code of practice developed by a nationally recognized association or independent testing laboratory, e.g., PEI RP 1200.

PART 4. REQUIREMENTS FOR CORROSION PROTECTION SYSTEMS

165:26-2-40. Corrosion protection

(a) Any portion of a tank or its piping system that is in contact with the soil must be protected from corrosion by a properly engineered, installed and maintained cathodic protection system in accordance with recognized standards of design, such as:

- (1) American Petroleum Institute Publication 1632-2002, Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems;
 - (2) National Association of Corrosion Engineers Standard RP0193-2001, Recommended Practice of External Cathodic Protection of On-Grade Metallic Storage Tank Bottoms;
 - (3) National Association of Corrosion Engineers Standard SP0169-2013, Control of External Corrosion of Underground or Submerged Metallic Piping Systems;
 - (4) National Association of Corrosion Engineers Standard SP0285-2011, Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems; and
- (b) Approved or listed corrosion-resistant materials or systems include special alloys, fiberglass reinforced plastic, or fiberglass reinforced plastic coatings.
 - (c) Piping systems for liquids, both aboveground and underground, that are subject to external corrosion must be protected.

PART 5. PIPING

165:26-2-52. Piping and gravity flow

Where tanks are at an elevation that produces a gravity head on the dispensing device, the tank outlet must be equipped with ~~an anti-siphon~~ device such as a solenoid valve, positioned adjacent to and downstream from the emergency valve, installed and adjusted so that liquid cannot flow by gravity from the tank in case of piping or hose failure when the dispenser is not in use.

165:26-2-53. Valves on piping

- (a) If a submersible pump system is used, a UL listed emergency shutoff/shear valve must be installed at each dispensing device. Both the emergency shutoff/shear valve and dispensing device shall be rigidly anchored in place.
- (b) If a suction pump-type dispensing device is used, a UL listed, vacuum-actuated shutoff/shear valve or equivalent-type valve must be installed directly under each dispensing device. Both the shut off/shear valve and dispensing device shall be rigidly anchored in place. Tanks installed in below-grade vaults are not required to comply with this requirement.
- (c) Manual shutoff and check valves must be equipped with a pressure-relieving device that will relieve the pressure generated by thermal expansion back to the tank. Manual shutoff valves that are normally open and only closed for maintenance do not require a pressure relieving device.
- (d) Each ~~outlet~~ connection to an aboveground tank through which liquid can normally flow must be provided with an internal or an external emergency fire valve located as close as practical to the shell of the tank or submerged pump. The fill line may be equipped with a check valve made of steel or nodular iron rather than a fire valve. The steel check valve must be installed upstream of the block valve on fill lines if a fire valve is not installed.

- (e) An anti-siphon or solenoid valve must be installed on each supply line according to manufacturer guidance and recognized industry standards.
- (f) A manual shut off or ball valve must be installed on each supply line according to manufacturer guidance and recognized industry standards.
- (g) All valves must meet the construction criteria of 165:26-2-54.

PART 7. VAULT REQUIREMENTS

165:26-2-71. Vaults

A vault is ~~a superior installation system that is not required. When used they are~~ allowed above or below grade and must meet NFPA 30 and NFPA 30A requirements.

PART 9. DISPENSER REQUIREMENTS

165:26-2-91. Dispensers

- (a) Liquids must be transferred from storage tanks by means of fixed pumps designed and equipped to allow control of the flow and prevent leakage or accidental discharge.
- (b) Dispensing devices for Class I and Class II liquids must be listed.
 - (1) Existing listed or labeled dispensing devices may be modified provided the modifications made are "Listed by Report" by an approved testing laboratory or as otherwise approved by PSTD.
 - (2) Modification proposals must contain a description of the component parts used in the modification and the recommended methods of installation on specific dispensing devices, and they must be made available to PSTD upon request.
- (c) A control must be provided that will permit the pump to operate only when a dispensing nozzle is removed from its bracket or normal position with respect to the dispensing device and only when the switch on this dispensing device is manually actuated. This control must also stop the pump when all nozzles have been returned either to their brackets or to the normal non-dispensing position.
- (d) A listed emergency breakaway device designed to retain liquid on both sides of the breakaway point must be installed on each hose dispensing any class of liquids. These devices must be installed and maintained in accordance with the manufacturer's instructions. Where hoses are attached to a hose-retrieving mechanism, the listed emergency breakaway device must be installed between the point of attachment of the hose-retrieving mechanism to the hose and the hose nozzle valve.
- (e) All gasoline, gasoline-alcohol blends, gasoline-ether blends, E85 Fuel ethanol, and M85 methanol dispensers located at retail facilities shall have a 10 micron or smaller nominal pore-sized filter. All biodiesel, biodiesel blends, diesel, and kerosene dispensers located at retail facilities shall have a 30 micron or smaller nominal pore-sized filter.

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(f) Dispensers at new installations that are connected to aboveground piping must have ~~containment~~ or sumps underneath the dispensers and be monitored.

PART 21. REMOVAL AND CLOSURE OF ABOVEGROUND STORAGE TANK SYSTEMS

165:26-2-214. Assessing the site at tank closure or change in service

- (a) Before permanent closure or a change in service is completed, the owner or operator must measure for the presence of a release where contamination is most likely to be present at the aboveground storage tank system site. Please refer to the PSTD ~~AST~~ sampling ~~guidance~~ document when choosing sample locations.
- (b) For tank systems containing petroleum product, analyses must be done for both TPH and BTEX.
- (c) If contaminated soils, contaminated groundwater, or free product as a liquid or vapor is discovered, the owner must immediately begin corrective action in accordance with Chapter 29 of Commission rules.
- (d) Any sampling at closures must be conducted under the supervision of a Licensed Environmental Consultant.
- (e) The requirements of this Section do not apply to aboveground storage tanks which are located in or on buildings.

SUBCHAPTER 3. RELEASE PREVENTION AND DETECTION

PART 14. RELEASE REPORTING REQUIREMENTS

165:26-3-77. Release reporting

- (a) The reporting requirements of this Part do not relieve the owner or operator of the responsibility to take necessary corrective action pursuant to Chapter 29 of Commission rules to protect the public health, safety and the environment, including the containment and cleanup of spills and overfills that are not required to be reported by this Chapter. No person shall allow a confirmed or suspected release of regulated substances from an aboveground storage tank system to continue without reporting or initiating an investigation within 24 hours of discovery as required by this Chapter. Owners and operators of aboveground storage tank systems, as well as persons who transport regulated substances must ensure that spills and overfills do not occur.
- (b) All aboveground storage tank system owners, operators, their employees or agents, or transporters must report any of the following events to PSTD by telephone at (405) 521-4683 or toll free at 1-888-621-5878 (if after hours or on weekends or holidays, call the PSTD emergency phone number at (405) 823-0994) within 24 hours of discovery of any of the following situations. Owners or operators must provide written confirmation to follow within 20 days in accordance with the

requirements established in this Chapter. Qualifying events include:

- (1) The discovery of released regulated substances at the aboveground storage tank system facility or in the surrounding area (such as the presence of free product or vapors in soils, basements, crawlspaces, sewer and utility lines, and nearby surface water);
 - (2) Any unusual operating conditions observed by owners and/or operators, such as the unexplained erratic behavior of product dispensing equipment, the sudden loss of product from the aboveground storage tank system, or an unexplained presence of water in the tank, unless system equipment is found to be defective but not leaking, and is immediately repaired or replaced.
 - (3) In the case of inventory control, two consecutive months where the Total Gallons Over/Short is greater than the "Leak Check" (1 percent of product sales plus 130 gallons) must be reported to PSTD within 24 hours of the owner or operator discovering the inventory control results.
 - (4) Monitoring results from a release detection method required by this Chapter that indicate a release may have occurred unless the monitoring device is found to be defective, and is immediately repaired, recalibrated, or replaced, and additional monitoring does not confirm the initial result.
- (c) While aboveground releases of petroleum of less than 25 gallons need not be reported, they must be recorded by the owner or operator and contained and cleaned up immediately. All of the following releases must be reported by telephone within 24 hours of discovery, with a written confirmation to follow within 20 days in accordance with the requirements established in this Chapter:
- (1) All known belowground releases in any quantity; for example, a release resulting from a line broken during an excavation.
 - (2) Any aboveground release of petroleum greater than 25 gallons.
 - (3) Any aboveground release of petroleum that is less than 25 gallons, but cannot be contained and cleaned up within 24 hours.
- (d) All owners and/or operators of aboveground storage tank systems must maintain records of all reportable and non-reportable events listed in this section sufficient to permit adequate inspection and review by PSTD. These records must be kept for 3 years following the date of the event.
- (e) If any of the possible, probable or definite release conditions in subsections (a) through (c) above are not reported within 24 hours, the owner or operator must be prepared to provide documentation or evidence that would reasonably indicate why knowledge of release conditions or monitoring results was delayed.

SUBCHAPTER 8. REQUIREMENTS FOR ABOVEGROUND STORAGE TANK SYSTEMS UTILIZED BY MARINAS

PART 9. OVER-WATER PIPING REQUIREMENTS

165:26-8-40.2. Installation requirements for over-water piping

(a) Steel piping.

- (1) Piping shall be installed with proper support and strain relief in order to eliminate the physical stress on the piping and piping connections caused by the constant movement of the water and floating dock. Fuel piping and electrical conduit shall be rigidly attached to the dock before the piping enters the sump area, in order to prevent strain on the entry boots and primary pipe fittings.
- (2) Steel flex connectors must be used between the shore piping and the piping on the floating structure and between separate sections of the floating structure to allow for movement of the dock and changes in water levels.
- (3) Onshore piping must be rigidly anchored in place to prevent movement when water levels are elevated.
- (4) A listed emergency breakaway device designed to retain liquid on both sides of the breakaway point must be installed on each line serving the dock. The breakaway device shall be located where the dock piping will separate from the shore or secured ramp piping. The piping shall be secured at both ends of the breakaway device so that the piping will withstand the forces and pressures exerted upon it.
- (5) There must be a normally closed explosion proof solenoid valve with built-in pressure relief or a normally closed explosion proof solenoid valve and a pressure relief valve installed in each product line at the shoreline.
- (6) A ball valve must be installed at the shoreline in order to manually shut off the flow of fuel.
- (7) Containment sumps must be installed under all dispensers and monitored with sensors. If a pressure system is used all sump sensors must automatically control the electricity to both the solenoid valves and submerged pump. If a suction system is used the sump sensors should automatically control the electricity to both the solenoid valve and suction pump motor.
- (8) If the onshore piping is double walled a transition sump is required at the shoreline in order to contain a release from the onshore piping. The transition sump must contain the ball valve and solenoid valve and be rigidly anchored in place.

(b) Double walled piping.

- (1) Double walled piping must be installed according to the double wall piping manufacturer recommendations.
- (2) All double walled piping installed above the water shall be enclosed inside a rigid metal chase or conduit except at joints requiring flexibility. A flexible metal conduit can be used between shore piping and piping on the floating structure or between separate sections of the floating structure to allow for movement of the dock and changes in water levels. Both the rigid and flexible metal chase/conduit must shield the fuel pipe from damage by fire and in itself be fire resistant.

- (3) Due to the constant movement of the water and the floating dock, piping shall be installed with proper support and strain relief in order to eliminate the physical stress on the piping and piping connections. Fuel piping and electrical conduit shall be rigidly attached to the dock before the piping enters the sump area, in order to prevent strain on the entry boots and primary pipe fittings.
- (4) Onshore piping must be rigidly anchored in place to prevent movement when water levels are elevated.
- (5) A listed emergency breakaway device designed to retain liquid on both sides of the breakaway point must be installed on each line serving the dock. The breakaway device shall be located where the dock piping will separate from the shore or secured ramp piping. The piping shall be secured at both ends of the breakaway device so that the piping will withstand the forces and pressures exerted upon it.
- (6) There must be a normally closed explosion proof solenoid valve with built-in pressure relief or a normally closed explosion proof solenoid valve and a pressure relief valve installed in each product line at the shoreline.
- (7) A ball valve must be installed at the shoreline in order to manually shut off the flow of fuel. It must be installed so that it is accessible to the operator at all water levels.
- (8) Containment sumps must be installed under all dispensers and monitored with sensors. If a pressure system is used all sump sensors must automatically control the electricity to both the solenoid valves and submerged pump. If a suction system is used the sump sensors should automatically control the electricity to both the solenoid valve and suction pump motor.
- (9) A transition sump must be rigidly anchored in place either on the dock or at the shoreline. The transition sump must contain the ball valve, solenoid valve, and emergency breakaway device. The transition sump must be either monitored with a sensor or a bypass tube must be used in order to divert a leak from the transition sump to the dispenser sump where it would be detected by a sensor.

[OAR Docket #17-503; filed 6-23-17]

**TITLE 165. OKLAHOMA CORPORATION COMMISSION
CHAPTER 27. INDEMNITY FUND**

[OAR Docket #17-504]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 1. General Provisions
- 165:27-1-2. Definitions [AMENDED]
- Subchapter 7. Reimbursement
- 165:27-7-2. Reimbursement [AMENDED]

AUTHORITY:

The Commission's statutory authority is found in Article IX, Section 18 of the Oklahoma Constitution, and 17 O.S. §§ 52, 350 et seq.

Permanent Final Adoptions

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

Although the Oklahoma Corporation Commission is not subject to the requirements of Executive Order No. 2013-34, the proposed rules were submitted to the Governor and Cabinet Secretary on September 21, 2016.

COMMENT PERIOD:

September 20, 2016 to December 23, 2016

PUBLIC HEARING:

January 24, 2017

ADOPTION:

January 24, 2017

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

February 1, 2017

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 13, 2017

FINAL ADOPTION:

June 13, 2017

EFFECTIVE:

September 11, 2017

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

OAC 165:27-1-2 is amended to expand and clarify what constitutes a confirmed release, an eligible release, and a suspicion of release; and to provide a definition for an electronic signature. OAC 165:27-7-2 is amended to allow for online submission of documents and payment of claims through electronic funds transfers (EFT's).

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 1. GENERAL PROVISIONS

165:27-1-2. Definitions

In addition to the terms defined in 17 O.S. Sections 303, 352, and in OAC 165:25-1-11, 165:26-1-2, and 165:29-1-11 the following words or terms, when used in this Chapter, are the Commission's interpretation of enabling statutes and shall have the following meaning unless the context clearly indicates otherwise:

"Actual physical damage" means those damages to real and personal property directly related to corrective action performed on a release of petroleum from a Commission regulated storage tank system. Personal property damage is limited to the replacement value of the personal property less depreciation. Real property damage is limited to the lesser of the property value or diminution in property value directly associated with a release of regulated substances from a Commission regulated storage tank system. In no event will the Indemnity Fund reimburse speculative damages, inferred damages, unrealized damages or any other damages where damage costs are not actually incurred, paid, or otherwise established to the Commission's satisfaction. The burden of proof shall be

upon the person seeking compensation from actual physical damages.

"Administrative Application" means an Application for eligibility and reimbursement made to the Commission by the Director of the Petroleum Storage Tank Division on behalf of an unavailable or unwilling Applicant to facilitate meeting the Program's obligation to protecting public health, safety and welfare.

"Agent" means a person authorized by another to act on their behalf, either out of employment or contract.

"Allowable Costs" means costs that are reasonable, integral and necessary to corrective action.

"Assignment of Benefits" means a written directive from the Applicant of Record instructing the PSTD Indemnity Fund to pay reimbursement directly to the named Assignee.

"Assignment of Rights" (aka "Limited Power of Attorney") means a transfer of authority granting the Assignee the legal right to act on the Assignee's behalf for specified matters.

"Associated costs" means expenses that are not integral to the corrective action and not subject to reimbursement.

"Chemicals of Concern ("COC")" means chemicals that may pose a threat to human health and the environment.

"Claim or Claims" means a properly submitted request for reimbursement from the Fund for an SOR or eligible case when the co-pay is paid.

"Closed file" means a file for which final resolution has been made of all invoices submitted for corrective action taken under an application for reimbursement from the Indemnity Fund.

"Commission or OCC" means the Oklahoma Corporation Commission.

"Confirmed Release" means a release of petroleum a regulated substance from a regulated storage tank system resulting in levels of chemicals of concern in native soils and/or groundwater that exceed state action levels-free product, contaminated soils or groundwater that exceed state action levels, organic vapor readings significantly above background levels, petroleum staining or odors or any other indication that a release has occurred that could be harmful to human health, safety or the environment and to which a PSTD case number is assigned and further corrective action is required.

"Contamination" means pollution in the native environment caused by a release of a regulated substance above action levels for that substance as set by the Commission.

"Disbursement" includes all monies, actually paid, expended, encumbered, reserved or attributable to a reimbursable event(s).

"Dispenser" means equipment, gauge(s), hose(s), nozzle(s), immediately associated pipe or fittings and other such appurtenances located aboveground and intended for dispensing PSTD-regulated substances from a tank system.

"Electronic signature" means any information in digital form that is included in or logically associated with an electronic document for the purpose of expressing the same meaning and intention as would a handwritten signature if affixed to an equivalent paper document with the same reference to the same content.

"Eligible Person" means the party who has made application to the Indemnity Fund and met applicable criteria to become eligible to receive reimbursement on an OCC confirmed release, and who has been issued an Eligibility Letter from the Indemnity Fund. An eligible person may be an impacted party or adjacent owner.

"Eligible Release" means a suspicion of release or confirmed release of a petroleum product that qualifies for Indemnity Fund reimbursement once Fund eligibility and/or reimbursement, and generally includes only those products and/or a release from a storage tank system regulated by the OCC has been determined.

"Fund" means the Petroleum Storage Tank Indemnity Fund.

"Impacted Party" means an owner whose property has been impacted by a release from an on-site or off-site petroleum storage tank system that was never owned or operated by the impacted party and who has no OCC regulatory responsibility. An Impacted Party can apply for Fund eligibility and reimbursement, and the Fund deductible is not applicable.

"Investigation" means activities taken to identify, confirm, monitor or delineate the physical extent of a release and which result in the selection of an appropriate means to remediate a release and specific design criteria for such remediation upon currently used costing programs and/or reasonable competitive bids.

"Licensed Environmental Consultant" means an individual who has a current license issued by the PSTD to perform corrective action.

"Medical injury(ies)" means actual physical injury to a person in which medical costs have been incurred in association with the diagnosis and treatment of a physical injury directly caused by corrective action performed on a release of petroleum from a Commission regulated storage tank system.

"Occurrence" means the release of a PSTD regulated substance into the soil or groundwater. Each PSTD regulated substance will be treated as one occurrence regardless of the composition of the substance released. Separate occurrences of the same PSTD regulated substance may be allowed if evidence establishes the PSTD regulated substance occurred in two different tank system locations, are separated by time, or both.

"Pay for Performance (PFP)" means a process where an environmental consulting company (Consultant) guarantees by contract that a release of a regulated substance will be remediated to Chemicals of Concern (COC) levels agreed to by the PSTD, the Consultant and tank owner/operator that are protective of human health, safety and the environment. This performance-based process encompasses several steps, but is not limited to the contract signed by an officer/owner of the environmental consulting company, the applicant and the Administrator of the Indemnity Fund and an agreed to reasonable price. Scheduled payments are distributed only as performance-based goals are attained.

"Petroleum storage tank system" means a closed-plumbed system including storage tank(s), line(s) and dispenser(s) for a given product, e.g. a facility site can have a gasoline and a diesel system, or systems for different grades

of gasoline, or even separate systems for the same grade of gasoline. It also includes a transport truck when attached to a tank system, and a used oil tank.

"PSTD" means Petroleum Storage Tank Division, or Division.

"Purchase Order" means a document submitted to PSTD online to obtain pre-approval by PSTD of a scope of work and the costs associated with the scope of work.

"Reimbursement" means repayment of a claim to a qualified Claimant or Assignee, or for an Administrative Application, or for such a claim submitted on behalf of a qualified Claimant, for incurred allowable costs resulting from an eligible release.

"Remedial Action Plan" means a plan implementing the required and approved remediation.

"Remediation" means the process or technique used to reduce concentration levels of regulated substances in the soil and groundwater, and/ or to reduce the presence of free product in the environment to levels that are protective of human health, safety and the environment.

"Site assessment" means a multi-step process designed to determine if a site has possibly been impacted by an amount of regulated substance(s).

"Site characterization" means a report submitted to the Commission that defines the extent of the contamination. The report should include, as a minimum, all things required by Chapter 29 of Commission rules for such a report.

"Suspicion of Release" ("SOR") means preliminary investigative work ~~performed under a PSTD Purchase Order~~ to determine if a release of a regulated substance has occurred. ~~A modified eligibility process for a SOR is required.~~

"Work Plan" means a proposed scope of work submitted online to implement corrective action.

SUBCHAPTER 7. REIMBURSEMENT

165:27-7-2. Reimbursement

(a) Among other requirements an eligible person for reimbursement is required to show:

- (1) Allowable costs were incurred on or after December 23, 1988.
- (2) The PSTD has determined that the release or suspicion of release may pose a threat to human health or the environment.
- (3) The eligible person has fully cooperated with PSTD in responding to the release.

(b) The Petroleum Storage Tank Division will reimburse from the Indemnity Fund an eligible person, with an eligible release from an eligible tank system allowable costs in excess of 1% co-pay not to exceed Five Thousand Dollars (\$5,000.00) but not more than:

- (1) One million five hundred thousand dollars (\$1,500,000.00) per occurrence providing the storage tank is used in petroleum marketing or if the system has a throughput in excess of ten thousand (10,000) gallons per month based on annual throughput for the previous calendar year, (throughput to be established by clear and

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convincing documentary records that are deemed sufficient by PSTD staff) and

- (A) Two million dollars (\$2,000,000.00) annual aggregate for owners of one to one hundred storage tank systems, or
 - (B) Three million dollars (\$3,000,000.00) annual aggregate for owners with more than one hundred storage tank systems or,
- (2) Five hundred thousand dollars (\$500,000.00) per occurrence providing the system is not used in petroleum marketing, or if the storage tank system has a throughput of ten thousand (10,000) gallons or less per month based on annual throughput for the previous calendar year, and
- (A) Two million dollars (\$2,000,000.00) annual aggregate for owners of one to one hundred storage tank systems or,
 - (B) Three million dollars (\$3,000,000.00) for owners with more than one hundred storage tank systems.
- (c) Reimbursement shall not be made from the Indemnity Fund pursuant to this Section until the Indemnity Fund Program has determined that the costs for which reimbursement is requested were incurred on behalf of an eligible person, of an eligible release from an eligible tank system and were reasonable, integral and necessary.
- (d) Releases that occurred prior to June 4, 2004, shall not receive reimbursement until the \$5,000.00 co-pay has been prepaid or a payment arrangement concerning the co-pay has been agreed to by PSTD and significant compliance with the payment agreement is achieved.
- (e) All corrective action or assessment costs incurred shall be subject to reimbursement in accordance with unit cost pricing recommended by the Unit Cost Committee as approved by the PSTD Director and any adaptations, amendments or changes thereto.
- (f) All corrective action costs incurred shall be subject to reimbursement that is deemed allowable, fair and reasonable by the PSTD.
- (g) ~~When~~ the technology is available, PSTD will accept online submissions of documents meeting PSTD rules and requirements.

(h) When the technology is available, payment of Indemnity Fund claims may be in the form of Electronic Funds Transfer ("EFT").

[OAR Docket #17-504; filed 6-23-17]

TITLE 165. CORPORATION COMMISSION CHAPTER 29. CORRECTIVE ACTION OF PETROLEUM STORAGE TANK RELEASES

[OAR Docket #17-505]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions
Part 3. Definitions
165:29-1-11. Definitions [AMENDED]
Part 7. National Industry Codes

165:29-1-31. Sources of standards [AMENDED]
165:29-1-32. Incorporated codes and standards [AMENDED]
Subchapter 3. Release Prevention, Detection and Correction
Part 1. Release Prohibition, Reporting, and Investigation
165:29-3-3. Release investigation; confirmed release; suspected release; emergency suspected release and release reporting [AMENDED]

AUTHORITY:

The Commission's statutory authority is found in Article IX, Section 18 of the Oklahoma Constitution, and 17 O.S. §§ 52, 301 et seq., 305, 306, 307, 321.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

Although the Oklahoma Corporation Commission is not subject to the requirements of Executive Order No. 2013-34, the proposed rules were submitted to the Governor and Cabinet Secretary on September 21, 2016.

COMMENT PERIOD:

September 20, 2016 to December 23, 2016

PUBLIC HEARING:

January 24, 2017

ADOPTION:

January 24, 2017

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

February 1, 2017

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 13, 2017

FINAL ADOPTION:

June 13, 2017

EFFECTIVE:

September 11, 2017

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

Incorporated standards:

National Ground Water Association, 601 Dempsey Road, Westerville, Ohio, 43081, (800) 551-7379.

American Petroleum Institute (API): Publication 2200, 2015, "Repairing Crude Oil, Liquefied Petroleum Gas, and Product Pipelines," 4th Edition; Publication 2015, 2014, "Requirements for Safe Entry and Cleaning of Petroleum Storage Tanks."

Underwriter's Laboratory (UL): Standard UL567, 2014, "Emergency Breakaway Fittings, Swivel Connectors and Pipe-Connection Fittings for Petroleum Products and LP-Gas."

National Groundwater Association, 1986, "RCRA Ground Water Monitoring Technical Enforcement Guidance Document (TEGD).

Incorporating rules:

165:29-1-31

165:29-1-32

Availability:

8:00 am to 4:30 pm, Monday through Friday at Oklahoma Corporation Commission, Office of Petroleum Storage Tank Division, 4th Floor, Jim Thorpe Office Building, 2101 N Lincoln Blvd., Oklahoma City, OK 73152-2000, 405-521-4683.

GIST/ANALYSIS:

OAC 165:29-1-11 is amended to refine the definition of a confirmed release and a suspicion of release, add a definition for electronic signature, delete hazardous substances language, and expand the definition of release to more closely match the federal definition in 40 CFR 280.12. OAC 165:29-1-31 amends "National Ground Water Association" to the current iteration of its name. OAC 165:29-1-32 is amended to update standards to the current edition as provided in 75 O.S. § 251, and to correct the name of the association. OAC 165:29-3-3 is amended to incorporate the federal requirements for release investigation for interstitial integrity testing where appropriate, pursuant to 40 CFR 280.50; and to expand and clarify what constitutes a confirmed release and a system test.

CONTACT PERSON:

Zach Duvall, Assistant General Counsel, Office of General Counsel, Oklahoma Corporation Commission, 2101 N. Lincoln Blvd., P.O. Box 52000, Oklahoma City, OK 73152-2000, (405)521-4749, z.duvall@occcemail.com.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,
THE FOLLOWING RULES ARE CONSIDERED
FINALLY ADOPTED AS SET FORTH IN 75 O.S.,**

SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 1. GENERAL PROVISIONS

PART 3. DEFINITIONS

165:29-1-11. Definitions

In addition to the terms defined in 17 O.S. § 303, the following words or terms, when used in this Chapter, shall have the following meaning unless the context clearly indicates otherwise:

"ANSI" means the American National Standards Institute.

"API" means the American Petroleum Institute.

"ASTM" means the American Society for Testing and Materials.

"Abandoned system" means a storage tank system that has not been removed but has been taken out of service and is not intended to be returned to service, or that has been rendered permanently unfit for use as determined by the Commission, including all tanks closed prior to April 21, 1989.

"Aboveground release" means any release to the surface of the land or to surface water. It includes, but is not limited to, releases from the aboveground portion of an underground storage tank system and aboveground releases associated with overfills and transfer operations as the regulated substance moves to or from an underground storage tank system.

"Agent" means a person authorized by another to act on their behalf, either out of employment or contract.

"Aquifer" means a formation that contains sufficient saturated, permeable material to yield significant quantities of water to wells and springs. This implies an ability to store and transmit water for beneficial uses.

"Ancillary equipment" means any device including, but not limited to, devices such as piping, fittings, flanges, valves, and pumps that are used to distribute, meter, or control the flow of regulated substances to or from a petroleum storage tank.

"Backfill" refers to only the material placed in the excavation zone to support the petroleum storage tank system.

"Belowground release" means any release to the subsurface of the land or to groundwater. It includes, but is not limited to, releases from belowground portions of petroleum storage tank systems and belowground releases associated with overfills and transfer operations as the regulated substance moves to or from underground storage tank systems. "Belowground release" does not include releases to a secondary containment system.

"Beneath the surface of the ground" means beneath the ground's surface or otherwise covered with materials so that physical inspection is precluded or impaired.

"Beneficial uses" means a classification of the waters of the State, according to their best uses in the interest of the public.

"COC" means Chemical of Concern.

"Commission" means the Oklahoma Corporation Commission and includes its designated agents or representatives.

"Compatible" means the ability of two or more substances to maintain their respective physical properties upon contact with one another for the design life of the petroleum storage tank system under conditions likely to be encountered in the system.

"Confirmed Release" means a release of ~~petroleum a regulated substance~~ from a regulated storage tank system resulting in ~~levels of chemicals of concern in native soils and/or groundwater that exceed state action levels~~ free product, contaminated soils or groundwater that exceed state action levels, organic vapor readings significantly above background levels, petroleum staining or odors or any other indication that a release has occurred that could be harmful to human health, safety or the environment and to which a PSTD case number is assigned and further corrective action is required.

"Contaminants" or "contamination" means concentrations of regulated substances or dissolved compounds therefrom at levels that may cause adverse human health or environmental effects.

"Corrective action" means action taken to assess, monitor, minimize, eliminate or clean up a release from a storage tank system.

"Corrective Action Plan" means any plan submitted to the Division detailing the method and manner of corrective action to be taken for a release.

"DAF" means Dilution Attenuation Factor.

"DEQ" means the Oklahoma Department of Environmental Quality.

"DWS" means Drinking Water Standards.

"de minimis" means, for the purposes of this Chapter, very small, as in very small amounts or concentrations of regulated substances.

"Dielectric material" means a material that does not conduct direct electric current. Dielectric coatings are used to electrically isolate underground storage tank systems from the surrounding area. Dielectric bushings are used to electrically isolate portions of the underground storage tank system (e.g., tank from piping).

"Dilution Attenuation Factor" or "DAF" means a unitless number greater than or equal to unity and represents the ratio of dissolved phase concentration at a downgradient location to the concentration at an upgradient location. It represents the reduction in concentration due to the combined influence of several factors (diffusion, dispersion, adsorption, decay, volatilization). It is applicable for all media, but is most commonly used for the unsaturated and saturated zones. DAF is generally estimated using a fate and transport model or based on site-specific data.

"Director" means the Director of the Petroleum Storage Tank Division of the Corporation Commission.

"Division" means the Petroleum Storage Tank Division of the Corporation Commission.

"EPA" means the United States Environmental Protection Agency.

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"Electrical equipment" means underground equipment that contains dielectric fluid necessary for the operation of equipment such as transformers and buried electric cable.

"Electronic signature" means any information in digital form that is included in or logically associated with an electronic document for the purpose of expressing the same meaning and intention as would a handwritten signature if affixed to an equivalent paper document with the same reference to the same content.

"Environment" means any water, water vapor, any land including land surface or subsurface, fish, wildlife, air and atmosphere, and all other natural resources.

"Environmental experience" means work-related experience in any type of activities associated with soil, water or atmosphere impacted or potentially impacted by a ~~hazardous~~ **PSTD regulated substance.**

"Excavation zone" means the volume containing the underground storage tank system and backfill materials, bounded by the ground surface, walls, and floor of the pit and trenches into which the underground storage tank system is placed at the time of installation.

"Facility" means any location or part thereof consisting of one or more petroleum storage tanks or systems containing regulated substances.

"Flow-through process tank" means a tank that forms an integral part of a production process through which there is a steady, variable, recurring or intermittent flow of material during the operation of the process. Flow-through process tanks do not include tanks used for the storage of materials prior to their introduction to the process or for the storage of finished products or by-products from the production process.

"FOC" means fraction organic carbon content.

"Fraction organic carbon content" or **"FOC"** means the fraction of organic carbon in soil that influences the adsorption of organic chemicals. It can be estimated in soils using high temperature combustion and oxidation techniques such as ASTM method D2974.

"Free product" means a regulated substance that is present as a non-aqueous phase liquid (e.g., liquid not dissolved in water).

"Fresh groundwater" means groundwater with total dissolved solids (TDS) less than five thousand (5,000) parts per million.

"Fund" means the Petroleum Storage Tank Release Environmental Cleanup Indemnity Fund.

"Gathering lines" means any pipeline, equipment, facility, or building used in the transportation of oil or gas during its production or gathering operations.

"Groundwater" means that part of water that is below the water table.

"Half-life" means the time required for the decay or transformation of one half of the amount of a chemical.

"Hazard Index" means the sum of the Hazard Quotients.

"Hazard Quotient" means the estimated dose, or intake, for a specific chemical and a specific pathway, divided by the Reference Dose (RfD).

"Impervious barrier" means a barrier of sufficient thickness, density, and composition that is impenetrable to

the regulated substance, has a permeability of at least 1×10^{-6} cm/sec., and will prevent the discharge to the environment of any regulated substance for a period of at least as long as the maximum anticipated time during which the regulated substance will be in contact with the impervious material.

"In service" means a petroleum storage tank that is not abandoned, or could contain regulated substances, and/or has regulated substances regularly added to or withdrawn from it.

"Inventory controls" means techniques used to identify a loss of regulated substances that are based on volumetric measurements in the tank and reconciliation of those measurements with product delivery and withdrawal records.

"Licensed Environmental Consultant" means an individual who has a current license issued by the Petroleum Storage Tank Division to perform corrective action.

"Liquid trap" means sumps, well cellars, and other traps used in association with oil or gas production, gathering, and extraction operations (including gas production plants) to collect oil, water, and other liquids. Liquid traps may temporarily collect liquids for subsequent disposition or reinjection into a production or pipeline stream, or may collect and separate liquids from a gas stream.

"MCL" means Maximum Contaminant Level.

"MtBE" means methyl tertiary butyl ether.

"Maintenance" means the normal operational upkeep necessary to prevent a petroleum storage tank system from releasing product.

"Motor fuel" means any petroleum product, oxygenate, or blend of products, that is suitable for use as a fuel in an internal combustion or diesel engine.

"Monitor well" means a piezometer or other cased and screened excavation, boring or drilled hole installed in any way that can be used for the continuous or periodic evaluation of groundwater quality or the detection of soil vapors.

"NACE" means the National Association of Corrosion Engineers.

"NFPA" means the National Fire Protection Association, Inc.

"NPDES" means the National Pollutant Discharge Elimination System.

"Occurrence" means the release of a PSTD regulated substance into the soil or groundwater. Each PSTD regulated substance will be treated as one occurrence regardless of the composition of the substance released. Separate occurrences of the same PSTD regulated substance may be allowed if evidence establishes that the PSTD regulated substance occurred in two different tank systems locations, are separated by time, or both.

"ORBCA" or **"Oklahoma Risk-Based Corrective Action"** means a scientific risk-based analysis that governs petroleum storage tank site assessment and remediation. It determines acceptable concentration levels of petroleum constituents in order to protect the public health, safety or welfare or the environment.

"OSDA" means the Oklahoma State Department of Agriculture.

"OWRB" means the Oklahoma Water Resources Board.

"Observation Well" means a cased and screened boring or drilled hole, installed within the tank excavation or piping trench that can be used for the continuous or periodic evaluation of groundwater quality or the detection of soil vapors as a method of release detection.

"Operational life" means the period beginning from the time installation of the tank or system is commenced until it is properly closed or removed as provided for in this Chapter.

"Overfill" means a release that occurs when a petroleum storage tank is filled beyond its capacity, resulting in a discharge of regulated substance to the environment.

"PEI" means the Petroleum Equipment Institute.

"POC" means Point of Compliance.

"POE" means Point of Exposure.

"PSI" means pounds per square inch.

"PSTD" means Petroleum Storage Tank Division or Division.

"Pay-for-Performance (PFP)" means a process where an environmental consulting company (Consultant) guarantees by signing a mutual agreement (the contract) that a release of a regulated substance will be remediated to COC levels agreed to by the PSTD and the Consultant that are protective of human health, safety and the environment. This performance-based process encompasses several steps, but is not limited to the contract signed by an officer/owner of the environmental consulting company, the applicant and the Administrator of the Indemnity Fund and an agreed to reasonable price. Scheduled payments are distributed only as performance-based goals are attained.

"Permanent out of use" or "POU" means a petroleum storage tank system that is not in service/use, does not contain regulated substances, and is not intended to be placed back in service/use.

"Petroleum" means antifreeze, motor oil, gasoline, diesel, aviation fuel, and/or volatile blending materials used in motor fuels, like kerosene and ethanol and used oil.

"Pipe" or "Piping" means a hollow cylinder or tubular conduit constructed of non-earthen materials.

"Pipeline facilities" means new and existing pipe rights-of-way and any equipment, facilities, or buildings regulated under:

- (A) The Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. § 1671, et seq.).
- (B) The Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. § 2001, et seq.).
- (C) The State Hazardous Liquid Transportation System Safety Act, § 47.1 et seq. of Title 52 of the Oklahoma Statutes.
- (D) Intrastate pipeline facilities regulated under state laws.

"Point of Compliance" means a select location where the concentration of a chemical released must be at or below back-calculated levels. The back-calculated levels are such that estimated concentrations at the Point of Exposure are below health-based levels.

"Point of Exposure" means a location at which an individual or population may be exposed to site-specific Chemicals

of Concern through ingestion, inhalation and/or dermal contact.

"Pollution" means contamination or other alteration of the physical, chemical or biological properties of any natural waters of the state, or contamination or alteration of the physical, chemical or biological properties of the land surface or subsurface, when such contamination or alteration will or is likely to create a nuisance or render the waters or land harmful to the public health, safety or welfare, or the environment.

"Positive sampling, testing, or monitoring results" means the results of sampling, testing, or monitoring using any of the release detection methods described in this Chapter that indicate a release from a petroleum storage tank system may have occurred.

"Potency Factor" means the plausible upper-bound estimate of the probability of a response (cancer) per unit intake of chemical over a lifetime. Also referred to as Slope Factor.

"RBCA" means Risk-Based Corrective Action.

"RfD" means Reference Dose.

"Reasonable Maximum Exposure" or "RME" means the highest rate of exposure that has a small probability (5 percent) of being exceeded.

"Reference Dose" or "RfD" means the estimate of the daily intake of a chemical over a lifetime that is not likely to result in any significant adverse health effects (including in sensitive subpopulations).

"Regulated substances" means antifreeze, motor oil, motor fuel, gasoline, kerosene, diesel or aviation fuel. It does not include compressed natural gas, liquid nature gas and propane.

"Release" means any spilling, overfilling, or leaking, discharging, emitting, or escaping of a regulated substance from a regulated storage tank system that goes beyond the excavation zone, tankpit, or secondary containment facility into the native environment or any concentrations of a regulated substance that as determined by the PSTD poses a threat to human health or the environment onto the ground surface or into the groundwater, surface water or subsurface soils.

"Release detection" means the methodology used in determining whether a release of regulated substances has occurred from a petroleum storage tank or system into the environment or into the interstitial area between the petroleum storage tank system and its secondary barrier.

"Remediation" process or technique used to reduce concentration levels of regulated substances in the soil and groundwater, and, or to reduce the presence of free product in the environment to levels that are protective of human health, safety and the environment. Generally remediation activities are scheduled after the site assessment is complete and the Remedial Action Plan (RAP) has been approved.

"Repair" means to restore a tank or petroleum storage tank system component to PSTD standards that has caused a release of regulated substances from the petroleum storage tank system.

"Reportable Quantity" or "RQ" means the amount of a ~~hazardous~~ PSTD regulated substance release required to be reported to appropriate federal, state, and/or local officials.

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"Residual Product" Petroleum hydrocarbons (product) that are absorbed or otherwise bound to geological materials (sand, silt, or clay) in any soil zone (vadose, capillary, or saturated zone), in such a manner that ground water in contact with the residual product or beneath the residual product is not contaminated with any petroleum constituent regulated by the OCC.

"Risk-Based Corrective Action" means all of the activities necessary to manage a site such that concentrations of chemicals from a release are at levels that are not detrimental to public health and the environment. It includes, but is not limited to, collection of site-specific data, analysis of the data to quantify the risk, comparison of the risk with acceptable levels, and implementation of engineering and non-engineering measures to ensure that concentrations of remaining Chemicals of Concern are not detrimental to human health.

"SCL" means Soil Cleanup Level.

"STI" means the Steel Tank Institute.

"Sacrificial anode" means a device used to reduce or prevent corrosion of a metal in an electrolyte by galvanic coupling to a more anodic metal.

"Saturated zone" means a subsurface zone below which all pore space is filled with water.

"Slope Factor" means the plausible upper-bound estimate of the probability of a response (cancer) per unit intake of chemical over a lifetime. Also referred to as Potency Factor.

"Smear Zone" Any soil zone containing petroleum hydrocarbons that can contaminate ground water in contact with the petroleum hydrocarbons or ground water beneath the petroleum hydrocarbons with petroleum constituents regulated by the PSTD.

"Soil zone" means and includes, but is not limited to, vadose zone, capillary fringe, or saturated soil zone.

"Source of contamination" means the location of the highest concentration of chemical contaminants in soil and groundwater.

"Source of release" means the location where regulated substances from a regulated tank system entered the environment.

"Spill" means a release that occurs during transfer operations of PSTD regulated substances to or from a petroleum storage tank system, resulting in a discharge of such substances into the environment.

"Storage Tank System" means one or a combination of tanks, including piping, hoses, dispensers and other system equipment used to contain regulated substances.

"Stormwater collection system" or "wastewater collection system" means piping, pumps, conduits, and any other equipment necessary to collect and transport surface water runoff resulting from precipitation or domestic, commercial, or industrial wastewater to and from retention areas or any areas where treatment is designated to occur. The collection of stormwater and wastewater does not include treatment except where incidental to conveyance.

"Surface impoundment" means a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials) that is not an injection well.

"Suspected release (SOR)" means an event has occurred that establishes a reasonable basis to believe a release from a petroleum storage tank system may have occurred.

"Suspicion of Release" or "SOR" means preliminary investigative work to determine if a release of a regulated substance has occurred.

"TCLP" means toxicity characteristic leaching procedure, a test procedure for determining if a solid waste is hazardous because it exhibits toxicity characteristics as enforced under Resource Conservation and Recovery Act.

"TDS" means Total Dissolved Solids.

"TPH" means Total Petroleum Hydrocarbon(s).

"Target Risk Level" means the level set by the Oklahoma Corporation Commission that must be achieved at each site prior to a risk-based closure of the site. For example, for current receptors this level has been set at 1E-06 (one-in-a-million) and a Hazard Quotient of less than 1.0 (one).

"Temporary out of use" or "TOU" means the status of a petroleum storage tank system that has been taken out of service/use but not removed with the intent to return to service.

"Transporter" means any person who transports, delivers, or distributes any quantity of regulated substance from one point to another.

"UL" means Underwriter's Laboratory.

"USGS" means the United States Geological Survey.

"Usable groundwater" means fresh groundwater that may be produced from an aquifer for beneficial uses.

"Unsaturated zone" or "vadose zone" means the subsurface zone containing water under pressure less than that of the atmosphere, including water held by capillary forces within the soil, and containing air or gases generally under atmospheric pressure. This zone is limited by the ground surface and the upper surfaces of the water table.

"Waters of the State" means all bodies or accumulations of water, surface and/or underground, natural or artificial, and public or private, which are contained within, flow through, or border upon any part of the State of Oklahoma or any portion thereof.

PART 7. NATIONAL INDUSTRY CODES

165:29-1-31. Sources of standards

The standards referenced in this Chapter are available for inspection at the Petroleum Storage Tank Division offices during regular business hours and from the following sources:

- (1) American Petroleum Institute (API), 1220 L Street, N.W., Washington, D.C. 20005-4070. Telephone (202) 682-8375.
- (2) National Association of Corrosion Engineers (NACE), P.O. Box 218340, Houston, Texas 77218-8340. Telephone (281) 228-6200.
- (3) National Fire Protection Association (NFPA), 1 Batterymarch Park, Quincy, Massachusetts 02269-9101. Telephone (800) 344-3555.
- (4) American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428-2959. Telephone (610) 832-9585.

- (5) Underwriter's Laboratory (UL), 333 Pfingston Road, Northbrook, Illinois 60062-2096. Telephone (847) 272-8800, ext. 42612.
- (6) Petroleum Equipment Institute (PEI), P.O. Box 2380, Tulsa, Oklahoma 74101-2380. Telephone (918) 494-9696.
- (7) Steel Tank Institute (STI), 570 Oakwood Road, Lake Zurich, Illinois 60047. Telephone (847) 438-8265.
- (8) American Society of Mechanical Engineers (ASME/ANSI), 22 Law Drive, P.O. Box 2300, Fairfield, New Jersey 07007-2300. Telephone (800) 843-2763.
- (9) National Ground Water Association (~~formerly National Water Well Association~~), 601 Dempsey Road, Westerville, Ohio 43081. Telephone (800) 551-7379.
- (10) United States Environmental Protection Agency
 - (A) National Service Center for Environmental Publications (NSCEP), Box 42419, Cincinnati, Ohio 45242. Telephone (800) 490-9198.
 - (B) Office of Underground Storage Tanks (OUST), 1200 Pennsylvania Avenue N.W., Mail Code 5401G, Washington, DC 20460. Telephone (800) 424-9346.

165:29-1-32. Incorporated codes and standards

Specific references to documents listed in (1) through (13) below are made throughout this Chapter. Each of these documents or parts thereof are adopted and incorporated by reference as standards, but only to the extent that they are specifically referenced in this Chapter. These rules will supercede in any conflict between these rules and any standard. These codes and standards will be updated periodically through a formal rulemaking procedure initiated by PSTD to reflect any substantive or relevant changes.

- (1) National Fire Protection Association Standards:
 - (A) Standard Number 30, 2015, "Flammable and Combustible Liquids Code."
 - (B) Standard Number 329, 2015, "Handling Releases of Flammable and Combustible Liquids and Gases."
 - (C) Standard Number 385, 2012, "Tank Vehicles for Flammable and Combustible Liquids."
 - (D) Standard Number 326, 2015, "Safeguarding of Tanks and Containers for Entry, Cleaning or Repair."
 - (E) Standard Number 30A, 2015, "Motor Fuel Dispensing Facilities and Repair Garages."
- (2) American Petroleum Institute Standards:
 - (A) Recommended Practice 1615, 2011, "Installation of Underground Hazardous Substances or Petroleum Storage Systems."
 - (B) Recommended Practice 1632, 2002, "Cathodic Protection of Underground Storage Tank and Piping Systems."
 - (C) Recommended Practice 1604, R2010, "Closure of Underground Petroleum Storage Tanks, 3rd Edition."
 - (D) Recommended Practice 1631, 2001, "Interior Lining and Periodic Inspection of Underground Storage Tanks."

- (E) Recommended Practice 1621, 2012, "Bulk Liquid Stock Control at Retail Outlets."
 - (F) Recommended Practice 1626, 2010, "Storing and Handling Ethanol and Gasoline - Ethanol Blends at Distribution Terminals and Service Stations."
 - (G) Recommended Practice 1627, 1993, "Storing and Handling of Gasoline - Methanol/Cosolvent Blends at Distribution Terminals and Service Stations."
 - (H) Publication 1628, 1996, "A Guide to the Assessment and Remediation of Underground Petroleum Releases."
 - (I) Publication 2200, ~~2010~~2015, "Repairing Crude Oil, Liquefied Petroleum Gas, and Product Pipelines, 4th Edition."
 - (J) Publication 2015, ~~2004~~2014, "Requirements for Safe Entry and Cleaning of Petroleum Storage Tanks."
- (3) National Association of Corrosion Engineers:
 - (A) Standard Number SP0169-2013, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems."
 - (B) Standard Number SP0285-2011, "External Corrosion Control of Underground Storage Tank Systems by Cathodic Protection."
 - (C) Standard Number SP-0286-2007, "Electrical Isolation of Cathodically Protected Pipelines."
 - (4) Underwriter's Laboratory Standards:
 - (A) Standard UL58, 9th Edition, 1996, "Steel Underground Tanks for Flammable and Combustible Liquids."
 - (B) Standard UL1316, Bulletin-2013, "Glass-Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products, Alcohols, and Alcohol-Gasoline Mixtures."
 - (C) Standard UL1746, Bulletin-2013, "External Corrosion Protection Systems for Steel Underground Storage Tanks."
 - (D) Standard UL567, ~~Bulletin-2012~~2014, "Emergency Breakaway Fittings, Swivel Connectors and Pipe-Connection Fittings for Petroleum Products and LP-Gas."
 - (5) Petroleum Equipment Institute PEI/RP 100 (2011 Edition), "Recommended Practices for Installation of Underground Liquid Storage Systems."
 - (6) Steel Tank Institute F894, ACT-100, "Specification for External Corrosion Protection of FRP Composite Underground Steel Storage Tanks 2006."
 - (7) Factory Mutual 1920 (2007), "Pipe Coupling and Fitting for Aboveground Fire Protection Systems."
 - (8) National Leak Prevention Association Standard 631, "Spill Prevention, Minimum 10 Year Life Extension, Existing Steel UST by Lining Without Additional Cathodic Protection."
 - (9) ~~National Water Well~~Groundwater Association, 1986, "RCRA Ground Water Monitoring Technical Enforcement Guidance Document (TEGD)."

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(10) American Society for Testing and Materials, ASTM Designation: E 1739-95 2015, Standard Guide for Risk-Based Corrective Action Applied at Petroleum Release Sites."

(11) U.S. Environmental Protection Agency Office of Water, 1997, Drinking Water Advisory: Consumer Acceptability Advice on Health Effects Analysis on Methyl Tertiary-Butyl Ether (MtBE).

SUBCHAPTER 3. RELEASE PREVENTION, DETECTION AND CORRECTION

PART 1. RELEASE PROHIBITION, REPORTING, AND INVESTIGATION

165:29-3-3. Release investigation; confirmed release; suspected release; emergency suspected release and release reporting

(a) **Duty to inspect for release.** Owners and operators of storage tanks must routinely inspect and conduct necessary testing of their storage tanks to prevent spilling, overfilling, or leaking from a storage tank system into the native environment. The owner or operator of a petroleum storage tank system must take the following steps or use other procedures approved by PSTD:

(1) **System test.** Owners or operators must conduct petroleum storage tank system tightness tests and, if applicable containment testing, that will determine whether a leak-release exists in the portion of the tank that routinely contains regulated substances and the attached delivery piping or a breach of either wall of the secondary containment has occurred. If the test results for the system, tank, ~~or~~ delivery piping, or interstice indicate that a leak exists, the owner or operator must repair, remove, replace, or upgrade permanently close as defined in OAC 165:25-2-135 the petroleum storage tank system, delivery piping, or interstice and begin a site check. Further investigation is not required if the test results for the system, tank, ~~and~~ delivery piping, and interstice do not indicate that a leak exists and if indicator chemical concentrations detected in soil or water are not the basis for suspecting a release. However, the owner or operator must conduct a site check as described in (B) below if the test results for the system, tank, ~~and~~ delivery piping, or interstice do not indicate that a ~~leak~~ release exists, but indicator chemical concentrations detected in soil or water are above action levels cited in (b) of this Section.

(2) **Site check.** The owner or operator must measure for the presence of a release where released regulated substances are most likely to be present at the petroleum storage tank system site. In selecting sample types, locations, depths and measurement methods, owners or operators must consider the nature of the stored substance, the type of initial alarm or cause for suspicion, the type of native soil, the depth of groundwater, and other factors appropriate for identifying the presence and source of the

release. Sample locations should be approximately 5 feet from the outside of the petroleum storage tank system in native soil or another location approved by the PSTD. Analyses for both BTEX constituents and the appropriate TPH must be obtained in all cases. For sites where used oil may be involved, as determined through a TPH analysis, TCLP analysis for metals, semi-volatiles, and volatiles may be required. The TCLP results will be used on a case-by-case basis to establish cleanup levels or to refer the case to the DEQ for regulation. The selected method must be able to detect the most stringent cleanup levels required in this Chapter. The Total Petroleum Hydrocarbon (TPH) Laboratory Methodology 418.1 will not be accepted for this Chapter.

(A) If the test results for soil and/or groundwater taken outside the excavation zone or the petroleum storage tank system site confirm that a release has occurred, the owner or operator must begin the required corrective action in accordance with this Subchapter.

(B) If the test results for the native soil and/or groundwater or the petroleum storage tank system site do not indicate that a release has occurred, further investigation is not required.

(b) **Confirmed release.**

(1) When one or more of the following is present from a petroleum storage tank system, a release may be considered confirmed and a confirmed release case may be activated by PSTD staff.

(A) ~~Free product is found anywhere.~~

(B) ~~Contaminated groundwater is found outside the excavation zone and/or soil that exceed OCC action levels.~~

(C) ~~Contaminated "soil zone" is found outside the excavation zone~~ Organic vapor readings above background levels.

(D) Actionable levels of petroleum staining or odors.

(E) Any other indication that a release from a regulated petroleum storage tank system has occurred that is harmful to human health, safety or the environment.

(2) ~~Any contamination from a regulated substance having concentrations determined by PSTD to be harmful to human health or the environment.~~

(3) Laboratory analysis of levels of chemical constituent concentrations that may be required to confirm a case are:

(A) Benzene

(i) Native Soils - 0.5 mg/kg

(ii) Groundwater - 0.005 mg/l

(B) Toluene

(i) Native Soils - 40.0 mg/kg

(ii) Groundwater - 1.0 mg/l

(C) Ethyl Benzene

(i) Native Soils - 15.0 mg/kg

(ii) Groundwater - 0.7 mg/l

(D) Xylene

(i) Native Soils - 200.0 mg/kg

(ii) Groundwater - 10.0 mg/l

- (E) TPH
 - (i) Native Soils - 50.0 mg/kg
 - (ii) Groundwater - 2.0 mg/l
 - (iii) If BTEX concentrations are below action levels, a TPH concentration of 500 mg/kg may be required to confirm a case.

(c) **Suspected release.** When an owner, operator, or their agent has reason to believe that a release from a storage tank may have occurred, he or she must notify PSTD within 24 hours and receive authorization from the Division prior to initiating any investigation for which subsequent payment from the Indemnity Fund may be sought.

(d) **Emergency suspected release.** Owners, operators, or their agent may begin investigation of suspected releases when the suspected release may cause immediate harm to the public health, safety, welfare or the environment. The Petroleum Storage Tank Division will approve and reimburse expenses for an investigation after it has been performed and prior to the issuance of a Suspicion of Release by the Petroleum Storage Tank Division when the owner or operator has reasonably acted upon the belief that the suspected release gave rise to the need for immediate emergency action. The determination of whether or not action was reasonable is within the discretion of PSTD.

(e) **Release reporting.** Within 20 days after the reporting of a release, the owner or operator must submit a report to PSTD summarizing the steps taken under this Section and any resulting information. If a release is confirmed through performance of the steps taken under this Section, then the report must be submitted on PSTD-specified forms and no other abatement measures or site checks are required.

[OAR Docket #17-505; filed 6-23-17]

**TITLE 165. OKLAHOMA CORPORATION
COMMISSION
CHAPTER 30. MOTOR CARRIERS,
PRIVATE CARRIERS AND
TRANSPORTATION NETWORK
COMPANIES**

[OAR Docket #17-506]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 1. General Provisions
 - 165:30-1-2. Definitions [AMENDED]
- Subchapter 3. Intrastate Motor Carriers
 - Part 3. License Requirements
 - 165:30-3-11. Insurance [AMENDED]
 - 165:30-3-13. Deleterious Substance Transport Permit [AMENDED]
- Subchapter 6. Transportation Network Companies
 - Part 1. Applying for a Permit
 - 165:30-6-3. TNC Permit renewals [AMENDED]
 - Part 3. Conducting Operations
 - 165:30-6-19. Compliance with laws and regulations [AMENDED]
- Subchapter 7. Procedural Rules
 - 165:30-7-5. Forms [AMENDED]
 - 165:30-7-6. Applications and requests [AMENDED]
- Subchapter 19. Registration Pursuant to the International Registration Plan
 - 165:30-19-2. Definitions [AMENDED]

- 165:30-19-3. Registration [AMENDED]
- 165:30-19-7. Operational records [AMENDED]
- 165:30-19-8. Maintenance and availability of operational records [AMENDED]
- 165:30-19-12. Supplemental application [AMENDED]
- 165:30-19-14. Audits [AMENDED]
- Subchapter 21. International Fuel Tax Agreement
 - 165:30-21-2. Definitions [AMENDED]
 - 165:30-21-13. Reporting requirements [AMENDED]
 - 165:30-21-17. Incorporating the International Fuel Tax Agreement [AMENDED]
 - 165:30-21-18. Operational records [NEW]
 - 165:30-21-19. Maintenance and availability of operational records [NEW]
 - 165:30-21-20. Audits [NEW]
- Subchapter 26. Nonconsensual Wrecker and Towing Services
 - Part 3. Response to Nonconsensual Towing Rate Complaints
 - 165:30-26-14. Nonconsensual towing rate complaints and audits [AMENDED]

AUTHORITY:

The Commission's statutory authority is found in Title 47 O.S. § 1120, Title 47 O.S. § 230.24, Title 47 O.S. § 230.32, Title 47 O.S. § 1013, Article IX, Sections 18 and 18a of the Oklahoma Constitution and OAC 165:5-1-7.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

Although the Oklahoma Corporation Commission is not subject to the requirements of Executive Order No. 2013-34, the proposed rules were submitted to the Governor and Cabinet Secretary on December 29, 2016.

COMMENT PERIOD:

December 29, 2016 to February 21, 2017

PUBLIC HEARING:

March 9, 2017

ADOPTION:

March 9, 2017

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

March 16, 2017

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 13, 2017

FINAL ADOPTION:

June 13, 2017

EFFECTIVE:

September 11, 2017

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

OAC 165:30-1-2 is amended to include new definitions related to commonly used acronyms and terms. OAC 165:30-3 is amended to provide the procedure for insurance companies and underwriters to request copies of filings and clarify when a deleterious substance transport permit is not required as well as procedures when transporting without one. OAC 165:30-6 is amended to provide for periodic updating of Transportation Network Company permit eligibility and require Transportation Network Companies' terms of service to conform to statute while allowing for contracting with licensed motor carriers. OAC 165:30-7 is amended to include new types of forms filed with the Transportation Division, remove forms no longer used and provide for updated motor carrier addresses conforming to the Federal Motor Carrier Safety Administration's records.

OAC 165:30-19 is amended to remove redundantly defined terms; clarify the use of independent contractors for residency requirements; update operation records types for documentation of fleet mileage; relocate the electronic record requirement in Chapter 30 for audits for certain fleet sizes; clarify effective dates for advanced registration of fleet vehicles; and, provide for operational record audits, payment of costs associated with the audits, and how documents are to be submitted in an audit for certain fleet sizes. OAC 165:30-21 is amended to remove redundantly defined terms; update the requirements for filing of quarterly and annual fuel tax returns; remove subsection headings and update the International Fuel Tax Agreement description and add the website address.

OAC 165:30-21-18 is added as a new permanent rule to allow for proper operational records under the International Fuel Tax Agreement that mirror the operational records of the International Registration Plan. OAC 165:30-21-19 is added as a new permanent rule establishing the requirements for the

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maintenance, duration, availability and enforcement provisions of operational records under the International Fuel Tax Agreement. OAC 165:30-21-20 is added as a new permanent rule establishing the terms of Commission audits under the International Fuel Tax Agreement. OAC 165:30-26-14 is amended to extend the period in which non-compliance with the Commission nonconsensual towing order may be considered a progressive violation.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 1. GENERAL PROVISIONS

165:30-1-2. Definitions

In addition to terms defined in 47 O.S., Sections 161 through 180m et seq., the Oklahoma Transportation Network Company Services Act and the Motor Carrier Act of 1995, the following words or terms, when used in this Chapter, shall have the following meaning unless the context clearly indicates otherwise:

"110% rule" means the household goods carrier must deliver the shipper's goods once the shipper pays 110% of the estimated or agreed upon charges.

"Alliance" means the Alliance for Uniform Hazardous Material Transportation Procedures, a confederation of state, local industry and environmental representatives for the purpose of administering and enforcing a uniform hazardous materials transporters program as established by HMTUSA.

"Accessorial services" means services provided by an intrastate motor carrier of household goods at the request of a shipper that may be in addition to the actual transportation of the household goods. Examples of accessorial services are packing, unpacking, appliance servicing, loading/unloading of large items (such as a piano), climbing/descending stairs, demurrage, etc.

"Audit" means an examination of records, source documents and any other information supporting a regulated entity's application or return; or a review performed by staff as a result of a complaint or prior enforcement actions taken.

"Authority" means a general term referring to permission issued by the Commission to a motor carrier to perform operations under the jurisdiction of the Commission. The term authority is not applicable to vehicle registrations, fuel licenses or permits, or TNC permits.

"Base state" means the state selected by a motor carrier according to the procedures established by a uniform program

"Binding estimate" means a written agreement made in advance between the intrastate household goods carrier and the shipper which guarantees the total cost of the transportation of the household goods based upon the quantities and services shown on the estimate.

"CFR" means the Code of Federal Regulations.

"Consignee" means the person or place shown on the shipping documentation as the location to which a carrier is directed to deliver a shipment.

"Consignor" means the person who offers goods for shipment.

"Commission" means the Oklahoma Corporation Commission.

"Corporate family" means a group of corporations consisting of a parent corporation and all subsidiaries in which the parent corporation owns directly or indirectly one hundred percent (100%) interest.

"Deleterious substance" means any chemical, salt water, oilfield brine, waste oil, waste emulsified oil, basic sediment, mud or injurious substances produced or used in the drilling, development, production, transportation, refining and processing of oil, gas and/or brine mining.

"Environmental restoration" means restitution for loss, damage, or destruction of natural resources arising out of the accidental discharge, dispersal, release or escape into or upon the land, atmosphere, watercourse, or body of water, of any commodity transported by a motor carrier. This includes the cost of removal and the cost of necessary measures taken to minimize or mitigate damage to human health, the natural environment, fish, shellfish and wildlife.

"Exceeding authority" means a motor carrier operating outside or beyond the purview of an issued license, certificate, permit, registration or other authority issued by the Commission or a reciprocal state.

"FMCSA" means the Federal Motor Carrier Safety Administration.

"For-hire motor carrier" means a person operating upon any public highway engaged in the transportation of property or passengers for compensation or consideration or for commercial purposes.

"Gross Combination Weight Rating" (GCWR) means the value specified by the manufacturer as the loaded weight of a combination (articulated) vehicle. In the absence of a value specified by the manufacturer, GCWR will be determined by adding the GVWR of the power unit and the total weight of the towed unit and any load thereon.

"Gross Vehicle Weight" (GVW) means the registered weight of the vehicle or any lawful registered combination weight (Gross Combination Weight or GCW).

"Gross Vehicle Weight Rating" (GVWR) means the value specified by the manufacturer as the loaded weight of a single vehicle (gross vehicle weight rating) and may include any lawful combination.

"Harvest permit" means a document issued by the Commission to a motor carrier engaging in the commercial transportation of farm products in a raw state. A harvest permit encompasses vehicle registration, fuel permit and intrastate operating authority requirements of the State of Oklahoma.

"Hazardous waste" means any material that is subject to the "Hazardous Waste Manifest Requirements" of the United States Environmental Protection Agency specified in Title 40, CFR, Part 262.

"**Hazardous waste permit**" means the document issued by a participating state which represents a specific motor carrier's registration to transport hazardous waste in states that participate in the uniform hazardous waste program.

"**HMTUSA**" means the Hazardous Materials Transportation Uniform Safety Act of 1990.

"**Household goods**" means the used personal effects and property of a dwelling.

"**Hunter's permit** or **Unladen permit**" means a permit that provides temporary registration to an apportionable vehicle at the unladen (empty) weight of the vehicle. It is commonly used by a vehicle lessor to move a vehicle, without any load, to another jurisdiction so the lessor can establish a new contractual relationship with a different motor carrier.

"**Identification device**" means an annual, fee-paid, non-transferable device issued by the Commission to be carried in each and every vehicle.

"**IFTA**" means the International Fuel Tax Agreement. The IFTA is a motor fuel use tax reciprocity agreement between the United States contiguous states and certain Canadian provinces which allows a licensee to report and pay motor fuel use taxes to a base jurisdiction for distribution to other member jurisdictions in which the licensee traveled and incurred motor fuel use tax liability.

"**Intercorporate hauling**" means the transportation of property, passengers or household goods by motor vehicle, for compensation, by a carrier which is a member of a corporate family, as defined in this Section, when said transportation for compensation is provided for other members of the corporate family.

"**Interstate**" means a shipment having an origin or destination into, out of or through two or more states.

"**Intrastate**" means a shipment having an origin and destination wholly within one state.

"**IRP**" means the International Registration Plan, as administered by the Commission or other states. The IRP is a commercial vehicle registration reciprocity agreement between the United States contiguous states and certain Canadian providences which allows a registrant to pay and report commercial vehicle registration fees to a base jurisdiction for distribution to other member jurisdictions in which the registrant travels.

"**IVDR**" means an Individual Vehicle Distance Record which is a document where the required operational information, as set forth by IRP and IFTA, can be recorded.

"**Letter of filing**" means a document issued by the Commission to a motor carrier as evidence of temporary compliance with the hazardous waste uniform program.

"**Motor carrier**" means a for-hire motor carrier or a private motor carrier operating in interstate or intrastate commerce.

"**Motor License Agent (MLA)**" means any person meeting the requirements for appointment as a motor license agent pursuant to 47 O.S. § 1140 and authorized by the Oklahoma Corporation Commission to process vehicle registrations, collect associated fees and issue credentials pursuant to the IRP and the Oklahoma Vehicle License and Registration Act (47 O.S. Chapter 74).

"**NAIC**" means the National Association of Insurance Commissions.

"**Non-binding estimate**" means the estimated total cost to transport household goods intrastate based upon the weight of the shipment, volume of the shipment, amount of time to perform the movement and/or any accessorial services requested.

"**OTNCS Act**" means the Oklahoma Transportation Network Company Services Act, 47 O.S. § 1010 et seq.

"**Participating state**" means a state electing to participate in a uniform program by entering into a base state agreement.

"**PIN**" means personal identification number.

"**Principal place of business**" means a single location that serves as the motor carrier's headquarters and where it maintains or can make available its operational records.

"**Private motor carrier**" means a person who operates a commercial motor vehicle and is not a for-hire motor carrier.

"**Process agent**" means a representative upon whom court papers may be served in any proceeding brought against a motor carrier, broker, or freight forwarder.

"**Registration**" means the identification of hazardous waste transporters through a national base state system.

"**Reciprocal state**" means a jurisdiction with which the Commission has entered into a reciprocal agreement regarding the uniform registration, licensing or permitting of motor carriers.

"**Shipper**" means a person authorized to tender a shipment to a carrier and may include, but is not limited to, a consignor, consignee or beneficial owner of the shipment.

"**TNC**" means a Transportation Network Company.

"**Trip permit**" means a temporary authorization issued by the Commission granting permission to conduct operations as a motor carrier in intrastate and/or interstate commerce.

"**Truck yard pit**" means any pit used to store or catch fluids or wash fluids in a truck terminal or maintenance facility as the result of transportation related activities.

"**UCR**" means Unified Carrier Registration.

"**Uniform application**" means a uniform motor carrier registration, licensing or permit application form established under a uniform program.

"**Uniform program**" means any law, rule, policy, practice and/or all combinations thereof which pertain to the regulation of motor carriers by motor vehicle operating in interstate or intrastate commerce over the highways of Oklahoma and is recognized, adopted and enforced or administered by the Transportation Division only when in concert and reciprocal with one or more states which adopt, recognize, administer and enforce the exact same rule, law, policy, practice and/or all combinations thereof.

"**Unprocessed agricultural commodities**" means all products raised or produced by tillage and cultivation of the soil, pasture grasses, orchard products, trees in their raw state and products produced by livestock (such as milk, wool, eggs, honey and manure). The term also includes those products embraced within the above definition which have been processed for purposes of handling, storage, preservation or transportation (such as washing, cleaning, wrapping, packaging, boxing, baling, trimming, drying, sorting, sizing, grading, cooling,

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spraying and fumigating). The term does not include those products embraced within the above definition which, as a result of some treatment or processing, have been so changed that they are no longer in their natural or raw state, but possess new forms, qualities, or properties or result in combinations.

"USDOT" means the United States Department of Transportation.

SUBCHAPTER 3. INTRASTATE MOTOR CARRIERS

PART 3. LICENSE REQUIREMENTS

165:30-3-11. Insurance

(a) No motor carrier whose principal place of business is in Oklahoma shall conduct any operations in this State unless such operations are covered by a valid primary bond or insurance policy issued by an insurer authorized or approved by the Oklahoma Insurance Department. No motor carrier whose principal place of business is not in Oklahoma shall conduct any operations in this State unless such operations are covered by a valid bond or insurance policy issued by an insurer licensed or approved by the insurance regulatory authority of the state of their principal place of business or the Oklahoma Insurance Department. No holder of an authority shall conduct any operations before a proper certificate of insurance(s) has been filed with, and approved by the Commission. A surety bond containing all obligations provided by this Section may be substituted for an insurance policy.

(b) Every motor carrier shall file with, and must be approved by, the Commission a certificate on Form E or G certifying that there is in effect a valid bond or insurance policy covering operations in Oklahoma to protect the public against loss of life, injury, property damage, and including environmental restoration in minimum amounts, of combined single limits, for bodily injuries to, or death of all persons injured or killed in any accident, and loss or damage in any one accident to property or others (excluding cargo). Minimum liability insurance limits as set forth in 49 CFR Part 387 shall also be applicable to intrastate operations unless otherwise specified in subsections (b)(1)-(4).

(1) Motor carriers of property using vehicles with a gross vehicle weight rating (GVWR) of 10,000 pounds or more:

(A) Transporting property, non-hazardous commodities or transporting hazardous waste, materials or substances not listed in 49 CFR Part 387.9 - \$750,000.

(B) Transporting deleterious substances - \$750,000.

(C) Transporting hazardous waste, materials, or substances- as required by 49 CFR, Part 387.9.

(2) Motor carriers of property using only vehicles with a GVWR under 10,000 pounds:

(A) Transporting commodities not listed in (B) of this paragraph- \$300,000.

(B) Transporting hazardous waste, materials or substances - as required by 49 CFR Part 387.9.

(3) Motor carriers of the following types of property, materials, and products (also known or identified as restricted property) - \$350,000:

(A) Sand, rock, gravel, rip-rap, aggregate or dirt.

(B) Asphaltic mixtures and similar mixtures and compositions (excluding concrete and concrete mixtures) used in road, highway and other ground surface paving.

(C) Unprocessed forestry products and by products thereof not in a finished state.

(D) Unprocessed agricultural commodities.

(E) Ordinary livestock.

(4) Motor carriers of passengers (manufacturer's designed seating capacity includes the driver):

(A) Utilizing vehicles having a seating capacity of six (6) or less passengers - \$100,000.

(B) Utilizing vehicles having a seating capacity of seven (7) - nine (9) passengers - \$750,000.

(C) Utilizing vehicles having a seating capacity of ten (10) to fifteen (15) passengers - \$1,000,000.

(D) Utilizing vehicles having a seating capacity of sixteen (16) or more passengers - \$5,000,000.

(5) Motor carriers of household goods - \$750,000.

(c) Every motor carrier of freight, except a motor carrier of household goods, shall be exempted from filing proof of cargo liability insurance. Every motor carrier of household goods shall file with, and be approved by, the Commission an additional certificate on Form H or J that there is in effect a valid bond or insurance policy issued by a State Insurance Department authorized provider as security required to compensate shippers or consignees for loss of or damage to property coming into the motor carrier's possession. Security in the amount of at least Five Thousand (\$5,000) Dollars is required to cover loss of or damage to property carried on any one motor vehicle in connection with its transportation service and in the amount of \$10,000 for the loss of or damage to or aggregate of losses of or damages to property occurring at any one time and place.

(d) Motor carriers of hazardous materials or hazardous waste shall maintain a properly executed Form MCS-82 or MCS-90 in effect as required by 49 CFR 387.

(e) The Commission may by order grant authority to operate or to continue operating as a motor carrier conditional upon carrying insurance coverage in amounts larger than prescribed by (b) of this Section.

(f) No certificate of insurance or surety bond filed with the Commission pursuant to this Section shall be ~~en-~~~~acted~~~~canceled~~, unless the authorization to conduct operations has been canceled, except after thirty (30) days written notice made to the Commission, on Form K or L, which notice shall be effective only upon actual receipt thereof by the Commission.

(g) Insurance certificates or surety bonds may be ~~en-~~~~acted~~~~canceled~~ without the thirty (30) days written notice on Form K or L only when the authorization to operate has previously expired or ~~en-~~~~acted~~~~canceled~~, the motor carrier provides an affidavit stating no operations have been conducted and the

effective date of the cancellation notice is not before the date the cancellation notice is received in the Commission.

(h) Insurance certificates or surety bonds not properly ~~cancelled~~cancelled or expired shall be considered expired one year after the motor carrier's authorization to operate has been ~~cancelled~~cancelled or expired.

(i) Insurance certificates or surety bonds approved by this Commission shall be replaced by more recent insurance certificates or surety bonds. The liability of the retiring insurer or surety shall be terminated as of the effective date of the replacement insurance certificate or surety bond provided the replacement is approved by this Commission.

(j) No certificate of insurance shall be filed with the Commission which contains a provision to the effect that liability thereunder may be limited or avoided because of the culpability, the recklessness, or the condition of the driver of the vehicle involved or any other restriction relating to the driving or operation of the vehicle.

(k) Every certificate of insurance filed with the Commission shall provide that the public is protected from damage sustained through operations of any and all vehicles operated by the motor carrier insured, whether or not listed or identified in the policy; and that liability is not limited by the description of any particular vehicle or route which may be traveled by the motor vehicle in transporting passengers or property under the certificate or permit or license.

(l) Every certificate of insurance filed with the Commission shall be executed by an officer or authorized agent of the insurance company; and if executed by an agent, a copy of his written authority or power of attorney to execute the same shall be attached to the certificate.

(m) When insurance is provided by more than one insurer in order to aggregate security limits for motor carriers, a separate insurance certificate and endorsement is required of each insurer.

(n) Every motor carrier shall maintain in force at all times all insurance required by state laws and by this Section. Failure for any cause to maintain any required insurance in force shall automatically and without notice suspend the license or authority of a motor carrier until proper insurance is filed.

(o) Whenever the license or authority of a motor carrier is suspended for failure to maintain in force insurance required by this Section, the carrier must file, within sixty (60) days after commencement of the suspension, proper certificate(s) of insurance as provided in this Section and a sufficient showing, by affidavit or otherwise, that no operations were conducted during the period that insurance was not in force (TDF 18).

(p) Whenever a motor carrier fails to provide proper certificates of insurance within sixty (60) days after suspension thereof as provided in this Section, the motor carrier's certificate or permit, license, or other authority shall be ~~cancelled~~cancelled by operation of law, and without notice. A certificate or permit, license, or other authority so ~~cancelled~~cancelled shall not be reinstated or otherwise made operative except upon proper showing, at a hearing, that the motor carrier was actually covered by proper insurance during the suspension or cancellation period, and that failure to file

with the Commission was not due to the motor carrier's own negligence.

(q) Any motor carrier conducting operations under a suspended or ~~cancelled~~cancelled authority, shall not be eligible to apply for a new authority for a period of not less than one hundred eighty (180) days. The one hundred eighty (180) day period shall be determined by either the date insurance on file expires or the date a violation is discovered, whichever occurrence is later.

(r) A person may not require indemnification from a motor carrier as a condition to the following:

- (1) The transportation of property by the motor carrier.
- (2) Entrance onto property by the motor carrier for the purpose of loading, unloading or transporting property.
- (3) Subsection (r)(2) of this Section does not apply to a claim arising from damages or losses from the wrongful or negligent act or omission of the motor carrier.

(s) Insurance filings and cancellation notices required by this Chapter may be accepted electronically as set forth by the Transportation Division. Electronic insurance filings and cancellations shall be held to the same standard and carry the same force and effect as if accepted through traditional paper filings.

(t) Insurance companies or their underwriters desiring a hard copy of an approved or disapproved insurance filing or insurance cancellation must submit the insurance filing or insurance cancellation in duplicate and additionally provide a self-addressed stamped envelope.

165:30-3-13. Deleterious Substance Transport Permit

(a) No person, motor carrier or private carrier shall transport any deleterious substance(s) in any quantity over twenty (20) gallons, without a Deleterious Substance Transport Permit (DSTP), to be issued by the Commission. A DSTP is required for soils contaminated by deleterious substances unless exempted under subsection (b) of this Section. ~~The Deleterious Substance Transport Permit~~DSTP shall be required in addition to a motor carrier license as prescribed by this Chapter, when required.

(b) A DSTP is not required when:

- (1) Transporting deleterious substances to be applied to land pursuant to a soil farming permit. A valid copy of the soil farming permit must be carried in the vehicle at the time of transportation; or,
- (2) Transporting contaminated soil which surrounded a leaking underground storage tank or a leaking pipeline when such soil is being transported to and can be legally disposed of in a landfill permitted by the Oklahoma Department of Environmental Quality.

~~(c)~~ No person, motor carrier or private carrier shall dump, disperse or otherwise release deleterious liquids or substances described herein upon a public highway, on private property, or at any place except as authorized by law.

~~(d)~~ No motor vehicle used to transport salt water or other deleterious substances shall be equipped with a release device which can be operated in any manner from within the cab of any motor vehicle.

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(~~de~~) The Commission may issue the permit upon applicant fulfilling all requirements. If issued, a copy of the permit must be carried in each motor vehicle at all time. Motor carriers must maintain valid liability insurance on file with this Commission in accordance with OAC 165:30-3-11. Failure to do so shall subject the permit to revocation.

(~~ef~~) Notice of the application and hearing thereon shall not be required, unless the Commission shall so direct.

(~~fg~~) Every person, motor carrier or private carrier holding a ~~Deleterious Substance Transport Permit~~DSTP or transporting ~~deleterious substances not requiring a DSTP pursuant to subsection (b) of this Section~~, shall maintain an accurate register in numerical order at the principal place of business and retain for inspection by Commission personnel at all times. The register shall consist of the shipping document or criteria as provided in (g) of this Section.

(~~gh~~) Every vehicle transporting deleterious substances, ~~whether under a DSTP or pursuant to subsection (b) of this Section~~, shall carry an individual shipping document for each load containing the information as follows:

- (1) Vehicle identification
- (2) Driver name
- (3) Shipper name
- (4) Legal description of the origin of the load
- (5) Volume and description of substance
- (6) Legal description of the destination of the load

(~~hi~~) The shipping documentation may be transferred to the register. The register shall be maintained in numerical order by the permit holder and retained for inspection by Commission personnel at all times.

(~~ji~~) Failure to maintain and preserve the records provided herein shall be grounds for revocation of the permit.

SUBCHAPTER 6. TRANSPORTATION NETWORK COMPANIES

PART 1. APPLYING FOR A PERMIT

165:30-6-3. TNC Permit renewals

(a) Any TNC desiring to continue operations as granted in its permit shall apply for renewal by submitting the appropriate application form (TDF 29) ~~and all supporting documentation~~ a minimum of thirty (30) days prior to the date of the permit's expiration. Each renewal application shall be properly signed.

(~~b~~) The applicant must supply updated documentation demonstrating eligibility for a TNC permit upon request.

(~~bc~~) All TNC Permits renewed by the Commission shall become effective the same date as the prior permit's expiration.

(~~ed~~) Renewal applications shall be accompanied by a filing fee as prescribed by law or by Commission rule.

(~~de~~) A renewal application may be set for hearing at the discretion of the Commission.

(~~ef~~) All requirements for compliance with this Chapter must be met within thirty (30) days from date of receipt of a TNC

permit renewal application by the Commission. Failure to comply will result in dismissal of the renewal application for a permit.

(~~fg~~) A renewal application will not be accepted if the permit has previously expired, unless the Director of the Transportation Division reviews and approves the acceptance of the application for renewal.

(~~gh~~) No TNC permit shall be renewed until all outstanding fines or judgments due the Commission or other Oklahoma state agencies have been satisfied.

(~~hi~~) No TNC operations shall be performed under an expired permit.

PART 3. CONDUCTING OPERATIONS

165:30-6-19. Compliance with laws and regulations

(a) All TNCs shall conduct their operations in accordance with all applicable laws of the State of Oklahoma and all applicable rules of this Chapter. All permits heretofore or hereafter granted by the Commission are subject to applicable provisions of law and of this Chapter as fully as if those laws and rules were set forth verbatim therein.

(b) No TNC shall operate or allow to be operated any equipment that does not comply with safety criteria established by the rules of this Commission, the Oklahoma Transportation Network Company Services Act or the statutes of the State of Oklahoma on the public highways of the State of Oklahoma. No TNC shall permit any TNC driver to operate a motor vehicle in violation of any size limits established by this Chapter, of OAC 595:30 or of the statutes of the State of Oklahoma. The TNC shall suspend access to its digital network to a TNC driver, pending an investigation by the TNC, if it receives notice of or has reason to believe the driver has failed to meet the safety criteria or size standards of the Commission, the Oklahoma Transportation Network Company Services Act, or the statutes of the State of Oklahoma.

(c) TNCs shall provide notice to their TNC drivers that arranging for-hire passenger transportation services in any way other than through the TNC's digital network will subject the driver to the same regulation, authority requirements, and penalties as a motor carrier under the Motor Carrier Act of 1995.

(d) TNCs shall provide, via the TNC's Digital Network, a method whereby each TNC driver can present to a requesting law enforcement officer proof that the driver is operating as a TNC driver. TNC drivers unable to present such information may be considered to be engaged in motor carrier operations.

(~~e~~) No provisions may be included in the TNC's Terms of Service or Driver Contracts that are contrary to the OTNCS Act.

(~~f~~) No provisions in this Subchapter prohibit a TNC from contracting with a licensed intrastate for-hire motor carrier.

SUBCHAPTER 7. PROCEDURAL RULES

165:30-7-5. Forms

The following forms of the Commission relate to this Chapter:

- (1) **Intrastate license forms.**
 - (A) TDF 1 - Application for Intrastate Motor Carrier For-Hire or Private Carrier License
 - (B) TDF 2 - Application for renewal of Intrastate Motor Carrier License or Certificate
- (2) **Intrastate certificate forms.**
 - (A) MCF 1 - Application For Household Goods Certificate
 - (B) Form H - Uniform Motor Carrier Cargo Certificate of Insurance
 - (C) Form J - Uniform Motor Carrier Cargo Surety Bond
- (3) **Interstate Form - Unified Carrier Registration**
- (4) **Harvest Permit forms**
 - (A) TOSS 1 - Application for Harvest Permit
 - (B) TOSS 2 - Application for 15-Day Harvest Permit Extension
- (45) **Hazardous Waste forms.**
 - (A) UPW - Part I - Registration
 - (B) UPW - Part II - Permit
 - (C) UPW - Part III - Other Information
 - (D) UPW - Part IV - Certification
 - (E) UPW - Uniform Program Fee Worksheet (Schedules A-D and Summary)
- (56) **IFTA/IRP forms.**
 - (A) IRP Schedule A - International Registration Plan Original Application-Schedule A
 - (B) IRP Schedule B - International Registration Plan- Schedule B
 - (C) IRP Schedule C - International Registration Plan Supplemental Application-Schedule C
 - (D) IRP Schedule G - International Registration Plan Declaration of Estimated Miles-Schedule G
 - (E) IRP Misc 1 - International Registration Plan Affidavit for Lost/Stolen Tag and Additional Cab Cards
 - (F) IFTA Application - International Fuel Tax Agreement Registration Application
 - (G) IFTA QTR - International Fuel Tax Agreement Quarterly Report
- (67) **Miscellaneous forms.**
 - (A) TDF 3 - Application for Change of Name
 - (B) TDF 8 - Application for Reinstatement
 - (C) TDF 14 - Application For for a Deleterious Substance Transport Permit
 - (D) TDF 16 - Application for Identification Devices
 - (E) TDF 17 - Application for Address Change
 - (F) TDF 18 - Affidavit of No Operations
 - ~~(G) TDF 19 - Carrier Identification Update Report~~
 - (H) Form E - Uniform Motor Carrier Bodily Injury and Property Damage Liability Certificate of Insurance
 - (I) Form K - Uniform Notice of Cancellation of Motor Carrier Insurance Policies

- (J) Form G - Uniform Motor Carrier Bodily Injury and Property Damage Liability Surety Bond
- (K) Form L - Uniform Notice of Cancellation of Motor Carrier Surety Bonds
- ~~(L) TDF 25 - Application for Motor Carrier Rules and Regulations~~
- ~~(M) TDF 26 - Motor Carrier Rules and Regulations Update Notification~~
- ~~(N) TDF 28 - Vehicle Information Request Form~~
- (78) **Transportation Network Company forms.**
 - (A) TDF 29 - Application for Oklahoma Transportation Network Company Permit
 - (B) TDF 30 - Oklahoma Transportation Network Company Certificate of Insurance
 - (C) TDF 31 - Oklahoma Transportation Network Company Notice of Insurance Cancellation

165:30-7-6. Applications and requests

- (a) All intrastate motor carrier, private carrier, transportation network company, deleterious, hazardous waste, registration and fuel permit applications must bear an original acceptable signature of the applicant. The applicant must be a legal entity with an optional single trade name listed that is not a legal entity. If signed by an attorney or agent in lieu of the applicant, a copy of the power of attorney must be attached to the application.
- (b) Acceptable signatures on applications for authority are as follows:
 - (1) Sole proprietorship - sole proprietor.
 - (2) Partnership - one of the partners.
 - (3) Corporation - one of the officers or directors.
 - (4) Limited liability company - the manager.
- (c) A name change relating to a partnership or a request to cancel a partnership must be signed by all partners.
- (d) All motor carrier and commercial motor vehicle applications filed by an applicant which does not maintain a terminal in Oklahoma must file and maintain a current listing of a valid Oklahoma process agent on behalf of the applicant.
- (e) All applications for authority shall contain the USDOT number of the operating motor carrier. Applications for registration shall additionally contain the USDOT number of the owner of each vehicle, and the registrant.
- (f) Motor carriers obtaining a name change with FMCSA in association with the motor carrier's DOT number must immediately update the name and/or trade name on the Commission issued authority, registrations, fuel licenses or permits. The Commission may require a name change or an application for new authority. Motor carriers obtaining a name change on Commission issued authority, registration, fuel licenses or permits must immediately obtain a name change with FMCSA in association with the motor carrier's DOT number. Failure to have the motor carrier name and trade name, if any, identically shown on all authority, registrations, fuel licenses or permits may subject the motor carrier to penalties, suspension, revocation, roadside enforcement delays or delays in processing subsequent applications.

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(g) Motor carriers changing their address with FMCSA in association with the motor carrier's DOT number must immediately update the address(es) on the Commission issued authority, registrations, fuel licenses or permits. In the event the Commission determines a motor carrier has changed its address(es) with FMCSA prior to notifying the Commission, may cause the Commission to update its records to reflect the updated address(es) on file with FMCSA. The motor carrier may notify the Commission in writing if it chooses to maintain separate address(es) on file with the Commission from the address(es) on file with FMCSA. Failure to have current address(es) on file for authority, registrations, fuel licenses or permits may subject the motor carrier to penalties, suspension, revocation, roadside enforcement delays or delays in processing subsequent applications.

(fh) An application for authority, commercial vehicle registration or fuel permit may not be processed when the motor carrier or the motor carrier responsible for safety has not updated its USDOT number within the prior twenty-four (24) months. Failure to update the USDOT number may subject the authority to revocation.

(gi) Failure to properly complete any application may result in delay or denial of the relief sought.

(hj) Applications may be denied due to outstanding monies owed to the Commission or other state or federal agencies.

(ik) Interstate authority, fuel permits and registration cannot be issued to a motor carrier whose ability to operate in interstate commerce has been denied or revoked.

(jl) If a fee is required for an application, and the funds are returned unpaid, any document or privilege granted as a result of that application shall be immediately revoked without notice. The document or privilege shall be reinstated provided valid payment is received in a timely manner.

SUBCHAPTER 19. REGISTRATION PURSUANT TO THE INTERNATIONAL REGISTRATION PLAN

165:30-19-2. Definitions

In addition to terms defined in the IRP, the Uniform Operational Audit Procedure Guidelines, and the IRP Policies and Procedures Manual, the following words and terms, when used in this Subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Applicant" means any person making an application with the Oklahoma Corporation Commission seeking to register a vehicle or vehicles pursuant to the IRP.

"Application" means a filing with the Oklahoma Corporation Commission, seeking to register a vehicle or vehicles with the Commission pursuant to the IRP.

"Apportioned registration" means the proportional registration of a vehicle pursuant to the terms of the IRP and this Subchapter.

"Carrier" means a fleet operator which engages in the transportation of passengers or property for compensation or hauls its own commodity.

"Credentials" means identification plates and cab cards.

"Established account" means any prorate account for which a properly completed original application has been received by the IFTA/IRP Section and all corresponding and assessed fees have been paid in full.

"Grace period" means two months following the expiration of the registration year.

"Interstate" means between or through two or more jurisdictions.

"Intrastate" means from one point within a jurisdiction to another point within the same jurisdiction.

~~**"IRP"** means the International Registration Plan. The IRP is a licensing and reciprocity agreement between states of the United States and provinces of Canada that sets forth the procedures for registration and operation of vehicles traveling in two or more member jurisdictions.~~

"New operation" means a vehicle or fleet of vehicles not previously registered pursuant to the provisions of the IRP. "New operation" does not include an existing fleet that is expanding the number of vehicles or area of operation.

"Operations" means actual movement of a vehicle. For purposes of this Subchapter, operations may be classified as interstate or a combination of interstate and intrastate.

"Proportional registration" means registration of an apportionable vehicle pursuant to the terms of the IRP and this Subchapter.

"Records" means and includes operational records.

"Registration agent" means a person hired by an applicant or registrant to prepare and/or file applications, supplemental applications, and other documents required for proportional registration in Oklahoma.

"Regular business hours" means 8:30 a.m. to 4:30 p.m. local time.

"Reporting period" or **"mileage year"** means the period of twelve (12) consecutive months immediately prior to July 1 of the year preceding the year of registration or license.

165:30-19-3. Registration

(a) Before a vehicle can be proportionally registered in the state of Oklahoma the applicant or registrant must:

(1) Have an established place of business located in Oklahoma. Absent an established place of business in any IRP jurisdiction, an applicant must satisfy the residency requirements in 165:30-19-6, prior to being allowed to base plate in Oklahoma. Under no circumstances can an independent contractor be used to establish a place of business or residence on behalf of a registrant.

(2) Complete the application, all required schedules, and provide backup documentation required by the Commission to verify the information submitted by the applicant:

(A) The application must include the mailing address and telephone number of the applicant. In addition to providing the applicant's telephone number, the applicant may provide the telephone number of a third party who has knowledge of the applicant's whereabouts and is able to contact the applicant within a reasonable period of time upon request. An

applicant or registrant may not utilize a telephone listing indicating the same telephone number as that of any other person in this state as a qualifying telephone number under this Section.

(B) If the application is signed by someone other than the applicant or registrant, pursuant to a power of attorney, the name or names of the individuals to whom such authority is granted must be included in the power of attorney executed by the applicant.

(3) Provide proof of payment (or suspension from levy) of Federal Heavy Vehicle Use Tax;

(4) Provide proof of financial responsibility pursuant to 47 O.S. § 7-602 (liability insurance);

(5) Motor vehicles operated by a motor carrier with valid liability insurance on file with FMCSA or this Commission are exempt from subsection (a) (4) of this Section;

(6) If the applicant is leased to a motor carrier, the applicant must provide a copy of the lease to satisfy Oklahoma's financial responsibility requirements (47 O.S. § 7-602). If multiple vehicles are under lease, a letter from the motor carrier listing each vehicle's year, make, model and VIN under lease to the carrier may be provided in lieu of the lease, provided a copy of any and all leases shall be made available to the Commission upon request.

(7) Provide proof of ownership;

(8) Provide proof of payment of prior registration fees, if the vehicle was registered pursuant to the IRP in another jurisdiction; and

(9) Pay all applicable fees to complete registration. Continuous registration is required, therefore registration fees shall be assessed from the last vehicle registration date or the date of sale.

(10) Provide the USDOT number and the social security number, federal employee identification number or taxpayer identification number of the carrier responsible for safety of each vehicle in the apportioned application.

(11) Be the owner, the lessee, the motor carrier responsible for safety or an entity contracted by the owner or motor carrier responsible for safety.

(b) Application for registration may be made at any time during a registration year.

(c) Application for registration may be submitted through the mail to the IFTA/IRP Section, Transportation Division, Oklahoma Corporation Commission, P.O. Box 52948, Oklahoma City, Oklahoma, 73152-2948, or by applying in person at 2101 N. Lincoln Blvd., in Oklahoma City. A list of other locations where application may be submitted is available from the IFTA/IRP Section or the Commission website under the Transportation Division (<http://www.occeweb.com>).

(d) No application for proportional registration shall be processed unless the applicant has submitted the documentation required in (a) of this Section. Failure to submit the required documentation shall result in denial of the application.

(e) Since registration with the Plan can affect other jurisdictions' registration fees and tax receipts, the Transportation Division must be diligent in ensuring that those registrants with

Oklahoma as their base jurisdiction are indeed entitled to base in Oklahoma.

(1) If after approval of the application and during the registration year, the Transportation Division has reason to believe that critical account information submitted on an application has changed, the Transportation Division shall allow the registrant 30 days to provide the updated information. If the information is not provided within that time or is deemed insufficient, the Transportation Division shall revoke the registrants' credentials in accordance with OAC 165:5-25.

(2) If after approval of the application and during the registration year the Transportation Division has evidence that critical account information submitted on an application was submitted erroneously or falsely, the Transportation Division shall revoke the registrants' credentials in accordance with OAC 165:5-25.

165:30-19-7. Operational records

Operational records shall be documents supporting miles traveled in each jurisdiction and the total miles traveled. These documents can be fuel reports, trip sheets, logs, or computer runs that can be supported by source documents, when requested. An acceptable source document to verify fleet mileage is some type of "Individual Vehicle Mileage Distance Record" (IVMR) — (IVDR). ~~IVMRs~~ IVDRs should contain the following basic information:

- (1) Date of trip (starting and ending);
- (2) Trip origin and destination;
- (3) Routes of travel and/or beginning and ending odometer readings;
- (4) Total trip mileage (including all movement, loaded, empty, deadhead, and/or bobtail miles);
- (5) Mileage by jurisdiction;
- (6) Unit number or vehicle identification number;
- (7) Vehicle fleet number;
- (8) Registrant's name; and
- (9) Driver's signature and/or name.

165:30-19-8. Maintenance and availability of operational records

(a) Operational records must be maintained for a period of three (3) years after the close of the registration year for which the records were included in the application. Failure to maintain the required records may result in an assessment in accordance with Section 1015 of the IRP.

(b) Failure to make records available upon proper request shall result in an assessment in accordance with Section 1015 of the IRP.

(c) Failure to maintain or make records available may also subject the registrant to denial of apportion privilege.

~~(d) Registrants or licensees selected for audit whose fleet size exceeds 200 vehicles are required to submit the detailed records required to conduct the audit in the electronic format established by the Commission.~~

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165:30-19-12. Supplemental application

(a) After an original application has been filed, vehicles can be added, deleted, or registration weight increased by filing a supplemental application form.

(b) Registration fees for supplemental applications are calculated from the date of purchase or lease, unless the vehicle was previously registered in the fleet, then the fees shall be calculated upon an annual rate. For registrants who do not have possession of equipment on the date they purchased it, fees may be calculated from the date the equipment came into possession of the registrant. Registrants who wish to avail themselves of this provision must provide documentation of the receipt date of the equipment to the Transportation Division. In no case should the effective date of the registration be after equipment is placed in service.

(c) When a supplemental application is filed to add a unit and delete a similar unit, a credit of the registration fees paid on the deleted unit will be given toward registration of the added unit for those states that allow credit. Credit is only available for vehicles subsequently added to the fleet in the registration year in which the credit was created. In no event shall credit be allowed for fees beyond such registration year. Credits are not transferable between fleets. In order for credit to be given on the registration fees, the cab card and license plate for the deleted vehicle must be returned with the supplemental application, or an affidavit of destruction must be submitted with the supplemental application. Under no circumstances can a license plate be transferred from one vehicle to another. No refund for unused deletion credits will be given for a deleted vehicle.

(d) Supplemental applications may be filed with a future effective date to add a unit before the unit is placed in service. In no case shall the registration effective date be more than sixty (60) days ~~in advance of~~ after the filing date of the supplemental application. When a unit is added with a future effective date but the unit does not become part of the fleet, no refund of the fees will be allowed. The unit may be deleted and the resulting deletion credits may be used toward the addition of subsequent unit.

(e) If the license plate is lost, an affidavit may be submitted in lieu of the plate.

(f) ~~When~~ the motor carrier is responsible for safety changes during a registration year, the registrant is required to file for a cab card change for each vehicle. The cab card change application shall include the new motor carrier responsible for safety's USDOT number and taxpayer identification number (social security or federal employee).

165:30-19-14. Audits

~~(a) The Transportation Division of the Commission has the responsibility of conducting audits of the operational records of a registrant that~~ If operational records are not maintained at a location within the State of Oklahoma and cannot be made available for audit at a location within Oklahoma.—~~The, the~~ the registrant ~~will~~ may be required to reimburse the ~~State of Oklahoma Corporation Commission~~ State of Oklahoma Corporation Commission, for expenses incurred ~~by its auditor(s)~~ for performance of an audit at a location outside Oklahoma.

(b) Registrants selected for audit whose fleet size exceeds two hundred (200) vehicles are required to submit detailed records in the electronic format established by the Commission in order to conduct an audit.

SUBCHAPTER 21. INTERNATIONAL FUEL TAX AGREEMENT

165:30-21-2. Definitions

In addition to terms defined in the IFTA, the IFTA Audit Manual, and the IFTA Procedures Manual, the following words and terms, when used in this Subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Applicant" means any person making an application with the Oklahoma Corporation Commission seeking to license a fleet pursuant to the IFTA.

"Application" means a filing with the Oklahoma Corporation Commission, seeking a license with the Commission pursuant to the IFTA.

~~"Audit" means a physical examination of record and source documents supporting a licensee's reports.~~

"Carrier" means a fleet operator, which engages in the transportation of passengers or property for compensation or hauls its own commodity.

~~"Commission" means the Oklahoma Corporation Commission~~

"Credentials" means IFTA identification license and decals.

"Fleet" means one or more vehicles

"Grace period" means two months following the expiration of the license year.

"Interstate" means between or through two or more jurisdictions.

"Intrastate" means from one point within a jurisdiction to another point within the same jurisdiction.

~~"IFTA" means the International Fuel Tax Agreement. The IFTA is a reciprocity agreement between states of the United States and provinces of Canada that sets forth the procedures for licensing, reporting and enforcement of qualified motor carriers. The IFTA requires member jurisdictions cooperate to ensure that each member receives motor fuel tax revenue due it.~~

"Operations" means actual movement of a vehicle. For purposes of this Subchapter, operations may be classified as interstate or a combination of interstate and intrastate.

"Person" means an individual, corporation, partnership, association, trust, or other entity

"Qualified Motor Vehicle" means a motor vehicle used, designed, or maintained for transportation of persons or property and:

(A) Having two axles and a gross vehicle weight or registered gross vehicle weight exceeding 26,000 pounds or 11,797 kilograms; or

(B) Having three or more axles regardless of weight; or

(C) Is used in combination, when the weight of such combination exceeds 26,000 pounds or 11,797 kilograms.

kilograms gross vehicle or registered gross vehicle weight. Qualified Motor Vehicle does not include recreational vehicles.

"Recreational Vehicle" means vehicles such as motor homes, pickup trucks with attached campers, and buses when used exclusively for personal pleasure by an individual. In order to qualify as a recreational vehicle, the vehicle shall not be used in connection with any business endeavor.

"Records" means all documents, files, and work product and includes but is not limited to, operational records.

"Registration" means the qualification of motor vehicles normally associated with a prepayment of fees for the privilege of using the highway and the issuance of license plate and a registration card or temporary registration-containing owner and vehicle data.

"Registration agent" means a person hired by a licensee to prepare and/or file applications, reports and other documents required for IFTA licensing and reporting in Oklahoma.

"Reporting Period" means a period of time consistent with the calendar quarterly periods of January 1 - March 31, April 1 - June 30, July 1 - September 30, and October 1 - December 31.

"Revocation" means withdrawal of a license and privileges by the licensing jurisdiction.

"Temporary Permit" means a permit issued by the Oklahoma Corporation Commission or its agent to be carried in a qualified vehicle in lieu of carrying the IFTA license and the display of the permanent annual decals. A temporary permit is valid for a period of 30 days to give the carrier adequate time to affix the annual permanent decals.

165:30-21-13. Reporting requirements

(a) Every person licensed under 68 O.S. § 607 shall make and transmit to the Commission, on or before the last day of April, July, October and January of each year, upon a form prescribed and furnished by the Commission, a verified quarterly ~~report~~ return, showing the total distance traveled by the licensee in all jurisdictions and the total volume (in gallons) of motor fuel or diesel fuel purchased or received in each jurisdiction on which the motor fuel tax levied by that jurisdiction has been paid to that jurisdiction. The ~~report~~ return will also show the total distance and the total taxable distance traveled by the licensee in each IFTA jurisdiction, and the total volume (in gallons) of motor fuel or diesel fuel consumed in each IFTA jurisdiction. The total volume (in gallons) of motor fuel or diesel fuel purchased or received in each IFTA jurisdiction shall be deducted from the total number of gallons of motor fuel or diesel fuel consumed by the licensee in each jurisdiction to determine the number of gallons of motor fuel or diesel fuel upon which each jurisdictions' motor fuel tax is to be computed and paid.

(b) Every person licensed under this article who travels less than ~~ten~~ five thousand (10,000) ~~(5,000)~~ miles distance ~~per year in Oklahoma~~ in all jurisdictions other than Oklahoma, based upon the four most recently filed consecutive quarterly returns, may request approval, at the option of the Commission, to file an annual report return in lieu of filing the quarterly ~~report~~ return.

165:30-21-17. Incorporating the International Fuel Tax Agreement

(a) ~~Reference to the International Fuel Tax Agreement (IFTA).~~ When reference is made to ~~the International Fuel Tax Agreement or IFTA,~~ it shall mean, unless the context clearly indicates otherwise, the motor fuel use tax reciprocity agreement among between the various states of the United States contiguous states and the certain Canadian provinces of Canada, including the Procedures Manual and the Audit Manual, which provides for payment of fuel taxes by licensees based on fuel used by qualified vehicles in the various jurisdictions, to which Oklahoma is a signatory state allows a licensee to report and pay motor fuel use taxes to a base jurisdiction for distribution to other member jurisdictions in which the licensee traveled and incurred motor fuel use tax liability, as published by International Fuel Tax Association, Inc., as amended. IFTA can be found online at <https://www.iftach.org>.

(b) ~~Incorporation.~~ The following Articles are, unless otherwise specifically provided, incorporated by reference in their entirety:

- (1) Articles I through XXI of the International Fuel Tax Agreement (IFTA);
- (2) The International Fuel Tax Agreement Audit Manual; and
- (3) The International Fuel Tax Agreement Procedures Manual.

(c) ~~Inclusion of IFTA citation and definitions.~~ When a provision of the IFTA is incorporated by reference, all citations and definitions contained therein are also incorporated by reference.

(d) ~~Inconsistencies or duplications.~~ In the case of any inconsistency or duplication between the requirements of those provisions incorporated by reference in this Section, and rules set out in this Subchapter, the provisions incorporated by reference shall prevail, except where the rules in this Subchapter are more particular. The provisions incorporated by reference are subject to any limitations provided by Oklahoma law.

165:30-21-18. Operational records

Operational records shall be documents supporting miles traveled in each jurisdiction and the total miles traveled. These documents can be fuel reports, trip sheets, logs or computer runs that can be supported by source documents, when requested. An acceptable source document to verify fleet mileage is some type of Individual Vehicle Distance Record (IVDR). IVDRs should contain the following basic information:

- (1) Date of trip (starting and ending);
- (2) Trip origin and destination;
- (3) Routes of travel and/or beginning and ending odometer readings;
- (4) Total trip mileage (including all movement, loaded, empty, deadhead, and/or bobtail miles);
- (5) Mileage by jurisdiction;
- (6) Unit number or vehicle identification number;
- (7) Vehicle fleet number;
- (8) Registrant's name; and
- (9) Driver's signature and/or name.

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165:30-21-19. Maintenance and availability of operational records

(a) An IFTA licensee shall retain the records of its operations to which IFTA reporting requirements apply for a period of four (4) years following the date the IFTA tax return for such operations was due or was filed, whichever is later, plus any period covered by waivers or jeopardy assessments. Failure to maintain the required records may result in an assessment in accordance with the IFTA Procedures Manual.

(b) Failure to make records available upon proper request shall result in an assessment in accordance with the IFTA Procedures Manual.

(c) Failure to maintain or make records available may also subject the licensee to revocation of its IFTA license or denial of the issuance of a license.

165:30-21-20. Audits

(a) If operational records are not maintained at a location within the State of Oklahoma and cannot be made available for audit at a location within Oklahoma, the licensee may be required to reimburse the Corporation Commission, for expenses incurred for performance of an audit at a location outside Oklahoma.

(b) Licensees selected for audit whose fleet size exceeds two hundred (200) vehicles are required to submit detailed records in the electronic format established by the Commission in order to conduct an audit.

SUBCHAPTER 26. NONCONSENSUAL WRECKER AND TOWING SERVICES

PART 3. RESPONSE TO NONCONSENSUAL TOWING RATE COMPLAINTS

165:30-26-14. Nonconsensual towing rate complaints and audits

(a) The Commission hereby establishes a progressive system of actions to be taken by the Commission, or its designee, to achieve compliance with a Commission nonconsensual towing order. Violations of a Commission nonconsensual towing order may be established as a result of a nonconsensual towing rate complaint investigation or an audit.

(b) For purposes of progressive actions, the date shown on the service invoice serves as the violation date. The dated written notice of a violation issued by the Commission, or its designee, serves as the Violation Notification.

(c) The following stipulations are in place for violations established as a result of a complaint investigation:

- (1) A Violation Notification will contain instructions on the proper rate calculation procedure and will be provided to the wrecker service. The Violation Notification will list the violations and remediation requirements. The Violation Notification may require the repayment of the overcharge to the person who paid for the services. The

wrecker service shall comply with the written instructions within thirty (30) days of the Violation Notification.

(2) Each subsequent Violation Notification of the same provision of a Commission nonconsensual towing order within a ~~twelve~~eighteen-month period will be treated as a progressive violation.

(A) A violation may progress to the next level only when the date of the second or succeeding Violation Notification is later than the previous violation date.

(B) Each progressive action may consist of a new remediation requirement as well as each of the preceding remediation action requirements.

(3) For the second Violation Notification of the same violation during a ~~twelve~~eighteen-month period, a penalty may be assessed in accordance with (f) of this Section. In addition, the Commission or its designee may recommend the wrecker service be temporarily removed from the Oklahoma Department of Public Safety and/or other political subdivision's rotation log. Any such recommendation for removal will include the justification for such request.

(4) For the third and any subsequent Violation Notification of the same violation during a ~~twelve~~eighteen-month period, the Commission or its designee may recommend to the Oklahoma Department of Public Safety that the license of the wrecker service ~~license~~ be suspended or revoked. Any political subdivision with which the wrecker service maintains a contract to provide nonconsensual wrecker or towing services may also be notified of the violation(s) along with the justification for such notification.

(d) Audits of wrecker services may be conducted with or without specific cause. Typically, audits are conducted as a normal part of rate determination and economic analysis, as a result of a nonconsensual towing rate complaint, as a referral from another political subdivision or as a follow up to a previously conducted audit. Audit periods cannot extend beyond the records retention period as required by the Department of Public Safety in OAC 595:25.

(e) Violations discovered as the result of an audit shall be reviewed by the Director of the Transportation Division or his designee. Progressive action remedies in addition to penalties in accordance with (f) of this Section may be assessed or the Commission may issue an order requiring that violations of this Subchapter be corrected. The order may include a fine up to a maximum of \$500.00 for each violation.

(f) For violations established as a result of a nonconsensual towing rate complaint or as a result of an audit, the following penalties may be assessed by the Director of the Transportation Division:

- (1) A penalty in an amount up to \$175.00 for the second violation;
- (2) A penalty in an amount up to \$375.00 for the third violation; or,
- (3) A penalty in an amount up to \$500.00 for the fourth and subsequent violations.

[OAR Docket #17-506; filed 6-23-17]

**TITLE 165. CORPORATION COMMISSION
CHAPTER 55. TELECOMMUNICATIONS
SERVICES**

[OAR Docket #17-509]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 1. General Provisions
 - 165:55-1-2. Jurisdiction [AMENDED]
 - 165:55-1-3. Application of rules [AMENDED]
 - 165:55-1-4. Definitions [AMENDED]
 - 165:55-1-6. Relief from rules [AMENDED]
 - 165:55-1-8. Supremacy [AMENDED]
 - 165:55-1-16. Universal service [AMENDED]
- Subchapter 3. Certificates, Reports, and Records
 - Part 1. Certificates of Convenience and Necessity
 - 165:55-3-1. Certificate of Convenience and Necessity [AMENDED]
 - 165:55-3-2. Notice requirements when filing an Application for Certificate of Convenience and Necessity [AMENDED]
 - 165:55-3-3. Approval of initial tariffs [AMENDED]
 - Part 5. Record Requirements
 - 165:55-3-22. Records to be provided to the Commission [AMENDED]
- Subchapter 5. Rates and Tariffs
 - Part 1. Tariff Filing
 - 165:55-5-1. Tariffs and/or Terms of Service required [AMENDED]
- Subchapter 7. Directories, Telephone Numbers and Customer-Provided Equipment
 - 165:55-7-1. Telephone directories [AMENDED]
 - 165:55-7-2. Telephone numbers and changes [AMENDED]
- Subchapter 9. Customer Billing and Deposits
 - Part 1. Billing and Payment Requirements
 - 165:55-9-2. Content of bills [AMENDED]
 - 165:55-9-5. Billing disputes [AMENDED]
- Subchapter 11. Service Denial, Suspension and Disconnection
 - Part 1. Notice Requirements
 - 165:55-11-6. Service disputes [AMENDED]
 - 165:55-11-7. Written correspondence [AMENDED]
 - Part 3. Suspension and Disconnection Procedures
 - 165:55-11-11. Suspension or disconnection for reasons others than nonpayment [AMENDED]
 - 165:55-11-12. Notice of Disconnection and Notice of Suspension [AMENDED]
- Subchapter 13. Operating and Maintenance Requirements
 - Part 3. Service Standards
 - 165:55-13-14.1. Tribal Land Link-up program [AMENDED]
 - Part 5. Service Quality Standards
 - 165:55-13-20. Responsibility for adequate and safe service [AMENDED]
 - Part 11. Interruptions of Service
 - 165:55-13-52. Notice of service interruptions [AMENDED]
- Subchapter 15. Notification of Transactions Affecting Customers or Business Operations
 - 165:55-15-1. Notification of certain transactions affecting the customers or operations of a telecommunications service provider or IXC [AMENDED]
- Subchapter 19. Unlawful Practices
 - Part 1. Slamming
 - 165:55-19-1.5. Absolution procedures where the end-user has not paid charges [AMENDED]
 - 165:55-19-1.6. Reimbursement procedures where the end-user has paid charges [AMENDED]
- Subchapter 23. Eligible Telecommunications Carriers
 - Part 1. General Provisions
 - 165:55-23-1. Requirements [AMENDED]
 - 165:55-23-2. ETC Designation [AMENDED]
 - 165:55-23-3. Records to be provided to the Commission [AMENDED]
 - 165:55-23-9. Billing disputes [AMENDED]
 - 165:55-23-11. Minimum service standards and Supported Services [AMENDED]
 - 165:55-23-12. Lifeline eligibility requirements [AMENDED]
 - 165:55-23-15. Lifeline program [AMENDED]
 - 165:55-23-17. Link-up program on Tribal Lands [AMENDED]

Part 3. Transmission Objectives

165:55-23-54. Notice of service interruptions [AMENDED]

AUTHORITY:

The Commission's authority is found in Okla. Const. Art. IX, § 18 and 17 O.S. § 131, et seq.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

Although the Oklahoma Corporation Commission is not subject to the requirements of Executive Order No. 2013-34, the proposed rules were submitted to the Governor and Cabinet Secretary on March 16, 2017.

COMMENT PERIOD:

January 25, 2017 through March 8, 2017

PUBLIC HEARING:

March 8, 2017

ADOPTION:

March 8, 2017

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

March 16, 2017

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 13, 2017

FINAL ADOPTION:

June 13, 2017

EFFECTIVE:

September 11, 2017

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

Incorporated standards:

National Electrical Code 2014 edition
National Electric Safety Code 2012 edition

Incorporating rules:

OAC 165:55-13-20(c) incorporated codes and standards:

Availability:

8:00 a.m. to 4:30 p.m., Monday through Friday at Oklahoma Corporation Commission, Public Utility Division, 2101 North Lincoln Blvd., Oklahoma City, Oklahoma 73105 (405) 521-4114.

GIST/ANALYSIS:

The rules were adopted in an effort to update, clarify, and streamline language and procedures appearing in OAC 165:55. In addition to making changes to correct typographical errors, a majority of the adopted rules were made in response to changes in HB 2616. In addition to other changes, HB 2616 expanded the contributors to the Oklahoma Universal Service Fund ("OUSF"). Further, changes were made regarding data-only providers. The Commission now has the express authority to regulate data-only providers who seek reimbursement from the OUSF for providing Special Universal Services. Additional changes were made to update references to the National Electrical Code ("NEC") and the National Electric Safety Code ("NESC"). Changes were also made in response to changes at the Federal Communications Commission ("FCC").

Language was added to make clear that the Commission has authority to grant certificates of convenience and necessity ("CCN") to data-only providers as well as separate and limit the applicability of Chapter 55 rules to just the CCN requirements as those relate to data-only providers. An amendment was made to the definition of data-only provider to specify that the non-voice services that can be offered by a data-only provider, includes Special Universal Services. This ties the definition of data-only provider to the provision of Special Universal Services and assists when using the data-only provider classification in conjunction with the CCN requirements. Additionally, data-only providers were added to Telecommunication Service Provider ("TSP") and Interexchange Carrier ("IXC") as entities that can seek relief from Chapter 55 rules to remain consistent with the underlying theme in the CCN revisions to treat data-only providers as a unique class of providers.

Special Universal Services was added to the provision of telecommunications service as one of the potential activities an entity could be engaged in for which the CCN application was being made as well as require a data-only application to clearly indicate whether the CCN requested was exclusively for the purpose of seeking reimbursement from the OUSF for the provision of Special Universal Services and in doing so eliminated some of the CCN requirements necessary for a data-only provider seeking a CCN exclusively for the purpose of seeking reimbursement from the OUSF.

Additionally, data-only providers, seeking a CCN for the limited purpose of seeking reimbursement from the OUSF for the provision of Special

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Universal Services, were excluded from the requirement to provide an initial tariff and instead are required to provide an informational tariff.

In accordance with HB2616, the term "entity" was replaced with "Contributing Providers" for purposes of describing those parties that are to contribute to the Oklahoma Universal Service Fund ("OUSF") as well as require "Contributing Providers" to provide contact information on an annual basis.

Amendments were made to update references to the NEC and the NESC to the 2014 edition for the NEC and the 2012 edition for NESC (from the current 2002 and 1997 editions). This language also makes the change applicable on a going forward basis beginning on September 1, 2017.

Amendments were made to the definition of Eligible Telecommunication Carrier ("ETC") and recognize that an ETC designation can now be granted by the FCC and clarify that those ETCs with Oklahoma Corporation Commission ("OCC") granted designations will comply with the requirements of OAC 165:55-23 and further, if eligible for Oklahoma Lifeline Fund ("OLF") support, the requirements of OAC 165:59-9-1 *et seq.*

To gain consistency with 17 O.S. § 139.109.1(B)(4) and the definition of "Eligible provider" at 17 O.S. § 139.102(11), amendments were made to make clear that OneNet is excluded from the CCN requirement for purposes of requesting funding from the OUSF for the provision of Special Universal Services.

Language that previously required the CCN to be consistent with where service is actually being provided was deleted.

Amendments were made to remove the current requirement to provide a financial statement as part of the affidavit in conjunction with providing a notification of transaction.

Amendments were made to delete minimum service standards for Lifeline service provided by ETCs and replaced by references to the applicable federal service standards. Additionally, language was deleted that referenced obsolete state and federal Lifeline eligibility programs and replaced by references to appropriate federal eligibility programs. Further, to be consistent with the change in federal law, language was added to limit the applicability of state specific eligibility programs to qualification for the OLF only and amend the number of days of non-usage allowed prior to being required to de-enroll a Lifeline customer for non-usage.

The rules add a definition for Consumer Service Division ("CSD") and states that the Director of CSD is the same as the Director of the Public Utility Division ("PUD").

Amendments were made to correct typographical errors and delete references to revoked subsections.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 1. GENERAL PROVISIONS

165:55-1-2. Jurisdiction

The Oklahoma Corporation Commission, by virtue of Article IX § 18 *et seq.* of the Constitution of the State of Oklahoma, enactments of the Oklahoma Legislature, and federal law has the authority and responsibility to supervise, regulate, and control the Oklahoma businesses of telecommunications service providers and interexchange telecommunications carriers in Oklahoma which are subject to regulation of the Commission. In addition, the Commission has the authority to designate eligible telecommunications carriers, to grant certificates of convenience and necessity to data-only providers

and to enact rules and regulations in connection therewith. No person or corporation not otherwise a telecommunications service provider within the meaning of this Chapter shall be deemed such solely because of the manufacture, distribution, installation, or maintenance of end-user premises communication equipment and accessories.

165:55-1-3. Application of rules

This Chapter shall apply to every telecommunications service provider, data-only provider, and IXC in Oklahoma subject to the jurisdiction of the Commission. This Chapter shall apply to a Telephone Cooperative Corporation only to the extent specifically authorized by 18 O.S. § 438.1 *et seq.* This Chapter shall not apply to the interexchange portion of an IXC's business, except as set forth in OAC 165:55-1-8. This Chapter shall not apply to the non-regulated services offered by a data-only provider, except as specified in OAC 165:55-3-1.

165:55-1-4. Definitions

The following words and terms, when used in this Chapter, shall have the following meanings, unless the context clearly indicates otherwise. These definitions shall be supplemented by the definitions contained in 17 O.S. § 139.102. To the extent there is a conflict between a definition contained in 17 O.S. § 139.102 and a definition in this Section, the definition in this Section shall be applicable to this Chapter:

"**Access service**" means any tariffed wholesale service provided by one LEC to another LEC, CLEC, interexchange carrier certificated by the Commission or an end-user that allows for access to the local exchange telecommunications network, excluding local interconnection arrangements.

"**Applicant for telecommunications service**" means any person, partnership, cooperative corporation, corporation, or lawful entity requesting service(s) from a telecommunications service provider.

"**Authorized carrier**" means any telecommunications carrier that submits a change, on behalf of an end-user, in the end-user's selection of a provider of telecommunications service with the end-user's authorization verified in accordance with the procedures specified in this Chapter.

"**Base rate area**" means the developed area within each exchange service area designated in the tariffs of the telephone company or if not so designated, an area within one-half (1/2) mile radius of the serving central office.

"**Basic local service**" means all residential and business telecommunications voice and/or relay service which meets the standards set forth in 165:55-13-10, including lines beyond the first line into a residence or business.

"**Billing agent**" means an entity which provides bills to an end-user for services received from a telecommunications service provider.

"**Billing and collection service**" means the wholesale service provided by a TSP or IXC for the processing and delivery of customer bills, on behalf of a third party.

"Bona Fide Request" means a written request delivered to a telecommunications service provider requesting services and interconnection provided for in this Chapter.

"CIC" means carrier identification code which identifies a provider of toll services by a three- or four-digit number.

"Campus" means multiple buildings located on a single tract or area of land or on adjacent and abutting tracts of land where all the buildings and land are subject to majority ownership by the same person. A campus may be intersected or traversed by public thoroughfares provided that the segments created would be continuous in the absence of the thoroughfare. A tract or tracts of land used for farming and/or ranching shall not be considered a "campus."

"Carrier of last resort" means a telecommunications service provider as designated by the Commission pursuant to OAC 165:55-13-12.

"Central office" means an operating unit of a telecommunications service provider by which connections are established between end-users' lines and between end-users' lines and trunks or toll lines.

"Circuit" or **"Channel"** means one communication path between two (2) or more points suitable for transmitting information.

"Class of service" or **"Customer class"** means a description of service furnished to an end-user in terms of type of rate, location, and use.

"CLEC" means a Competitive Local Exchange Carrier.

"Clear and conspicuous" means notice that would be apparent to the reasonable consumer.

"Competitive Provider" means an entity providing the same or equivalent services through the use of its own or leased facilities including resellers. The service must satisfy the Commission's rules of minimum service standards regardless of whether the provider is regulated by the Commission.

"Competitive service" means a telecommunications service determined by the Commission to be subject to effective competition for a relative geographic and service(s) market, after notice and hearing.

"Competitive Test" means an evaluation by the Commission to determine after notice and hearing, for a particular service on an exchange by exchange basis, the existence of competition among an ILEC, a non-affiliated facilities based Competitive Provider, and one (1) other non-affiliated Competitive Provider. Such exchanges shall be the same as those on file with the Commission on the date of approval of the Transition Plan.

"Cramming" means the placement of unauthorized, misleading, or deceptive charges on a customer's telephone bill for products or services that were never ordered by the customer.

"CSD" means the Consumer Service Division of the Public Utility Division of the Oklahoma Corporation Commission.

"Customer" means any person, firm, partnership, cooperative corporation, corporation, or lawful entity that receives regulated telecommunications services supplied by any telecommunications service provider or IXC.

"Customer trouble report" means any oral or written report given to a telecommunications service provider's repair

service by an end-user of telephone services relating to a physical defect or difficulty or dissatisfaction with the provision of the telecommunications service provider's regulated services. Each trouble report shall count as a separate report regardless of whether subsequent reports relate to the same physical defect, difficulty, or dissatisfaction with the provision of the telecommunications service provider's regulated services.

"Data-only provider" means a company exclusively providing non-voice services, to include Special Universal Services as defined at 17 O.S. § 139.102(39), which, pursuant to OAC 165:55-3-1, has obtained a Certificate of Convenience and Necessity.

"Demarcation point" means the physical location at which responsibility for operating and maintaining facilities passes from one person to another.

"Deniable charge" means a charge for those regulated services for which nonpayment may result in a disconnection of basic local service.

"Dialing parity" means that a person that is not an affiliate of a telecommunications service provider is able to provide telecommunications services in such a manner that end-users have the ability to route automatically, without the use of any access code, their telecommunications to the telecommunications service provider of the end-user's designation from among two (2) or more telecommunications service providers.

"Directory" means the published listing of all telephone numbers, other than those requested by the end-user not to be published, for all end-users in a service area regardless of the local exchange telecommunications service provider selected by the end-user.

"Disconnection of service" means an arrangement made by the end-user or TSP for permanently discontinuing service by terminating the contract and/or removing the telephone service from the end-user's premises.

"Eligible Telecommunications Carrier" ("ETC") means a common carrier designated by the Commission pursuant to OAC 165:55-23-2 and 47 U.S.C. §§ 254 and 214(e). ETC also means a Lifeline Broadband Provider designated by the Federal Communications Commission.

"End-user" means the customer to whom a telephone number is assigned.

"Executing carrier" means any telecommunications carrier that effects a request that an end-user's telecommunications carrier be changed. A carrier may be treated as an executing carrier, however, if it is responsible for any unreasonable delays in the execution of carrier changes or for the execution of unauthorized carrier changes, including fraudulent authorizations.

"Facilities-based provider" means an entity providing telecommunications services predominately through the use of its own facilities, including UNEs, and other technologies capable of meeting all local telecommunications service requirements while complying with the Commission's quality of service rules.

"FCC" means the Federal Communication Commission.

"Filed" means to present a document to and have it accepted by the Office of the Court Clerk of the Oklahoma Corporation Commission.

"ILEC" means an Incumbent Local Exchange Company.

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"Individual Case Basis" ("ICB") means a condition, pursuant to the provisions of the tariff, in which the rates and charges for an offering are developed based on the circumstances of each customer.

"Initial Tariffs" means the first tariffs approved after, or in conjunction with, the granting of a Certificate of Convenience and Necessity.

"Interexchange telecommunications service" means telecommunications service provided between locations within different certified telephone exchange service areas.

"InterLATA call" means any call which is originated in one LATA and terminated in another LATA.

"Interstate call" means any call which is originated in one state and terminated within the boundaries of another state.

"IntraLATA call" means any call which is originated and terminated within the boundaries of the same LATA, regardless of whether such call crosses LATA boundaries prior to reaching its termination point.

"Internet Subscriber Fee" means any fee that is paid to a telecommunications service provider for Internet service that is in addition to the access connection charge.

"Intrastate call" means any call which is originated and terminated within the boundaries of the State of Oklahoma, regardless of whether such call crosses state boundaries prior to reaching its termination point.

"LATA" means Local Access and Transport Area as defined in the Code of Federal Regulations, Title 47 Part 53.3.

"Less than Minimum Service Provider" means a CLEC which offers local exchange service that does not meet all minimum service standards, as set forth in OAC 165:55-13-10.

"Letter of Agency" ("LOA") means the written authorization that gives permission to change the customer's telecommunications services and/or the customer's provider or to share that customer's network information with representatives or associates of the telecommunication company or telecommunications carrier.

"Local interconnection arrangements" means a contract for interconnection, including resale, as governed by section 251 of the Communications Act of 1934 (47 U.S.C. § 251), as amended, the Federal Communication Commission rules and the rules of the Commission.

"Local operator services" means the automatic or live assistance provided to a customer, which enables the customer to arrange for billing or completion of a local call. Local operator services may include, but are not limited to, line status verification, busy line verification, emergency interrupt, and calls to emergency numbers (e.g., 911).

"Long run incremental cost" ("LRIC") means the long run forward-looking additional cost caused by providing all volume-sensitive and volume-insensitive inputs required to provide the total demand associated with a service or network element offered as a service, using economically efficient current technology efficiently deployed. LRIC also equals the cost avoided, in the long run, when a service or network element offered as a service is no longer produced. LRIC excludes costs directly and solely attributable to the production of other services or network elements offered as services, and unattributable costs which are incurred in common for all the

services supplied by the firm. The long run means a period long enough so that the cost estimates are based on the assumption that all inputs are variable.

"Network element" means a facility or equipment used in the provision of a telecommunications service. Such term also includes features, functions and capabilities that are provided by means of such facility or equipment, including end-user numbers, databases, signaling systems and information sufficient for billing and collection or used in the transmission, routing or other provision of a telecommunications service.

"Network interface" means the normal demarcation point separating the telecommunications service provider's regulated facilities and equipment from the unregulated facilities, equipment, or systems provided by the end-user. The provision of the network interface is the responsibility of the telecommunications service provider.

"New service provider" means a service provider that did not bill the end-user for service during the service provider's last billing cycle. This definition excludes service providers which bill the customer solely on a per transaction basis.

"New services" means any service(s), except access services or interconnection services, for which a rate element does not presently exist, which does not replace an existing service, and that enlarges the range of service options available to end-users.

"Nonbasic service" means any telecommunication service not included in basic local service, local interconnection arrangements and/or access service.

"Non-deniable charge" means a charge for those not-regulated services for which nonpayment shall not result in a disconnection of basic, local service.

"Not-regulated service" or "Non-regulated service" means the offering of service(s) where the rates and/or terms and conditions for such service(s) are not-regulated by the Commission. These would include any interstate services offered FCC tariffs or rules, and any taxes, fees and surcharges applicable to those services, as well as any intrastate services that are not regulated by the Commission.

"Number Portability" means the ability of end-users of telecommunications services to retain, within the same wire center, their existing telecommunications number without impairment of quality, reliability or convenience when switching from one telecommunications service provider to another.

"Packaging" means the sale of two or more services offered by or in conjunction with the services of a TSP to a customer of a TSP for a single price.

"Rates" means all charges assessed by a TSP or IXC.

"Regulated telecommunications service" means the offering of telecommunications service(s) directly to the public where the rates and/or terms and conditions for such service(s) are regulated by the Commission. These would include services offered from intrastate tariffs approved by the Commission including any taxes, fees and surcharges applicable to those services, and interstate services when the Commission is enforcing the FCC slamming rules.

"Rural telephone company" means a LEC to the extent that such entity:

(A) Provides telecommunications service to any local exchange study area that does not include either:

- (i) Any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recently available population statistics of the U.S. Bureau of Census; or,
- (ii) Any territory, incorporated or unincorporated, included in an urbanized area, as defined by the U.S. Bureau of Census as of August 10, 1993.

(B) Provides local exchange service, including exchange access, to fewer than 50,000 access lines;

(C) Provides local exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or,

(D) Has less than fifteen percent (15%) of its access lines in communities of more than 50,000 on the date of enactment of the Federal Telecommunications Act of 1996.

"RUS" means the Rural Utility Services.

"Service" means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used. Service shall not include the provision of nontelecommunications services, including but not limited to the printing, distribution, or sale of advertising in telephone directories, maintenance of inside wire, customer premises equipment and billing and collection, nor does it include the provision of mobile telephone service, enhanced services and other not-regulated services.

"Service interruption" means service outage, total failure, or complete loss of service due to a trouble condition in the facilities of a telecommunications service provider.

"Service provider" means any entity that offers a product or service to a customer, the charge for which appears on the bill of the billing agent. This definition shall include only providers that have continuing relationships with the end-user that will result in periodic charges on the end-user's bill, unless the service is subsequently canceled.

"Service territory" means a geographic area served by a telecommunications service provider.

"Slamming" means the unauthorized switching of an end-user's telecommunications service provider or presubscribed IXC.

"Submit" means to present a document to the Director of the Public Utility Division.

"Submitting carrier" means any telecommunications carrier that requests on the behalf of an end-user that the end-user's telecommunications carrier be changed and seeks to provide retail services to the end-user. A carrier may be treated as a submitting carrier, however, if it is responsible for any unreasonable delays in the submission of carrier change requests or for the submission of unauthorized carrier change requests, including fraudulent authorizations.

"Supported Services" means services identified in 47 CFR part 54, or OAC 165:59, as amended from time to time, for which an ETC receives support from the federal USF, OUSF or OLF, or as otherwise may be ordered by the Commission.

"Suspension of service" means an arrangement made at the initiative of the TSP for temporarily discontinuing service without terminating the contract or removing the telephone service from the customer's premises.

"SWBT" means Southwestern Bell Telephone Company d/b/a AT&T Oklahoma.

"Tariff" means all or any part of the body of rates, tolls, charges, classifications, and terms and conditions of service relating to regulated services offered, the conditions under which offered and the charges therefore, which have been filed with and approved by the Commission.

"Telecommunications carrier or Company" means a telecommunications service provider ("TSP") or an interexchange telecommunications carrier ("IXC").

"Telecommunications service provider" ("TSP") means all authorized providers of local exchange service, whether an incumbent LEC or a competitive LEC.

"Telephone bill" means a billing agent's invoice, issued in compliance with this Chapter, for products or services rendered by itself and by a service provider(s), if any.

"Telephone company" or "Company" means any person, firm, partnership, corporation, or other entity engaged in furnishing regulated local exchange telephone services under the jurisdiction of the Commission on July 1, 1995, pursuant to a Certificate of Convenience and Necessity or grandfathered authority.

"Terms of Service" means rates, charges and terms and conditions for regulated services that a TSP or IXC elects to post, in a searchable format, on a publicly availability website.

"Tribal Land" means any federally recognized Indian tribe's reservation, Pueblo, or Colony, including former reservations in Oklahoma, Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), Indian allotments; Hawaiian Home Lands-areas held in trust for Native Hawaiians by the state of Hawaii, pursuant to the Hawaiian Homes Commission Act, 1920 July 9, 1921, 42 Stat. 108, et.seq., as amended; and any land designated as such by the Commission for purposes of this subpart pursuant to the designation process in 47 CFR §.54.412.

"Unauthorized carrier" means any telecommunications carrier that submits a change, on behalf of an end-user, in the end-user's selection of a provider of telecommunications service but fails to obtain the end-user's authorization verified in accordance with the procedures specified in this Chapter.

"Unauthorized change" means a change in an end-user's selection of a provider of telecommunications service that was made without authorization verified in accordance with the verification procedures specified in this Chapter.

"Unbundled network element" ("UNE") means a component of the ILEC's telecommunications network utilized to provide telecommunications services.

"Unbundling" means to provide to any telecommunications service provider nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms and conditions that are just, reasonable and nondiscriminatory.

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"Unfilled application" means a firm application by an end-user for new service or a different class of service which has not yet been accomplished.

"Wireless Provider" means provider of radio communication service carried on between mobile stations or receivers and land stations, and by mobile stations communicating among themselves and which permits a user generally to receive a call that originates and/or terminates on the public switched network or its functional equivalent, regardless of the radio frequencies used.

"Zone" means a service territory described as such by an incumbent LEC.

165:55-1-6. Relief from rules

Whenever compliance with any requirement of this Chapter would result in unreasonable hardship upon or excessive expense to the telecommunications service provider, IXC, data-only provider, an end-user, consumer or for other good cause shown, the Commission may, by order, waive or modify the requirements of this Chapter upon application of any interested person filed in accordance with the Commission's Rules of Practice, OAC 165:5. The Commission may grant temporary relief pending hearing.

165:55-1-8. Supremacy

(a) Every tariff, rule, regulation, or agreement relating to the subject matter of this Chapter is superseded by this Chapter and is deemed amended to conform with this Chapter.

(b) The interexchange portion of an IXC's business shall continue to operate under the regulatory requirements and procedures prescribed by their respective certification orders and OAC 165:55-1-1, 165:55-1-3, 165:55-1-4, 165:55-1-5, 165:55-1-6, 165:55-1-11, 165:55-1-15, 165:55-1-16, 165:55-3-1, 165:55-3-2, 165:55-3-3, 165:55-3-22, 165:55-3-23, 165:55-5-3, 165:55-5-10, ~~165:55-5-10-1~~, 165:55-5-10.2, 165:55-5-10.4, 165:55-5-11, ~~165:55-5-12-1~~, 165:55-5-13, 165:55-5-14, 165:55-5-20, 165:55-5-34, 165:55-5-35, 165:55-9-2.1, 165:55-15-1, ~~165:55-15-3~~, 165:55-15-5, 165:55-19-1, 165:55-19-3, and 165:55-21-1.

165:55-1-16. Universal service

Consistent with 17 O.S. § 139.107, ~~every allentity Contributing providers, as defined at 17 O.S. § 139.102, that operates operating or provides telecommunications service~~ within the State of Oklahoma shall contribute, on a nondiscriminatory basis, into the Oklahoma Universal Service Fund. Further, each Contributing provider, whether subject to the jurisdiction of the Commission or not, shall annually provide contact information to the OUSF Administrator for the purpose of correspondence regarding contributions to the OUSF. Compliance with this requirement can be accomplished by the submission of an annual report, submission of an affirmation that the Contributing provider filed the FCC Form 499, or submission of full contact information for the Contributing provider.

SUBCHAPTER 3. CERTIFICATES, REPORTS, AND RECORDS

PART 1. CERTIFICATES OF CONVENIENCE AND NECESSITY

165:55-3-1. Certificate of Convenience and Necessity

(a) **Requirement for Certificate of Convenience and Necessity.** No person, firm, association, corporation or cooperative shall furnish telecommunications service to any end-user or customer in the State of Oklahoma without first having secured a Certificate of Convenience and Necessity from the Commission.

(b) **Requirement for Certificate of Convenience and Necessity prior to receiving funding from the Oklahoma Universal Service Fund.** Any provider, excluding OneNet, requesting funding from the Oklahoma Universal Service Fund for the provision of Special Universal Services shall first obtain a Certificate of Convenience and Necessity ~~in the exchange where service is to be provided from the Commission.~~

(c) **Application for Certificate of Convenience and Necessity.** Every provider of telecommunications services making application to the Commission for a Certificate of Convenience and Necessity in accordance with 17 O.S. § 131 *et seq.* shall be required to demonstrate its financial, managerial and technical ability to provide the requested telecommunications services in the State of Oklahoma. An application for a certificate to provide telecommunications service in the State of Oklahoma shall be made pursuant to and in conformance with the requirements of Oklahoma law and any additional requirements set forth in this Chapter. An original and five (5) copies of the application for Certificate of Convenience and Necessity shall be filed at the Commission's Office of the Court Clerk. A filing fee pursuant to the Commission's Rules of Practice, OAC 165:5, shall be required.

(d) **Application requirements for Certificate of Convenience and Necessity.** An application for a Certificate of Convenience and Necessity shall include information and attachments which are certified as true and correct by an officer of any corporate applicant, or an authorized representative of an unincorporated applicant. The Commission reserves the right to deny or dismiss, without prejudice, any application found not to be in compliance with this subchapter. If an applicant is unable to produce any information required in this subsection, the applicant must provide a statement explaining why the information is not included.

(1) The application shall contain the following information:

(A) The complete name, including any and all trade name(s) under which business will be conducted pursuant to 18 O.S. § 1140, corporate or other headquarters street address and names/addresses of principal or corporate officers of the entity proposing to sell telecommunications service or provide Special Universal Services to the public in the State of Oklahoma. The telephone number and, if applicable, the toll-free number will also be included.

(B) If different from those provided pursuant to subparagraph (1)(A) of this Section, the names and address(es) of all officers and corporate or primary offices of the applicant for a Certificate of Convenience and Necessity located in the State of Oklahoma and the name(s) and address(es) of senior management personnel responsible for Oklahoma operations.

(C) A description of any facilities that will be used to provide services in Oklahoma, and whether applicant intends to add additional facilities that will be used to provide services in Oklahoma.

(D) A written affirmation, signed before a Notary Public by someone with authority to bind the corporation or entity, containing the following statements:

(i) That the information contained in the application is true and correct;

(ii) That the applicant is familiar with and will comply with all federal and state laws, and the rules and orders of this Commission;

(iii) That for each area or exchange(s) an applicant proposes to serve, the applicant agrees to offer the provisioning of service to all end-users within that area or exchange(s) on a nondiscriminatory basis;

(iv) That the applicant understands the Commission's contempt authority;

(v) That the applicant will contribute to the Oklahoma Universal Service Fund pursuant to OAC 165:59;

(vi) That the applicant will comply with the provisions of 165:55-13-10.1 and will include a statement to this effect in its tariffs;

(vii) That the applicant ~~either provides only data services~~ is a data-only provider or is seeking a CCN exclusively in order to seek reimbursement from the OUSF under 17 O.S. § 139.109.1(B)(4) for the provision of Special Universal Services, or, if not, that prior to commencing to provide local exchange service the applicant will notify each Public Safety Answering Point ("PSAP") within their service area that they will be providing service within the area served by the PSAP, and provide each PSAP with contact information in case there are issues with the completion of calls by the customers of the Applicant. The attachment shall also state that the Applicant will comply with the requirements of 17 O.S. § 131 and will collect and disburse the E911/911 fee as required by 63 O.S. § 2814. Such affirmation should also include a statement that applicant will provide proof to the Commission of such compliance within thirty (30) days following Applicant's initial provisioning of local service;

(viii) That the applicant understands that before it ceases, discontinues, or curtails operations and/or service, it must file with the Commission and provide each affected customer, in the manner

required by the Commission, notice of the intended action, and, if the change impacts the availability or operation of E911 service, must also provide notice to any E911/911 Database Management Service Provider, pursuant to OAC 165:55-15-5;

(ix) A statement that the applicant, its owners (individuals and/or entities) or investors holding more than five (5) percent ownership, or companies, or officers and senior management, are not currently under investigation or involved in any pending or concluded investigations or litigation, either in this state or in another state or jurisdiction, for violation of any deceptive trade or consumer protection law or regulation related to the operation of a regulated industry, if that is the case;

(x) A statement that the applicant, or its owners (individuals and/or entities) or investors holding more than five (5) percent ownership, or companies, or officers and senior management, have not been fined, found guilty, sanctioned or otherwise penalized either in this state or in another state or jurisdiction for violation of any consumer protection law or regulation related to the operation of a regulated industry, if that is the case; and

(xi) If either of the statements required in (ix) and (x) above is untrue, a detailed explanation of the circumstances of the investigation or fine, sanction, or penalization including a detailed description of the cause(s), the number of customers involved, and current status of the proceeding.

(xii) A statement as to whether applicant currently seeks state or federal universal service funding of any kind for services provided in the state(s) in which applicant is currently authorized to provide service, and whether applicant intends to seek Oklahoma Universal Service Fund funding in Oklahoma.

(2) The attachments to the application shall include the following:

(A) Copies of the applicable Articles of Incorporation, Articles of Organization, and/or partnership agreement, and/or Joint Venture agreement and, where they exist, by-laws or operating agreement of the applicant for a Certificate of Convenience and Necessity and any entity or individual owning a whole or controlling interest in the applicant for a Certificate of Convenience and Necessity.

(B) A copy of the applicable certificate, issued by Oklahoma's Secretary of State, to transact business in the State of Oklahoma, and evidence that applicant is in good standing with the Oklahoma Secretary of State.

(C) A copy of the Corporate Trade Name Report, issued by Oklahoma's Secretary of State, shall be provided for each and every trade name utilized by the telecommunications service provider, data-only provider, or IXC, i.e. a "d/b/a".

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(D) Proof that the third-party surety bond, surety bond or letter of credit required in subsection ~~(g)~~(h) of this Section has been obtained, if applicable.

(E) Documentation indicating the applicant's organizational structure and ownership such as:

(i) For corporations, limited liability companies, partnerships and/or joint ventures, the applicant's stockholders annual reports and SEC 10Ks for the last three (3) years, if applicable, or, if the company is not publicly traded, its financial statements for the last three (3) years, if available, or other documentation as may be requested by the Commission.

(ii) A sole proprietor, as well as a limited liability company, shall provide financial statements for the last three (3) years, if available, or other documentation as may be requested by the Commission.

(F) A brief description of its history of providing the requested telecommunications service, Special Universal Services, or other telecommunications services, in order to demonstrate its managerial experience. The history shall include a list of the geographic areas in which it previously provided service and/or is currently providing service and such other documentation as may be requested by the Commission. Applicants for a Certificate of Convenience and Necessity without prior experience shall list the experience of each principal officer, partner, or the sole proprietor in order to demonstrate its managerial ability, and/or provide other documentation as may be requested by the Commission.

(G) A description of the applicant's experience in providing telecommunications services or Special Universal Services in order to demonstrate its technical abilities. In the case of applicants for a Certificate of Convenience and Necessity without prior experience, the applicant shall provide documentation which supports its technical abilities or other documentation as may be requested by the Commission.

(H) The name, address and toll-free telephone number that an end-user may contact concerning repairs and maintenance, complaints, billing questions, refunds and any other customer service-related inquiries.

(I) The contact name, address, and telephone number of the individual with overall responsibility for repairs and maintenance, complaints, billing questions, refunds, and any other customer service-related inquiries. This will be the principal contact for ~~the Commission's Consumer Services Division~~ CSD regarding complaints involving the telecommunications service provider, IXC or data-only provider.

(J) The contact name, address and telephone number of the principal contact to be utilized by the Commission's Public Utility Division regarding any questions which are not related to customer service.

(K) A list of all other states, if any, where:

(i) The applicant is authorized to operate;

(ii) Authorization to operate is pending;

(iii) A request for authorization has been denied, including the reason stated for denial, with a certified copy of the denial document attached; and/or,

(iv) Authorization has been revoked, with a certified copy of the revocation document attached.

(L) A complete set of proposed initial tariffs which include the terms and conditions of service and all rates and charges for each service classification shall be in a format consistent with Subchapter 5 of this Chapter or a statement that the applicant will file tariffs pursuant to OAC 165:55-3-3. A company may elect to post Terms of Service on a publicly available website, subsequent to the approval of their initial tariffs.

(M) A description of the applicant's proposed service territory.

(N) A description of the deposit, if the applicant intends to collect deposits, and disconnection rules to be applied to end-users by the applicant, all of which shall conform to Subchapters 9 and 11 of this Chapter.

(O) A statement setting forth the accounting system to be utilized by the applicant (the FCC-approved Uniform System of Accounts or another accounting system) and a Chart of Accounts.

(P) A listing of the complete name(s), including any trade name(s), corporate or primary headquarters street address(es) and names/addresses of principal officers of any affiliates, individuals or investors holding more than five (5) percent ownership, and/or subsidiaries providing telecommunications and/or other services to the entity making the application proposing to sell the requested telecommunications service or Special Universal Services to the public in the State of Oklahoma, unless otherwise ordered by the Commission.

(Q) An affirmation that the Applicant will maintain a record of complaints in a manner consistent with OAC 165:55-3-23.

(R) A copy of the applicant's proposed letter of authorization to be used by the telecommunications service provider to obtain written authorization from an end-user to switch telecommunications service providers or a copy of the text of the proposed script of the verification, which must be approved by the Director of the Public Utility Division, consistent with OAC 165:55-19-1.

(S) A statement regarding whether the applicant intends to utilize the services of a billing agent to issue bills to end-users.

(T) A description of applicant's parameters for determining creditworthiness if applicant intends to perform credit checks prior to providing service to a potential end-user.

(3) The Public Utility Division Staff may issue data requests for additional information during its initial review of an application.

(4) Agreements in accordance with OAC 165:55-17-7, if any, between telecommunications service providers shall be provided to the Public Utility Division as soon as such agreement(s) become available. Protective relief may be sought pursuant to 51 O.S. § 24A.22.

(e) Requirements applicable to CCN requests exclusively for purposes related to 17 O.S. § 139.109.1(B)(4). An applicant for a CCN for the limited purpose of qualifying as an eligible provider, as that term is defined at 17 O.S. § 139.102(11), in order to be eligible to seek reimbursement from the OUSF for the provision of Special Universal Services as provided at 17 O.S. § 139.109.1(B)(4) shall submit an application consistent with the requirements of this subsection.

(1) All applications for a CCN pursuant to this subsection shall include the information specified at OAC 165:55-3-1(d)(1)(A), 165:55-3-1(d)(1)(B), 165:55-3-1(d)(1)(D)(i), 165:55-3-1(d)(1)(D)(ii), 165:55-3-1(d)(1)(D)(iv), 165:55-3-1(d)(1)(D)(v), 165:55-3-1(d)(1)(D)(vii), 165:55-3-1(d)(1)(D)(ix), 165:55-3-1(d)(1)(D)(x), 165:55-3-1(d)(1)(D)(xi), 165:55-3-1(d)(1)(D)(xii), 165:55-3-1(d)(2)(A), 165:55-3-1(d)(2)(B), 165:55-3-1(d)(2)(C), 165:55-3-1(d)(2)(E), 165:55-3-1(d)(2)(F), 165:55-3-1(d)(2)(G), 165:55-3-1(d)(2)(H), 165:55-3-1(d)(2)(I), 165:55-3-1(d)(2)(J), 165:55-3-1(d)(2)(K), and 165:55-3-1(d)(2)(P).

(2) The application shall also contain the following information:

(A) A full description of any investigations of the applicant, its owners (individuals and/or entities) or investors holding more than five (5) percent ownership, or companies, or officers or senior management in conjunction with participation in any local, state or federal universal service fund or subsidy program.

(B) A full description of any investigations of the applicant, its owners (individuals and/or entities) or investors holding more than five (5) percent ownership, or companies, or officers or senior management officers, owners, senior management, investors or affiliates for potential violations of laws, rules or regulations related to the operation of an entity within a regulated industry.

(C) For each investigation described in (A) and/or (B) provide an indication of the disposition of any ongoing investigations and, if concluded, the investigating agency's findings.

(D) A listing of all affiliates, subsidiaries, or partnerships that participate or collaborate in any manner with the applicant in providing and/or administering any services supported by a local, state or federal universal service fund or subsidy program.

(E) An affirmative statement that the applicant understands and agrees that any request for CCN authority beyond the limited purpose of qualifying for reimbursement from the OUSF for the provision of Special

Universal Services under 17 O.S. § 139.109.1(B)(4) would require an application for authority under OAC 165:55-3-1(C).

(F) An informational tariff describing the services to be offered, any limitations on the availability of those services within Oklahoma, and general terms and conditions.

(ef) Requirements for expanding authority under an existing CCN. An Applicant wishing to expand its service authority under an existing Certificate of Convenience and Necessity granted pursuant to Chapters 55, 56, 57 and/or 58, must make application to the OCC and provide all information and notice as required in Sections 165:55-3-1(c) and 165:55-3-2. However, information submitted in support of a previous Application for certification, if such Application was approved by the OCC, may be used in support of the current Application by providing a written affirmation, signed before a Notary Public, and by someone with authority to bind the Applicant, stating that the previously submitted information is still true and correct, and circumstances have not changed. If the previously submitted information is no longer true and correct, or if circumstances have changed, Applicant shall submit updated information along with a written affirmation fully explaining all changed circumstances. This section shall not apply to an Applicant wishing to expand its existing service territory granted under an existing CCN. Such an application shall be filed pursuant to OAC 165:55-17-3.

(fg) Approval requirement. No Certificate of Convenience and Necessity shall be granted except by order of the Commission, after notice and hearing, if any, as directed by the Commission or unless otherwise provided in this Chapter, or by the laws of the State of Oklahoma.

(gh) Surety requirements for an applicant for Certificate of Convenience and Necessity. To ensure the protection of the applicant's end-users, the applicant that intends to collect deposits from end-users, for a Certificate of Convenience and Necessity shall maintain a third-party surety bond, surety bond or irrevocable letter of credit, as may be determined by the Commission during the certification process, as set forth in this subsection.

(1) An applicant that does not have at least one million dollars (\$1,000,000) net book value invested in telephone plant and/or telephone facilities located in Oklahoma shall be required to post and maintain a third-party surety bond, surety bond or irrevocable letter of credit in, at a minimum, an amount sufficient for the indemnification of one hundred ten percent (110%) of its projected customer deposits.

(2) The third-party surety bond, surety bond or irrevocable letter of credit shall be maintained as long as the telecommunications service provider is furnishing telecommunications services in the State of Oklahoma pursuant to this Chapter, unless modified or released pursuant to Commission order.

(3) The Commission may modify the requirements of this subsection for good cause shown, after such notice and hearing, if any, as the Commission may require.

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(hi) **Transferability of certificates.** Any certificate granted under this section shall not be transferable without prior approval of the Commission and shall continue in effect until further order of the Commission.

(hj) Prior to providing service in Oklahoma, the Applicant shall jointly test interoperability with the 911/E911 PSAPs in their service area and provide verification of interoperability to the Commission and the PSAP. If testing is not applicable to the services for which CCN authority has been requested, a statement to that effect will be included in the CCN application.

165:55-3-2. Notice requirements when filing an Application for Certificate of Convenience and Necessity

Applicants seeking a Certificate of Convenience and Necessity shall meet all notice requirements as set forth in this Section.

(1) **Requirements for filing an Application of a Certificate of Convenience and Necessity.** An Application of a Certificate of Convenience and Necessity shall be delivered by mail, electronic mail or by personal service to the following people and/or entities:

(A) The Attorney General of the State of Oklahoma;

(B) The Director of the Public Utility Division of the Oklahoma Corporation Commission;

(i) The Application delivered to the Director of the Public Utility Division shall be file-stamped by the Oklahoma Corporation Commission Court Clerk's Office and shall be delivered to the Director of the Public Utility Division in electronic copy form only.

(ii) The Director of the Public Utility Division shall place the Application of Certificate of Convenience and Necessity on the Commission's website, <http://www.occeweb.com>, within five (5) business days of receipt.

(C) The governing body of each Enhanced 911 Public Safety Answering Point (E911 PSAP) operating in the proposed service territory of the Applicant.

(D) The ILEC in the proposed service territory.

(E) Sections (C) and (D) of this subsection shall not apply to applications for a certificate of convenience and necessity filed exclusively for the limited purpose of receiving reimbursement from the OUSF for the provision of Special Universal Services in accordance with 17 O.S. § 139.109.1(B)(4).

(2) **Publication of a Notice of Application of a Certificate of Convenience and Necessity.** The Notice required by 17 O.S. § 132 shall be published as follows:

(A) In a newspaper of general circulation once a week for two (2) consecutive weeks with at least seven (7) days apart in each service territory affected.

(B) Publication shall be at the expense of the applicant.

(C) A "Proof of Publication" document shall be filed with the Oklahoma Corporation Commission

Court Clerk's Office within fifteen (15) days of the last publication date.

(3) **Requirements for a Notice of Hearing on an Objection to a Certificate of Convenience and Necessity.**

(A) When an objection is made in a cause of an Application of a Certificate of Convenience and Necessity, the Applicant shall promptly file a Notice of Hearing at the Oklahoma Corporation Commission Court Clerk's office requesting a date for a hearing on the merits of the application.

(B) Within ten business days prior to the date of the hearing, the Applicant shall serve the notice by delivering a file-stamped copy by mail, electronic mail or by personal service to the following people and/or entities:

(i) The Attorney General of the State of Oklahoma;

(ii) The Director of the Public Utility Division of the Oklahoma Corporation Commission; and

(iii) Any Interveners, including the person or entity filing the objection.

165:55-3-3. Approval of initial tariffs

(a) No later than twelve (12) months after being granted a Certificate of Convenience and Necessity, pursuant to OAC 165:55-3-1, a telecommunications service provider, or IXC shall file an application requesting approval of its initial tariffs, unless filed pursuant to OAC 165:55-3-1(d)(2)(L), which include the terms and conditions of service and all rates and charges for each service classification, in a format consistent with Subchapter 5 of this Chapter. Notice of such filings shall comply with OAC 165:55-5-11~~(e)~~(d).

(b) The initial tariffs shall not become effective except by order of the Commission after such notice and hearing, if any, as directed by Commission.

(c) Not later than thirty (30) days after approval of the initial tariffs, an original and two (2) copies of the approved tariffs, which conform to OAC 165:55-5-20, shall be provided to the Public Utility Division.

(d) With the application requesting approval of a complete set of proposed initial tariffs, the telecommunications service provider, or IXC, shall file proof that the third-party surety bond, surety bond or letter of credit required in OAC 165:55-3-1~~(g)~~(h) has been obtained, if applicable.

(e) This subsection does not apply to providers with a Certificate of Convenience and Necessity limited to authority to receive reimbursement for the provision of Special Universal Services in accordance with 17 O.S. § 139.109.1(B)(4). Such entities will provide informational tariffs in accordance with OAC 165:55-3-1(e)(2)(F).

PART 5. RECORD REQUIREMENTS

165:55-3-22. Records to be provided to the Commission

(a) **Annual report of operations.** Each telecommunications service provider and IXC shall provide to the Director

of the Public Utility Division an annual report, in a format developed by the Director of the Public Utility Division, no later than May 1 of the year following the reporting year. Proposed revisions to the Annual Report format will be posted to the OCC website at least ninety (90) days prior to their effective date. All carriers will be notified of the posting via e-mail, based on addresses supplied by carriers. Any carrier that objects to the proposed revisions to the Annual Report format may file an Application with the Commission requesting relief from the applicability of the format changes. The filing of an Application will suspend the applicability of the proposed format revisions until an Order is issued by the Commission. Unless an Order revising the Annual Report format is entered at least 90 days prior to the May 1 filing deadline, carriers will not be required to file an Annual Report in the revised format until the following year.

(b) **Confidentiality of annual report.** All non-publicly available information included in the annual report or an ETC's FCC Form 481 or FCC Form 555 will be considered confidential by the OCC.

(c) **Proof of third-party surety bond, surety bond or irrevocable letter of credit.** Where applicable, not later than May 1 of each year, each telecommunications service provider and IXC which does not have at least one million dollars (\$1,000,000) net book value invested in telecommunications plant and/or telecommunications facilities located in the State of Oklahoma, shall provide annually, to the Director of the Public Utility Division, proof of the continuing existence and sufficiency of the required third-party surety bond, surety bond or irrevocable letter of credit providing coverage at a level of at least one hundred and ten percent (110%) of customer deposits. Such proof shall be in a format developed by the Director of the Public Utility Division and approved by the Commission.

(d) **Exchange maps.** Each telecommunications service provider shall provide the Director of the Public Utility Division two (2) copies of updated exchange maps when the boundaries of an exchange(s) are changed. The maps and descriptions shall be in sufficient detail to permit the location of exchange boundaries on the ground, and be consistent with the format set forth in this subsection.

(1) Each exchange map provided after the effective date of this Chapter shall conform to the following:

- (A) One exchange service area per sheet.
- (B) Each map shall be on eight and one-half by eleven inches (8.5" x 11") (or larger sheet which folds down to eight and one-half by eleven inches (8.5" x 11"), twenty pounds (20 lbs.) or heavier, white paper.
- (C) Each township and range will be specified along the side of the map and, at a minimum, each corner section will be numbered.
- (D) The outline of the exchange service area will be a heavy black line with an "E" every one inch (1") or two inches (2") along the boundary.
- (E) The name of adjacent incumbent LEC exchanges will be indicated on the exchange map to identify their relative location.

(2) When said boundary map changes involve more than one telephone exchange and more than one incumbent LEC, the changes involved shall be coordinated between the incumbent LECs concerned and a "Joint Application" submitted. After an order is issued by the Commission the incumbent LECs shall submit revised exchange maps containing the revised territory, the new certificate number, the cause number, the order number, and the date of the order approving the change. A copy of each current exchange map shall be made available for review to any interested person upon reasonable notice containing:

- (A) Application number.
- (B) Maps showing the changes in contrasting colors.
- (C) Metes and bounds of changes.
- (D) Proposed orders (one for each exchange) with complete metes and bounds of the revised exchange(s).

(e) **Competitive LEC service territories maps.** Each competitive LEC shall either identify the LEC exchanges of their service territory or maintain up-to-date maps showing its service territory. The maps and descriptions shall be in sufficient detail to establish the location of incumbent LEC exchange boundaries on the ground. Each map provided shall conform to the format set out in OAC 165:55-3-22(c)(1). Two (2) copies of each map shall be provided to the Director of the Public Utility Division.

(f) **Contracts and agreements.** Upon request by the Director of the Public Utility Division, a TSP or IXC shall provide a copy of a contract entered into by the TSP or IXC for regulated services.

(g) **Contact names.** Each telecommunications service provider and IXC shall notify, in writing, the Director of the Public Utility Division ~~and the Director of the Consumer Services Division~~ within thirty (30) days of a change in the company-designated contacts for Public Utility Division and ~~Consumer Services Division~~ CSD issues.

(1) The update shall include the name(s), physical street address(es), electronic mail addresses and telephone number(s) of the designated individual(s).

(2) The contact name(s) provided pursuant to this subsection shall be the individual(s) primarily responsible for:

- (A) Providing customer service;
- (B) Repair and maintenance;
- (C) Answering complaints;
- (D) Authorizing and/or furnishing refunds to customers; and,
- (E) Tariff issues.

(h) **Other information.** Each telecommunications service provider and IXC shall promptly furnish such other information as the Commission Staff may request, unless otherwise ordered by the Commission.

SUBCHAPTER 5. RATES AND TARIFFS

PART 1. TARIFF FILING

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165:55-5-1. Tariffs and/or Terms of Service required

(a) Except as provided in this Subchapter, a telecommunications service provider or IXC shall charge for the provisioning of regulated telecommunications services to its end-users only the rates and charges contained in its tariffs on file with and approved by the Commission or Terms of Service. No deviation from a tariff or Terms of Service shall be permitted, except as permitted by OAC 165:55-5-10.3 or unless otherwise authorized by the Commission. The provisions of each telecommunications service provider's or IXC's filed tariff and/or Terms of Service are binding upon the telecommunications service provider, IXC and the end-user as to the rates and charges for service and the terms and conditions of service. Notwithstanding the foregoing and OAC 165:55-3-3, neither a telecommunications service provider nor an IXC shall be required to file a written tariff with the Commission for any service except payphone access services, E911/911 access services, or switched access services.

(b) A telecommunications service provider or an IXC which has a written tariff on file with the Commission may withdraw the tariff, except for payphone access services, E911/911 services, or switched access services if the telecommunications service provider or IXC:

- (1) provides written notice to the Director of Public Utility Division and the Attorney General, that it is withdrawing the tariff,
- (2) posts the Terms of Service, and
- (3) provides the Commission with the web page information where the language is posted.

(c) The Commission maintains the same authority to review the Terms of Service, of a telecommunications service provider or IXC, as permitted by OAC 165:55-5-10.

(d) All tariff revisions shall be deemed approved by the Commission on the day following the day the tariff revision is submitted to the Commission. Revisions to the Terms of Service on a telecommunications service provider's or IXC's website will become effective on the day following the day the revision is posted on the website, or as otherwise indicated on the website.

(e) A data-only provider, with a CCN granted exclusively for the purpose of seeking reimbursement from the OUSF under 17 O.S. § 139.109.1(B)(4), shall maintain an informational tariff with current terms, conditions and rates applicable to the Special Universal Services it provides. Any modifications to the data-only provider's terms, conditions or rates, shall be submitted to the Director of Public Utility Division prior to the effective date of such modifications.

SUBCHAPTER 7. DIRECTORIES, TELEPHONE NUMBERS, AND CUSTOMER-PROVIDED EQUIPMENT

165:55-7-1. Telephone directories

(a) **Provision of directory to end-users; frequency.** Each telecommunications service provider shall provide in conjunction with the provisioning of local exchange service, or make arrangements to provide to its end-users an alphabetical

telephone directory for each service territory, exchange or group of exchanges. Telecommunications service providers may furnish white page directories in a variety of electronic formats, including CD-Rom, via the internet, or as printed directories. Such directory shall be issued at intervals consistent with satisfactory service, which, in the absence of unusual circumstances, will be at least once each year. If any alternative to a printed paper directory is provided, customers are also to be furnished with notification at the time the directory is issued that they may request a printed version of their local directory at no charge. The notification shall also include a toll free number established for honoring such customer requests. A directory for an exchange or calling area may be issued.

(b) **Listing in directory.** Each telecommunications service provider shall provide its end-users in conjunction with the provisioning of local exchange service, without charge, one listing in the white page directory issued pursuant to this Chapter and inclusion in a database used to provide directory assistance for the end-user's geographic area.

(c) **Provision of directory.** Unless the Commission directs otherwise each customer shall be furnished at the customer service address, one (1) directory for each access line being furnished him under current tariffs, unless the customer and the telecommunications service provider agree this requirement can be fulfilled in an alternative manner. Each telecommunications service provider shall make available its directory to telecommunications service providers for distribution to their end-users.

(d) **Contents of directory.** The directory provided to end-users pursuant to this Section shall contain the following information:

(1) **Minimum requirements.** Each telecommunications service provider shall assure that its end-users receive a directory which includes the following information:

- (A) The name of the exchange or area covered and the date of issue on the front cover;
- (B) Emergency numbers;
- (C) Instructions to access directory assistance;
- (D) Instructions to access repair service;
- (E) Instructions for placing long distance and local calls;
- (F) Instructions for obtaining an itemization of the end-user's current monthly statement;
- (G) Instructions to access Telecommunication Relay Service; and
- (H) A notice prominently displayed on the table of contents page which shall state: "This directory contains important information about your rights as a telephone end-user on page (Here the telecommunications service provider will insert the page number on which the notice shall appear)". In the absence of a table of contents page, said notice shall be prominently displayed on the inside of the front cover.

(2) A statement shall be submitted to ~~the Consumer Services Division of the Commission~~ CSD for approval, at least thirty (30) days prior to being submitted for publication in a directory or distributed as a mailing

or otherwise. Unless notified to the contrary by ~~the Consumer Services Division~~CSD within fifteen (15) days after submission, the statement shall be considered approved. Once approved by ~~the Consumer Services Division~~CSD, the statement need not be resubmitted to ~~the Consumer Services Division~~CSD for further approval, unless and until this Chapter is changed by the Commission to require additional data. The statement shall at least describe or include:

- (A) Billing procedures.
 - (B) Customer payment requirements and procedures.
 - (C) Deposit and guarantee requirements.
 - (D) Conditions of termination, discontinuance, and reconnection of service.
 - (E) Procedures for handling inquiries.
 - (F) A procedure whereby an end-user may avoid discontinuance of service during a period of absence.
 - (G) The telephone number and address of all offices of ~~the Commission's Consumer Services Division~~CSD.
 - (H) The statement that the telecommunications service provider is regulated by the Commission.
 - (I) Notification that the end-user may request an adjustment if service is interrupted for periods in excess of twenty-four (24) hours.
- (3) Additional information. The directory shall contain additional information concerning a telecommunications service provider, as requested by a telecommunications service provider, to the same extent that the directory provider includes similar information for itself or its affiliates offering local exchange service within the geographic area covered by the directory based on rates, terms and conditions that are just, reasonable and nondiscriminatory.
- (e) **Liability for errors.** The liability of the telecommunications service provider for an error or omission in its telephone directory, or for an error or omission on intercept service, shall not exceed the amount of actual damage suffered, and in no event shall its liability exceed an amount equal to local exchange service charged to the end-user for the listed service for the period during which the directory containing the error or omission is the last published directory of the exchange.
- (f) **Access to publishing information.** Upon request, a telecommunications service provider shall provide directory listings gathered in its capacity as a provider of local exchange service on a timely and unbundled basis, under nondiscriminatory and reasonable rates, terms, and conditions, and to any person upon request for the purpose of publishing directories.

165:55-7-2. Telephone numbers and changes

(a) A telephone number shall be deemed a national resource and is not the property of either the telecommunications service provider or the end-user. Initial telephone numbers for end-users establishing a local exchange service account shall be assigned by the telecommunications service provider then serving the end-user. Local exchange service end-users shall not be required to change telephone numbers solely due to a change in telecommunications service providers. The

telecommunications service provider may change the number assigned to a customer upon reasonable notice but only in order to give better service and not as an accommodation to another customer. Changes in telephone numbering plans may be made upon reasonable notice, in order to meet the needs of expansion or better service. Unless changed by the number portability requirements or the numbering administration guidelines established by the FCC, a customer who supersedes an account in order to obtain the telephone number of a previous customer will accept all liabilities for that account. The superseding customer will then retain the telephone number until the account is superseded or the superseding customer has no further use of it for service purposes. Any unresolved dispute arising between end-users or between an end-user and a telecommunications service provider over use of a telephone number may be mediated by ~~the Commission's Consumer Services Division~~CSD.

(b) Whenever an end-user's number is changed on the initiative of the telecommunications service provider after the directory has been issued, the telecommunications service provider shall at no charge to the end-user intercept all calls to the former number and give the calling party the new number. Such intercept service shall be provided until the next directory is published, if the central office equipment permits and the number is not in service or the end-user agrees otherwise. Such numbers have last priority for reassignment. In the event the change in an end-user's telephone number is necessitated by action of the telecommunications service provider providing intercept service, the telecommunications service provider serving the end-user shall be exempt from any charges for intercept service

(c) Whenever the end-user's number is changed by reason of change of location or service to the end-user, or at their request, intercept service will be provided for a reasonable time (of at least thirty (30) days) if central office equipment permits and the number is not in service.

(d) In the event of error in the listed number of any end-user in the telecommunications service provider's directory, the telecommunications service provider shall, at no charge to the end-user, intercept all calls to the listed number until the next directory is published provided central office equipment permits and the number has not been assigned to another end-user, or make other reasonable arrangements. In such case, and in the case of an error in or omission of the name listing of an end-user, the correct listing and number shall be available through directory assistance. If the directory listing error is caused by the telecommunications service provider providing intercept service, the telecommunications service provider serving the end-user shall be exempt from any charges for intercept service.

(e) In areas equipped with E911 emergency service, whenever the end-user's number is changed by reason of change of location or service to the end-user or there is a change in service provider with or without a change to the end-user's number, the telecommunications service provider shall report such changes to the appropriate E911 emergency number database within two (2) business days, or as required by agreement with appropriate E911 agencies within the state, after completion

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of service orders. In the event of an error report, the telecommunications service provider shall correct the error within two (2) business days, unless the agreement with the appropriate E911 agency allows otherwise. This subsection shall not apply to telecommunications service providers who provide data service only.

SUBCHAPTER 9. CUSTOMER BILLING AND DEPOSITS

PART 1. BILLING AND PAYMENT REQUIREMENTS

165:55-9-2. Content of bills

(a) Telecommunications service provider's and IXC's bills should comply with the Federal Truth-in-Billing standard. 47 C.F.R. § 64.2401.

(b) Disclosure of inquiry contacts.

(1) Telecommunications service providers and IXCs shall prominently display on each bill, a toll-free number or numbers by which end-users may inquire or dispute any charges on the bill. Where the end-user does not receive a paper copy of his or her telephone bill, but instead accesses that bill only by e-mail or internet, the telecommunications service provider and IXC may comply with this requirement by providing the disclosure information on the bill, an e-mail, or web site address. Each telecommunications service provider and IXC must make a business address available upon request from an end-user.

(2) A telecommunications service provider and IXC may list a toll-free number for itself, a clearinghouse, or other third party, provided such party possesses sufficient information to answer questions concerning the end-user's account and is fully authorized to resolve the end-user's complaints on the service provider's behalf.

(3) A telecommunications service provider and IXC shall also provide a phone number for ~~the Consumer Services Division of the Oklahoma Corporation Commission~~ CSD.

165:55-9-5. Billing disputes

(a) In the event of a dispute between an end-user and a telecommunications service provider, the telecommunications service provider shall make such investigation as is required by the particular case, and report the results thereof to the end-user. A TSP shall not make any attempt to collect disputed amounts or disconnect service over the disputed portion of a bill for sixty (60) calendar days from the date the dispute is received.

(b) In the event the dispute is not resolved, the telecommunications service provider shall inform the end-user that the end-user may utilize the complaint procedures of ~~Commission's Consumer Services Division~~ CSD. The information to be provided to consumers shall be:

(1) The street address of ~~the Consumer Services Division~~ CSD, which is Oklahoma Corporation Commission, Consumer Services Division, 2101 N. Lincoln Blvd. Suite 580W580, Oklahoma City, OK 73105.

(2) The mailing address of the Consumer Services Division, which is ~~P.O.P.O.~~ Box 52000, Oklahoma City, OK 73152-2000.

(3) The telephone numbers of the Consumer Services Division, which are (405) 521-2331 and (800) 522-8154.

(4) The hours of operation of the Consumer Services Division, which are 8:00 a.m. to 4:30 p.m. Monday through Friday, excluding State holidays.

(c) When a complaint has been made with ~~the Commission's Consumer Services Division~~ CSD, the telecommunications service provider shall be required to forego disconnect procedures on account of nonpayment of any portion of accumulated disputed charges pending investigation by ~~the Commission's Consumer Services Division~~ CSD. The end-user shall be required to pay the undisputed part of the bill, and if not paid, the telecommunications service provider may discontinue service.

SUBCHAPTER 11. SERVICE DENIAL, SUSPENSION AND DISCONNECTION

PART 1. NOTICE REQUIREMENTS

165:55-11-6. Service disputes

(a) In case of controversy arising out of the refusal of a telecommunications service provider to extend service or out of its efforts to disconnect existing service, either party or the Commission staff may make application to the Commission for relief pursuant to OAC 165:55-1-7, OAC 165:55-1-10. If there is an unresolved dispute pending with the Commission concerning a bill and the end-user pays the undisputed portion of that bill, disconnection procedures shall be held in abeyance until the dispute is resolved.

(b) If service is denied or terminated pursuant to this Subchapter, the telecommunications service provider shall advise the end-user of end-user's right to contact ~~the Commission's Consumer Services Division~~ CSD and shall provide the end-user with ~~the Consumer Service Division's~~ CSD's address and the telephone number.

(c) The telecommunications service provider or the end-user may seek assistance from the Commission to review records of the telecommunications service provider and the end-user concerning the end-user's complaint.

(d) After the Commission has notified the telecommunications service provider of a complaint or inquiry from the end-user regarding the end-user's account, the telecommunications service provider shall coordinate communication with the Commission Staff regarding the complaint. The Commission Staff shall be the intermediary between the telecommunications service provider and the end-user until the resolution of the problem has been completed.

165:55-11-7. Written correspondence

(a) Any written correspondence or notices to the end-user by the telecommunications service provider or IXC relating to billing disputes or complaints, which are not otherwise provided for in this Chapter, shall meet the following criteria:

- (1) The correspondence shall be sent to the end-user via the method of delivery chosen by the end-user as provided for in OAC 165:55-9-1 or as otherwise agreed by the end-user and telecommunications service provider. This would include paper, electronic, or other delivery methods.
- (2) The correspondence shall clearly state that it is from the telecommunications service provider or IXC.
- (3) The correspondence shall clearly state any applicable deadlines within which the end-user must take the appropriate action.
- (4) The correspondence shall clearly state that if the end-user is unable to resolve any disputes with the telecommunications service provider or IXC regarding the subject of the correspondence, the end-user may contact ~~the Commission's Consumer Services Division~~ CSD at the address and telephone numbers stated on the correspondence.

(b) Written correspondence shall be considered delivered three (3) business days after the correspondence has been mailed, or if written correspondence is provided electronically to end-user, delivery shall be deemed to occur the same date as sent, unless the electronic notice is returned as undeliverable.

PART 3. SUSPENSION AND DISCONNECTION PROCEDURES

165:55-11-11. Suspension or disconnection for reasons other than nonpayment

(a) Unless otherwise provided in this Chapter, service to an end-user may be suspended or disconnected only upon order of the Commission, upon application and after notice and hearing. Prior to the merit hearing, the Commission may order suspension or disconnection of service for good cause with or without notice to the end-user.

(b) End-users that communicate with the TSP's employee(s) in any manner that is reasonably expected to frighten, abuse, torment, or harass such employee(s) or engage in actions reasonably construed as threat(s) against the TSP's physical assets are subject to immediate disconnection, without notice. A TSP that disconnects an end-user's service under this section will:

- (1) provide written or verbal notice to ~~the Consumer Services Division~~ CSD of the disconnect action prior to the actual disconnect;
- (2) within three (3) business days of the actual disconnect, provide a written description of the circumstances leading to the disconnect action; and
- (3) give the customer written notice, which will include an address and telephone number, for ~~the Consumer Services Division~~ CSD.

(c) ~~The Consumer Services Division~~ CSD may, after an informal inquiry and review of the written description of the

circumstances leading to the disconnect action, direct the TSP to restore services to the affected end-user and/or file an application with the Commission requesting a finding of contempt and the imposition of a fine or other penalty against a TSP that unreasonably suspends or disconnects an end-user pursuant to subsection (b) of this section.

165:55-11-12. Notice of Disconnection and Notice of Suspension

(a) A notice of disconnection or suspension shall contain the following information:

- (1) The words "NOTICE OF DISCONNECTION" or "NOTICE OF SUSPENSION" or words with the same meaning, in print type larger than the print type of the notice text.
- (2) The name and address and the telephone number of the end-user.
- (3) A statement of the reason for the proposed disconnection or suspension of service.
- (4) The date on or after which service will be disconnected or suspended unless appropriate action is taken.
- (5) The telephone number in bold print of the telecommunications service provider where the end-user may make an inquiry.
- (6) The approved charges and procedure for reconnection or approved charges and procedure to avoid suspension.
- (7) A statement that the end-user must contact the telecommunications service provider regarding the disconnection or suspension, prior to contacting ~~the Commission's Consumer Services Division~~ CSD.
- (8) The address and telephone number of ~~the Commission's Consumer Services Division~~ CSD, in print size which is smaller than the print size used for the telecommunications service provider's telephone number.
- (9) The services that are being disconnected or suspended, whether local and/or toll, and if the service to be disconnected or suspended is local service, a statement that the end-user must also contact their IXC if such end-user wishes to terminate such service in order to avoid incurring additional charges for such service.
- (10) Notice of suspension of service relating to past-due amounts shall inform the end-user that the total amount due may include charges for non-deniable and/or not regulated services which would not cause interruption of local service. The notice must indicate a toll-free telephone number of a service center where questions can be referred and payment arrangements made.

(b) The following additional information shall be in the notice unless said information can be obtained in the telephone directory and the notice refers the end-user to the location in the directory where the information can be obtained:

- (1) A statement of how an end-user may avoid the disconnection of service or suspension of service, including a statement that the end-user must notify the telecommunications service provider on the day of payment as to the place and method of such payment when the bill is paid

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at a place other than the office of the telecommunications service provider.

(2) A statement that informs the end-user where payments may be made or how to obtain a listing of authorized payment agencies.

SUBCHAPTER 13. OPERATING AND MAINTENANCE REQUIREMENTS

PART 3. SERVICE STANDARDS

165:55-13-14.1. Tribal Land Link-up program

(a) Each telecommunications service provider who has been designated as an ETC and is receiving high-cost support on Tribal lands, pursuant to 47 CFR Part 54, Subpart D, shall file tariffs or post Terms of Service which offer a Tribal Land Link-up assistance program. This program shall offer:

(1) For an eligible resident living on Tribal land, a reduction consistent with 47 CFR § 54.413(a)(1). The charge from which the reduction is made shall not exceed the customary charge for commencing telecommunications service for a single telecommunications connection at a subscriber's principal place of residence.

(2) A deferred payment schedule consistent with 47 CFR § 54.413(a)(2) may be offered to the subscriber. The charge assessed for initiating service shall not exceed the customary charge for commencing telecommunications service for a single telecommunications connection at a subscriber's principal place of residence.

(b) A qualifying low-income end-user living on Tribal land may choose one ~~of~~ both of the programs set forth in (a)(1) and (a)(2) above of this Section.

(c) A telecommunications service provider, who has been designated as an ETC and is receiving federal high-cost support on Tribal lands, pursuant to 47 CFR Part 54, Subpart D, shall allow an end-user to receive the benefit of the Link-up program for a second or subsequent time only for a principal place of residence with an address different from the residence address at which the Tribal land Link-up assistance was provided previously.

(d) An eligible telecommunications service provider, who has been designated as an ETC and is receiving federal high-cost support on Tribal lands, pursuant to 47 CFR Part 54, Subpart D, shall publicize the availability of Link-up support throughout their designated ETC service area in a manner reasonably designed to reach those likely to qualify for the support.

(e) The end-user qualification criteria for Tribal land Link-up shall be the same as the criteria established for Lifeline in accord with ~~OAC 165:59-9-347~~ C.F.R. § 54.409.

PART 5. SERVICE QUALITY STANDARDS

165:55-13-20. Responsibility for adequate and safe service

(a) A telecommunications service provider is responsible for providing adequate and efficient telephone service to every end-user served by it.

(b) A telecommunications service provider that uses its own local exchange facilities to provide service shall install and maintain its system so as to render safe, efficient, and continuous service, and shall keep all of its lines, equipment, and facilities in a good state of repair.

(c) The recommendations contained in the ~~2002~~2014 Edition of the National Electrical Code (NEC) and the ~~1997~~2012 Edition of the National Electrical Safety Code (NESC) are hereby adopted as the minimum standards governing the installation, construction, and maintenance of communication lines. The recommendations contained in the ~~2002~~2014 NEC will apply on a prospective basis effective ~~July~~September 1, ~~2002~~2017. Local and municipal electrical codes shall not apply to the installation of telecommunications facilities.

(d) The dominant criteria for these standards is voice grade service quality.

(e) All telecommunications service providers, that install temporary drops and temporary cables as interim facilities to ensure service to customers pending permanent placement of those facilities, are required to:

(1) Permanently remove, bury, or install drops and temporary cables as soon as practical, but in no circumstances shall that time exceed ninety (90) days without notification and justification being provided to ~~the Director of the Consumer Services Division~~ CSD prior to expiration of the ninety (90) day period.

(2) Keep records of all temporary drops and temporary cables in each of its exchanges and provide the records to the Commission upon request.

PART 11. INTERRUPTIONS OF SERVICE

165:55-13-52. Notice of service interruptions

(a) The Commission shall be notified as soon as possible, through the Director of the ~~Consumer Services~~ Public Utility Division and the Commission's Public Information Officer, of interruptions in telecommunications services which affect the entire system; a major division thereof; or which, in the judgment of the telecommunications service provider, may cause a high degree of public interest or concern.

(b) The Commission notification process required in subsection (a) of this Section, may be accomplished by facsimile or by electronic methods, twenty-four (24) hours a day, seven (7) days a week; or by phone, during the business hours of 8:00 a.m. through 4:30 p.m., Monday through Friday, and should consist of the following:

(1) An initial contact to advise of the outage; the cause of such outage; the area affected; and, the estimated time for repair;

(2) Intermediate contact to provide status reports, as deemed necessary by the telecommunications service

provider, or as may be requested by the Commission Staff; and,

(3) A conclusory contact detailing the results and completion of the restoration of service.

SUBCHAPTER 15. NOTIFICATION OF TRANSACTIONS AFFECTING CUSTOMERS OR BUSINESS OPERATIONS

165:55-15-1. Notification of certain transactions affecting the customers or operations of a telecommunications service provider or IXC

(a) The parties to an agreement, the performance of which will result in the movement of some or all of the regulated telecommunications services customers of one or more certificated telecommunications services providers or IXCs to a different legal entity, shall, at least forty-five (45) days before the effective date of such proposed transaction, file an original and five (5) copies of a Notification of Transaction with the Commission's Office of the Court Clerk, accompanied by the applicable filing fee, in order to notify the Commission of the transaction. Any related relief, including but not limited to new Certificates of Convenience and Necessity or tariffs, shall be filed as separate causes.

(b) The parties to an agreement, the performance of which will result in the transfer of a Certificate of Convenience and Necessity, with or without the transfer of a tariff, from one legal entity to another legal entity shall, at least forty-five (45) days before the effective date of such proposed transaction, file an original and five (5) copies of a Notification of Transaction with the Commission's Office of the Court Clerk, accompanied by the applicable filing fee, in order to notify the Commission of the transaction.

(c) The parties to an agreement, the performance of which will result in the merger of one or more legal entities with a surviving legal entity which is certificated to provide local and/or interexchange telecommunications services, shall, at least forty-five (45) days before the effective date of such proposed transaction, file an original and five (5) copies of a Notification of Transaction with the Commission's Office of the Court Clerk, accompanied by the applicable filing fee, in order to notify the Commission of the transaction.

(d) This Section shall not require notification to the Commission of transactions which involve only changes in the ownership of the stock of a telecommunication service provider or IXC. Such transactions are not subject to regulation by the Commission.

(e) The Notification of Transaction shall include a copy of the agreement, with all exhibits and schedules, and set forth the following information, if applicable:

- (1) The name of the acquiring entity and the acquired entity.
- (2) Identification of the acquired assets.
- (3) The anticipated completion date and the effective date (if different) of the transaction.

(4) The name of the entity(ies) which will be providing telecommunications services in Oklahoma subsequent to the effective date of the transaction (the "surviving entity").

(5) The name, address and telephone number of a contact person for purposes of the Notification of Transaction.

(6) The names and qualifications of the individuals who will serve as officers and management of the surviving entity.

(7) The name(s), address(es) and telephone number(s) of the representatives of the surviving entity who will be the contact(s) for the Public Utility Division and ~~the Consumer Services Division~~ CSD and will be primarily responsible for:

- (A) Providing customer service;
- (B) Repair and maintenance;
- (C) Answering complaints;
- (D) Authorizing and/or furnishing refunds to customers
- (E) Tariff issues; and,
- (F) Receiving Notices related to causes docketed at the Commission.

(8) An affidavit, ~~including a financial statement~~, that states that the surviving entity possesses the financial ability to provide telecommunications services in the State of Oklahoma.

(9) A copy of the notice which will be provided to affected customers informing them of the transaction and any change in the name of the entity which provides telecommunications services to them or in their rates, charges or terms and conditions of service as a result of the transaction.

(10) Identification of any changes in services to be offered or tariffed rates to affected customers required by the transaction.

(11) A narrative and/or schematic description of the relationship between or among the acquired and acquiring entities and the surviving entity.

(12) An acknowledgment that any tariff revisions shall only be accomplished in a separate filing.

(13) A statement of the approximate number of Oklahoma customers.

(14) In addition, this Section shall not apply to transactions between affiliates that have an Oklahoma Certificate of Convenience and Necessity. If the transaction is going to modify the company name on the customer's bill, forty-five (45) days advance notice must be provided to affected customers.

(f) At the time of filing the Notification of Transaction, the acquiring entity shall provide a copy of the Notification of Transaction, with all attachments thereto, to the Office of the Attorney General of the State of Oklahoma.

(g) The Commission Staff shall review the Notification of Transaction for the purpose of determining whether the proposed transaction should be approved and, in the case of mergers, whether the surviving entity should be allowed to provide telecommunications service in Oklahoma after the effective date of the transaction under the authority of any

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existing Certificate of Convenience and Necessity. The Commission shall act on a notification within forty-five (45) days of the date the notification is filed. No reportable transaction shall be consummated except by order of the Commission. Any person wishing to object to the proposed filing must file an objection with the Commission's Office of the Court Clerk no later than fifteen (15) days after the proposed filing. The Attorney General of the State of Oklahoma shall be granted intervention in such proceeding, if requested.

(h) Within forty-five (45) days of the filing of the Notification of Transaction, the Commission Staff may file a Continuance of Review in the Cause stating that the Commission Staff has not completed its review of the transaction and shall require an additional specified time, not to exceed an additional thirty (30) calendar days, in which to complete such review. The Commission Staff shall accompany such a Continuance of Review with a specification of the additional information, if any, needed to complete this review.

(i) The Commission Staff may, if it determines appropriate, file a Notice in the Cause requiring the acquiring entity and/or the surviving entity to show cause that the proposed transaction and/or merger is lawful, fair to the customers and in the public interest. The filing of such Notice by the Commission Staff will not alone suspend the authority of any entity to operate under an existing Certificate of Convenience and Necessity. Simultaneously with the filing of any such Notice, the Commission Staff shall propose a procedural schedule, including a date for hearing which shall be held within ninety (90) calendar days of the date of the filing of the Notification of Transaction, unless otherwise ordered by the Commission. If such a Notice is filed by the Commission Staff, the acquiring entity and/or surviving entity shall have the burden of establishing that the proposed transaction(s) is lawful, fair to the customers and in the public interest.

(j) After approval of notification of transaction(s), and not later than thirty (30) days after transaction consummation, an original and two (2) copies of the approved tariffs, if necessary, which conform to OAC 165:55-5-20, shall be provided to the Public Utility Division.

SUBCHAPTER 19. UNLAWFUL PRACTICES

PART 1. SLAMMING

165:55-19-1.5. Absolution procedures where the end-user has not paid charges

(a) **Applicability.** This Section shall only apply after an end-user has determined that an unauthorized change, as defined by 165:55-1-4, has occurred and the end-user has not paid charges to the allegedly unauthorized carrier for service provided for thirty (30) days, or a portion thereof, after the unauthorized change occurred.

(b) **Removal of charges for the first 30 days.** An allegedly unauthorized carrier shall remove all charges incurred for service provided during the first thirty (30) days after the alleged unauthorized change occurred, as defined by 165:55-1-4, from

an end-user's bill upon notification that such unauthorized change is alleged to have occurred.

(c) **Challenging an end-user's allegation of unauthorized charges.** An allegedly unauthorized carrier may challenge an end-user's allegation that an unauthorized change, as defined by 165:55-1-4, occurred. An allegedly unauthorized carrier choosing to challenge such allegation shall immediately notify the complaining end-user that:

(1) The complaining end-user must file a complaint with the Commission within thirty (30) days of either:

(A) The date of removal of charges from the complaining end-user's bill in accordance with (b) of this Section or

(B) The date the allegedly unauthorized carrier notifies the complaining end-user of the requirements of this Section, whichever is later; and

(2) A failure to file such a complaint within this thirty (30) day time period will result in the charges removed pursuant to (b) of this Section being reinstated on the end-user's bill and, consequently, the complaining end-user's will only be entitled to remedies for the alleged unauthorized change other than those provided for in 165:55-19-1.3(b)(1). No allegedly unauthorized carrier shall reinstate charges to an end-user's bill pursuant to the provisions of this Section without first providing such end-user with a reasonable opportunity to demonstrate that the requisite complaint was timely filed within the 30-day period described in this Section.

(d) **Procedure if thirty (30) days or fewer of unauthorized charges were incurred.** If the Commission determines after reasonable investigation that an unauthorized change, as defined by 165:55-1-4, has occurred, ~~the Consumer Services Division of the Commission~~ CSD shall issue a factual determination stating that the end-user is entitled to absolution from the charges incurred during the first thirty (30) days after the unauthorized carrier change occurred, and neither the authorized or unauthorized carrier may pursue any collection against the end-user for those charges.

(e) **Procedure if more than thirty (30) days of unauthorized charges were incurred.** If the end-user has incurred charges for more than thirty (30) days after the unauthorized carrier change, the unauthorized carrier must forward the billing information for such services to the authorized carrier, which may bill the end-user for such services using either of the following means:

(1) The amount of the charge may be determined by a re-rating of the services provided based on what the authorized carrier would have charged the end-user for the same services had an unauthorized change, as described in 165:55-1-4, not occurred; or

(2) The amount of the charge may be determined using a fifty percent (50%) Proxy Rate as follows: Upon receipt of billing information from the unauthorized carrier, the authorized carrier may bill the end-user for fifty percent (50%) of the rate the unauthorized carrier would have charged the end-user for the services provided. However, the end-user shall have the right to reject use of this fifty

percent (50%) proxy method and require that the authorized carrier perform a re-rating of the services provided, as described in (e)(1) of this Section.

- (f) **End-user payments for services provided after the first thirty (30) days.** If the unauthorized carrier received payment from the end-user for services provided after the first thirty (30) days after the unauthorized change occurred, the obligations for payments and refunds provided for in this Section shall apply to those payments.
- (g) **Re-billing.** If the Commission determines after reasonable investigation that the carrier change was authorized, the carrier may re-bill the end-user for charges incurred.

165:55-19-1.6. Reimbursement procedures where the end-user has paid charges

- (a) **Applicability.** The procedures in this Section shall only apply after an end-user has determined that an unauthorized change, as defined by 165:55-1-4, has occurred and the end-user has paid charges to an allegedly unauthorized carrier.
- (b) **Order requirements.**
 - (1) ~~If the Consumer Services Division of the Commission~~ CSD determines after reasonable investigation that an unauthorized change, as defined by OAC 165:55-1-4, has occurred, it shall issue a factual determination requiring the unauthorized carrier to forward to the authorized carrier the following:
 - (A) An amount equal to one hundred and fifty percent (150%) of all charges paid by the end-user to the unauthorized carrier; and
 - (B) Copies of any telephone bills issued from the unauthorized carrier to the end-user.
 - (2) This factual determination shall be sent to the end-user, the unauthorized carrier, and the authorized carrier.
- (c) **End-user refund or credit by authorized carrier if payment is received.** Within ten days of receipt of the amount provided for in this Section, the authorized carrier shall provide a refund or credit to the end-user in the amount of fifty percent (50%) of all charges paid by the end-user to the unauthorized carrier. The end-user has the option of asking the authorized carrier to re-rate the unauthorized carrier's charges based on the rates of the authorized carrier and, on behalf of the end-user, seek an additional refund from the unauthorized carrier, to the extent that the re-rated amount exceeds the fifty percent (50%) of all charges paid by the end-user to the unauthorized carrier. The authorized carrier shall also send notice to the Commission that it has given a refund or credit to the end-user.
- (d) **Billing and collection charges.** If an authorized carrier incurs billing and collection expenses in collecting charges from the unauthorized carrier, the unauthorized carrier shall reimburse the authorized carrier for reasonable expenses.
- (e) **End-user refund or credit by authorized carrier if payment is not received.** If the authorized carrier has not received payment from the unauthorized carrier as required by (c) of this Section, the authorized carrier is not required to provide any refund or credit to the end-user. The authorized carrier must, within forty-five (45) days of receiving a factual determination as described in (b) of this Section, inform the

end-user and the Commission if the unauthorized carrier has failed to forward to it the appropriate charges, and also inform the end-user of his or her right to pursue a claim against the unauthorized carrier for a refund of all charges paid to the unauthorized carrier.

- (f) **Reinstatement into programs.** Where possible, the properly authorized carrier must reinstate the end-user in any premium program in which that end-user was enrolled prior to the unauthorized change, if the end-users participation in that program was terminated because of the unauthorized change. If the end-user has paid charges to the unauthorized carrier, the properly authorized carrier shall also provide or restore to the end-user any premiums to which the end-user would have been entitled had the unauthorized change not occurred. The authorized carrier must comply with the requirements of this Section regardless of whether it is able to recover from the unauthorized carrier any charges that were paid by the end-user.

SUBCHAPTER 23. ELIGIBLE TELECOMMUNICATIONS CARRIERS

PART 1. GENERAL PROVISIONS

165:55-23-1. Requirements

The requirements of this Subchapter pertain to the designation of Eligible Telecommunications Carriers by the Commission or the Federal Communications Commission pursuant to 47 U.S.C. § 214(e) and the provision of Supported Services by Eligible Telecommunications Carriers (hereinafter referred to as "ETCs"). All ETCs shall comply with federal requirements, the requirements of this Subsection, and, if also eligible for participation in the Oklahoma Lifeline Fund, the requirements of OAC 165:59-9-1 *et. seq.*

165:55-23-2. ETC Designation

- (a) No person shall receive federal Lifeline funds for Oklahoma customers or Connect America Funds for investment in Oklahoma without first being designated an Eligible Telecommunications Carrier ("ETC") by the Commission or as otherwise provided in 47 C.F.R. § 54.201 and § 54.202. A person seeking to be designated an ETC by the Commission shall file an Application with the Commission, meeting the requirements of the Commission's Rules of Practice, OAC 165:5, and shall provide the following additional information in support of the Application:
 - (1) A description of whether the applicant intends to offer the Supported Services over its own facilities, by resale of another carrier's facilities and/or services, or through a combination of its own facilities and resale of third party facilities and/or services;
 - (2) A description of the service area for which ETC designation is sought, to include a list of exchanges;
 - (3) A description of the applicant's proposed Supported Services;

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- (4) A description of the applicant's plans to advertise the availability of Supported Services within the service area sought;
 - (5) A complete description of the terms, conditions and rates applicable to the applicant's offering of Supported Services.
 - (6) Submit a two-year plan that describes with specificity proposed improvements or upgrades to the applicant's network throughout its proposed service area. Each applicant shall estimate the area and population that will be served as a result of the improvements. Except, a common carrier seeking designation as an ETC in order to provide supported services only under 47 C.F.R. Part 54 Subpart E does not need to submit such a five-year plan.
 - (7) Demonstrate its ability to remain functional in emergency situations, including a demonstration that it has a reasonable amount of back-up power to ensure functionality without an external power source, is able to reroute traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations.
 - (8) Demonstrate that it will satisfy applicable consumer protection and service quality standards. A commitment by wireless applicants to comply with the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service will satisfy this requirement. Other commitments will be considered on a case-by-case basis.
 - (9) For common carriers seeking designation as an ETC for purposes of receiving support only under 47 C.F.R. Part 54 Subpart E, demonstrate that it is financially and technically capable of providing the Lifeline service in compliance with 47 C.F.R. Part 54 Subpart E.
- (b) Each incumbent LEC is designated as an ETC for the territory for which it was certified on the date of the adoption of the Federal Telecommunications Act of 1996.
- (c) For the purpose of eligibility to receive federal universal service support under 47 U.S.C. § 214(e), an ETC shall, throughout its service territory:
- (1) Offer the telecommunications services that are supported by Federal universal service support mechanisms under 47 U.S.C. § 254(c), either using its own facilities or a combination of its own facilities and resale of another telecommunications service provider's services, including the services offered by another eligible telecommunications service provider; and,
 - (2) Advertise the availability of such telecommunications services and the charges thereof using media of general distribution.

165:55-23-3. Records to be provided to the Commission

- (a) **Terms, conditions and rates for Supported Services.** An ETC shall maintain current terms, conditions and rates applicable to its Supported Services in an approved tariff on file with the Commission or pursuant to Terms of Service posted on its website and provided to the Commission. Any

modification to an ETC's terms, conditions and rates for Supported Services, shall be submitted to the Director of Public Utility Division prior to the effective date of such modification. Failure to comply with this Section may result in the filing of an application by the Director of the Public Utility Division to revoke the Telecommunication Service Provider's or wireless provider's ETC designation.

(b) **Location of records.** All records including terms, conditions and rates for its Supported Services, required by this Subchapter shall, be kept at the general office of each ETC and shall be made available to the Commission or its designee upon reasonable request. The ETC shall make such records available to the Commission or its designee at reasonable times for examination and inspection at a location designated by the Commission.

(c) **Retention of certification records.** All records, including the Lifeline application form showing proof of eligibility and a report from the third party verification system that shows the identity and address of the Lifeline customer was verified (unless the ETC has obtained a waiver from the requirement to utilize a third party verification system), shall be preserved for a minimum of three (3) years.

(d) **Required information to be reviewed.** Each ETC shall obtain information as follows: At the time a prospective Lifeline subscriber signs up for initial service, each ETC shall obtain:

(1) a legible copy of the subscriber's Lifeline application or service request form showing the customer's name, physical address and proof of eligibility;

(2) the subscriber's information necessary to demonstrate eligibility under 47 C.F.R. § 54.410; and

(3) the subscriber's government issued photo identification unless the ETC utilizes a third party verification system that has been approved by the Director of the Public Utility Division.

(4) Each ETC shall provide annually to the Director of the Public Utility Division a copy of the ETC's FCC Form 555 as filed with Universal Service Administrative Company ("USAC") and the FCC.

(e) **Contact names.** Each ETC shall notify, in writing, the Director of the Public Utility Division ~~and the Director of the Consumer Services Division~~ within thirty (30) days of a change in the company-designated contacts for Public Utility Division and ~~Consumer Services Division~~ CSD issues.

(1) The update shall include the name(s), address(es) and/or telephone number(s) of the designated individual(s).

(2) The contact name(s) provided pursuant to this subsection shall be the individual(s) primarily responsible for:

(A) Providing customer service;

(B) Repair and maintenance;

(C) Answering complaints;

(D) Authorizing and/or furnishing refunds to customers; and,

(E) Terms, conditions and rates of Supported Services.

(f) **Other information.** Each ETC shall promptly furnish such other information as the Commission Staff may reasonably request, unless otherwise ordered by the Commission.

(g) **Supported Services.** Each ETC shall provide confirmation that each Lifeline plan of the ETC provides the Supported Services.

(h) **Exchanges.** Each ETC shall retain a listing of all of the exchanges within which the ETC has provided Lifeline Service during the preceding twelve (12) months and the addresses of households who requested service and were denied Lifeline service for reasons other than the household did not meet eligibility requirement.

(i) **Annual report of operations.** No later than May 1 each year, unless otherwise determined by the Commission, each ETC shall provide an annual report of operations for the preceding calendar year, to the Director of the Public Utility Division, in a format approved by the Director of the Public Utility Division. In addition, each ETC shall provide a copy of any annual report required to be filed with any federal regulatory agency(ies). As a component part of the annual report of operations, each ETC shall attach a copy of its Annual Report to Stockholders. All non-publicly available information included in the annual report will be considered confidential by the OCC. On or before July 1, of each year, each ETC shall submit its FCC Form 481 to the Commission, in accordance with FCC regulations.

(j) **Complaints report.** Each ETC shall maintain a record of customer complaints that it has received regarding Supported Services provided by the ETC, consistent with 47 CFR §54.313(a)(4) and 47 CFR §54.422(b)(2).

(k) **Report attestation.** All reports required by this subchapter to be submitted to the Commission shall be attested to by an officer or authorized agent of the ETC.

(l) **Due dates of reports.** All periodic reports required by this Commission must be received on or before the due dates unless otherwise agreed to by the Director of the Public Utility Division.

(m) **Changes affecting Customers or Business Operations.** An ETC proposing changes to operations that affect either customers or business operations in the State, including but not limited to name changes; and additions, modifications or deletions of trade names under which Supported Services will be operated, shall comply with Subchapter 15 of this Chapter.

165:55-23-9. Billing disputes

(a) In the event of a dispute between an end-user and an ETC, the ETC shall make such investigation as is required by the particular case, and report the results thereof to the end-user.

(b) In the event the dispute is not resolved, the ETC shall inform the end-user that the end-user may utilize the complaint procedures of ~~the Commission's Consumer Services Division~~CSD. The information to be provided to consumers shall be:

- (1) The street address of ~~the Consumer Services Division~~CSD, which is Oklahoma Corporation Commission,

Consumer Services Division, 2101 N. Lincoln Blvd. Suite 580W580, Oklahoma City, OK 73105.

(2) The mailing address of the Consumer Services Division, which is ~~P.O.~~P.O. Box 52000, Oklahoma City, OK 73152-2000.

(3) The telephone numbers of the Consumer Services Division, which are (405) 521-2331 and (800) 522-8154.

(4) The hours of operation of the Consumer Services Division, which are 8:00 a.m. to 4:30 p.m. Monday through Friday, excluding State holidays.

(c) When a complaint has been made with ~~the Commission's Consumer Services Division~~CSD, the ETC shall be required to forego disconnect procedures on account of nonpayment of any portion of accumulated disputed charges pending investigation by ~~the Commission's Consumer Services Division~~CSD. The end-user shall be required to pay the undisputed part of the bill and, if not paid, the ETC may discontinue service.

165:55-23-11. Minimum service standards and Supported Services

(a) The purpose of this Section is to create a uniform standard governing the minimum components of the Supported Services for all end-users of an ETC. Supported Services shall be offered by each ETC pursuant to OAC 165:55-23-15 and OAC 165:55-23-17.

(b) If required by the FCC, each ETC shall make available to each end-user subscribing to its Supported Services within its designated service area voice telephony service with the following functionalities:

- (1) voice grade access to the public switched network or its functional equivalent;
- (2) minutes of use for local service provided at no additional charge to end-users;
- (3) access to the emergency services provided by local government or other public safety organizations;
- (4) toll limitation for qualifying low-income consumers.

(c) In addition to the foregoing voice telephone functionalities applicable to all ETCs, wireless providers shall provide ~~the following additional service requirement:~~a level of voice service consistent with the minimum service standards detailed at 47 C.F.R. § 54.408(b)(3).

~~(1) unless approved by Commission order, at least one Lifeline plan containing unlimited anytime minutes of use for local service on Tribal Land;~~

~~(2) unless otherwise approved by Commission order, at the ETC's option and in addition to the unlimited minute Lifeline plan, additional Lifeline plans containing at least one thousand (1000) minutes of use for local service on Tribal Land or five hundred (500) minutes of local use on non-Tribal Land may be offered; and~~

~~(3d)~~ Any plan that is marketed as an unlimited plan that does not contain unlimited local voice minutes must be approved by the Director of the Public Utility Division. If the Director denies the requested unlimited plan, the ETC may seek approval of the plan by Commission Order, after notice and hearing.

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165:55-23-12. Lifeline eligibility requirements

(a) In order to qualify for the federal Lifeline Service Program, an applicant for Lifeline service must meet the qualification requirements of 47 CFR §§ 54.400409 and be certified as eligible consistent with 47 CFR § 54.410. Qualification for the Oklahoma Lifeline Fund program is to be in accordance with OAC 165:59-9-3(b) through 54.415 and show that they:

~~(1) Participate in or receive assistance or benefits, as certified by the Department of Human Services, under a program providing:~~

~~(A) Temporary Assistance to Needy Families;~~

~~(B) Supplemental Nutrition Assistance Program (SNAP) f/k/a Food Stamps, or Food Distribution Program on Indian Reservations, (FDPIR);~~

~~(C) Medical Assistance and/or Medicaid; or~~

~~(D) Supplemental Security Income.~~

~~(2) Participate in Federal Public Housing Assistance;~~

~~(3) Participate in Low Income Home Energy Assistance Programs;~~

~~(4) Participate in or receive assistance or benefits, as certified by the State Department of Rehabilitation Services, under a program providing vocational rehabilitation, including aid to the hearing impaired; or,~~

~~(5) Participate in or receive assistance or benefits, as certified by the Oklahoma Tax Commission, pursuant to the Sales Tax Relief Act, 68 O.S. § 5011 et seq.~~

~~(6) Have income that does not exceed one hundred thirty five percent (135%) of the Federal Poverty Guidelines;~~

~~(7) Low income individuals living on tribal lands may establish their income eligibility by certifying participation in one of the following Federal Assistance Programs:~~

~~(A) Bureau of Indian Affairs General Assistance,~~

~~(B) Tribally Administered Temporary Assistance for Needy Families (TANF);~~

~~(C) Head Start Programs (under income qualifying eligibility provision only);~~

~~(D) National School Lunch Program (free lunch program only).~~

(b) The Lifeline provider shall also advise each end-user customer enrolled in either the State or Federal Lifeline Service program that in order to continue receiving Lifeline service, the end-user customer must provide the ETC with documentary proof of program eligibility annually, in accordance with the recertification requirements at OAC 165:59-9-5, and that the subscriber has a duty to inform the ETC within thirty (30) calendar days whenever the subscriber ceases to be eligible to receive State or Federal Lifeline service support. The requirement to annually provide documentary proof of program eligibility shall not apply if a Lifeline provider utilizes USAC to conduct its annual recertification, unless such documentation is required by USAC at the time of the annual recertification.

165:55-23-15. Lifeline program

(a) Each telecommunications service provider or wireless provider who has been designated as an ETC shall submit

tariffs to the Commission or post informational terms, conditions, and rates on the Company's website and provide to the Commission; implementing a program for which qualifying low-income end-users pay reduced charges as a result of the Lifeline support amount described in (e) below.

(b) If the ETC has toll services, the ETC shall offer toll restriction to all qualifying low-income end-users at the time such end-user subscribes to Lifeline service. If the end-user elects to receive toll restriction, that service shall become part of that end-user's Lifeline service. ETCs may not collect a deposit in order to initiate Lifeline service if the qualifying low-income end-user voluntarily elects toll restriction, where available, from the ETC. If toll restriction is unavailable, or if it is available and the qualifying low-income end-user does not elect toll restriction, the ETC may charge a deposit as detailed in OAC 165:55-9-14.

(c) Each ETC shall publicize the availability of Lifeline service throughout their designated ETC service area in a manner reasonably designed to reach those likely to qualify for the service.

(d) Qualifying end-users must meet the eligibility criteria set out in OAC 165:55-23-12.

(e) For a qualifying low-income end-user who is not an eligible resident of Tribal lands, the Lifeline support amount shall not exceed the federal support amount at 47 C.F.R. § 54.403(a)(1) and § 54.403(a)(2) plus, when qualified, the state support amount established by Commission order or by 17 O.S. § 139.105. For an eligible low-income end-user who lives on Tribal Land, the Lifeline support amount shall not exceed the federal support amount at 47 CFR § 54.403(a)(1), § 54.403(a)(2) and 47 C.F.R. § 54.403(a)(3) plus, when qualified, the state support amount established by Commission order or by 17 O.S. § 139.105.

(f) The ETC shall instruct applicants to the Lifeline program to indicate, at the time of application, in writing, all qualifying programs under which the applicant is eligible for or receives assistance or benefits.

(g) The wireless provider must provide access to its own customer service department by dialing 611 from the wireless handset or have a toll free number for contacting the ETC programmed in the phone and clearly identified.

(h) Any wireless handset provided in conjunction with the Lifeline Service must clearly identify the provider of the service.

(i) An ETC may not provide Lifeline Service purely by resale without a Commission order.

(j) An approved Lifeline product may not be modified without submitting the modification to the Director of the Public Utility Division at least fifteen (15) days prior to the effective date of the proposed change for the purpose of receiving a determination whether the modification is in the public interest. Unless the ETC receives written notification that its modification is NOT IN THE PUBLIC INTEREST within fifteen (15) days after its submission, the submission is deemed to be in the public interest and may be implemented.

(k) The ETC shall utilize a third party verification system that has been approved by the Director of the Public Utility Division to verify the customer's identity and address, or obtain

a waiver from the Director of the Public Utility Division from this requirement.

(l) The ETC must retain a copy of the signed application for Lifeline Service, and any recertification information for three (3) years.

(m) The ETC shall maintain a database sufficient to identify any duplicates among all companies affiliated with the ETC.

(n) Any Lifeline plan offered by a wireless provider must comply with the minimum service standards for voice services detailed at 47 C.F.R. § 54.408. ~~on Tribal Land must include a minimum of one thousand (1000) minutes of local voice use or unlimited domestic calling, to be considered in the public interest. Any Lifeline plan on non Tribal Land must include a minimum of five hundred (500) minutes of local voice usage to be considered in the public interest.~~

(o) In addition to other remedies available to the Commission, violations of the marketing rules may result in a minimum of a thirty (30) days suspension of an ETC's ability to sign up new customers.

(p) The ETC shall comply with the recordkeeping requirements with respect to records on customer identity and addresses, along with corresponding documentation confirming customer eligibility for either State or Federally supported Lifeline Service, as identified in 17 O.S. § 139.105.

(q) If there is no usage of the wireless provider's handset for ~~sixty-thirty(60)(30)~~ days, the ETC shall de-enroll the customer, according to federal guidelines.

165:55-23-17. Link-up program on Tribal Lands

(a) Each ETC providing service on Tribal Land and receiving High Cost Support on Tribal lands, pursuant to 47 CFR Part 54, Subpart D, shall file informational tariffs that offer a Link-up assistance program. This program shall offer:

(1) For an eligible resident living on Tribal Land, a reduction consistent with 47 CFR § 54.413(a)(1). The charge from which the reduction is made shall not exceed the customary charge for commencing telecommunications service for a single telecommunications connection by customers initiating non-Lifeline service with the ETC.

(2) A deferred payment schedule consistent with 47 CFR § 54.413(a)(2). The charge assessed for initiating service may include any charges that the ETC customarily assesses to connect end-users, but may not include any security deposit requirements.

(b) A qualifying low-income end-user who resides on Tribal land may choose one or both of the programs set forth in (a)(1) and (a)(2) above of this Section.

(c) An ETC that is receiving federal High-cost support on Tribal land, pursuant to 47 CFR Part 54, Subpart D, shall allow an end-user to receive the benefit of the Link-up program for a second or subsequent time only for service billed at a principal place of residence with an address different from the residence address at which the Link-up assistance was provided previously.

(d) An ETC shall publicize the availability of Link-up support throughout its designated service area, in a manner reasonably designed to reach those likely to qualify for the support.

(e) The end-user qualification criteria for Link-up shall be the same as the criteria established for Lifeline in accordance with ~~OAC 165:59-9-347~~ C.F.R. § 54.409.

PART 3. TRANSMISSION OBJECTIVES

165:55-23-54. Notice of service interruptions

(a) The Commission shall be notified, through the Director of the ~~Consumer Services Division~~ Public Utility Division and the Commission's Public Information Officer, of all interruptions in Supported Services, which cause a customer to not have access to Supported Services within the designated service area for more than twelve (12) hours; or any interruption which, in the judgment of the ETC, may cause a high degree of public interest or concern.

(b) The Commission notification process required in subsection (a) of this Section, may be accomplished by facsimile, and email twenty-four (24) hours a day, seven (7) days a week; or by phone, during the business hours of 8:00 a.m. through 4:30 p.m., Monday through Friday, and should consist of the following:

- (1) An initial contact to advise of the outage; the cause of such outage; the area affected; and, the estimated time for repair;
- (2) Intermediate contact to provide status reports, as deemed necessary by the telecommunications service provider, or as may be requested by the Commission Staff; and,
- (3) Concluding information detailing the results and completion of the restoration of service.

[OAR Docket #17-509; filed 6-23-17]

**TITLE 165. CORPORATION COMMISSION
CHAPTER 59. OKLAHOMA UNIVERSAL
SERVICE AND OKLAHOMA LIFELINE**

[OAR Docket #17-510]

RULEMAKING ACTION:

PERMANENT adoption

RULES:

Subchapter 1. General Provisions

165:59-1-1. Purpose and title [AMENDED]

165:59-1-2. Jurisdiction [AMENDED]

165:59-1-3. Application of rules [AMENDED]

165:59-1-4. Definitions [AMENDED]

165:59-1-7. Supremacy [AMENDED]

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Part 1. Oklahoma Universal Services

165:59-3-1. Oklahoma Universal Services [REVOKED]

Part 3. Oklahoma Universal Service Fund

165:59-3-11. How the Oklahoma Universal Service Fund shall be funded [AMENDED]

165:59-3-13. ~~Fund amount~~ Establishment of OUSF Assessment [AMENDED]

165:59-3-14. Eligibility to receive OUSF funding [AMENDED]

165:59-3-15. Relinquishment of OUSF support eligibility [REVOKED]

165:59-3-16. Designation of eligible telecommunications carriers for unserved areas [AMENDED]

Part 5. Administration of the OUSF

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165:59-3-30. Administration of the Fund [AMENDED]
165:59-3-32. Audits of the Fund [AMENDED]
165:59-3-34. Resolution of disputes regarding contributions to the OUSF and OLF [AMENDED]
165:59-3-36. Resolution of other disputes [AMENDED]
165:59-3-38. Violations [AMENDED]
Part 7. Contributions to the OUSF
165:59-3-40. Contributors to the OUSF [AMENDED]
165:59-3-42. Reporting requirements [AMENDED]
165:59-3-44. Amount of contributions and charges assessed for the OUSF [AMENDED]
165:59-3-46. Recovery of OUSF contributions [AMENDED]
Part 9. Requests for OUSF Funding
165:59-3-60. Requests for funding from the OUSF [AMENDED]
165:59-3-61. Forms for requesting funding from the OUSF [AMENDED]
165:59-3-62. Procedures for requesting funding from the OUSF [REVOKED]
165:59-3-64. Identifying and measuring the level of OUSF funding [AMENDED]
165:59-3-65. [RESERVED]
165:59-3-66. Procedures for OUSF administrative preapproval request [NEW]
165:59-3-67. [RESERVED]
165:59-3-68. Procedures for requesting funding from the OUSF - Special Universal Services [NEW]
165:59-3-69. [RESERVED]
165:59-3-70. Procedures for requesting funding from the OUSF - Primary Universal Service [NEW]
165:59-3-71. [RESERVED]
165:59-3-72. Request for reconsideration procedures [NEW]
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165:59-7-5. Toll-free calling to not-for-profit hospitals [REVOKED]
165:59-7-6. Telemedicine access for eligible healthcare entities [AMENDED]
165:59-7-7. Toll-free calling to public schools and public libraries [REVOKED]
165:59-7-8. Internet access to public schools and libraries [AMENDED]
165:59-7-9. County seats [REVOKED]
165:59-7-10. Other sources of funds [AMENDED]
165:59-7-13. Reselling of Special Universal Services Prohibited [AMENDED]
165:59-7-15. Provision of Special Universal Services [AMENDED]
165:59-7-17. Disclosure on bill regarding provided Special Universal Services [AMENDED]
165:59-7-18. [RESERVED]
165:59-7-19. Competitive bidding [NEW]
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165:59-9-15. Violations [AMENDED]
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Part 5. Contributions and Reimbursements
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165:59-9-25. Procedures for requesting reimbursement from the OLF [AMENDED]
165:59-9-27. Recovery of contribution [AMENDED]
165:59-9-29. Resolution of disputes regarding contributions [AMENDED]

AUTHORITY:

Corporation Commission; Article IX, Section 18 of the Oklahoma Constitution, 17 O.S. §§ 137.3 and 139.101 *et seq.*

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

Although the Oklahoma Corporation Commission is not subject to the requirements of Executive Order No. 2013-34, the proposed rules were submitted to the Governor and Cabinet Secretary on March 22, 2017.

COMMENT PERIOD:

January 25, 2017 through March 8, 2017

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Approved by Governor's declaration on June 13, 2017

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June 13, 2017

EFFECTIVE:

September 11, 2017

SUPERSEDED EMERGENCY ACTIONS:

Superseded rules:

Subchapter 1. General Provisions

165:59-1-1. Purpose and title [AMENDED]

165:59-1-2. Jurisdiction [AMENDED]

165:59-1-3. Application of rules [AMENDED]

165:59-1-4. Definitions [AMENDED]

165:59-1-7. Supremacy [AMENDED]

Subchapter 3. Oklahoma Universal Service Fund

Part 1. Oklahoma Universal Services

165:59-3-1. Oklahoma Universal Services [REVOKED]

Part 3. Oklahoma Universal Service Fund

165:59-3-11. How the Oklahoma Universal Service Fund shall be funded [AMENDED]

165:59-3-13. Fund amount [AMENDED]

165:59-3-14. Eligibility to receive OUSF funding [AMENDED]

165:59-3-15. Relinquishment of OUSF support eligibility [REVOKED]

165:59-3-16. Designation of eligible telecommunications carriers for unserved areas [AMENDED]

Part 5. Administration of the OUSF

165:59-3-30. Administration of the Fund [AMENDED]

165:59-3-32. Audits of the Fund [AMENDED]

165:59-3-34. Resolution of disputes regarding contributions to the OUSF and OLF [AMENDED]

165:59-3-36. Resolution of other disputes [AMENDED]

165:59-3-38. Violations [AMENDED]

Part 7. Contributions to the OUSF

165:59-3-40. Contributors to the OUSF [AMENDED]

165:59-3-42. Reporting requirements [AMENDED]

165:59-3-44. Amount of contributions and charges assessed for the OUSF [AMENDED]

165:59-3-46. Recovery of OUSF contributions [AMENDED]

Part 9. Request for OUSF Funding

165:59-3-60. Requests for funding from the OUSF [AMENDED]

165:59-3-61. Forms for requesting funding from the OUSF [AMENDED]

165:59-3-62. Procedures for requesting funding from the OUSF [REVOKED]

165:59-3-65. [RESERVED]

165:59-3-66. Procedures for OUSF administrative preapproval request [NEW]

165:59-3-67. [RESERVED]

165:59-3-68. Procedures for requesting funding from the OUSF - Special Universal Services [NEW]

165:59-3-69. [RESERVED]

165:59-3-70. Procedures for requesting funding from the OUSF - Primary Universal Service [NEW]

165:59-3-71. [RESERVED]

165:59-3-72. Request for reconsideration procedures [NEW]

Subchapter 7. Special Universal Services

165:59-7-1. Reimbursement from the OUSF for Special Universal Service [AMENDED]

165:59-7-5. Toll-free calling to not-for-profit hospitals [REVOKED]

165:59-7-6. Telemedicine access for eligible healthcare entities [AMENDED]

165:59-7-7. Toll-free calling to public schools and public libraries [REVOKED]
165:59-7-8. Internet access to public schools and libraries [AMENDED]
165:59-7-9. County seats [REVOKED]
165:59-7-10. Other sources of funds [AMENDED]
165:59-7-13. Reselling of Special Universal Services Prohibited [AMENDED]
165:59-7-15. Provision of Special Universal Services [AMENDED]
165:59-7-17. Disclosure on bill regarding provided Special Universal Services [AMENDED]
165:59-7-18. [RESERVED]
165:59-7-19. Competitive bidding [NEW]
Subchapter 9. Oklahoma Lifeline Fund
Part 1. Lifeline Service Program
165:59-9-1. Purpose of Oklahoma Lifeline Fund [AMENDED]
165:59-9-3. Oklahoma Lifeline Service Program [AMENDED]
165:59-9-5. Recertification of Lifeline eligibility [AMENDED]
165:59-9-6. Retention of Lifeline eligibility records [AMENDED]
Part 3. Administration of the Oklahoma Lifeline Fund
165:59-9-11. Administration of the Fund [AMENDED]
165:59-9-13. Audits [AMENDED]
165:59-9-15. Violations [AMENDED]
165:59-9-17. Reporting requirements [AMENDED]
Part 5. Contributions and Reimbursements
165:59-9-21. Contributions to the Oklahoma Lifeline Fund [AMENDED]
165:59-9-23. Amount of contribution [AMENDED]
165:59-9-25. Procedures for requesting reimbursement from the OLF [AMENDED]
165:59-9-27. Recovery of contribution [AMENDED]
165:59-9-29. Resolution of disputes regarding contributions [AMENDED]

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INCORPORATIONS BY REFERENCE:

Incorporated standards:

1. Federal Communications Commission, August 2010, OBI Technical Paper No. 5, "Health Care Broadband in America: Early Analysis and a Path Forward."
2. State Educational Technology Directors Association, "The Broadband Imperative: Recommendations to Address K-12 Education Infrastructure Needs."
3. Federal Communications Commission, FCC 14-99, Adopted July 11, 2014, "Report and Order and Further Notice of Proposed Rulemaking."

Incorporating Rules:

165:59-7-6(c); 165:59-7-8(c); 165:59-7-8(e).

Availability:

8:00 a.m. to 4:30 p.m., Monday through Friday, Corporation Commission, Jim Thorpe Building, 2101 North Lincoln Boulevard, Oklahoma City, OK 73105.

GIST/ANALYSIS:

OAC 165:59-1-1, OAC 165:59-1-3, OAC 165:59-3-14, OAC 165:59-3-16, OAC 165:59-3-36, OAC 165:59-3-42, OAC 165:59-3-46, OAC 165:59-7-13, OAC 165:59-7-15, OAC 165:59-7-17, OAC 165:59-9-1, OAC 165:59-9-5, OAC 165:59-9-6, OAC 165:59-9-11, OAC 165:59-9-15, OAC 165:59-9-17, OAC 165:59-9-21, and OAC 165:59-9-27 were amended to correct terminology to remain compliant with the Oklahoma Telecommunications Act (OTA).

OAC 165:59-1-2 was amended to add the term "contributing providers."

OAC 165:59-1-4 was amended to add the following definitions: ALL, assessed revenues, Bed, Interconnected Voice over Internet Protocol, SETDA, Special Construction Cost, and USAC, and amended to remove the following definitions: Bona fide request, Eligible healthcare entity, Eligible local exchange telecommunications service provider, Eligible telecommunications carrier, Enhanced service provider, Federally Qualified Health Center, Free of charge, Local exchange telecommunications service provider, Oklahoma Lifeline Fund, Primary Universal Service, Public school building wherein classrooms are contained, Special Universal Services, Tariff, Telemedicine, and Universal service area. Additionally, OAC 165:59-1-4 is amended to correct terminology to remain compliant with the OTA.

OAC 165:59-1-7 was amended to remove "of 1997" when referring to the OTA.

OAC 165:59-3-1, OAC 165:59-3-15, OAC 165:59-7-5, OAC 165:59-7-7, and OAC 165:59-7-9 were revoked to remain compliant with the OTA.

OAC 165:59-3-65, OAC 165:59-3-67, OAC 165:59-3-69, OAC 165:59-3-71, OAC 165:59-7-18, and OAC 165:59-7-20 were added as reserved sections.

OAC 165:59-3-11 was amended to correct a spacing issue.

OAC 165:59-3-13 was amended to allow the OUSF Administrator to send notice of a filing to be sent via electronic mail, provide a clear process for establishing the fund amount, and amend the title of the section to match the statutory language.

OAC 165:59-3-30 was amended to add a procedure for accessing, reviewing, and distributing confidential information, and determining who may have access to the confidential information, and amended to correct terminology to remain compliant with the OTA.

OAC 165:59-3-32 was amended to add procedures for an independent audit, who may request audit objectives, and provides that the final audit report will be provided to the Oklahoma Attorney General.

OAC 165:59-3-34 was amended to provide that no acceptance of any payment shall be construed as an accord that the amount paid is in fact the correct amount, nor shall any acceptance of payments be construed as a release of any claim that the OUSF Administrator may have for further or additional sums payable, and to correct terminology to remain compliant with the OTA.

OAC 165:59-3-38 was amended to add the term "the Oklahoma Telecommunications Act."

OAC 165:59-3-40 was amended to remain compliant with the OTA concerning who contributes to the OUSF, including VoIP providers.

OAC 165:59-3-44 was amended to correct terminology to remain compliant with the OTA, to provide for a fiscal reporting year, and clarifies how and when contributions to the OUSF must be paid.

OAC 165:59-3-60 was amended to correct terminology to remain compliant with the OTA, and to create a standard caption for special universal service and primary universal service requests.

OAC 165:59-3-61 was amended to correct terminology to remain compliant with the OTA, to provide a format for the OUSF Administrator to post forms, to provide a procedure for objecting to the OUSF forms.

OAC 165:59-3-62 was revoked to simplify the process into multiple separate sections including Special Universal Services, Primary Universal Services, and a request for reconsideration section.

OAC 165:59-3-64 was amended to correct terminology to remain compliant with the OTA, identify what information must be in a cost study, and require the most recent cost studies be provided in causes filed pursuant to 17 O.S. § 139.106(G).

OAC 165:59-3-66 was added to create a procedure for OUSF administrative preapproval requests, pursuant to the OTA.

OAC 165:59-3-68 was added to create a separate procedure for requesting funding from the OUSF for Special Universal Services.

OAC 165:59-3-70 was added to create a separate procedure for requesting funding from the OUSF for Primary Universal Services, including adding a detailed minimum filing requirement list.

OAC 165:59-3-72 was added to create a separate procedure for when a request for reconsideration is filed.

OAC 165:59-7-1 was amended to correct terminology and procedures to remain compliant with the OTA, require specific necessary information be provided to the OUSF Administrator, require the OUSF Beneficiary to seek alternative funding, implement the 125% funding of the lowest cost reasonable qualifying bid, clarify the monthly payment process, tracking requirements, and posting requirements; amends the procedure and needed information for processing a request for OUSF funding for schools, libraries, and providing a telemedicine line; and allows for multiple lines from the same provider if bandwidth is within provided standard range.

OAC 165:59-7-6 was amended to correct terminology to remain compliant with the OTA, add bandwidth standards for eligible healthcare entities, add exceptions for eligible healthcare entities who request bandwidth beyond the listed standards, removes the requirement for annual recertification, add a process for the OUSF Administrator to verify eligibility of eligible healthcare entities, and requires the eligible healthcare entity to seek alternative funding.

OAC 165:59-7-8 was amended to correct terminology to remain compliant with the OTA, remove sections that were duplicative to other sections, add bandwidth standards for schools and libraries, add Category One services as eligible for reimbursement from the OUSF, and require the eligible provider to notify the OUSF Administrator if E-rate funding is discontinued.

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OAC 165:59-7-10 was amended to correct terminology to remain compliant with the OTA, add the requirement to seek alternative funding, and provides that when funding programs offer to match state funds for special construction costs, the OUSF Beneficiary will post bid requests with sufficient lead time for the OUSF Administrator to provide preapproval of the selected bid.

OAC 165:59-7-19 was added to describe the competitive bidding requirements to be in compliance with the OTA.

OAC 165:59-7-21 was added to describe the OUSF Administrator's process to review and fund installation, construction, and special construction in compliance with the OTA, and add requirements regarding receiving reimbursement for special construction costs.

OAC 165:59-9-3 was amended to correct terminology to remain compliant with the OTA, amend qualifications for the Oklahoma Lifeline Service Program to remain compliant with the OTA, renames the Public Utility Division to now state OLF Administrator.

OAC 165:59-9-13 was amended to add procedures for an independent audit, who may request audit objectives, and that the final audit report will be provided to the Oklahoma Attorney General.

OAC 165:59-9-23 was amended to remain compliant with the OTA concerning who contributes to the OLF, including VoIP providers, amended to provide for a fiscal reporting year, and clarifies how and when contributions to the OLF must be paid.

OAC 165:59-9-25 was amended to correct terminology to remain compliant with the OTA, amended to clarify the information submitted in a request for OLF funding, and amends the process for a request for reconsideration to be similar to those for schools, libraries, and eligible healthcare entities.

OAC 165:59-9-29 was amended to allow for resolution of disputes regarding the OLF to be identical to the resolution of disputes regarding the OUSF.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 1. GENERAL PROVISIONS

165:59-1-1. Purpose and title

(a) This Chapter establishes the Oklahoma Corporation Commission Rules and Regulations implementing the Oklahoma Telecommunications Act of 1997 (hereinafter referred to as the "Oklahoma Telecommunications Act"). This Chapter shall be cited as the Oklahoma Universal Service and Oklahoma Lifeline Rules.

(b) The purpose of this Chapter is to establish such rules pertaining to Universal Services and the Oklahoma Lifeline Service Program as are necessary and appropriate to implement the Oklahoma Telecommunications Act.

(c) This Chapter describes:

(1) ~~The services supported by the Oklahoma Universal Service Fund ("OUSF") and the Oklahoma Lifeline Fund ("OLF");~~

(2) ~~Who shall make contributions to the OUSF and the OLF, and the methodology for calculating those contributions;~~

(3) ~~The eligibility criteria to receive OUSF and OLF funding; and,~~

~~(4) The procedures for requesting, calculating and distributing OUSF and OLF funding.~~

(4) This Chapter also establishes the guidelines—procedures for administration of the OUSF and the OLF.

165:59-1-2. Jurisdiction

The Oklahoma Corporation Commission has jurisdiction to enact this Chapter by virtue of Article IX § 18 of the Constitution of the State of Oklahoma, the Oklahoma Telecommunications Act, and the Federal Telecommunications Act of 1996. The Commission has the authority to assess a charge upon all telecommunications carriers and contributing providers, in conformance with federal and state law to support the objectives for Oklahoma Universal Services and Oklahoma Lifeline Service.

165:59-1-3. Application of rules

(a) This Chapter shall be read in context with any applicable:

- (1) Federal law and/or regulation;
- (2) State law and/or regulation; and,
- (3) Commission order and/or rule.

(b) This Chapter shall be applicable to all eligible local exchange telecommunications service providers, eligible providers, and contributing providers, carriers.

(c) No person or corporation not otherwise a provider of telecommunications services shall be deemed such solely because of the manufacture, distribution, installation, or maintenance of end-user premises communication equipment and accessories.

165:59-1-4. Definitions

~~The following words and terms, when used in this Chapter, shall have the same meaning as defined in the Oklahoma Telecommunications Act, provided the words and terms, which are not defined in the Oklahoma Telecommunications Act, shall have the following meaning, unless the context clearly indicates otherwise:—In addition to terms defined in The Oklahoma Telecommunications Act, 17 O.S. §§ 139.101, et seq., the following words and terms, when used in this Chapter shall have the following meaning, unless the context clearly indicates otherwise:~~

"Administrator" or "OUSF Administrator" or "OLF Administrator" means the same as Administrator, as defined in the Oklahoma Telecommunications Act,—person(s) or entity(ies) responsible for administering the Oklahoma Universal Service Fund and/or the Oklahoma Lifeline Fund.

"ALJ" means Administrative Law Judge.

"Assessed Revenues" means as that term is defined in 17 O.S. § 139.107(A).

"Bed" is a patient care bed or bassinets that is regularly maintained, staffed on a 24-hours basis, and immediately available for the care of patients.

"Bona fide request" means a written request delivered to a telecommunications carrier requesting services provided for in this Chapter.

"Carrier of Last Resort" means a telecommunications service provider as designated by the Commission pursuant to OAC 165:55-17-29-165:55.

"Commercial mobile radio service provider" means a carrier who provides wireless telecommunications services.

"Customer" or **"Subscriber"** means any person, firm, partnership, cooperative corporation, corporation or lawful entity that receives telecommunications services.

~~**"Eligible healthcare entity"** means a not for profit hospital; county health department; city county health department; not for profit mental health and substance abuse facility as defined in this Section; and federally qualified health center in Oklahoma. Eligible healthcare entity also includes telemedicine services provided by the Oklahoma Department of Corrections at facilities identified in 57 O.S. § 509.~~

~~**"Eligible local exchange telecommunications service provider"** means any incumbent local exchange telecommunications service provider, its successors and assigns, which owned, maintained and provided facilities for universal service within a local exchange area on January 1, 1996, and any provider of telecommunications service that has been determined to be an eligible local exchange telecommunications service provider pursuant to the Oklahoma Telecommunications Act.~~

~~**"Eligible Telecommunications Carrier"** ("ETC") means a common carrier designated by the Commission pursuant to OAC 165:55-23-2, and 47 U.S.C. §§ 254 and 214(e).~~

~~**"Enhanced service provider"** means a provider of enhanced service.~~

"FCC" means the Federal Communications Commission.

"Federally Qualified Health Center ("FQHC")" means an entity which

(A) is receiving a grant under section 330 of the Public Health Service Act (PHS) [42 U.S.C. 254b]; or is receiving funding from such a grant under a contract with the recipient of such a grant and meets the requirements to receive a grant under section 330 of such Act [42 U.S.C. 254b]; or

(B) based on the recommendation of the Health Resources and Services Administration within the Public Health Service, is determined by the Secretary of the Department of Health and Human Services ("HHS") to meet the requirements for receiving such a grant; or

(C) was treated by the Secretary, for purposes of part B of Section 330, as a comprehensive Federally funded health center as of January 1, 1990; or

(D) is an outpatient health program or facility operated by a tribe or tribal organization under the Indian Self-Determination Act [25 U.S.C. 450f et seq.] or by an urban Indian organization receiving funds under title V of the Indian Health Care Improvement Act [25 U.S.C. 1651 et seq.].

"Free of Charge" means 100% discount off the amount of the tariffed rate or charge, recurring and nonrecurring, directly attributable to the telecommunications line or wireless connection, used to provide the Special Universal Service. All

applicable taxes and regulatory fees shall apply to the undiscounted rate or charge, but shall not be recoverable from the OUSF.

"High cost "High-cost area" means an area where actual costs exceed Commission- or Legislatively-authorized rates for Primary Universal Services.

"Interconnected Voice over Internet Protocol" or "VoIP" includes both fixed and nomadic versions of the service, with fixed Interconnected Voice over Internet Protocol service able to be used at only one location, and nomadic Interconnected Voice over Internet Protocol service able to be used at multiple locations. Interconnected Voice over Internet Protocol means a service that:

(A) enables real-time, two-way voice communications;

(B) requires a broadband connection from the user's location;

(C) requires Internet protocol-compatible customer premises equipment; and

(D) permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.

"Internet Subscriber Fee" means any fee that is paid to a telecommunications service provider for internet service that is in addition to the access connection charge.

"Lifeline Service Program" means the federal and state program designed to keep low-income subscribers on the telecommunications network.

~~**"Local exchange telecommunications service provider"** or **"telecommunications service provider"** or **"TSP"** means a company holding a certificate of convenience and necessity from the Commission to provide local exchange telecommunications service.~~

"Network" includes a telecommunications service provider's or telecommunication carrier's facilities used to originate and terminate traffic.

"Oklahoma Lifeline Fund" or **"OLF"** means the fund established and required to be implemented by the Commission pursuant to 17 O.S. § 139-105.

"Oklahoma Universal Services" means Primary Universal Service and Special Universal Services as defined herein in the Oklahoma Telecommunications Act.

"OneNet" means statewide Internet and technology provider operated by the Oklahoma State Regents for Higher Education for the purpose of meeting the mission critical technology needs of Oklahoma's education, research, healthcare and public service communities.

"Primary Universal Service" means an access line and dial tone provided to the premises of residential or business customers which provides access to other lines for the transmission of two way switched or dedicated communication in the local calling area without additional, usage sensitive charges, including:

(A) A primary directory listing;

(B) Dual tone multifrequency signaling;

(C) Access to operator services;

(D) Access to directory assistance services;

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(E) Access to telecommunications relay services for the hearing impaired;

(F) Access to ~~one one~~ service where provided by a local governmental authority or multijurisdictional authority; and,

(G) Access to ~~interexchange long distance~~ services.

"Public school building wherein classrooms are contained" means a building owned, leased or rented with public funds and accredited by the Oklahoma State Department of Education as a public school, which contains one or more classrooms utilized for student instruction for kindergarten pre-kindergarten through twelfth grade, and where internet access is utilized for student instruction.

"Reimbursement" means remuneration from the OUSF pursuant to OAC 165:59-3-60 for Primary Universal Services and OAC 165:59-7 for Special Universal Services. Reimbursement also means remuneration from the Oklahoma Lifeline Fund pursuant to OAC 165:59-9, for the Lifeline Service Program.

"Service territory" means a geographic area within which served by a telecommunications service provider has authority to provide telecommunications services.

"SETDA" means the State Educational Technology Directors Association.

"Special Universal Services" means:

(A) ~~One incoming, toll free phone number and up to a total of five access lines, provided free of charge to a not for profit hospital, public school building wherein classrooms are contained, public library, or county seat, in order to allow incoming, toll free calls from any location within the geographic area of Oklahoma served by said entity.~~

(B) ~~One access line, with the ability, to connect to an Internet service provider in accordance with 17 O.S. §139.109(C)(4), provided free of charge to a public school or a public library within the State, as set forth in 17 O.S. § 139.109 and Subchapter 7 herein.~~

(C) ~~One telecommunications line or wireless connection, provided free of charge to an eligible health care entity within the State, sufficient for providing such telemedicine services as the healthcare entity is equipped to provide.~~

"Special Construction Cost" is the FCC's Category One eligible charge necessary to connect public schools and public libraries to broadband networks.

"State" means the State of Oklahoma.

"Tariff" means all or any part of the body of rates, tolls, charges, classifications, and terms and conditions of service relating to regulated services offered, the conditions under which such services are offered and the charges for services, which have been filed with the Commission and have become effective.

"Telecommunications Act of 1996" means the Federal legislation cited as 47 U.S.C. Section §§151 et. seq.

"Telemedicine" means the practice of health care delivery, diagnosis, consultation, treatment, transfer of medical

data, or exchange of medical education information by means of audio, video, or data communications. Telemedicine is not a consultation provided by telephone or facsimile machine, nor does it include administrative applications such as billing, contracted non-clinical services, or security systems.

"USAC" means the Universal Services Administrative Company.

"U.S.C." means United States Code.

"Universal service area" or "service area" means a geographic area established by the Commission for the purpose of determining universal service obligations and support mechanisms. In the case of an area served by a rural telephone company, "service area" means such company's "study area" unless and until the FCC and the Commission, after taking into account recommendations of a Federal State Joint Board instituted under 47 U.S.C. Section 410(e), establish a different definition of service area for such company.

"Unregulated services" means telecommunications services not regulated by the Commission.

165:59-1-7. Supremacy

This Chapter supersedes any conflicting Commission order that may be in effect on the effective date of this Chapter. If there is any conflict between this Chapter and the Oklahoma Telecommunications Act of 1997, the provisions of said Act shall supersede this Chapter to the extent of any conflict. If there is any conflict between said Act and the Federal Telecommunications Act of 1996, the provisions of the Federal Act shall prevail to the extent of any conflict.

SUBCHAPTER 3. OKLAHOMA UNIVERSAL SERVICE FUND

PART 1. OKLAHOMA UNIVERSAL SERVICES

165:59-3-1. Oklahoma Universal Services [REVOKED]

(a) ~~Oklahoma Universal Services shall consist of Primary Universal Services and Special Universal Services.~~

(b) ~~The Commission may, by rule, expand primary universal services to be supported by the OUSF after notice and hearing as provided in Section 139.106(J) of the Oklahoma Telecommunications Act.~~

PART 3. OKLAHOMA UNIVERSAL SERVICE FUND

165:59-3-11. How the Oklahoma Universal Service Fund shall be funded

The OUSF shall be funded consistent with 17 O.S. § 139.107.

165:59-3-13. ~~Fund amount~~ Establishment of OUSF Assessment

- (a) ~~The Commission Administrator shall initiate a docket to file a cause with the Commission's Court Clerk to establish or adjust the OUSF Assessment, funding level, as necessary, or on an annual basis, and bill assess the telecommunications carriers contributing providers required to contribute to the fund under OAC 165:59-3-11-17 O.S. § 139.107. Notice of this filing shall be sent to all contributing providers via electronic mail to the contributing provider's contact information contained in their annual report.~~
- (b) ~~Within thirty (30) days from the date of billing for contributions received from the OUSF Administrator or contracted agent, each contributor contributing provider shall submit payment to the OUSF Administrator, or, if designated, to the contracted agent.~~
- (b) By posting on the Commission's website, the Administrator shall notify each contributing provider of the effective dates and rates of the ordered OUSF and OLF factors to be applied to OUSF Assessed Revenues.
- (c) Contributing providers are to report revenues and make payment to the OUSF and OLF as described in OAC 165:59-3-44.

165:59-3-14. Eligibility to receive OUSF funding

- (a) The incumbent local exchange telecommunications service provider, its successors and assigns, which owned, maintained and provided facilities for universal service within a local exchange area on January 1, 1996, shall be the eligible local exchange telecommunications service provider eligible for OUSF funding within the local exchange area, except as otherwise provided for in the Telecommunications Act of 1997, 17 O.S. §§ 139.101, et seq.
- (b) Upon request, and after notice and hearing, the Commission shall consider the designation of more than one eligible local exchange telecommunications service provider in a universal service area to receive funding from the OUSF under the Oklahoma Telecommunications Act of 1997 and 47 U.S.C. §214(e).
- (c) Where the incumbent local exchange telecommunications service provider receives or is eligible to receive monies from the OUSF, except as otherwise provided in 17 O.S. § 139.106, the Commission, after notice and hearing, may designate other local exchange telecommunications service providers to be eligible for the funding, provided:
- (1) The other local exchange telecommunications service provider is certificated by the Commission to provide and offer the primary universal services supported by the OUSF to all customers in the universal service area designated by the Commission, using its own facilities, or a combination of its own facilities and the resale of the services or facilities of another;
 - (2) The other local exchange telecommunications service provider may only receive funding for the portion of the facilities that it owns, maintains, and uses for regulated services;
 - (3) The other local exchange telecommunications service provider shall not receive OUSF funding at a level

higher than the level of funding the incumbent local exchange telecommunications service provider is eligible to receive for the same area if the incumbent local exchange telecommunications service provider is also providing service in the same area; provided, the cost of any cost studies required to be performed shall be borne by the party requesting such studies, unless the party performing the study utilizes the study for its own benefit;

- (4) The other local exchange telecommunications service provider advertises the availability and charges for services it provides through a medium of general distribution; and,
 - (5) It is determined by the Commission that the designation is in the public interest and the other local exchange telecommunications service provider is in compliance with all Commission rules for which a waiver has not been granted.
- (d) For any area served by an incumbent local exchange telecommunications service provider which serves less than seventy-five thousand (75,000) access lines within the State, only the incumbent local exchange telecommunications service provider shall be eligible for OUSF funding except:
- (1) ~~Other eligible telecommunications carriers-service providers and eligible providers~~ which provide Special Universal Services or Lifeline service shall be eligible to request and receive OUSF funds in the same manner as the incumbent local exchange telecommunications service provider in the same area pursuant to this Chapter;
 - (2) The incumbent local exchange telecommunications service provider may elect to waive the right to be the only eligible local exchange telecommunications service provider within the local exchange area by filing notice with the Commission; or
 - (3) When the Commission, after notice and hearing, makes a determination that it is in the public interest that another local exchange telecommunications service provider should also be deemed a carrier of last resort and be eligible to receive OUSF funding in addition to the incumbent local exchange telecommunications service provider. It shall not be in the public interest to designate another local exchange telecommunications service provider as being a carrier of last resort and eligible to receive OUSF funding if such designation would cause a significant adverse economic impact on users of telecommunications services generally or if the other carrier refuses to seek and accept carrier of last resort obligations throughout the universal service area as designated by the Commission. The other local exchange telecommunications service provider shall not receive OUSF funding at a level higher than the level of funding the incumbent local exchange telecommunications service provider is eligible to receive for the same area if the incumbent local exchange telecommunications service provider is also providing service in the same area and the other local exchange telecommunications service provider meets the requirements of subsection (c) of this Section.
- (e) In order to be designated as an eligible local exchange telecommunications service provider for purposes of Federal

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Universal Service support, the local exchange telecommunications service provider shall meet the requirements of 47 U.S.C. § 214(e).

(f) Notwithstanding the criteria set forth in this Section for designation as an eligible local exchange telecommunications service provider, a commercial mobile radio service provider may, after notice and hearing, seek ~~reimbursement from the OUSF Funding~~ for the provision of services supported by the OUSF.

(g) Notwithstanding the criteria set forth in this Chapter for designation as an eligible local exchange telecommunications service provider, ~~OneNet and/or any telecommunications carrier~~ any eligible provider may seek ~~reimbursement from the OUSF Funding~~ for the provision of Special Universal Services consistent with ~~17 O.S. § 139.109~~ 17 O.S. § 139.109.1.

(h) Any ~~provider who is not prohibited from applying for OUSF funds as set forth in 17 O.S. § 139.109~~ eligible provider shall receive funding for any Special Universal Services provided ~~and contributions made to the Oklahoma E911 Emergency Service Fund and the Oklahoma Telecommunications Technology Training Fund~~ from the OUSF without a hearing, in a manner consistent with OAC 165:59-7-1 and the Oklahoma Telecommunication Act. The funding shall be approved only after the appropriate forms have been ~~submitted to~~ filed with the Commission's Court Clerk and reviewed by the OUSF Administrator or contracted agent.

(i) For an area served by an incumbent local exchange telecommunications service provider which serves less than seventy-five thousand (75,000) access lines within the State, the incumbent local exchange telecommunications service provider may elect to waive the right to be the only eligible local exchange telecommunications service provider within the local exchange area by filing notice with the Commission.

165:59-3-15. Relinquishment of OUSF support eligibility [REVOKED]

~~In exchanges or wire centers where the Commission has designated more than one local exchange telecommunications service provider as eligible for OUSF funding, the Commission shall permit one or more of the local exchange telecommunications service providers in the area to relinquish the designation as a local exchange telecommunications service provider eligible for OUSF funding in a manner consistent with Section 214(e)(4) of the Federal Telecommunications Act of 1996, upon a finding that at least one eligible local exchange telecommunications service provider shall continue to assume the carrier of last resort obligations throughout the area.~~

165:59-3-16. Designation of eligible telecommunications carriers for unserved areas

In no event shall any area(s) be without the capability of accessing universal services supported by the OUSF. If no eligible local exchange telecommunications service provider of telecommunications services is currently providing the services that are supported by the OUSF to an unserved area or

any portion of the area that requests such service, the Commission will:

~~(A1) Determine which eligible local exchange telecommunications service provider(s) telecommunications carrier, or carriers, are best able to provide such service to the unserved area(s), or portion of the area(s); and,~~

~~(B2) Order such eligible local exchange telecommunications service provider(s) telecommunications carrier, or carriers, to provide such service to that area(s), or portion of the area(s).~~

PART 5. ADMINISTRATION OF THE OUSF

165:59-3-30. Administration of the Fund

~~(a) The Commission will appoint the OUSF Administrator, which shall be the Public Utility Division of the Commission.~~

~~(b) The Public Utility Division, as the appointed OUSF Administrator, may as necessary, take all actions necessary to fulfill the objectives of the Oklahoma Telecommunications Act, including but not limited to, contract~~ contracting with a third party having no conflict of interest in the provisioning of telecommunications services, for the provisioning of assistance with the administrative functions related to the OUSE.

~~(e) The OUSF Administrator is expressly authorized to bring actions before the Commission to enforce the provisions of this Chapter and the Oklahoma Telecommunications Act of 1997.~~

~~(d) The OUSF Administrator or and/or contracted agent shall act under the supervision of the Commission, in order to administer the OUSF in accordance with the rules and procedures approved by the Commission and consistent with this Subchapter and the Oklahoma Telecommunications Act of 1997.~~

~~(e) The OUSF Administrator's and/or contracted agent's general duties shall include, but not be limited to:~~

(1) Receiving, distributing, and accounting for funds paid into the OUSF;

(2) Providing ~~funding~~ reimbursement to eligible ~~telecommunications providers and eligible local exchange telecommunications service providers in accordance with the Oklahoma Telecommunications Act from the OUSF;~~

(3) Managing the daily operations and affairs of the OUSF;

(4) Monitoring and assuring contribution/payment compliance as well as conducting periodic audits of ~~the contributing providers~~ contributors to the OUSF to ensure that the ~~contributors~~ contributing providers are accurately reporting and making proper payments to the OUSF;

(5) Monitoring and assuring that ~~all federal and state universal service~~ OUSF funds received by the eligible local exchange telecommunications service providers and eligible providers are based on one of the categories for which reimbursement is allowed under the Oklahoma Telecommunications Act, for primary and special universal services, by any entity are used for the provision, maintenance and/or upgrading of facilities and services for which the support is intended.

~~(6) Performing any periodic audits of the OUSF deemed necessary by the Administrator and/or the Commission;~~

~~(7) Informally resolving disputes;~~

~~(8) Independently evaluate and review Requests for OUSF Funding and OUSF administrative preapproval requests within time frames identified in this Chapter—the Oklahoma Telecommunications Act, and making a recommendation to the Commission for approval, modification or denial of such requests; determine the accuracy of the requests, advise the eligible local exchange telecommunications service provider or eligible provider requesting the funds of the determination of eligibility made by the OUSF Administrator, and determine the eligibility of the OUSF Beneficiary; and,~~

~~(9) Performing any other duties as required by law and/or this Chapter or as ordered by the Commission.~~

(e) The OUSF Administrator and/or contracted agent shall authorize payment of the approved funding to the requesting eligible local exchange telecommunications service provider or eligible provider, pursuant to the Oklahoma Telecommunications Act.

(f) The Commission finds, pursuant to Article IX, Section 18 of the Oklahoma Constitution, and 51 O.S. § 24A.22, that all information that is not otherwise publicly available, provided by an eligible local exchange telecommunications service provider, an eligible provider, an OUSF Beneficiary, or contributing provider in all matters submitted and filed pursuant to the Oklahoma Telecommunications Act is hereby classified as confidential. All documents and information considered to be confidential must be clearly marked as such. All information classified as confidential shall be used by the OUSF Administrator, ALJ, any party to a Request for OUSF Funding or party to a request for reconsideration related to such Request, and the Commission solely in connection with the review and disposition of all matters subject to the Oklahoma Telecommunications Act. The OUSF Administrator, the ALJ, the Commission and all other parties that receive or review information deemed confidential herein shall keep all such information confidential, and shall only use such data for purposes of administering the OUSF, evaluating a Request for OUSF Funding, and/or prosecuting a request for reconsideration of the Administrator's determination of OUSF Funding, and shall not disclose such data to any unauthorized person, provided, confidential information may be disclosed to parties in the cause after the party in the cause signs a nondisclosure agreement, as posted on the Commission Website, or as otherwise agreed between the party requesting the information and the party receiving the request for confidential information.

(g) Pursuant to 51 O.S. § 24A.22, the Commission hereby does classify as confidential all information that is not otherwise publicly available, provided by an eligible local exchange telecommunications service provider, an eligible provider, an OUSF Beneficiary, or contributing provider, in conjunction with an audit of said eligible local exchange telecommunications service provider, eligible provider, OUSF Beneficiary, or contributing provider. All information classified as confidential shall be used by the OUSF Administrator,

ALJ, and the Commission solely in connection with the review and disposition of all matters subject to the Oklahoma Telecommunications Act. The OUSF Administrator, the ALJ, the Commission and all other parties that gain access as provided herein to confidential information shall keep all confidential information confidential, and shall not use such data except for purposes of administering the OUSF, and shall not disclose such data to any unauthorized person, provided, confidential information may be disclosed to parties in any filed cause after the party in the cause signs a nondisclosure agreement, as posted on the Commission Website, unless otherwise agreed to by the parties.

165:59-3-32. Audits of the Fund

(a) The OUSF shall be audited annually by a non-OUSF, independent auditor selected by a committee with input from the State Auditor's Office—the Administrator. The committee shall be selected by the Commission's Director of Administration.

(b) The annual audit should be based on assessed program risk conducted in accordance with standards.

(c) The audit may include further objectives as requested by the Commission's Director of Administration, the State Auditor's Office, the Oklahoma Attorney General, and/or as required by the contract between the OUSF and independent auditor.

~~(d)~~ The cost of the annual audits of the OUSF shall be funded by the OUSF.

(e) All audit reports, once finalized, shall be provided to the Oklahoma Attorney General.

165:59-3-34. Resolution of disputes regarding contributions to the OUSF and OLF

(a) Any telecommunications carrier-contributing provider operating within Oklahoma may dispute the amount of contribution assessed it by the OUSF Administrator for the OUSF and OLF, in the following manner:

(1) The telecommunications carrier-contributing provider shall submit a written notice setting forth its dispute in detail to the OUSF Administrator, on or before the payment due date, and the OUSF Administrator shall have the initial responsibility for trying to resolve the dispute.

(2) If satisfactory resolution is not achieved within thirty (30) days of the receipt of the written notice of dispute, the telecommunications carrier-contributing provider may file an application in with the Commission's Court Clerk's Office—Clerk requesting that the Commission resolve the dispute.

(b) Pending final resolution of a dispute, the disputing telecommunications carrier-contributing provider shall pay the disputed and undisputed amounts to the OUSF and OLF.

(c) If the disputing telecommunications carrier-contributing provider prevails in its protest of the required contribution dispute, the telecommunications carrier-contributing provider will be entitled to a refund, with interest, at the then effective

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interest rate, as provided by OAC 165:55-9-14(e)(1), from the date the disputed charge was paid to the date of refund.

(d) No acceptance of any payment shall be construed as an accord that the amount paid is in fact the correct amount, nor shall any acceptance of payments be construed as a release of any claim that the OUSF Administrator may have for further or additional sums payable.

165:59-3-36. Resolution of other disputes

(a) Any adversely impacted party may dispute the actions of ~~a telecommunications carrier~~ an eligible local exchange telecommunications service provider or an eligible provider related to the provisioning of Universal Services. The adversely affected party may contact the OUSF Administrator or contracted agent of the OUSF and the OUSF Administrator shall have the initial responsibility for trying to resolve the dispute.

(b) If satisfactory resolution is not achieved, the affected party may file an application requesting the Commission resolve the dispute.

165:59-3-38. Violations

(a) Failure to pay an assessed contribution to the OUSF shall be deemed a violation of the Oklahoma Telecommunications Act and this Chapter.

(b) The Commission may use all authority it has pursuant to the Oklahoma Constitution and laws of this State to ensure compliance with the Oklahoma Telecommunications Act and this Chapter.

PART 7. CONTRIBUTIONS TO THE OUSF

165:59-3-40. Contributors to the OUSF

(a) The OUSF shall be funded in a competitively neutral manner in accordance with the Oklahoma Telecommunications Act. Every telecommunication carrier shall contribute/make payments, on a nondiscriminatory basis, into the OUSF.

(b) Each contributing provider shall annually provide contact information to the OUSF Administrator for the purpose of correspondence regarding contribution to the OUSF. The submission of an annual report to the Commission shall be deemed compliance with this paragraph.

(c) Each telecommunications carrier providing wholesale telecommunications services to VoIP providers in Oklahoma will annually provide the identity, to include address, of each such VoIP provider(s) to the OUSF Administrator as available. While the names of the VoIP providers may be made publicly available, all information with regard to the reporting telecommunications carrier will be treated as confidential.

(d) The contributing provider must certify to the truth and accuracy of data used to determine the contributing provider's contribution amounts. The OUSF Administrator may verify any information used by the contributing provider in its determination of its contributions to the OUSF. Each contributing provider shall maintain records and documentation used

in its determination of its contributions to the OUSF for three (3) years, and shall provide such records and documentation to the OUSF Administrator upon request. Inaccurate or untruthful information used by the contributing provider may lead to prosecution to the full extent of the law.

165:59-3-42. Reporting requirements

Each telecommunications carrier-contributing provider shall, within thirty (30) days from the date of a request made for information necessary for the OUSF Administrator to perform its duties under the Oklahoma Telecommunications Act and this Chapter shall submit the requested information to the OUSF Administrator, unless otherwise agreed between the OUSF Administrator and the telecommunications carrier-contributing provider.

165:59-3-44. Amount of contributions and charges assessed for the OUSF

(a) The amount of contribution required from each telecommunications carrier-contributing provider shall be determined as provided in the Oklahoma Telecommunications Act.

(b) The Administrator shall, based on the amount to be contributed to the OUSF, calculate the contribution required to be made to the OUSF by each contributor, based on the fund level established by the Commission and the information provided pursuant to OAC 165:59-3-42.

(c) Each telecommunications carrier shall pay its contribution directly to the Administrator as directed by the Administrator on a monthly, quarterly, or annual basis, at the carrier's option, at the beginning of the payment period(s) selected. The payment shall be payable to the "OUSF." The invoice or other request for OUSF contributions shall be past due thirty (30) calendar days after the date on the invoice, unless otherwise agreed by the Administrator or as may be ordered by the Commission.

(d) Interest shall be charged on any payment not received by the past due date at the rate of 1.5% monthly.

(e) All contributions and interest payments made to the "OUSF" shall be deposited into the OUSF account by the Administrator or contracted agent.

(b) The OUSF Administrator or contracted agent shall, based on the amount to be contributed to the OUSF, calculate the contribution required to be made to the OUSF by each contributing provider, based on the fund level established by the Commission sufficient to recover the costs of administration and payments for OUSF and OLF requests for funding, as provided by the Oklahoma Telecommunications Act and the information provided pursuant to OAC 165:59-3-42.

(c) The fiscal reporting year shall be July 1 through June 30.

(d) Each contributing provider shall pay its contribution directly to the OUSF Administrator, or contracted agent, as directed by the OUSF Administrator, on a monthly or annual basis, conditioned upon an annual revenue threshold established by the OUSF Administrator.

(e) If the contributing provider qualifies to pay its contribution annually, payment shall be made at the beginning of the

fiscal year, and is past due after August 31. If the contributing provider underestimates its annual contribution by 15% or greater, the contributing provider shall be required to make its contributions monthly for the next fiscal reporting year, and underpayments will be subject to interest.

(f) If the contributing provider qualifies to pay its contribution monthly, the contributing provider shall report the prior calendar month's revenues, and pay on those revenues, by the end of the month, each month, without skipping a month.

(g) Interest shall be charged on any payment not received by the reporting due date at the rate of 1.5% monthly.

(h) The payment shall be payable to the OUSF. All contributions and interest payments shall be deposited into the OUSF account established by the OUSF Administrator and/or contracted agent.

(i) All contributions shall be subject to audit by the OUSF Administrator, or its contracted agent.

165:59-3-46. Recovery of OUSF contributions

(a) A telecommunications carrier contributing provider may, at its option, recover the amount it pays into the OUSF from its retail customers as provided in the Oklahoma Telecommunications Act. If the telecommunications carrier contributing provider elects to recover the amount of its contributions from its retail customers, such recovery shall be made in a fair, equitable and nondiscriminatory manner.

(b) Any over-recovery of the OUSF contributions for the preceding year shall be carried forward to the ensuing year, and shall be included as a reduction in the calculation of the retail end-user recovery amount for the ensuing twelve-month period of the telecommunications carrier's contributing provider's OUSF contributions; recovery from its customers. Any under-recovery of the OUSF contribution for the preceding year, may be included as an increase in the calculation of the retail end-user recovery amount for the ensuing twelve-month period of the telecommunication carrier's contributing provider's OUSF recovery from its customers, provided the telecommunications carrier contributing provider made a reasonable attempt to collect the funds in the preceding year.

(c) The Commission may, as it deems appropriate, order modifications in a regulated telecommunications carrier's contributing provider's method of recovery from its customers, after notice and hearing.

(d) In the event a telecommunications carrier contributing provider, excluding prepaid wireless providers, elects to recover its OUSF contributions from its customers, the amounts of the recovery shall be explicitly stated as a line item on customer's bills.

PART 9. REQUEST FOR OUSF FUNDING

165:59-3-60. Requests for funding from the OUSF

(a) Any eligible telecommunications service provider Eligible local exchange telecommunications service providers and eligible providers may request funding from the OUSF

as allowed by the Oklahoma Telecommunications Act. necessary to maintain rates for primary universal services, at rates that are reasonable and affordable, and special universal services, and to provide for reasonably comparable services at affordable rates in rural areas as in urban areas.

(b) Any eligible provider may request funding from the OUSF as necessary for the provision of Special Universal Services.

(c) Should the OUSF at any time experience a shortfall, the costs associated with administering the fund will be paid first, followed by the payment due to the Oklahoma Attorney General, pursuant to 17 O.S. § 139.103. Thereafter, any residual funds will be distributed to eligible OUSF recipients providers and eligible local exchange telecommunications service providers on a pro rata basis, pursuant to their approved requests. The balance of each approved request for OUSF funding will be paid at such time as additional funds become available.

(ed) Each request for OUSF funding by an eligible ILEC serving less than seventy-five thousand (75,000) access lines shall be in accordance with the Oklahoma Telecommunications Act.

(de) The Commission OUSF Administrator shall process any request for OUSF funding by an ILEC serving seventy-five thousand (75,000) or more access lines or a CLEC, in accordance with the Oklahoma Telecommunications Act.

(f) Requests for OUSF funding for the provision of Special Universal Service, including OUSF administrative preapproval requests, shall contain the following caption: In the matter of the request by (name of school/library/eligible healthcare provider /consortium) of (name of city / library system or city / health care system or city / Consortium lead) for funding from the Oklahoma Universal Service Fund.

(g) Requests for OUSF funding for primary universal service shall contain the following caption: In the matter of the request by (name of eligible telecommunications service provider) for the (insert basis of request) for funding from the Oklahoma Universal Service Fund.

165:59-3-61. Forms for requesting funding from the OUSF

(a) The appropriate forms necessary for making an OUSF funding request and preapproval funding request shall be available on the Commission's website, and may be obtained from the OUSF Administrator.

(b) The OUSF Administrator shall post the forms on the Commission's website no later than August 31 annually, for requests made for funding years prior to the funding year beginning July 1 annually, and on or before June 30, preceding each subsequent funding year.

(c) Any party objecting to the form shall file an Application in the Commission's Court Clerk within fifteen (15) calendar days of the form being posted on the Commission's website. Notice of the objection shall be given to the OUSF Administrator, the Oklahoma Attorney General, and shall be posted on the Commission's website by the OUSF Administrator within three (3) calendar days of the filing of the Application.

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(d) The caption for filing an objection shall be as follows: In the matter of the application of (name of party filing the objection) objecting to the OUSF Administrator's form.

(e) Each objection filed shall be filed in a separate cause and shall provide details of the objection sufficient to allow the Commission to fully evaluate the objection. The Commission may, within its sole discretion, conduct a hearing to resolve the dispute. If the Commission opts to conduct a hearing, it shall provide at least five (5) calendar days notice to the parties in the cause. Any interested person may participate in the hearing by filing an entry of appearance and a statement of position setting forth their position on the objection. The entry of appearance and statement of position shall be served on all parties to the cause.

(f) The Commission shall issue a final order on the objection to the form within thirty (30) calendar days of the objection being filed, or if no order is issued, then the objection shall be deemed approved, and the form modified accordingly.

165:59-3-62. Procedures for requesting funding from the OUSF [REVOKED]

(a) ~~An eligible local exchange telecommunications service provider or provider of Special Universal Services requesting funds from the OUSF shall file a "Request for OUSF Funding" with the Commission Court Clerk's Office. On the date of filing the Request for OUSF Funding, the eligible telecommunications carrier or provider of Special Universal Services shall deliver a filed copy of the Request to the Administrator for processing. To facilitate the timely evaluation of requests for funding from the OUSF, a Request for OUSF Funding shall not contain a request for funding Special Universal Services to more than one Eligible Healthcare Entity or more than one School District or more than one Library system. The filing of the Request for OUSF Funding shall start the 90 day review period established by 17 O.S. §139.106(D) unless otherwise agreed to by the requesting provider.~~

(b) ~~Applications found to be incomplete (missing information required by the form and instruction package contained on the Commission website) may be denied.~~

(c) ~~It is the intention of the Commission that each funding request will be reviewed on a case by case basis. Part 9 of Subchapter 3 does not purport to predetermine the merits of any funding request. The eligible telecommunications service provider requesting OUSF funding for primary universal service shall make every reasonable and timely effort to obtain funding from alternative funding sources designated to support universal service, and shall submit all documentation of the effort to obtain funding from alternative funding sources designated to support universal service as a part of its Request for OUSF funding set forth in subsection (a), or an explanation for why alternative funding is not available. Upon the company providing the documentation that it has sought alternative funding sources or an explanation for why alternative funding is not available, the company shall not be precluded from having its application processed.~~

(d) ~~If a provider receives funding from alternative funding sources for an investment or expense already reimbursed by the OUSF, the provider shall refund the double collection to the~~

~~OUSF by either reducing a prospective funding request from the OUSF by an equivalent amount or remitting cash payment to the OUSF. Under no circumstances will double recovery be allowed.~~

(e) ~~Concurrent with the filing of the Request for OUSF Funding, the eligible telecommunications carrier who is requesting funding from the OUSF shall provide copies of its Request for OUSF Funding and notice of the Request for OUSF Funding, to the Director of the Public Utility Division, to the Attorney General and to the school/library/telemedicine entity. In addition, the eligible telecommunications carrier, which is requesting funding shall provide notice of the Request for OUSF Funding to the contributors to the OUSF. The notice requirement to each telecommunications carrier in the State of Oklahoma which is a contributor to the OUSF, shall be accomplished by providing an electronic copy of such notification to the Fund Administrator on the date the eligible telecommunications provider files its Request for OUSF Funding at the Commission's Court Clerk's office for posting on the OCC website. The OUSF Administrator will then place the notification on the OCC website within five (5) business days. The Administrator shall provide a list of the contributors to the OUSF, upon request by an eligible telecommunications carrier. The notice shall identify whether the request is for Lifeline support, Primary Universal Service support or Special Universal Service support. The notice and Request for OUSF Funding shall also include the dollar amount requested for the lump sum and any recurring amounts, as well as the name and address of the school/library/telemedicine entity for which OUSF funding is sought in the Application.~~

(f) ~~An eligible telecommunications carrier or provider of Special Universal Services shall submit to the Administrator or file with its Request for OUSF Funding a copy of its tariffed rate for the data speed set forth in 17 O.S. § 139.109(C)(4) or its equivalent. If the eligible carrier or provider does not have a tariffed rate for the data speed set forth in 17 O.S. § 139.109(C)(4), then the eligible carrier or provider shall provide a copy of its Individual Case Basis pricing or a document that describes the rates being charged. The eligible carrier or provider shall also provide a diagram showing the configuration identifying components and charges.~~

(g) ~~Within ninety (90) days after receipt of the completed Request for OUSF Funding, the Administrator shall review, determine the accuracy of the request, and advise the provider requesting the OUSF funds of the determination of eligibility. Simultaneously with the Administrator or contracted agent advising the provider, the Administrator or contracted agent shall provide the written determination to the Commission and post it to the Commission's website. The carrier shall provide a copy of the Administrator's Determination to the school/library/telemedicine entity within five (5) days after it is filed.~~

(h) ~~Any adversely affected party shall have fifteen (15) days to file a request for reconsideration by the Commission of the Determination made by the Administrator. Upon filing a request for reconsideration, the party requesting reconsideration shall file a Request for Procedural Schedule with the Request for Reconsideration that sets the Request for Reconsideration before an Administrative Law Judge.~~

(i) The Commission will, within thirty (30) days from the request for reconsideration, issue an order on the Request for OUSF Funding after reviewing the Administrator's or contracted agent's Determination regarding the Request for OUSF Funding and any request for reconsideration. The party requesting reconsideration shall give notice to the provider making the Request for OUSF Funding, the Attorney General, the Administrator or contracted agent, the school/library/telemedicine entity on whose behalf which funding is requested and all parties of the time and place for hearing.

(j) If no request for reconsideration of the Administrator's Determination is filed, an order will be issued by the Commission approving the request without further notice and/or hearing.

(k) If a Request for Reconsideration is filed and the Commission does not issue an order within the time frames set forth in this Section, the request shall be deemed approved, on an interim basis, subject to refund, with interest at a rate determined by the Commission. Any refund shall include interest at a rate of not more than the interest rate established by the Commission on customer deposits and shall accrue for a period not to exceed ninety (90) days from the date the funds were received by the requesting eligible provider.

(l) The Commission shall ensure that all OUSF funds have been received and are on deposit in a sufficient manner so as to pay requests for OUSF funding for primary Universal Services as ordered by the Commission, or as may be deemed approved in accordance with State law. The Administrator or contracted agent shall authorize payment of the approved funding to the requesting Incumbent Local Exchange Carrier, OneNet, or company that has a Certificate of Convenience and Necessity, after issuance of a Commission order approving payment or the request is deemed approved, whichever occurs sooner.

(m) Any Request for OUSF Funding may be returned to the requesting party and deemed denied if the appropriate forms are not used or said forms are not completed in a satisfactory manner. The appropriate forms and applicable instructions may be obtained from the Administrator or the Commission's website.

(n) Unless good cause is shown, any request for OUSF funding should be made within eighteen (18) months from the date the requesting telecommunications carrier can determine the impact of occurrence of the circumstance giving rise to the request.

(o) An eligible telecommunications carrier or provider shall receive future reimbursement upon submission of properly submitted true ups to the Fund Administrator or contracted agent, and upon request, provide copies of invoices submitted to the customer or subscriber showing a credit equivalent to the reimbursement which has been received by the provider from the OUSF.

(p) An eligible telecommunications carrier or provider shall submit changes to the monthly recurring support based on discount adjustments received from alternative funding sources designated to support universal service such as E-Rate and the FCC's rural health care programs, to the Fund Administrator or

contracted agent via the monthly true-up reports, for processing. Any ongoing monthly recurring charges will be adjusted as necessary based on the appropriate discount approved by the Universal Service Administrative Company.

(q) An eligible telecommunications carrier or provider shall notify the Fund Administrator or contracted agent in writing, of any changes to the provisioning of service, including but not limited to disconnection of service, upgrade and/or downgrade in connectivity speed, and adding or removing eligible buildings. Any increase to the number of entities will require approval from the Fund Administrator or contract agent in order to determine if a new application will be required and a new Commission Order issued to approve reimbursement. The Administrator shall advise the provider of its determination within thirty (30) days of receipt of the written notice provided by the provider. If the Administrator fails to advise the provider of its determination within the thirty (30) day period the OUSF funding being received by the provider will not change until a new request for OUSF funding is processed in accordance with the Oklahoma Telecommunications Act and this Chapter.

(r) An eligible telecommunications carrier or provider of Special Universal Services requesting funds from the OUSF may request preapproval of a Request for OUSF Funding.

(1) A request for preapproval shall follow the procedures outlined in OAC 165:59-3-62 (a) (q). The purpose of such a preapproval request is to provide greater certainty to providers of Special Universal Services and the eligible institutions that rely on those services. No OUSF funds shall be dispersed to an eligible telecommunications carrier or provider of Special Universal Services until the services are installed and in service. The amount of OUSF funding preapproved under this subsection shall be subject to adjustments based on the amount of support received from other sources, if any, as well as adjustments to pricing that may occur between the time of preapproval and installation of service. Additional services or buildings that are installed beyond those contained in the pre-approved application shall require an additional application to be filed.

(2) Upon receipt of an application under this paragraph, the Administrator shall process the application in the manner outlined in 165:59-3-62 (e) (j). If the Administrator recommends that preapproval be granted, the Commission may enter an Interim Order regarding the specific request for which preapproval is sought. After the services are installed and in service, the provider of Special Universal Services shall provide documentation regarding the installation and charge for the services, after which time the Commission may enter a final order in the cause approving disbursement of OUSF funds if there are no material differences between the services for which pre approval was granted and the services that were installed.

(3) This paragraph is intended to supplement and not supplant the current application process, and eligible telecommunication carriers and providers of Special Universal Services shall still submit requests for funding from OUSF in the manner provided in OAC 165:59-3-62 (a)-(q).

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165:59-3-64. Identifying and measuring the level of OUSF funding

(a) In identifying and measuring the costs of providing primary universal services, exclusively for the purpose of determining OUSF funding levels under 17 O.S. § 139.106, the eligible local exchange telecommunications service provider serving less than seventy-five thousand (75,000) access lines shall, at its option:

(1) Calculate such costs by including all embedded investments and expenses incurred by the eligible local exchange telecommunications service provider in the provision of primary universal service, and may identify high-cost areas within the local exchange area it serves and perform a fully distributed allocation of embedded costs and identification of associated primary universal service revenue. The cost study shall identify any investments and associated expenses jointly used for the provision of primary universal service and any other services and provide a reasonable allocation of those investments and expenses. Such calculation may be made using fully distributed FCC Parts 32, 36, and 64 costs, if such Parts are applicable. The high-cost area shall be no smaller than a single exchange, wire center, or census block group, chosen at the option of the eligible—local exchange telecommunications service provider; or,

(2) Adopt the cost studies approved by the Commission for a local exchange telecommunications service provider that serves seventy-five thousand (75,000) or more access lines; or,

(3) Adopt such other costing or measurement methodology as may be established for such purpose by the FCC pursuant to Section 254 of the Federal Telecommunications Act of 1996.

(b) In identifying and measuring the cost of providing primary universal services, and exclusively for the purpose of determining OUSF funding levels pursuant to 17 O.S. § 139.106, each ILEC which serves seventy-five thousand (75,000) or more access lines and each CLEC shall identify high-cost areas within the local exchange and perform a cost study using a Commission-approved methodology from those identified in subsection (a) of this Section. The high-cost area shall be no smaller than a single exchange, wire center or census block group chosen at the option of the eligible ILEC or CLEC. If the Commission fails to approve the selected methodology within one hundred twenty (120) calendar days of the filing of the selection, the selected methodology shall be deemed approved.

(c) Any cause filed pursuant to 17 O.S. § 139.106(G) shall include the most recent cost study, and an order reflecting the amount to be reimbursed shall only be applicable for a twelve (12) month period, unless otherwise determined by the OUSF Administrator or ordered by the Commission.

165:59-3-65. [RESERVED]

165:59-3-66. Procedures for OUSF administrative preapproval request

Preapproval is an optional process available to OUSF Beneficiaries who desire to have certainty regarding the amount that will be paid from the OUSF in support of Special Universal Services on behalf of the OUSF Beneficiary.

(1) The OUSF Beneficiary may submit a "Request for OUSF Preapproval" to the OUSF Administrator to determine eligible services and credit amounts for the upcoming funding year.

(2) A Request for OUSF Preapproval may be submitted at any time by sending via electronic mail a digital copy of all required documentation to the OUSF Administrator, to the email address posted on the Commission's website, until such time as the Commission implements the electronic filing system. Once the electronic filing system is in place, the OUSF Beneficiary shall file all required documentation using the electronic filing system.

(3) The Request for OUSF Preapproval shall include the following:

(A) All documents and information required by the approved form; and

(B) All documents identified in 17 O.S. § 139.109.1(F)(2)(d).

(4) The Request for OUSF Preapproval may include any documentation that would assist the OUSF Administrator in independently evaluating the request.

(5) The OUSF Administrator and/or contracted agent shall independently evaluate and review the Request for OUSF Preapproval, including all provided documentation, and issue an OUSF preapproval funding letter, without Commission order, to the OUSF Beneficiary within ninety (90) calendar days of receipt of the Request for OUSF Preapproval. The preapproval funding letter shall be electronically delivered to the OUSF Beneficiary.

(6) A Request for OUSF Preapproval that is found by the OUSF Administrator to be incomplete (missing information required by the form and instruction package contained on the Commission website) may be denied.

(7) After a preapproval funding letter has been issued, an OUSF Beneficiary may submit a new Request for OUSF Preapproval to provide corrections or additional information per this Chapter; however, a new Request shall be submitted for each funding year. This new Request shall be submitted by sending via electronic mail a digital copy of all required documentation to the OUSF Administrator, to the email address posted on the Commission's website, until such time as the Commission implements the electronic filing system. Once the electronic filing system is in place, the OUSF Beneficiary shall file all required documentation using the electronic filing system.

(8) Unless an OUSF Beneficiary receives preapproval of a Request for OUSF Preapproval, the Beneficiary shall not identify the OUSF as the source of secured funds for any purpose.

(9) The amount of OUSF funding preapproved under this subsection shall be subject to adjustments based on

the amount of support received from other sources, if any, as well as adjustments to pricing that may occur between the time of preapproval and installation of service.

(10) Additional services that are installed beyond those contained in the Request for OUSF Preapproval shall require either a new Request for OUSF Preapproval or a Request for OUSF Funding to be filed.

(11) Variance from the terms approved in the OUSF preapproval funding letter, which could have impacted bid selection may make the previously issued OUSF preapproval funding letter null and void.

(12) A Request for OUSF Preapproval submitted by an OUSF Beneficiary shall be signed by an authorized agent of the OUSF Beneficiary, or by the attorney for the OUSF Beneficiary.

165:59-3-67. [RESERVED]

165:59-3-68. Procedures for requesting funding from the OUSF - Special Universal Services

(a) An eligible provider of Special Universal Services may seek and obtain funds from the OUSF by filing a "Request for OUSF Funding" and "Notice of Request for OUSF Funding" with the Commission's Court Clerk. On the date of filing the Request for OUSF Funding, the eligible provider shall deliver a filed copy of the Request for OUSF Funding to the OUSF Administrator for processing.

(1) If the OUSF Beneficiary filed a Request for OUSF Preapproval, and a preapproval funding letter was issued by the OUSF Administrator, then the eligible provider must file the Request for OUSF Funding in the same cause number as the Request for OUSF Preapproval.

(2) If the Request for OUSF Funding requests anything different than what is stated in the OUSF preapproval funding letter, then the eligible provider shall file the Request for OUSF Funding as a new cause number.

(b) The Request for OUSF Funding shall include, but not be limited to the following:

- (1) The name and address of the eligible provider;
- (2) The name and address of the OUSF Beneficiary;
- (3) A description of the provisions of the Oklahoma Telecommunications Act relied on for the request;
- (4) The amount requested for funding;
- (5) The completed Affidavit, including all required attachments;
- (6) An affidavit signed by the eligible provider, verifying the truth and accuracy of the information contained in the Request for OUSF Funding and attachments; and
- (7) A copy of the preapproval funding letter, if preapproval was sought by the OUSF Beneficiary.

(c) To facilitate the timely evaluation of requests for funding from the OUSF, a Request for OUSF Funding shall not contain a request for funding Special Universal Services to more than one Eligible Healthcare Entity, or more than one School District, or more than one Library system. An eligible provider to a consortium may request a waiver from the OUSF Administrator to allow a Request for OUSF Funding to include eligible

members of the consortium within a single request for funding. (d) No amended Requests for OUSF Funding shall be accepted. Eligible providers may withdraw the originally filed Request for OUSF Funding and file a new request at any time prior to the issuance of the Determination. Upon the filing of a Withdrawal of Request for OUSF Funding, the Commission's Court Clerk shall close the file, without Commission order. If a new request is filed, it shall be filed under a new cause number.

(e) A Request for OUSF Funding found to be incomplete (missing information required by the form and instruction package contained on the Commission website) may be denied.

(f) It is the intention of the OUSF Administrator that each Request for OUSF Funding will be independently evaluated and reviewed on a case-by-case basis.

(g) Consistent with 17 O.S. § 139.109.1(B)(2), the OUSF Beneficiary shall make every reasonable and timely effort to obtain funding from alternative funding sources designated to support universal service, and shall submit all documentation of the effort to obtain funding from alternative funding sources as a part of the eligible provider's Request for OUSF Funding, or an explanation for why alternative funding is not available.

(h) If an eligible provider receives funding from alternative funding sources for an investment or expense already reimbursed by the OUSF, the eligible provider shall refund the double collection to the OUSF by either reducing a prospective funding request from the OUSF by an equivalent amount or remitting cash payment to the OUSF. Under no circumstances will double recovery be allowed.

(i) Concurrent with the filing of the Request for OUSF Funding, the eligible provider shall:

(1) Provide copies of its Request for OUSF Funding and Notice of the Request for OUSF Funding to the OUSF Administrator, the Oklahoma Attorney General, and the OUSF Beneficiary.

(2) Provide Notice of the Request for OUSF Funding to the contributing providers by providing an electronic copy of such Notice to the OUSF Administrator on the date the eligible provider files its Request for OUSF Funding with the Commission's Court Clerk, for posting on the Commission's website. The OUSF Administrator will then place the Notice on the Commission's website within five (5) business days.

(3) Provide notice which identifies the dollar amount requested for the lump sum and any recurring amounts, as well as the name and address of the OUSF Beneficiary.

(j) The OUSF Administrator and/or its contracted agent shall independently evaluate, review, and determine the accuracy of the complete request and issue a Determination of the eligibility for funds, within sixty (60) calendar days if an OUSF preapproval funding letter was issued, or within ninety (90) calendar days if no preapproval funding letter was issued. Simultaneously with the OUSF Administrator or contracted agent providing a copy of the Determination to the eligible provider and parties to the cause, the OUSF Administrator or contracted agent shall file the Determination

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in the Commission's Court Clerk and post it to the Commission's website. The eligible provider shall provide a copy of the OUSF Administrator's Determination to the OUSF Beneficiary within five (5) calendar days after it is filed. If the OUSF Beneficiary received an OUSF preapproval funding letter and subsequently requested additional bids that were not reviewed by the OUSF Administrator during the preapproval process, then the OUSF preapproval funding letter is null and void.

(k) Any affected party, as defined in 17 O.S. § 139.106(D)(5), may file a request for reconsideration within fifteen (15) calendar days of the Determination being filed by the OUSF Administrator, by following the procedures in OAC 165:59-3-72.

(l) If no Request for Reconsideration is filed, the Determination shall be deemed final on the sixteenth (16) calendar day after the Determination is filed, and the cause with the Commission's Court Clerk shall automatically be closed upon the filing of a Notice of Disbursement by the OUSF Administrator. The OUSF Administrator or contracted agent shall issue payment within forty-five (45) days of the previously mentioned sixteenth (16) day, without an order of the Commission.

(m) Unless good cause is shown, any Request for OUSF Funding should be made within eighteen (18) months from the date the requesting eligible provider can determine the impact of occurrence of the circumstance giving rise to the request; however, if an OUSF Beneficiary has obtained an OUSF preapproval funding letter from the OUSF Administrator, the eligible provider shall make a request for funding within sixty (60) calendar days of the start of service.

(n) An eligible provider shall receive future reimbursement upon submission of properly formatted monthly payment requests, and any other required forms, to the OUSF Administrator and/or contracted agent, which shall include discount adjustments received from alternative funding sources designated to support universal service such as E-rate and the FCC's rural health care programs. Any ongoing monthly recurring charges will be adjusted as necessary based on the appropriate discount approved by USAC.

(o) An eligible provider shall notify the OUSF Administrator and/or contracted agent in writing, and in a format determined by the OUSF Administrator and/or contracted agent, of any changes to the provisioning of service, including but not limited to disconnection of service, upgrade and/or downgrade in connectivity speed, change in E-rate discount, or price. Any change to the previously approved Special Universal Services will require approval from the OUSF Administrator and/or contracted agent in order to determine if a new Request for OUSF Funding will be required, rather than the OUSF Administrator approving reimbursement through the monthly payment process. The OUSF Administrator shall advise the eligible provider of its determination within sixty (60) calendar days of receipt of the written notice from the eligible provider identifying the change(s). If the OUSF Administrator fails to advise the eligible provider of its determination concerning the requested change within the sixty (60) calendar day period, the OUSF funding being received by the eligible provider will cease until a new Request for

OUSF Funding is processed in accordance with the Oklahoma Telecommunications Act and this Chapter.

(p) When an eligible provider will no longer be providing Special Universal Services it shall notify the OUSF Administrator of the disconnection of service date fifteen (15) business days prior to disconnection, or immediately upon receipt of a request for disconnection, if the request is less than fifteen (15) business days prior to disconnection.

(q) No OUSF funds shall be disbursed to an eligible provider of Special Universal Services until the services are installed and in service.

(r) A Request for OUSF Funding, pursuant to this Section, shall be signed by an authorized agent of the eligible provider, or by the attorney for the eligible provider.

165:59-3-69. [RESERVED]

165:59-3-70. Procedures for requesting funding from the OUSF - Primary Universal Service

(a) An eligible local exchange telecommunications service provider may seek and obtain funds from the OUSF for Primary Universal Service by filing a "Request for OUSF Funding" and "Notice of Request for OUSF Funding" with the Commission's Court Clerk. On the date of filing the Request for OUSF Funding, the eligible local exchange telecommunications service provider shall deliver a filed copy of the Request for OUSF Funding to the OUSF Administrator for processing.

(b) Unless a waiver is granted by the OUSF Administrator, the following minimum filing requirements are necessary for causes filed pursuant to 17 O.S. § 139.106(G), and must be made available at the time of filing:

(1) The name and address of the eligible local exchange telecommunications service provider;

(2) A description of the provisions of the Oklahoma Telecommunications Act relied on for the request;

(3) The amount requested for funding;

(4) A chart of corporate organization listing all employees, and detailing any affiliate relationships;

(5) A list of affiliates, a description of the service(s) or goods provided to or by the requesting eligible telecommunications service provider for each affiliate, and the total expense charged to the requesting eligible local exchange telecommunications service provider by each affiliate in sufficient detail to demonstrate that any affiliate company utilizing employees or assets of the company are allocated or reimbursed in accordance with 47 C.F.R. 32.27. This information shall be provided for the reimbursement year and the previous three (3) years (4 total), and shall include, but not be limited to, all contracts, memorandum, timesheets, calculations, and studies;

(6) A written description and documentation showing how costs are separated for each regulated and non-regulated service that the requesting eligible local exchange telecommunications service provider provides to, or receives from, any affiliate that is associated with the Request for OUSF Funding. This description must show

compliance with the cost allocation standards and procedures as set forth in 47 C.F.R. 64.901. This information shall be provided for the reimbursement year and the previous three (3) years (4 total), and shall include, but not be limited to, all contracts, memorandum, timesheets, calculations, and studies;

(7) If applicable, copies of the eligible local exchange telecommunications service provider's Cost Allocation Manual (CAM), to include any changes to the CAM for the last three (3) years, including documentation supporting the cost allocation procedures and a current example of the application of the CAM's manual. If a CAM is unavailable, similar documentation must be provided;

(8) The most recent three (3) years preceding the request of audited financial statements, or if not subject to an audit, then reviewed financial statements, (including balance sheet, income statement, statement of cash flows accompanying notes, and any associated management letter);

(9) A description of network facilities, identifying all facilities included in the Request for OUSF Funding, with actual documentation available upon request by the OUSF Administrator;

(10) A description of the cost and accounting methodologies used to support the Request for OUSF Funding;

(11) A trial balance and general ledger in Excel format, or other format as agreed to by the Administrator;

(12) If applicable, a fully distributed cost study based on the FCC's Part 32, 36 and 64; provide plant reserve, rate base, income (revenue, expenses, and taxes), and other schedules included in the filing made with NECA or the FCC; a schedule of separations cost study for the reimbursement year. Underlying work-papers to be available onsite;

(13) Copies of the company's annual Federal Universal Service Fund (USF) High Cost Loop Data Collection forms for the reimbursement year and the previous three (3) years (4 total);

(14) The total number of full-time and part-time employees, officers, and/or contractors to include a listing of each of the above positions that includes title, duties, responsibilities, wages and/or salaries and benefits for the reimbursement year and the previous three (3) years (4 total);

(15) A list of expenses sought, including prior period adjustments and/or contingent liabilities that were reported on the eligible local exchange telecommunications service provider's books and records and are part of this request, including but not limited to any:

(A) reimbursed employee business expense, including travel, mileage, car rental, lodging, meals, etc.;

(B) lobbying;

(C) listing of all legal services and fees by law firm;

(D) advertising expenses;

(E) external relation costs;

(F) community outreach;

(G) entertainment;

(H) food, including travel, normal business, and company events;

(I) political contributions;

(J) charitable donations;

(K) penalties for fines or violations;

(L) membership fees and dues;

(M) gifts.

(16) The Federal tax classification (C-Corp, Sub-Chapter S, Partnership, etc.) of the eligible local exchange telecommunications service provider, and copies of the eligible local exchange telecommunications service provider's Federal and State tax returns for the reimbursement year and the previous three (3) years (4 total);

(17) A Description of the time tracking and reporting methods used by the eligible local exchange telecommunications service provider to distribute payroll dollars between regulated and non-regulated affiliates. Provide all supporting documentation for the reimbursement year and the previous three (3) years (4 total);

(18) A list of plant in-service retirements for the reimbursement year and the three (3) years prior to the reimbursement year (4 total);

(19) A plant in-service schedule by account that provides existing plant and additions for the reimbursement year and the three (3) years prior to the reimbursement year (4 total);

(20) Listing by account of all revenues, including aggregate customer revenues by category (residential, business, wholesale, etc.), that were used to off-set the eligible local exchange telecommunications service provider's OUSF funding request. This should include any amount received from the Federal USF, OUSF, and any other federal or state funding sources;

(21) The total number of customers by category (residential, business, wholesale, etc.) for the reimbursement year and the three (3) years prior to the reimbursement year (4 total);

(22) A copy of the eligible local exchange telecommunications service provider's regulated Continuing Property Records (CPR). If the CPRs do not tie to the general ledger, provide a reconciliation of the differences; and

(23) A list and copies of any audits or reviews to include letters, reports, memorandum, etc. conducted by the National Exchange Carriers Association (NECA), USAC, or FCC conducted during the reimbursement year and three (3) years prior to the reimbursement year (4 total).

(c) Unless a waiver is granted by the OUSF Administrator, the following minimum filing requirements are necessary for causes filed pursuant to 17 O.S. § 139.106(K), and must be made available at the time of filing:

(1) The name and address of the eligible local exchange telecommunications service provider;

(2) A description of the provisions of the Oklahoma Telecommunications Act relied on for the request;

(3) The amount requested for funding;

(4) Documentation necessary to substantiate the requested funding; and

(5) The most recently filed jurisdictional cost study;

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- (6) For highway relocation causes, the additional following minimum filing requirements are necessary:
- (A) Copies of all bids;
 - (B) The request for proposal;
 - (C) Copies of all invoices and work orders;
 - (D) Documentation showing internal material accounting;
 - (E) Documentation showing internal labor accounting, including time sheets, and separate documentation showing accounting of overtime work;
 - (F) A certificate of completion of the relocation.
- (d) No amended Requests for OUSF Funding shall be accepted. Eligible local exchange telecommunications service providers may withdraw the originally filed Request for OUSF Funding and file a new request at any time prior to the issuance of the Determination. Upon the filing of a Withdrawal of Request for OUSF Funding, the Commission's Court Clerk shall close the file, without Commission order. If a new request is filed, it shall be filed under a new cause number.
- (e) Requests for OUSF Funding found to be incomplete (missing information required by the form and instruction package contained on the Commission website) may be denied.
- (f) It is the intention of the OUSF Administrator that each funding request will be independently evaluated and reviewed on a case-by-case basis.
- (g) The eligible local exchange telecommunications service provider requesting OUSF funding for primary universal service shall make every reasonable and timely effort to obtain funding from alternative funding sources designated to support universal service, and shall submit all documentation of the effort to obtain funding from alternative funding sources designated to support universal service as a part of its Request for OUSF Funding, or an explanation for why alternative funding is not available. Upon the eligible local exchange telecommunications service provider producing the documentation that it has sought alternative funding sources or an explanation for why alternative funding is not available, the eligible local exchange telecommunications service provider shall not be precluded from having its Request for OUSF Funding processed.
- (h) If an eligible local exchange telecommunications service provider receives funding from alternative funding sources for an investment or expense already reimbursed by the OUSF, the eligible local exchange telecommunications service provider shall refund the double collection to the OUSF by either reducing a prospective funding request from the OUSF by an equivalent amount or remitting cash payment to the OUSF. Under no circumstances will double recovery be allowed.
- (i) Concurrent with the filing of the Request for OUSF Funding, the eligible local exchange telecommunications service provider shall:
- (1) Provide copies of its Request for OUSF Funding and Notice of the Request for OUSF Funding to the OUSF Administrator and the Oklahoma Attorney General.
 - (2) Provide Notice of the Request for OUSF Funding, which shall include the dollar amount of the request for lump sum and any recurring amounts, to the contributing providers by providing an electronic copy of such Notice

to the OUSF Administrator on the date the eligible local exchange telecommunications service provider files its Request for OUSF Funding with the Commission's Court Clerk, for posting on the Commission website. The OUSF Administrator will then place the Notice on the Commission website within five (5) business days.

(j) The OUSF Administrator and/or contracted agent shall independently evaluate, review, and determine the accuracy of the complete request and issue a determination of the eligibility for funds, which details the amount of funding recoverable from the OUSF, within ninety (90) calendar days. Simultaneously with the OUSF Administrator or contracted agent advising the provider and parties to the cause, the OUSF Administrator or contracted agent shall file the written Determination in the Commission's Court Clerk and post it to the Commission's website. The eligible local exchange telecommunications service provider shall provide a copy of the OUSF Administrator's Determination to all parties of record within five (5) calendar days after it is filed.

(k) Any affected party, as defined in 17 O.S. § 139.106(D)(5), may file a Request for Reconsideration within fifteen (15) calendar days of the Determination being filed by the OUSF Administrator, by following the procedures in OAC 165:59-3-72.

(l) If no Request for Reconsideration is filed, the Determination shall be deemed final on the sixteenth (16) calendar day after the Determination is filed, and the cause with the Commission's Court Clerk shall automatically be closed upon the filing of a Notice of Disbursement by the OUSF Administrator. The OUSF Administrator or contracted agent shall issue payment within forty-five (45) calendar days of the previously mentioned sixteenth (16) day, without an order of the Commission.

(m) Unless good cause is shown, any Request for OUSF Funding pursuant to this Section should be made within a reasonable time from the date the requesting local exchange telecommunications service provider can determine the impact of occurrence of the circumstance giving rise to the request, including receipt or notification of alternative funding designed to support universal service. However, this shall neither preclude a local exchange telecommunications service provider from filing a Request for OUSF Funding, nor shall it preclude such a Request from being processed, prior to the time a final decision is made regarding alternative funding from a program designed to support universal service.

(n) A Request for OUSF Funding, pursuant to this Section, shall be signed by an attorney for the eligible local exchange telecommunications service provider.

165:59-3-71. [RESERVED]

165:59-3-72. Request for reconsideration procedures

(a) The Request for Reconsideration and a Notice of Pre-hearing Conference shall be filed with the Commission's Court Clerk and provided to all parties of record on the same day it is filed. Any party filing a Request for Reconsideration must be represented by an attorney, as defined in OAC 165:5-1-3.

(b) Notice of the Request for Reconsideration shall be given to the OUSF Administrator, the Oklahoma Attorney General, and all parties to the cause, and shall be posted on the Commission's website by the OUSF Administrator.

(c) Upon filing the Request for Reconsideration and the Notice of Prehearing Conference, the Request for Reconsideration shall, without Commission order, be assigned to an ALJ, and set for hearing on the next regularly scheduled prehearing conference date, which is at least five (5) business days after the date of filing, unless the parties agree or the Commission directs otherwise.

(d) At the time a Request for Reconsideration is filed, all documentation not contained in the public record and not filed in the cause with the Commission's Court Clerk, relied upon by the OUSF Administrator in making the Determination, shall be made available to the party filing the Request for Reconsideration. No confidential information and/or highly sensitive confidential information shall be provided until the nondisclosure agreement, as approved pursuant to OAC 165:59:3-30(f) is signed by the affected party. Additionally, all data requests issued with respect to a Request for Reconsideration shall be answered within ten (10) business days, unless otherwise agreed by the parties. Any prefiled testimony, statement of position, or legal brief in support of the Request for Reconsideration shall be filed with the Commission's Court Clerk within fifteen (15) calendar days of the Request for Reconsideration, and provided to all parties of record on the same day it is filed.

(e) Any responsive prefiled testimony or responsive legal brief shall be filed with the Court Clerk within ten (10) business days of the filing of the prefiled testimony or legal brief, as referenced in subsection (d), and provided to all parties of record on the same day it is filed.

(f) During the prehearing conference, the ALJ shall identify any additional requirements for a procedural schedule, including scheduling a hearing on the Request for Reconsideration, if deemed necessary by the ALJ. The parties shall identify all witnesses or potential witnesses who will provide testimony, and all witnesses or potential witnesses shall submit prefiled testimony. The ALJ may determine that a hearing on the Request for Reconsideration is not needed for causes without material disputes of fact or if all parties waive cross-examination. The hearing on the Request for Reconsideration shall be set within forty-five (45) calendar days of filing of the Request for Reconsideration, unless the Commission orders otherwise. The parties shall adhere to the procedural schedule set by the ALJ, without a Commission order.

(g) The ALJ shall issue an ALJ report containing the findings of fact, conclusions of law, and recommendation within fifteen (15) business days of the hearing on the Request for Reconsideration. If the ALJ determines no hearing on the Request for Reconsideration is necessary, the ALJ shall issue an ALJ report as set forth herein, no later than sixty (60) calendar days after the date the Request for Reconsideration was filed.

(h) Recommendations on motions, objections, and all filings made prior to the issuance of an ALJ report shall be addressed by the ALJ in the ALJ report, containing the recommendation on the merits of the Request for Reconsideration, unless the Commission orders otherwise.

(i) Oral or written exceptions regarding motions, objections, and all filings made prior to the issuance of an ALJ report will not be allowed, unless the Commission orders otherwise. Exceptions to the ALJ report, shall be governed under OAC 165:5-13-5(a)(2), (b) and (c).

(j) A Request for Reconsideration may be withdrawn at any time prior to opening of the record in the Hearing on the Request for Reconsideration by filing a Withdrawal of Request for Reconsideration with the Commission's Court Clerk. Upon filing a Withdrawal of Request for Reconsideration, the Cause shall be closed by the Commission's Court Clerk, without a Commission order, and payment shall be made within forty-five (45) calendar days after filing the Withdrawal of Request for Reconsideration.

(k) If the Commission does not issue a final order within thirty (30) calendar days from the date the Request for Reconsideration is filed, the Request shall be deemed approved on an interim basis subject to refund with interest. To obtain interim funding, the eligible local exchange telecommunications service provider or the eligible provider must file notice with the Commission's Court Clerk of its intention to seek interim funding. The OUSF Administrator shall pay the interim funding within forty-five (45) calendar days upon receipt of notice.

SUBCHAPTER 7. SPECIAL UNIVERSAL SERVICES

165:59-7-1. Reimbursement from the OUSF for Special Universal Service

(a) A provider of Special Universal Services—An OUSF Beneficiary may be eligible to receive funding from both the OUSF and other state or federal funds; however, in no instance will there be a double recovery. If the provider of Special Universal Services—OUSF Beneficiary receives funding from another state or federal fund for an investment or expense already reimbursed by the OUSF, the OUSF Beneficiary shall notify the eligible provider, and thereafter the eligible provider shall reduce the amount of its credit to the OUSF Beneficiary and its prospective funding request from the OUSF by an equivalent amount. The provider of Special Universal Services—OUSF Beneficiary shall work with the recipient to make every reasonable effort to obtain funding from another state and/or federal fund designated to support special universal service; however, such efforts shall not delay or affect the provider's ability to receive funding from the OUSF pursuant to the provisions of this Chapter and the Oklahoma Telecommunications Act. The provider—OUSF Beneficiary shall provide the Commission—OUSF Administrator with information regarding the recipient's—OUSF Beneficiary's request for funding from government sources designed to support the provisioning of the Special Universal Service, i.e. the federal schools and libraries program or federal rural health care program, or an explanation of why such funding is not available, or why the recipient of the Special Universal Service—OUSF Beneficiary did not request such funding. Failure to provide such documentation regarding Special Universal Service may result in the Commission—OUSF Administrator denying the request for

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Special Universal Service funding from the OUSF. The OUSF Beneficiary shall provide evidence of any exemption it has to obtain funding from another state or federal fund designated to support Special Universal Services.

(b) Completing alternative funding requests in a manner that results in reduced alternative funding, for which the OUSF Beneficiary would have otherwise been eligible, may reduce OUSF funding.

(b) A provider of the free of charge telecommunications services identified in this Chapter and 17 O.S. § 139.109 as Special Universal Services, shall be reimbursed from the OUSF for the provisioning of said Special Universal Services, if requested.

(c) A provider of Special Universal Services seeking reimbursement from the OUSF for the tariffed rate or charge for any Special Universal Service provided must make its request for reimbursement pursuant to OAC 165:59-3-62, in the same manner that an eligible telecommunications carrier requests funds from the OUSF for purposes other than the provisioning of Special Universal Services. The requesting provider shall submit information with its Request for OUSF Funding that identifies where and to whom the services were provided, along with documentation supporting the requested level of funding. The information shall include the applicable tariffed rate or charges for providing the services.

(d) Upon receipt of a Request for OUSF Funding, the Administrator of the OUSF or the contracted agent shall review the Request and, if appropriate, reimburse the provider of the Special Universal Services, consistent with the Oklahoma Telecommunications Act.

(ec) The Commission OUSF Administrator will utilize the following procedures when evaluating a request for OUSF funding for internet-Internet access to a public school or public library:

(1) Competitive A fair and open competitive bidding should be used for all services where process shall be used to select the services and eligible provider for which OUSF funding will be sought, including costs for internet Internet access to schools and libraries for the balance not paid by E-Rate, up to the eligible 1.5 Mbps building credit equivalent E-rate.

(2) An affidavit will be required from the public school or public library that the bid information submitted to the OUSF Administrator for review contains all the bids received by the school or library. All evaluation tools utilized by the OUSF Beneficiary while reviewing the bids, including all received bids, must be provided to the OUSF Administrator at the Commission offices or in a manner approved by the OUSF Administrator.

(3) The OUSF will not reimburse charges for redundant service(s); however, if the eligible provider is unable to provision the eligible bandwidth using a single access line, the OUSF Beneficiary may choose to employ multiple access lines to provision the eligible bandwidth level established by the SETDA standard, as long as all lines are provisioned by the same eligible provider. The OUSF Administrator may waive this requirement for good cause shown.

(4) The provider of the LAN/WAN will be given 30 days notice prior to their reimbursement being reduced due to the funding going to the internet access provider first, unless the reduction in funding is caused by an increase in the rate of the LAN/WAN provider.

(5) Funding from the OUSF will be provided to the incumbent carrier until the date of disconnection or thirty (30) days after the end user provides the notice to disconnect to the incumbent carrier; whichever occurs first.

(6) In instances where the provider has not filed or submitted a 1.5 Mbps tariff to the Commission, the OUSF will calculate the 1.5 Mbps building credit using the amount established for a 1.5 Mbps credit by Commission Order.

(7) For applications that include funding for the internet access and for LAN/WAN systems, the OUSF will reimburse distance sensitive mileage for the internet access for the "first building" credit when the carrier's tariff has a mileage sensitive component. Each subsequent building credit will not include distance sensitive mileage.

(8) For applications that include funding for LAN/WAN only, the OUSF will not fund distance sensitive mileage in any building credit unless more than one Central Office is involved to provision internet access. In the latter case, distance sensitive mileage will be allowed for only one (1) building credit per central office.

(9) In the event a school uses multiple service providers for the Internet and LAN/WAN connection, available building credits will be utilized to first fund the Internet service provider, and then the LAN/WAN service provider will be funded based upon remaining available building credits.

(10) The OUSF will fund reasonable installation charges. Installation charges may be amortized over a reasonable period of time to avoid excessive switching, reduced quality of service and excessive burden on the OUSF caused by untimely carrier changes.

(11) The OUSF will not reimburse monthly fees or hardware related to optional services, such as managed routers. The OUSF may pay a one time cost for the installation charge associated with configuring the router.

(12) One (1) building credit is available for each building which contains classrooms wherein students in pre-kindergarten through twelfth grades receive internet-based coursework. Buildings with a physical firewall would qualify for a building credit for each section of the building that is separated by a physical functional firewall.

(13) A building that is the point of service, but which fails to otherwise qualify as a public school building in which classrooms are contained, does not qualify as a building for the purpose of calculating building credits.

(14) Building credits will only be allowed for buildings with classrooms that have active student instructional/testing internet sessions or use the building for state mandated testing that uses internet access. In instances where the internet usage is limited to student testing, the school must

demonstrate that alternative locations or methods for testing are not available.

(15) ~~The OUSF will not fund internet access to a building for more than 60 days during the construction phase or any remodeling/out of service timeframes that occur over an extended period.~~

(4) The OUSF shall not fund more than one eligible provider for the same service at the same location for the same time period, except during a transition period from one eligible provider to another. Such funding during a transition period shall not exceed thirty (30) calendar days.

(5) The OUSF will fund either the lowest cost reasonable qualifying bid, or a bid that is no more than 25% above the lowest cost reasonable qualifying bid, inclusive of all non-recurring eligible charges, for the eligible bandwidth range of the OUSF Beneficiary. If the selected bid is more than 25% above the lowest cost reasonable qualifying bid, the OUSF will fund the lowest cost reasonable qualifying bid plus the 25%.

(6) The OUSF Beneficiary's request for bids shall clearly identify the minimum and a maximum bandwidth at standard available levels as suggested in guidelines promulgated by the FCC or Commission rules.

~~(167) Once an Order regarding OUSF reimbursement has been issued, the Telecommunications Carrier OUSF funding has been approved pursuant to the Oklahoma Telecommunications Act, the eligible provider should submit true up monthly payment reports to the OUSF manager OUSF Administrator or the contracted agent on a monthly basis. Payment will be limited to ninety (90) days of true up; other than for the initial true up filed after the final Order is issued. After the initial true up request, a new application must be filed to recover any true up amount that exceeds (90) days of service, unless otherwise agreed to by the Administrator. The initial payment will be as necessary to pay all amounts approved but not yet received by the eligible provider. After the initial monthly payment request is submitted, a monthly payment request should be submitted by the eligible provider to collect the amount of credit provided to the OUSF Beneficiary. The monthly payment requests shall be paid on the next regularly scheduled payment date. A new Request for OUSF Funding must be filed to recover any monthly payment amount that exceeds ninety (90) days of service, unless otherwise agreed to by the OUSF Administrator.~~

~~(178) True up Monthly payment reports must be received in the form and content prescribed by the OUSF Administrator.~~

~~(189) The OUSF Administrator will post to the Commission website a copy of the monthly payout true up payment report; within five (5) business days of the payout true up payment report being approved by the OUSF Administrator.~~

~~(1910) True up monthly Monthly recurring amounts or other funding related changes (i.e. number of buildings or e.g. level of bandwidth, or changes in E-rate discount amount) will not be increased from the ordered approved~~

amount without supporting documentation being made available to the OUSF Administrator.

~~(20) Increases in cost caused by the expiration of a contract will not be permitted via true up when the new cost is higher than 10% of the expired contract and when there is no new contract in place. A new application will need to be filed in the Court Clerk's office to recover any difference in prices that exceed 10% of the expired contract price.~~

~~(21) Any additional service above and beyond the internet access line on contracts and invoices will be denied, unless good cause is shown for reasonable pricing and public interest. Invoices provided to request recovery from the OUSF must contain a breakdown of non-eligible expenses, such as additional internet maintenance service, Quality of Service product, firewall, email packages, domain registration, etc.~~

(11) Funding for eligible services, including federal funding, shall not exceed actual eligible expenses.

~~(f) The Commission will utilize the following procedures when evaluating a request for OUSF funding for a telemedicine line:~~

~~(1) Competitive bidding should be used for all services where OUSF funding will be sought.~~

~~(2) An affidavit will be required from the telemedicine entity that the bid information submitted to the Administrator for review contains all the bids received by the telemedicine entity.~~

~~(3) The OUSF will not reimburse charges for redundant service(s).~~

~~(4) Funding from the OUSF will be provided to the incumbent carrier until the date of disconnection or thirty (30) days after the end user provides the notice to disconnect to the incumbent carrier; whichever occurs first.~~

~~(5) The OUSF will fund reasonable installation charges. Installation charges may be amortized over a reasonable period of time to avoid excessive switching, reduced quality of service and excessive burden on the OUSF caused by untimely carrier changes.~~

~~(6) The OUSF will not reimburse monthly fees or hardware related to optional services, such as managed routers or maintenance.~~

~~(7) Once an Order regarding OUSF reimbursement has been issued, the Telecommunications Carrier should submit true up reports to the OUSF manager on a monthly basis. Payment will be limited to ninety (90) days of true up; other than for the initial true up filed after the final Order is issued. After the initial true up request, a new application must be filed to recover any true up amount that exceeds ninety (90) days of service, unless otherwise agreed to by the Administrator.~~

~~(8) True up reports must be received in the form and content prescribed by the OUSF Administrator.~~

~~(9) The Administrator will post to the Commission website a copy of the monthly payout true up report; within five (5) days of the payout true up report being approved by the OUSF Administrator.~~

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(10) ~~Changes to the funding level may not be done by true up unless expressly authorized by the OUSF Administrator after review of changes to the bandwidth needs of the eligible healthcare entity. True up monthly recurring amounts or other funding related changes (i.e. level of bandwidth) will not be increased from the ordered amount without supporting documentation being made available to the OUSF Administrator.~~

(11) ~~Increases in cost caused by the expiration of a contract will not be permitted via true up when the new cost is higher than 10% of the expired contract and when there is no new contract in place. A new application will need to be filed in the Court Clerk's office to recover any difference in prices caused by an expired contract.~~

(12) ~~Any additional service above and beyond the telemedicine line on contracts and invoices will be denied, unless good cause is shown for reasonable pricing and public interest. Invoices provided to request recovery from the OUSF must contain a breakdown of non-eligible expenses, such as Quality of Service product, firewall, email packages, domain registration, etc.~~

(d) The OUSF Administrator will utilize the following procedures when evaluating a request for OUSF funding for a telemedicine line:

(1) A fair and open competitive bidding process shall be used to select the services and eligible provider for which OUSF funding will be sought, including costs for Internet access to eligible healthcare entities.

(2) An affidavit will be required from the eligible healthcare entity that the bid information submitted to the OUSF Administrator for review contains all the bids received by the eligible healthcare entity. All evaluation tools utilized by the OUSF Beneficiary while reviewing the bids, including all received bids, must be provided to the OUSF Administrator.

(3) The OUSF will not reimburse charges for redundant service(s); however, the eligible healthcare entity may choose to employ multiple access lines to provision the eligible bandwidth level established by the FCC, and as stated in OAC 165:59-7-6(c), as long as all lines are provisioned by the same eligible provider.

(4) The OUSF shall not fund more than one eligible provider for the same service at the same location for the same time period, except during a transition period from one eligible provider to another. Such funding during a transition period shall not exceed thirty (30) calendar days.

(5) The OUSF will fund reasonable installation and/or reasonable construction charges. These charges shall be evaluated as part of the OUSF Administrator's analysis of lowest cost reasonable qualifying bid selection by the OUSF Beneficiary. Installation charges, construction charges, early termination fees, and charges assessed upon the expiration of a contract will be amortized over the initial term of the contract when determining the lowest cost reasonable qualifying bid.

(6) The OUSF will fund either the lowest cost reasonable qualifying bid, or a bid that is no more than 25% above the lowest cost reasonable qualifying bid, inclusive

of all non-recurring eligible charges, for the eligible bandwidth range provided in OAC 165:59-7-6(c) of the OUSF Beneficiary. If the selected bid is more than 25% above the lowest cost reasonable qualifying bid, the OUSF will fund the lowest cost reasonable qualifying bid plus the 25%.

(7) Once OUSF funding has been approved pursuant to the Oklahoma Telecommunications Act, the eligible provider should submit monthly payment reports to the OUSF Administrator or the contracted agent on a monthly basis. The initial payment will be as necessary to pay all amounts approved but not yet received by the eligible provider. After the initial monthly payment request is submitted, a monthly payment request should be submitted by the eligible provider to collect the amount of credit provided to the eligible healthcare entity. The monthly payment requests shall be paid on the next regularly scheduled payment date. A new Request for OUSF Funding must be filed to recover any monthly payment amount that exceeds ninety (90) days of service, unless otherwise agreed to by the OUSF Administrator.

(8) Monthly payment reports must be received in the form and content prescribed by the OUSF Administrator.

(9) The OUSF Administrator will post to the Commission website a copy of the monthly payment report within five (5) business days of the payment report being approved by the OUSF Administrator.

(10) Monthly recurring amounts or other funding related changes (i.e. level of bandwidth) will not be increased from the approved amount without supporting documentation being made available to the OUSF Administrator.

(11) Funding for eligible services, including federal funding, shall not exceed actual eligible expenses.

(12) Increases in cost caused by the expiration of a contract will not be permitted via the monthly payment process when the new cost is higher than 10% of the expired contract and when there is no new contract in place. A new Request for OUSF Funding will need to be filed in the Commission's Court Clerk to recover any difference in prices caused by an expired contract.

(13) Reimbursement of the cost for any additional service above and beyond the telemedicine bandwidth on contracts and invoices will be denied, unless the costs are in compliance with the Oklahoma Telecommunications Act. Invoices provided to request OUSF Funding must contain a breakdown of non-eligible expenses, such as firewall (unless provided as a standard component of Internet access by the eligible provider to all customers with the same type of service and not priced separately), email packages, and domain registration, etc.

(e) If a Request for Reconsideration is filed and subsequently withdrawn, the OUSF Administrator will pay the determined amount no later than forty-five (45) calendar days after the date the Request for Reconsideration is withdrawn.

165:59-7-5. Toll-free calling to not-for-profit hospitals [REVOKED]

(a) Upon receipt of a written request by an authorized representative of a not for profit hospital, as defined by this Chapter,

a telecommunications carrier shall, by itself or in conjunction with another provider of telecommunications services, provide a toll free telephone number, and up to a total of five access lines, free of charge, to allow incoming toll free calls from any location within the geographic area served by the requesting not for profit hospital. The furnished telephone number shall allow toll free calls from the geographical area served by the not for profit hospital, or a larger area if providing access to a larger area is determined by the telecommunications carrier to be more economical. The written request shall be in the form and content approved by the Director of the Public Utility Division.

(b) Where the technical capability exists, the telecommunications carrier shall periodically monitor the usage only of each provided telephone number, and if, upon review, usage does not support the initially requested number of access lines, the number of access lines may be reduced.

(c) The telecommunications carrier providing the Special Universal Service shall receive reimbursement from the OUSF in the amount of the tariffed rate or charge directly attributable to the provisioning of the incoming, toll free telephone number, the associated usage, the access lines and all access or other charges paid by the telecommunications carrier providing the Special Universal Service.

165:59-7-6. Telemedicine access for eligible healthcare entities

(a) It is the intention of the Commission that this Chapter be interpreted to assist in the development of telemedicine service programs which in turn have the following effects on eligible ~~health care~~ healthcare entities:

- (1) Empowering eligible healthcare entities, especially those in rural areas, to provide a higher level of medical service;
- (2) Expanding the range of medical services available, especially those in rural areas;
- (3) Providing greater access to more choices in medical care by patients in rural areas;
- (4) Reducing the number of rural patient transfers to urban areas;
- (5) Enhancing rural economic development; and
- (6) Reducing the costs of medical care at eligible healthcare entities.

(b) ~~Upon compliance with the competitive bidding process, and other requirements set forth in the Oklahoma Telecommunications Act, and upon receipt of a written request by an authorized representative of an eligible healthcare entity, as defined by this Chapter, the telecommunications carrier or OneNet eligible provider shall, by itself or in conjunction with another provider of telecommunications services, provide Special Universal Services to the eligible healthcare entity on a telecommunications line or wireless connection, free of charge, sufficient for providing such telemedicine, clinical, and health consultation services as the entity is equipped to provide as set forth in 17 O.S. § 139.109(C)(2).~~

(c) ~~The telecommunications carrier shall be entitled to reimbursement from the OUSF for the recurring amount of the~~

~~tariff rate or charge directly attributable to the telecommunications line or wireless connection.~~

(c) Special Universal Services to an eligible healthcare entity include the provision of bandwidth per standards as recommended by the FCC sufficient for providing telemedicine services including the telemedicine line, reasonable installation, and network termination equipment owned and operated by the eligible provider that is necessary to provide the eligible telemedicine service. Bandwidth may be rounded up to the next available standard service increment to avoid increased costs to the fund.

(1) The OUSF Administrator shall approve funding for bandwidth requests, up to and including the amount listed below, for an eligible healthcare entity as follows:

(A) Department of Corrections shall be eligible for funding up to 100 Mbps;

(B) Federally Qualified Health Centers shall be eligible for funding as follows:

(i) Urban locations up to 500 Mbps;

(ii) Rural locations up to 100 Mbps.

(C) County Health Department shall be eligible for funding as follows:

(i) Urban locations up to 500 Mbps;

(ii) Rural locations up to 100 Mbps.

(D) City-County Health Department shall be eligible for funding as follows:

(i) Urban locations up to 500 Mbps;

(ii) Rural locations up to 100 Mbps.

(E) Not for Profit Mental Health and Substance Abuse Facilities (certified facilities pursuant to OAC 450, Chapters 17 and 24) that are not staffed 24-hours each day shall be eligible for funding up to 100 Mbps;

(F) Eligible healthcare entities that are staffed 24-hours each day, including those which are academic facilities, large medical centers, hospitals, and mental health and substance abuse facilities (certified facilities pursuant to OAC 450 Chapter 23) shall be eligible to receive bandwidth, based on licensed or certified beds, as follows:

(i) 1 to 50 beds shall be eligible for funding up to 500 Mbps;

(ii) 51 to 100 beds shall be eligible for funding up to 1 Gbps;

(iii) 101 to 200 beds shall be eligible for funding up to 3 Gbps;

(iv) 201 or greater beds shall be eligible for funding up to 10 Gbps.

(G) The eligible healthcare entities, identified above in (A) through (F), which support other eligible healthcare entities as a central location or host, may request additional bandwidth per supported location of up to twenty five percent (25%) of the supported eligible healthcare entity's eligible bandwidth.

(2) When determining whether funding for additional bandwidth is appropriate, when an eligible healthcare entity requests funding for a bandwidth that exceeds the amounts listed in section (1), the OUSF Administrator

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may consider, but not be limited to considering, the following factors:

(A) Number of health care providers and staff at the eligible healthcare entity;

(B) Number of beds at the eligible healthcare entity;

(C) The telemedicine services provided at the eligible healthcare entity;

(D) Support for other telemedicine facilities that require broadband access with consideration for any payments received by the supporting facility; and

(E) Prior bandwidth usage, not including public network usage.

(d) In no case, however, shall reimbursement from the OUSF be made for an Internet subscriber fee or charges incurred as a result of services accessed via the Internet.

(e) ~~The telecommunications carrier eligible provider shall be entitled to reimbursement from the OUSF for a one-time reasonable charge for the establishment of service of a new telecommunications line or wireless connection. Under this subsection (e), reimbursement is intended to allow for reasonable changes in 1) the telecommunications services and technologies purchased by an eligible healthcare entity, 2) the physical location of an eligible healthcare entity by permitting establishment of new service at a new location, and and/or 3) the telecommunications carrier eligible provider providing service to an eligible healthcare entity.~~

(f) ~~The written request by an authorized representative of an eligible healthcare entity to a telecommunications carrier or OneNet an eligible provider shall be in the form and content approved by the Director of the Public Utility Division OUSF Administrator.~~

~~(g) No later than February 1, each eligible healthcare entity that receives OUSF telemedicine funding shall, annually recertify for the purpose of determining their continued eligibility. The annual recertification shall be in the form and content approved by the Director of the Public Utility Division. If the healthcare entity is not recertified for the current level of funding, then funding will be adjusted or cease as of July 1 of the same calendar year unless determined otherwise by the Commission; except that in 2013 funding shall be adjusted or cease December 31, 2013, unless determined otherwise by the Commission.~~

~~(h) No later than May 1, the Public Utility Division shall mail a letter to each eligible healthcare entity and its telecommunications service provider, to inform of the Public Utility Division's determination regarding recertification. If either the eligible healthcare entity or the telecommunications service provider disputes the determination of eligibility or bandwidth to be funded by the OUSF after July 1 of that year (December 31, in 2013 only), they may file an application in the Court Clerk's office to request reconsideration by the Commission.~~

~~(i) Effective July 1, 2016, eligible healthcare entities that are eligible for funding from a federal healthcare program are expected to not only request funding, but are expected to follow through and complete the process for federal funding. The telecommunications carrier that provides the Special Universal~~

~~Service to an eligible healthcare entity that is eligible for federal funding shall provide the Form 463 and and/or Form 467 filed by the eligible healthcare to PUD, within thirty (30) days after the eligible healthcare entity has submitted the form to the Universal Service Administrative Corporation.~~

~~(g) The OUSF Administrator and/or its contracted agent may periodically seek verification of continued eligibility from an eligible healthcare entity, and the eligible healthcare entity shall maintain sufficient documentation to be able to provide verification of eligibility within fifteen (15) calendar days after request of the OUSF Administrator and/or its contracted agent. Failure to supply the requested eligibility verification within the stated timeframe will result in immediate discontinuance of OUSF support until information is received and deemed complete, unless the Commission directs otherwise.~~

~~(h) Eligible healthcare entities that are eligible for funding from a program designed to support universal service, including but not limited to the FCC Rural Health Care Program, are expected to not only request funding, but to follow through and complete the process for Rural Health Care Program funding.~~

~~(i) Completing alternative funding requests in a manner that results in reduced alternative funding, for which the OUSF Beneficiary would have otherwise been eligible, may reduce OUSF funding.~~

~~(j) If the eligible healthcare entity is eligible for Rural Health Care Program funding, the following documents shall be provided to the OUSF Administrator within thirty (30) calendar days after the eligible healthcare entity has either submitted the form to USAC, or received the form from USAC, whichever is applicable.~~

~~(1) If eligible under the Telecommunications program, the eligible healthcare entity must provide the OUSF Administrator the FCC Form 466, Funding Commitment Letter, FCC Form 467, and Health Care Provider Support Schedule.~~

~~(2) If eligible under the Healthcare Connect Fund, the eligible healthcare entity must provide the OUSF Administrator the FCC Form 462 and associated network cost worksheet, and Funding Commitment Letter.~~

165:59-7-7. Toll-free calling to public schools and public libraries [REVOKED]

~~(a) Upon receipt of a written request by an authorized representative of a public school or public library, as defined by this Chapter, a telecommunications carrier shall, by itself or in conjunction with another provider of telecommunications services, provide one incoming, toll free telephone number and up to a total of five access lines, free of charge, for each public school building wherein classrooms are contained and for each public library, for the purpose of allowing incoming toll free calls from any location within the geographical area served by the requesting public school or public library, or a larger area if such area is determined by the telecommunications carrier to be more economical. The written request by a public school or public library shall be in the form and content approved by the Director of the Public Utility Division.~~

(b) Where the technical capability exists, the telecommunications carrier shall periodically monitor the usage only of each provided telephone number and if, upon review, usage does not support the initially requested number of access lines, the number of access lines may be reduced.

(c) ~~The telecommunications carrier providing the Special Universal Service shall receive reimbursement from the OUSF in the amount of the tariffed rate or charge directly attributable to the provisioning of the incoming, toll free telephone number, the associated usage, the access lines and all access or other charges paid by the telecommunications carrier providing the Special Universal Service.~~

165:59-7-8. Internet access to public schools and libraries

(a) It is the intention of the Commission that this Chapter be interpreted to maximize the availability of Internet access to all public schools and public libraries within Oklahoma, so that children within Oklahoma will be able to utilize the Internet to enhance their learning opportunities, thereby better preparing them for the future.

~~(b) Upon receipt of a written request by a public school or a public library, the telecommunications carrier or OneNet shall, by itself or in conjunction with another provider of Special Universal Services, provide each public school building wherein classrooms are contained and each public library in the state one access line, free of charge, with the ability to connect toll free to an Internet service provider at 1.5 Mbps as set forth in 17 O.S. § 139.109 (C)(4), in the most economically efficient manner for the carrier, or an equivalent dollar credit to be applied by the public school or public library toward similar services, including services are required to link locations prior to accessing a service provider.~~

~~(c) The written request by a public school or public library shall be in the form and content approved by the Director of the Public Utility Division and for a public school shall include an affidavit from the school regarding the number of buildings and a description thereof, for which a building credit is requested. The public school shall also provide a statement explaining the service requested for reimbursement and an affidavit that the service is needed to achieve the educational needs of the school's students.~~

~~(b) Special Universal Services for schools shall include the E-rate Eligible Services List (ESL) for Category One services as determined by the FCC for the applicable funding year or, in the absence of such a list, as published by USAC. In the event no ESL is available from the FCC or USAC for the applicable funding year, eligible services will be those on the ESL for the last funding year for which an ESL was available.~~

~~(c) Special Universal Services shall include the provision of bandwidth sufficient for providing educational services not to exceed, without good cause shown, the standards established for the relevant funding year by SETDA or successor educational broadband standard including Internet access lines, WAN connections, reasonable installation, and network termination equipment owned and operated by the eligible provider as defined by the ESL that is necessary to provide the eligible service. Student counts as reported to the State Department of~~

Education in October of the year prior to the relevant funding year shall be utilized for the purpose of determining bandwidth recommendations established by SETDA for purposes of this paragraph. In the absence of standards prescribed for the applicable funding year, the standards for the next prescribed funding year shall be used. Bandwidth may be rounded up to the next available standard service increment to avoid increased costs to the fund.

(d) Special Universal Services for libraries shall include the E-rate Eligible Services List (ESL) for Category One services as determined by the FCC for the applicable funding year or, in the absence of such a list, as published by USAC. In the event no ESL is available from the FCC or USAC for the applicable funding year, eligible services will be those on the ESL for the last funding year for which an ESL was available.

(e) Special Universal Services shall include the provision of bandwidth sufficient for providing library services per standards as recommended by the FCC including Internet access lines, reasonable installation, and network termination equipment owned and operated by the eligible provider that is necessary to provide the eligible service. Bandwidth may be rounded up to the next available standard service increment to avoid increased costs to the fund.

(f) Special Universal Services shall not include voice services that use separate lines or have allocated bandwidth.

(dg) In no case will the OUSF reimburse an entity for an Internet subscriber fee or charges incurred as a result of services accessed via the Internet.

(e) The provider of the Internet access component of Special Universal Service shall receive reimbursement from the OUSF in the amount of the tariffed rate or charges directly attributable to the provisioning of the toll free access line capable of connecting with an Internet service provider as set forth in 17 O.S. § 139.109 (C)(4) and Subchapter 7, and the associated usage, and all access or other charges paid by the provider of the Special Universal Service.

(h) The eligible provider shall update the OUSF Administrator through the monthly payment process if E-rate funding is discontinued, for any reason, within thirty (30) calendar days of receiving notification from USAC.

(i) The Commission encourages public schools to request sufficient bandwidth to achieve the school's educational goals.

165:59-7-9. County seats [REVOKED]

~~(a) Upon receipt of a written request from the board of county commissioners, a telecommunications carrier shall, by itself or in conjunction with another provider of telecommunications services, provide one incoming, toll free telephone number and up to a total of five access lines, free of charge, for the purpose of allowing incoming, toll free calls from any location within the geographic area served by the requesting county seat. The furnished telephone number shall allow incoming calls from a larger area if the provision of such service is determined to be more economically efficient for the telecommunications carrier. The written request by a board of county commissioners shall be in the form and content approved by the Director of the Public Utility Division.~~

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~~(b) Where the technical capability exists, the telecommunications carrier shall periodically monitor the usage only of the provided telephone number, and if, upon review, usage does not support the requested number of access lines, the number of access lines may be reduced.~~

~~(c) The telecommunications carrier providing the Special Universal Service shall receive reimbursement from the OUSF in the amount of the tariffed rate or charge directly attributable to the provisioning of the incoming, toll free telephone number, the associated usage, the access lines and all access or other charges paid by the telecommunications carrier providing the Special Universal Service.~~

165:59-7-10. Other sources of funds

~~(a) Recipients of funds for Special Universal Services OUSF Beneficiaries should make every reasonable effort to seek other sources of funding from state-State or federal funds, to minimize the impact on the Oklahoma Universal Service Fund-OUSF. This includes completing the application process and requesting disbursement of funds from the federal fund administrator when funding is approved.~~

~~(b) Completing alternative funding requests in a manner that results in reduced alternative funding, for which the OUSF Beneficiary would have otherwise been eligible, may reduce OUSF funding.~~

~~(c) In the event that federal universal service funding programs offer to match state funds for special construction cost, OUSF Beneficiaries will post bid requests with sufficient lead time for the OUSF Administrator to timely provide preapproval of the selected bid.~~

165:59-7-13. Reselling Special Universal Services Prohibited

~~Special Universal Services purchased from a-an eligible provider of Special Universal Services are for the exclusive use of the eligible healthcare entity, public school, public library, or county government which has submitted a written request for Special Universal Services. Under no circumstances shall the eligible healthcare entity, public school, public library, or county government sell, repack or share Special Universal Services with any other entity shall not be sold, resold or transferred in consideration for money or any other thing of value.~~

165:59-7-15. Provision of Special Universal Services

~~(a) Upon-After compliance with the Oklahoma Telecommunications Act, and upon receipt of a written request by an eligible healthcare entity, public school, public library or board of county commissioners-OUSF Beneficiary, the eligible provider of Special Universal Services-receiving the request shall make a good faith effort to provide the requested Special Universal Service not later than ten (10) business days after receiving the request.~~

~~(b) If the requested Special Universal Service cannot be provided within the time limit established by subsection (a) of this Section, the eligible provider of Special Universal Services shall immediately notify the OUSF Beneficiary entity~~

requesting the service of the estimated delay and any interim service that might be available. Service requests shall be filled as quickly as practicable, but no longer than thirty (30) days after the request for service has been received by the eligible provider unless unavoidable delays beyond the eligible provider's control are experienced. If the service will be delayed longer than thirty (30) days, the eligible provider shall promptly notify the ~~Commission-OUSF Administrator~~ of the reason for the delay upon becoming aware of the delay, and the anticipated completion date of the request for service.

165:59-7-17. Disclosure on bill regarding provided Special Universal Services

~~(a) Each eligible provider of Special Universal Services, which may be either a telecommunications carrier or OneNet, shall render a bill to the eligible healthcare entity, public school, public library, or county seat government OUSF Beneficiary regarding said Special Universal Services. The bill shall reflect the provider's itemized charges for the provisioning of tariffed rate or charge for the provided toll free telephone number, access lines, usage and any other costs incurred by the provider in conjunction with the provision of the Special Universal Services.~~

~~(b) Prior to signing a contract with a school, library or recipient of a telemedicine line-an OUSF Beneficiary, the eligible provider shall provide to said school, library or recipient of a telemedicine line-the OUSF Beneficiary, written information regarding the limitations on funding from the OUSF. The content of the written information to be provided shall be posted on the Commission's website.~~

165:59-7-18. [RESERVED]

165:59-7-19. Competitive bidding

~~(a) In the interest of fostering a fair and open bidding process from all qualified bidders eligible to receive OUSF funding under the Oklahoma Telecommunications Act, the following are requirements for requests for bids:~~

~~(1) The bidder must be an eligible provider, as defined in 17 O.S. § 139.102.~~

~~(2) Bidding shall not be structured in a manner to exclude carriers eligible to receive OUSF funding where the OUSF Beneficiary is located.~~

~~(A) The bid request must require ineligible services be priced separately from OUSF eligible services.~~

~~(B) The bid request shall not require that the Internet and WAN be provided by the same eligible provider.~~

~~(C) To avoid bid structuring, the bid request shall clearly identify the requested bandwidth range, inclusive of the eligible bandwidth limit, of the OUSF Beneficiary, and shall include a minimum and a maximum bandwidth at standard available levels as suggested in guidelines promulgated by the FCC or Commission rules.~~

~~(b) Bids must contain all costs to provide the Special Universal Services. Any bid containing estimated costs, other than~~

fees and taxes to be paid to a third party, will be disregarded as not meeting the bid requirements.

(c) Bidders are presumed to know statutory requirements for contracts for public entities; bids that do not conform to requirements for public entities may be disregarded.

(d) An existing contract, selected by the OUSF Beneficiary for comparison to received bids, shall be considered as being submitted during the same bidding period as the awarded bid.

165:59-7-20. [RESERVED]

165:59-7-21. Installation, construction, and special construction

(a) The OUSF will fund reasonable installation and special construction charges. These charges shall be evaluated for purposes of the OUSF Administrator's analysis of lowest cost reasonable qualifying bid selection by the OUSF Beneficiary as part of the overall bid pricing and funding evaluation, and will be amortized as follows:

- (1) For schools and libraries, over a one (1) year period, unless the bid allocates the construction over multiple years and is approved pursuant to state or federal law.
- (2) For telemedicine, over the lifetime of the contract, not to exceed five (5) years.

(b) Upon request by the OUSF Beneficiary, during the preapproval process, the OUSF Administrator's analysis of lowest cost reasonable qualifying bid may allocate special construction charges over the period selected in the special construction cost analysis in (c) in order to consider long term cost effectiveness to the OUSF.

(c) Special Construction Cost:

- (1) Prior to posting the request for bids, the OUSF Beneficiary is required to seek OUSF Administrator review of any bid evaluation criteria for any projects involving special construction cost. Review of the request for bids and bid evaluation criteria does not guarantee approval of funding.
- (2) Cost effectiveness evaluation for projects with special construction cost may extend up to five (5) years.
- (3) If special construction is funded, special construction will not be available again to the location(s) specified for the period used in the analysis.
- (4) Special construction costs will not be included in monthly recurring costs.
- (5) Eligible providers that receive special construction cost funding for installation shall maintain or reduce monthly recurring costs.

SUBCHAPTER 9. OKLAHOMA LIFELINE FUND

PART 1. LIFELINE SERVICE PROGRAM

165:59-9-1. Purpose of Oklahoma Lifeline Fund

(a) This Subchapter establishes guidelines for the administration of the Oklahoma Lifeline Fund ("OLF"), that are consistent with 17 O.S. §§ 139.105 and 139.107.

(b) The Oklahoma Lifeline Fund is designed to advance the goals of universal service, and ensure that low-income residential customers within the State of Oklahoma, who meet the criteria of 17 O.S. § 139.105, and 47 CFR §§ 54.400 through 54.415, are provided financial assistance, pursuant to the Oklahoma Telecommunications Act in maintaining basic local exchange telecommunications service.

(e) ~~The Oklahoma Lifeline Fund is a state fund administered by the Oklahoma Corporation Commission, for the purpose of funding the Lifeline Service Program, as set forth in Section 165:59-9-3.~~

165:59-9-3. Oklahoma Lifeline Service Program

(a) The Oklahoma Lifeline Service Program is a program designed to operate in conjunction with the Federal Lifeline program, to provide a monthly credit to the monthly bill of qualifying residential subscribers for basic local exchange service, in an amount equal to such amount as may be established by the Commission, after notice and hearing or by 17 O.S. § 139.105.

(b) In order to qualify for the Oklahoma Lifeline Service Program, a customer must meet ~~the all applicable requirements of 47 CFR §§ 54.400 through 54.415-54.422 and/or 17 O.S. § 139.105.~~ show that they:

- (1) ~~Participate in or receive assistance or benefits, as certified by the Department of Human Services, under a program providing:~~
 - (A) ~~Temporary Assistance to Needy Families,~~
 - (B) ~~Supplemental Nutrition Assistance Program (SNAP) f/k/a Food Stamps, or Food Distribution Program on Indian Reservations, (FDPIR),~~
 - (C) ~~Medical Assistance and/or Medicaid, or~~
 - (D) ~~Supplemental Security Income;~~
- (2) ~~Participate in Federal Public Housing Assistance~~
- (3) ~~Participate in Low Income Home Energy Assistance Programs~~
- (4) ~~Participate in or receive assistance or benefits, as certified by the State Department of Rehabilitation Services, under a program providing vocational rehabilitation, including aid to the hearing impaired; or,~~
- (5) ~~Participate in or receive assistance or benefits, as certified by the Oklahoma Tax Commission, pursuant to the Sales Tax Relief Act, 68 O.S. § 5011 et seq.~~
- (6) ~~Beginning October 1, 2000, eligibility has been expanded to permit low income individuals living on Tribal lands to establish their income eligibility by certifying participation in one of the following Federal Assistance Programs:~~
 - (A) ~~Bureau of Indian Affairs General Assistance,~~
 - (B) ~~Tribally Administered Temporary Assistance for Needy Families (TANF),~~
 - (C) ~~Head Start Programs (under income qualifying eligibility provision only);~~

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- ~~(D) National School Lunch Program (free lunch program only)~~
- (c) Each eligible local exchange telecommunications service provider~~carrier~~ shall file tariffs implementing a Lifeline Service Program that is consistent with this Subchapter.
- (d) Lifeline Assistance shall not be available on a retroactive basis to the customers.
- (e) Upon notification to the eligible local exchange telecommunications service provider~~carrier~~, the credit will be discontinued for customers who no longer qualify for Lifeline Assistance.
- (f) Lifeline Service benefits are applicable only to the primary line at the customer's principal residence. An applicant for Lifeline Service may report only one address in the state as the principal place of residence.
- (g) As a participant in Lifeline Assistance, customers will be eligible to receive Toll Restriction Service at no charge.
- (h) Each eligible local exchange telecommunications service provider with approved Lifeline Service tariffs shall advertise the availability of the Lifeline Service Program within its exchange(s) or service territory on, at a minimum, an annual basis.
- (i) The wireless ETC-eligible local exchange telecommunications service provider must provide access to its own customer service department by dialing 611 from the wireless handset or have a toll free number for contacting the ETC-eligible local exchange telecommunications service provider programmed in the phone and clearly identified.
- (j) All enrollment in any Lifeline Services from any outdoor mobile location shall be governed by OAC 165:55-23-16.
- (k) Any wireless handset provided in conjunction with the Lifeline Service must clearly and permanently identify the provider of the service.
- (l) An ETC-eligible local exchange telecommunications service provider may not provide Lifeline Service purely by resale without a Commission order.
- (m) An approved Lifeline tariff may not be modified without submitting the modification to the Director of the Public Utility Division-OLF Administrator at least fifteen (15) calendar days prior to the effective date of the proposed change for the purpose of receiving a determination whether the modification is in the public interest. Unless the ETC-eligible local exchange telecommunications service provider receives written notification that its modification is NOT IN THE PUBLIC INTEREST within fifteen (15) calendar days after its submission, the submission is deemed to be in the public interest and may be implemented.
- (n) The ETC-eligible local exchange telecommunications service provider shall utilize a third party verification system that has been approved by the Director of PUD-OLF Administrator to verify the customer's identity and address, or obtain a waiver from the Director of the Public Utility Division-OLF Administrator from this requirement.
- (o) The ETC-eligible local exchange telecommunications service provider must retain a copy of the signed application for Lifeline Service, and any recertification information for five (5) years.

- (p) The ETC-eligible local exchange telecommunications service provider shall maintain a database sufficient to identify any duplicates among all companies associated with the ETC-eligible local exchange telecommunications service provider.
- (q) Unless otherwise approved by Commission Order, any Lifeline plan on Tribal Land must include a minimum of ~~400~~ one thousand (1,000) minutes of local voice use or unlimited domestic calling, to be considered in the public interest. Any Lifeline plan on non-Tribal Land must include a minimum of ~~500~~ five-hundred (500) minutes of local voice use to be considered in the public interest.
- (r) All marketing efforts must clearly identify the ETC-eligible local exchange telecommunications service provider actually providing the Lifeline Service.
- (s) In addition to other remedies available to the Commission, violations of the marketing rules may result in a minimum of a thirty (30) days suspension of an ETC's-eligible local exchange telecommunications service provider's ability to sign up new customers and/or a fine as authorized by 17 O.S. § 139.105 after notice and hearing.
- (t) The eligible local exchange telecommunications service provider~~carrier~~ seeking reimbursement from the Oklahoma OUSF-OLF for the provisioning of Lifeline services shall also note on the certified written statement obtained from the customer the name of the employee or representative who verified the customer's eligibility for Lifeline service and the type of documentation reviewed.
- (u) Prior to obtaining money from the OUSF-OLF, an ETC-eligible local exchange telecommunications service provider must show compliance with 17 O.S. § 139.105(E).

165:59-9-5. Recertification of Lifeline eligibility

Each ETC-eligible local exchange telecommunications service provider, eligible to receive Lifeline support from the Oklahoma Lifeline Fund and/or the federal Lifeline Fund shall, annually, require each end-user subscriber to recertify confirming their continued eligibility for the State or Federal Lifeline program. The ETC-eligible local exchange telecommunications service provider shall retain a copy of the signed recertification form for three (3) years.

165:59-9-6. Retention of Lifeline eligibility records

All records, including the signup form showing proof of eligibility and a report from the third party verification system that shows the identity and address of the Lifeline customer was verified (unless the ETC-eligible local exchange telecommunications service provider obtained a waiver from the requirement to utilize a third party verification system) shall be retained by the ETC-eligible local exchange telecommunications service provider for a minimum of three (3) years.

PART 3. ADMINISTRATION OF THE OKLAHOMA LIFELINE FUND

165:59-9-11. Administration of the Fund

(a) ~~The Commission will appoint the OLF Administrator, which shall be the Public Utility Division of the Commission shall be the Administrator of the OLF. The administrative function shall be headed by the OLF Administrator, as defined in 17 O.S. § 139.102.~~

(b) ~~The Public Utility Division, as the appointed OLF Administrator, may, as necessary, take all actions necessary to fulfill the objectives of the Oklahoma Telecommunications Act, including but not limited to, contracting contract with a third-party who has no conflict of interest in the provisioning of telecommunications services for the provisioning of assistance with the administrative functions related to the OLF.~~

(c) ~~The OLF Administrator is expressly authorized to bring actions before the Commission to enforce the provisions of this Subchapter and the Oklahoma Telecommunications Act of 1997.~~

(d) ~~The OLF Administrator and/or contracted agent shall act under the supervision of the Commission, in order to administer the OLF in accordance with this Subchapter and the Oklahoma Telecommunications Act of 1997.~~

(e) ~~The OLF Administrator's or contacted agent's general duties shall include, but not be limited to:~~

- (1) ~~Receiving, distributing, and accounting for funds paid into the OLF;~~
- (2) ~~Providing funding to eligible telecommunications providers from the OLF;~~
- (3) ~~Managing the daily operations and affairs of the OLF;~~
- (4) ~~Monitoring and assuring contribution/payment compliance, as well as conducting periodic audits of the contributing providers contributors to the OLF to ensure that the contributors are accurately reporting and making proper payments to the OLF;~~
- (5) ~~Performing any periodic audits of the OLF deemed necessary by the Administrator and/or the Commission, provided however, that the Staff of the Public Utility Division shall not conduct an annual audit for any year during which it also acted as the OLF Administrator;~~
- (6) ~~Informally resolving disputes;~~
- (7) ~~Independently evaluate and review Reviewing all requests Requests for OLF Funding funding from the OLF within the time frames identified in the Oklahoma Telecommunications Act, this Chapter and making a recommendation to the Commission for approval, modification or denial of such requests; make a Determination of the accuracy of the requests, and advise the eligible local exchange telecommunications service provider requesting the funds of the determination of eligibility made by the OLF Administrator; and,~~
- (8) ~~Performing any other duties as required by law, and/or this Chapter, and/or as ordered by the Commission.~~

165:59-9-13. Audits

~~The Administrator of the OLF shall conduct periodic reviews and/or audits of any telecommunications service~~

~~provider's carrier's Lifeline Service Program. This review/audit shall include, but not be limited to:~~

- (1) ~~A review of the documentation on file with the telecommunications service provider carrier regarding eligibility of the end user to participate in the Lifeline Service Program; whether received during the initial enrollment or during the annual recertification process and,~~
- (2) ~~The amounts received by the telecommunications service provider carrier for reimbursement from the OLF.~~

(a) ~~The OLF shall be audited annually by a non-OLF independent auditor selected by a committee with input from the State Auditor's Office. The committee shall be selected by the Commission's Director of Administration.~~

(b) ~~The annual audit should be based on assessed program risk conducted in accordance with standards. It may also include a review of the documentation on file with the eligible local exchange telecommunications service provider regarding eligibility of the end-user to participate in the Lifeline Service Program, whether received during the initial enrollment or during the annual recertification process, and the amounts received by the eligible local exchange telecommunications service provider for reimbursement from the OLF.~~

(c) ~~The audit may include further objectives as requested by the Commission's Director of Administration, and/or as required by the contract between the OLF and independent auditor.~~

(d) ~~The cost of audits of the OLF shall be funded by the OLF.~~

(e) ~~All audit reports, once finalized, shall be provided to the Oklahoma Attorney General.~~

165:59-9-15. Violations

~~If a contributor-contributing provider to the OLF fails or refuses to make a contribution to the OLF as required by the Oklahoma Telecommunications Act and this Chapter, such violation will be resolved consistent with the provisions of OAC 165:59-3-38.~~

165:59-9-17. Reporting requirements

~~Each contributor-contributing provider to the OLF shall, within thirty (30) calendar days from the date of a request made for information or a report by the OLF Administrator or contracted agent, submit to the OLF Administrator or contracted agent a completed report form based on a 12-month period identified by the OLF Administrator or contracted agent, containing such information as designated by the OLF Administrator.~~

PART 5. CONTRIBUTIONS AND REIMBURSEMENTS

165:59-9-21. Contributions to the Oklahoma Lifeline Fund

~~The OLF shall be funded in a competitively neutral manner by a charge paid by all telecommunications carriers, at a level sufficient to maintain the OLF and administrative cost of the fund.~~

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(a) The OLF shall be funded in a competitively neutral manner in accordance with the Oklahoma Telecommunications Act.

(b) Each contributing provider, whether they are subject to the jurisdiction of the Commission or not, shall annually provide contact information to the OLF Administrator for the purpose of correspondence regarding contribution to the OLF. The submission of an annual report to the Commission shall be deemed sufficient for compliance with this paragraph.

(c) Each telecommunications carrier providing wholesale telecommunications services to VoIP providers in Oklahoma will annually provide the identity, to include address, of each such VoIP provider(s) to the OLF Administrator as available. While the names of the VoIP providers may be made publicly available, all information with regard to the reporting telecommunications carrier will be treated as confidential.

(d) The contributing provider must certify to the truth and accuracy of data used to determine the contributing provider's contribution amounts. The OLF Administrator may verify any information used by the contributing provider in its determination of its contributions to the OLF. Contributing providers shall maintain records and documentation to justify information used in its determination of its contributions to the OLF for three (3) years, and shall provide such records and documentation to the OLF Administrator upon request. Inaccurate or untruthful information used by the contributing provider may lead to prosecution to the full extent of the law.

165:59-9-23. Amount of contribution

~~(a) The Administrator or contracted agent shall, based on the adjusted amount to be contributed to the OLF, calculate the contribution required to be made to the OLF by each contributor, based on the fund level established by the Commission and the information provided pursuant to OAC 165:59-9-17.~~

~~(b) The funding from each carrier shall be based on the total retail billed intrastate telecommunications revenues, from both regulated and unregulated services, of the telecommunications carrier as a percentage of all telecommunications carriers' total retail billed intrastate telecommunications revenues, from both regulated and unregulated services for the 12-month period identified by the Administrator or contracted agent.~~

~~(c) Each telecommunications carrier shall pay its contribution directly to the Administrator or contracted agent on a monthly, quarterly, or annual basis, at the carrier's option, at the beginning of the payment period(s) selected. The payment shall be payable to the OUSF. The invoice or other written request for OLF contributions shall be past due thirty (30) calendar days after the date on the invoice or other request for OLF contribution, unless otherwise ordered by the Commission.~~

~~(d) Interest shall be charged on any payment not received by the past due date at the rate of 1.5 percent monthly.~~

~~(e) All contributions and interest payments made to the OLF shall be deposited into the OUSF account by the Administrator or contracted agent.~~

(a) The OLF Administrator or contracted agent shall, consistent with 165:59-3-40, and based on the adjusted amount to

be contributed to the OLF, independently evaluate and calculate the contribution required to be made to the OLF by each contributor, based on the fund level established by the Commission sufficient to recover the costs of administration and payments for Requests for OLF Funding as provided by the Oklahoma Telecommunications Act.

(b) The funding from each contributing provider shall be based on the total intrastate retail Oklahoma Interconnected Voice over Internet Protocol revenues and intrastate telecommunications revenues, from both regulated and unregulated services, of the contributing provider, herein after referred to as assessed revenues, as a percentage of all revenues of the contributing providers, or such other assessment methodology not inconsistent with federal law. Interconnected VoIP services shall be assessed only as provided for in the decision of the Federal Communications Commission, FCC 10-185, released November 5, 2010, or such other assessment methodology that is not inconsistent with federal law.

(c) For Interconnected VoIP services, contributing providers shall, consistent with the methodology of the FCC, identify intrastate retail revenue subject to the OUSF/OLF assessment through 1) direct assignment; 2) a company-specific traffic study; or 3) the inverse of the FCC safe harbor calculation, currently 35.1%. A contributing provider must file an application with the Commission and receive approval to utilize any methodology other than the safe harbor calculation.

(d) The fiscal reporting year shall be July 1 through June 30.

(e) Each contributing provider shall pay its contribution directly to the OLF Administrator, or contracted agent, as directed by the OLF Administrator, on a monthly or annual basis, conditioned upon an annual revenue threshold established by the OLF Administrator.

(f) If the contributing provider qualifies to pay its contribution annually, payment shall be made at the beginning of the fiscal year, and is past due after August 31. If the contributing provider underestimates its annual contribution by 15% or greater, the contributing provider shall be required to make its contributions monthly for the next fiscal reporting year, and underpayments will be subject to interest.

(g) If the contributing provider qualifies to pay its contribution monthly, the contributing provider shall report the prior calendar month's revenues, and pay on those revenues, by the end of the month, each month, without skipping a month.

(h) Interest shall be charged on any payment not received by the reporting due date at the rate of 1.5% monthly.

(i) The payment shall be payable to the OLF. All contributions and interest payments shall be deposited into the OLF account established by the OLF Administrator and/or contracted agent.

(j) All contributions shall be subject to audit by the OLF Administrator, or its contracted agent.

165:59-9-25. Procedures for requesting reimbursement from the OLF

(a) Any eligible local exchange telecommunications service provider~~carrier~~ required to file with approved-Lifeline Service tariffs may apply to the OLF Administrator or contracted agent

of the OLF for reimbursement of the Lifeline Service Program credits provided for residential basic local service.

(b) Upon receipt of a "Request for OLF Funding", the OLF Administrator or contracted agent of the OLF shall independently evaluate and review the Request and supporting documentation and, as appropriate, pay the applicable amount to the eligible local exchange telecommunications service provider, as provided in the Oklahoma Telecommunications Act.

(c) ~~A~~ An eligible local exchange telecommunications service provider ~~carrier~~ seeking reimbursement of eligible Lifeline Service Program credits from the OLF shall:

(1) File a "Request for OLF Funding" with the ~~Commission~~ Commission's Court Clerk's Office Clerk.

(2) Concurrent with filing the Request for OLF Funding, the eligible local exchange telecommunications service provider ~~carrier~~ who is requesting funding from the OLF shall provide notice, which shall include the dollar amount of the request for lump sum and any recurring amounts, of the Request for ~~Reimbursement~~ OLF Funding to the ~~OLF Administrator~~ Director of the Public Utility Division, the Oklahoma Attorney General, and to each telecommunications carrier in the State of Oklahoma which is a contributor to the OLF contributing provider by providing an electronic copy of such notification to the OLF Administrator on the date the eligible local exchange telecommunications service provider files its Request for OLF Funding with the Commission's Court Clerk, for posting on the Commission's website. The OLF Administrator will then place the notification on the Commission's website within five (5) business days.

(3) ~~Provide a copy of the Request for OLF Funding to the Attorney General and other telecommunications carriers, upon request.~~

(d) An eligible local exchange telecommunications ~~carrier service provider~~ may not receive reimbursements from the OLF unless it demonstrates that its rates have been reduced by an amount equal to the amount of the Lifeline payments that were previously included in the rate structure of the eligible local exchange telecommunications carrier service provider. ~~A telecommunications carrier~~ An eligible local exchange telecommunications service provider shall be eligible for support from the OLF for any amount which is greater than the amount which has been previously included in the rate structure of the eligible local exchange telecommunications carrier service provider.

(e) ~~Within ninety (90) days after receipt of the Request for OLF Funding, the Administrator or contracted agent shall review such request, determine the accuracy of the request, and advise the telecommunications provider requesting the OLF funds of the determination of eligibility. Simultaneously with the Administrator or contracted agent advising the provider, the Administrator or contracted agent shall provide the written determination to the Commission and post it to the Commission's website. The OLF Administrator and/or contracted agent shall independently evaluate, review, and determine the accuracy of the complete request and issue a Determination of~~

the eligibility for funds, which details the amount of funding recoverable from the OLF, within ninety (90) calendar days. Simultaneously with the OLF Administrator or contracted agent advising the eligible local exchange telecommunications service provider and parties to the cause, the OLF Administrator or contracted agent shall file the written Determination with the Commission's Court Clerk and post it to the Commission's website.

(f) ~~Any adversely affected party shall have fifteen (15) days to file a request for reconsideration the Commission of the determination made by the Administrator or contracted agent. Upon filing a request for reconsideration, the matter will be set for a hearing. Any affected party may file a Request for Reconsideration within fifteen (15) calendar days of the Determination being filed by the OLF Administrator, by following the procedures in OAC 165:59-3-72.~~

(g) ~~The Commission will, within 30 days from the request for reconsideration, issue an order on the request for OLF funding, after reviewing the Administrator's or contracted agent's determination regarding the Request for Reimbursement and any request for reconsideration. The Commission shall give notice to the provider requesting the OLF funds, the Attorney General, the Administrator or contracted agent, and all parties requesting reconsideration of the time and place for hearing.~~

(h) ~~If no request for reconsideration of the Administrator's or contracted agent's determination is filed, an order will be issued by the Commission approving the request without further notice and/or hearing.~~

(i) ~~If the Commission does not issue an order within the time frames set forth in this Section, the request shall be deemed approved, on an interim basis, subject to refund, with interest at a rate determined by the Commission, but not more than the interest rate established by the Commission on customer deposits. Interest on any refund shall accrue for a period not to exceed ninety (90) days from the date the funds were received by the requesting eligible provider.~~

(g) Any Request for Reconsideration will be processed using the provisions set forth in OAC 165:59-3-72.

(j) ~~The OLF Administrator or contracted agent shall ensure that all OLF funds have been received and are on deposit in a sufficient manner so as to pay requests for OLF funding. Funding in accordance with the Oklahoma Telecommunications Act and this Chapter as ordered by the Commission or as may be deemed approved in accordance with State law. The OLF Administrator or contracted agent shall provide the approved funding to the requesting eligible local exchange telecommunications carrier service provider, consistent with the procedures in O.A.C 165:59-3-68 within ten (10) days after issuance of a Commission order approving payment or the request is deemed approved, whichever occurs sooner.~~

(k) ~~Any request for funds from the OLF will be returned to the requesting party and deemed denied if the appropriate forms are not used or said forms are not completed in a satisfactory manner.~~

165:59-9-27. Recovery of contribution

Each ~~contributor~~ contributing provider to the OLF may recover its contributions to the OLF consistent with 17 O.S.

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§ 139.105. The OLF recovery received by each eligible local exchange telecommunications service provider shall be subject to an annual true-up. Any over- or under-recovery of the Lifeline Service Program contributions for the preceding year shall be carried forward for inclusion in the calculation for recovery in the ensuing year.

165:59-9-29. Resolution of disputes regarding contributions

~~(a) Any telecommunications carrier which contributes to the OLF may dispute the amount of contribution it is required to pay into the OLF, in the following manner:~~

~~(1) The telecommunications carrier shall make a written request to the Administrator or contracted agent of the OLF setting forth its dispute and the Administrator or contracted agent shall have the initial responsibility for trying to resolve the dispute.~~

~~(2) If satisfactory resolution is not achieved, the telecommunications carrier may file an application in the Commission's Court Clerk's Office requesting that the Commission resolve the dispute.~~

~~(b) Pending final resolution of a dispute, the disputing telecommunications carrier shall pay the disputed and undisputed amounts to the OLF.~~

~~(c) If a disputing contributor prevails in its protest of the required contribution, the contributor will be entitled to a refund, with interest, at the then effective rate, as provided by OAC 165:55-9-14, of any excess amount paid. The resolution of disputes regarding the OLF shall be consistent with the procedures set forth in OAC 165:59-3-34.~~

[OAR Docket #17-510; filed 6-23-17]

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

[OAR Docket #17-467]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 3. Licensure of Schools
Part 1. Initial School Licensing
175:10-3-3 [AMENDED]
Part 3. Student Registration and Entrance Requirements
175:10-3-16 [AMENDED]
Part 5. Equipment and Curriculum Requirements
175:10-3-34 [AMENDED]
175:10-3-37 [AMENDED]
175:10-3-38 [AMENDED]
175:10-3-39 [AMENDED]
175:10-3-41 [AMENDED]
175:10-3-42 [AMENDED]
175:10-3-43 [AMENDED]
175:10-3-44 [AMENDED]
175:10-3-45 [AMENDED]
175:10-3-46 [AMENDED]
Part 7. General Operations and Licensing Requirements

175:10-3-55 [AMENDED]
175:10-3-60 [AMENDED]
Subchapter 7. Sanitation, ~~Disinfection~~ and Safety Standards for ~~Cosmetology and Barber~~ Establishments, Salons and Schools
175:10-7-4 [AMENDED]
175:10-7-6 [AMENDED]
175:10-7-18 [AMENDED]
175:10-7-29 [AMENDED]
175:10-7-31 [AMENDED]

AUTHORITY:

59 O.S. § 199.3(A); State Board of Cosmetology and Barbering

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

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APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 13, 2017

FINAL ADOPTION:

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EFFECTIVE:

September 11, 2017

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The adopted rule amendments will simplify the registration process for students with the Board. It will also update the curriculum requirements in specific subjects to meet the current trends and needs of the industry. The amendments provide general clean up language and also strengthen the sanitation and safety standards for licensed establishments in order to protect the public when services are performed.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 3. LICENSURE OF SCHOOLS

PART 1. INITIAL SCHOOL LICENSING

175:10-3-3. Second inspection

(a) A second Board inspection is in order once the name of the school, location and space are approved.
(b) The second inspection set forth in (a) of this Section will be conducted at such time as the Board is notified in writing that:

- (1) the school has all equipment ~~including student kits equipped with required~~ and minimum tools for training;
- (2) approved textbooks, library reference materials and educational materials are obtained;

- (3) the minimum equipment is installed and operable; and
- (4) the school license applicant is prepared to begin classes in compliance with Board rules, regulations and law.

~~(e) Student kits shall be prepared and ready for approval at the second inspection.~~

~~(c)~~ All enrolled students shall be present and in appropriate uniform at time of second inspection and if all student registrations are complete, students may accumulate hours for the date of inspection provided all other license requirements are met.

PART 3. STUDENT REGISTRATION AND ENTRANCE REQUIREMENTS

175:10-3-16. Student entrance requirements

Student entrance requirements for the Basic Cosmetologist, Manicurist/Nail Technician, Cosmetician, Hairbraiding Technician, Esthetician/Facialist/Facial Operator, Barber and Barber Instructor courses are as follows:

- (1) The student must:
 - (A) be at least 16 years of age by November 1st of the current year.
 - (B) submit completed student registration application accompanied by a fee of \$5.00 before attending classes.
 - ~~(C) submit a copy of the completed student/school contract with the student registration application. The contract shall state cost of kit and how and when it is considered paid for and becomes the sole property of the student. If kit provision is a rental depreciation or other agreement, contract will provide details of the agreement.~~
 - ~~(C)~~ submit proof of at least eighth grade education or equivalency or submit proof of having satisfactorily passed an ability to benefit exam.
 - ~~(D)~~ submit, if under 18 years of age, a photocopy of birth certificate or other legal proof of age.
 - ~~(E)~~ submit 2"X3" current full-face photograph of the applicant as requested on registration form. A current photograph is one taken within the last six months.
- (2) Each student shall be registered with the Board before attending school.
- (3) Each student shall be provided with an approved textbook or manual upon commencing training.
- (4) Each student must be provided a kit with minimum content requirements before commencing clinic training.
- (5) All applicants who register with the Board as students or who apply for a license will be considered without regard to race, sex, creed, color, religion, or national origin provided they have met all requirements of cosmetology and barber law and rules of the Board. All students shall be considered for enrollment in a school. Admission to public schools is governed by applicable state and federal laws.

PART 5. EQUIPMENT AND CURRICULUM REQUIREMENTS

175:10-3-34. Basic Cosmetologist course curriculum for privately owned and public schools

(a) **Privately owned cosmetology school.** The 1500 clock hour curriculum (pure cosmetology) is prescribed as follows: (Note: Hours may be measured in credits and ratio is as recognized by ~~the United States Department of Education~~ as recognized by a national accreditation entity as recognized by ~~the United States Department of Education~~.)

- (1) Theory (must be coordinated with each practical practice subject as is appropriate throughout the course of training) 150 clock hours
- (2) Manicuring and pedicuring (including sculptured nails and tips and other artificial nail application procedures and care) 90 clock hours
- (3) Facials (skin care training includes make-up, arching, waxing and/or other methods for non-permanent hair removal) ~~160~~30 clock hours
- (4) Scalp treatments and shampooing/conditioning rinses 30 clock hours
- ~~(5) Shampooing/conditioning rinses 60 clock hours~~
- ~~(5)~~ Hairstyling, including finger waving, the dressing of wigs, thermal and blow drying ~~300~~390 clock hours
- ~~(6)~~ Hair color tints and bleaching and other color treatments ~~170~~120 clock hours
- ~~(7)~~ Hair cutting and hair shaping with shears and thinning shears (scissors) razor and Clipper (includes beard) 180 clock hours
- ~~(9) Lash and brow tinting and arching 30 clock hours~~
- ~~(8)~~ Professional development, Establishment management and unassigned hours for review, examinations, etc. 180 clock hours
- ~~(9)~~ Hair restructuring/permanent waving and chemical hair relaxing 240 clock hours
- ~~(10)~~ Total cosmetology hours 1500 hours

(b) **Public cosmetology school.** The 1500 clock hour curriculum (1000 hours pure cosmetology plus 500 hours of cosmetology related high school subjects) is prescribed for public school, parochial school, private school or home schooled students in the following situations:

- (1) Cosmetology students that are currently attending high school, parochial, private school or a home school.
- (2) Persons that did not otherwise complete their cosmetology training while registered as a cosmetology student in high school, parochial school, or a home school.
 - (A) Students who shall qualify for training in this matter must complete 1000 clock hours in a Basic cosmetology course and 500 hours of approved related subjects. The official parochial, private school or home school high school transcript shall serve as documentation for the 500 hours of related instruction. The transcript must show passing grades in related subjects and completion of at least the first semester of the twelfth (12th) grade. Related subjects shall run concurrently with and shall be in no instance older than three (3) years at time of enrollment in a

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cosmetology school course. The curriculum as follows has a recommended completion time of two (2) school years.

(B) Adult students registered in a cosmetology school are not eligible to train under the 1000 hours pure cosmetology plus 500 hours of cosmetology related high school subjects unless qualified under (b) (1) and (2) of this rule.

(3) Theory (must be coordinated with each practical practice subject as is appropriate throughout the course of training) 150 clock hours

(4) Manicuring and pedicuring (including sculptured nails and tips and other artificial nail application procedures and care) 60 clock hours

(5) Facials (skin care training includes make-up, arching, waxing and/or other methods for non-permanent hair removal) ~~(60)~~ 30 clock hours

(6) Scalp treatments, shampooing/conditioning rinses 30 clock hours

~~(7) Shampooing/conditioning rinses 30 clock hours~~

~~(78)~~ Hairstyling, including finger waving, the dressing of wigs, thermal and blow drying 180 clock hours

~~(89)~~ Hair color tints and bleaching and other color treatments ~~120~~ 90 clock hours

~~(94)~~ Hair cutting and hair shaping with shears and thinning shears (scissors) razor and clipper (includes beard) 120 clock hours

~~(11)~~ Lash and brow tinting and arching 30 clock hours

~~(10)~~ Professional development, Establishment management and unassigned hours for review, examinations, etc. 100 clock hours

~~(11)~~ Hair restructuring/permanent waving and chemical hair relaxing 180 clock hours

~~(12)~~ Cosmetology related subjects 500 clock hours

~~(13)~~ Total cosmetology hours 1500 hours

(c) **Minimum training supplies ~~student kit contents~~ for private and public schools.**

~~(4)~~ A Basic Cosmetology student ~~kit~~ minimum training supplies ~~are~~ required as follows:

~~(A)~~ one (1) approved text on theory of cosmetology

~~(B)~~ one (1) razor-type hair shaper and shaper blades ~~or razor hone~~

~~(C)~~ one (1) pair each hair cutting shears and thinning shears

~~(D)~~ one (1) cuticle nipper for finger nails and one (1) nipper for toe nails

~~(E)~~ one (1) cuticle scissors

~~(F)~~ one (1) nail brush

~~(G)~~ one (1) nail file or package of emery boards

~~(H)~~ one (1) tweezer

~~(I)~~ six (6) assorted hair brushes

~~(J)~~ twelve (12) combs (including tail, all purpose and/or barber-type)

~~(11)~~ one (1) curling iron

~~(K)~~ one (1) box of curl clips (100 per box)

~~(L)~~ one (1) shampoo cape

~~(M)~~ twelve (12) dozen hair styling rollers

~~(N)~~ one (1) kit or tray to contain student personal training equipment

~~(2)~~ In addition to the list of equipment in (1) of this Section the school shall immediately have available for student training:

~~(A)~~ 13 appropriately disinfected set of manicuring implements for student training use on each patron

~~(B)~~ 14 toe nail clipper

~~(C)~~ 15 permanent wave rods

~~(D)~~ 16 other hair restructuring supplies

~~(E)~~ 17 an adequate supply of applicator bottles and chemical bowl and brush

~~(F)~~ 18 an adequate supply of protective gloves (disposable)

~~(G)~~ 19 an adequate supply of neck strips

~~(H)~~ 20 an adequate supply of hair clippers

~~(I)~~ 21 an adequately supplied products dispensary to appropriately train students in cosmetology classes

~~(J)~~ 22 visual aid equipment in addition to the chalk or marker board

175:10-3-37. Master cosmetology instructor course entrance and curriculum requirements

(a) **Entrance requirements.**

(1) Student registered in the master cosmetology instructor course must:

(A) hold an Oklahoma Cosmetologist license or be registered for the Basic Cosmetologist examination. If any person enrolled prior to examination shall fail to appear or fail to pass Basic Cosmetologist, he/she shall immediately cease master cosmetology instructor training until such time as he shall again register for and show proof of achieving a passing score on the cosmetologist examination.

(B) hold a High School Diploma or General Education Development Certificate.

(C) file registration application for master cosmetology instructor course including fee of \$5.00 with the Board.

(2) Each student shall be provided with an approved textbook or manual before commencing training.

(b) **Curriculum requirements.** The 1000 clock hour Master Cosmetology Instructor course curriculum is prescribed as follow: (Note: Hours may be measured in credits and ratio is as recognized by the United States Department of Education as recognized by a national accreditation entity as recognized by the United States Department of Education.)

(1) Orientation 60 clock hours

(2) Introduction to teaching and curriculum 120 clock hours

(3) Course outlining and development; lesson planning; teaching techniques; teaching aids; developing and administering and grading examinations 330 clock hours

(4) Cosmetology Law, cosmetology school management and record keeping 90 clock hours

(5) Teaching - assisting in the classroom and clinic 150 clock hours

- (6) Practice teaching - classroom and clinic 250 clock hours
- (7) Total hours 1000 hours
- (c) Master Cosmetology Instructor students are assigned practice in classes actually scheduled by the school. Practice teaching by master cosmetology instructor students will be in the Basic, Manicurist/Nail Technician, Cosmetician, Hairbraiding Technician and/or Esthetician/Facialist/Facial Operator course. Practice teaching must be supervised by a licensed master cosmetology instructor.
- (d) A master cosmetology instructor student is not allowed to perform patron services. The master cosmetology instructor student shall only demonstrate for or otherwise assist student under his supervision.
- (e) **Minimum training supplies student kit contents.** A master cosmetology instructor shall be provided the following minimum kit equipment is required as follows:
 - (1) textbook or manual
 - (2) workbook
 - (3) Board Statute, Rules and Regulations Book

175:10-3-38. Manicurist/Nail Technician course entrance and curriculum requirements

- (a) **Entrance requirements.** Manicurist/nail technician course entrance requirements are the same as for a Basic course student.
 - (1) Each student shall be provided an approved textbook before commencing classroom training.
 - (2) A manicurist/nail technician student shall not be allowed to perform patron services until such time as he/she has received at least 80 clock hours of practice and classroom instruction under the direct supervision of a licensed instructor.
 - ~~(3) Kit is required on or before completion of classroom training.~~
- (b) **Curriculum requirements.** The 600 clock hour curriculum is prescribed as follows: (Note: Hours may be measured in credits and ratio is as recognized by the United States Department of Education as recognized by a national accreditation entity as recognized by the United States Department of Education.)
 - (1) Bacteriology, disinfection and sanitation 40 clock hours
 - (2) Nail structure, composition, disorders and diseases 60 clock hours
 - (3) Manicuring and pedicuring (includes waxing or other non-permanent hair removal) 160 clock hours
 - (4) Artificial nails 160 clock hours
 - (5) Nail art 60 clock hours
 - (6) Establishment development (includes business administration and law; insurance; professional ethics; record keeping; business telephone techniques; salesmanship; displays and advertising; hygiene and public health) 80 clock hours
 - (7) Board rules, regulations and statutes 40 clock hours
 - (8) Total hours 600 hours
- (c) **Minimum student kit contents training supplies.** Manicurist/nail

- (4) ~~A Manicurist/nail Manicurist/nail technician minimum training supplies are kit equipment is required as follows:~~
 - ~~(A1) one (1) textbook or manual~~
 - ~~(B2) one (1) cuticle nipper for finger nails and one (1) nipper for toe nails~~
 - ~~(C3) one (1) cuticle scissor~~
 - ~~(D4) one (1) cuticle pusher~~
 - ~~(E5) one (1) nail brush~~
 - ~~(F6) one (1) nail file or package of emery boards~~
 - ~~(G7) artificial nail product and tools~~
 - ~~(H) one (1) kit or tray to contain student personal training equipment~~
- (2) ~~In addition to the list of equipment in (1) of this subsection, the school shall have immediately available for student training:~~
 - ~~(A8) appropriately disinfected set of manicuring implements for student use on each patron~~
 - ~~(B9) an adequate supply of protective gloves (disposable)~~
 - ~~(C10) visual aid equipment in addition to the chalk or marker board~~

175:10-3-39. Esthetician/Facialist/Facial Operator course entrance and curriculum requirements

- (a) **Entrance requirements.** Esthetician/Facialist/Facial Operator course entrance requirements are the same as for a basic course student.
 - (1) Each student shall be provided an approved textbook before commencing classroom training.
 - (2) An esthetician/facialist/facial operator student shall not be allowed to perform patron services until such time as he/she has received at least 80 clock hours of practice and classroom instruction under the direct supervision of a licensed instructor.
 - ~~(3) Kit is required on or before completion of classroom training~~
- (b) **Curriculum requirements.** The 600 clock hour curriculum is prescribed as follows: (Note: Hours may be measured in credits and ratio is as recognized by the United States Department of Education as recognized by a national accreditation entity as recognized by the United States Department of Education.)
 - (1) Bacteriology, disinfection, sanitation and safety 80 clock hours
 - (2) Sciences: Histology, dermatology and physiology of the skin (includes structure and function of skin and glands; color and morphology) 180 clock hours
 - (3) Facials: (includes draping, manipulations, cleaning and toning; chemistry and light therapy and make-up 200 clock hours
 - (4) Non-permanent hair removal: (includes methods and procedures and arching) 40 clock hours
 - (5) Salon development: (includes business administration and law; insurance; professional ethics; record keeping; business telephone techniques; salesmanship;

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displays and advertising; hygiene and public health) 60 clock hours

(6) Board rules, regulations and statutes 40 hours

(7) Total hours 600 hours

(c) **Minimum student kit contents/training supplies.**

~~(1) Esthetician/Facialist/Facial~~ ~~An esthetician/facialist/facial operator~~ minimum training supplies are kit equipment is required as follows:

~~(A1)~~ one (1) textbook or manual

~~(B2)~~ make-up with disposable applicators

~~(C3)~~ one (1) set of five (5) make-up brushes

~~(D4)~~ one (1) comb-out cape

~~(E5)~~ one (1) tweezer

~~(F) one (1) kit or tray to contain student personal training equipment~~

~~(2) In addition to the list of equipment in (1) of this subsection, the school shall have immediately available for student training:~~

~~(A6)~~ an adequate supply of protective gloves (disposable)

~~(B7)~~ an adequately supplied dispensary with skin care products

~~(C8)~~ visual aid equipment in addition to the chalk or marker board

175:10-3-41. Cosmetician course entrance and curriculum requirements

(a) **Entrance requirements.** Cosmetician course entrance requirements are the same as for a Basic course.

(1) Each student shall be provided an approved textbook or manual before commencing classroom training.

(2) A Cosmetician student shall not be allowed to perform patron services until such time as he/she has received at least 80 clock hours of practice and classroom instruction under the direct supervision of a licensed instructor.

(3) Kit is required on or before completion of practice and classroom instruction hours.

(b) **Curriculum requirements.** The 600 clock hour curriculum is prescribed as follows: (Note: Hours may be measured in credits and ratio ~~is~~ as recognized by ~~the United States Department of Education~~ as recognized by a national accreditation entity as recognized by the United States Department of Education.)

(1) Bacteriology, disinfection and sanitation 60 clock hours

(2) Make-up application (includes application of make-up, lipstick, eye shadow, eyeliner, mascara and rouge) 200 clock hours

(3) Hair arranging (includes arranging of the hair using curling irons, hot rollers, combs, brushes and any necessary product and accessories) 200 clock hours

(4) Establishment development (includes business administration and law, insurance, professional ethics, record keeping, business telephone techniques, salesmanship, displays, advertising, hygiene and public health) 90 clock hours

(5) Board rules, regulations and statutes 50 clock hours

(6) Total hours 600 hours

(c) **Minimum ~~student kit contents~~ training supplies.**

~~(1) A Cosmetician minimum training supplies are kit equipment~~ is required as follows:

~~(A1)~~ textbook or manual

~~(B2)~~ make-up with disposable applicators

~~(C3)~~ lipstick with disposable applicators

~~(D4)~~ eye shadow with disposable applicators

~~(E5)~~ mascara with disposable applicators

~~(F6)~~ eyeliner with disposable applicators

~~(G7)~~ rouge/blush with disposable applicators

~~(H8)~~ 1 set of five (5) make-up brushes

~~(I9)~~ hairspray

~~(J10)~~ minimum of twelve (12) combs

~~(K11)~~ minimum of twelve (12) hairbrushes

~~(L12)~~ disposable make-up sponges

~~(M13)~~ hot rollers

~~(N14)~~ curling iron

~~(O) one (1) kit or tray to contain student personal training equipment~~

~~(P15)~~ one (1) comb-out cape

~~(2) In addition to the list of equipment in (1) of this subsection, the school shall have immediately available for student training:~~

~~(A16)~~ an adequate supply of protective gloves (disposable)

~~(B17)~~ an adequate supply of neck strips

~~(C18)~~ visual aid equipment in addition to the chalk or marker board.

175:10-3-42. Facial/Esthetics Instructor course entrance and curriculum requirements

(a) **Entrance requirements.**

(1) Student registered in the facial esthetics instructor course must:

(A) hold an Oklahoma facial/esthetician license or be registered for the facial/esthetician examination. If any person enrolled prior to examination shall fail to appear or shall fail to pass facial test, he/she shall immediately cease facial/esthetics instructor training until such time as he shall again register for and show proof of achieving a passing score on the facial/esthetician examination.

(B) hold a high school diploma or General Education Development Certificate.

(C) file registration application for facial/esthetician instructor course including fee of \$5.00 with the Board.

(2) Each student shall be provided with an approved textbook or manual before commencing Training.

(3) A person licensed as a Manicurist/Nail Technician Instructor and holds a current esthetician license may be eligible for Facial/Esthetics Instructor licensure by registering and passing the Facial/Esthetics Instructor practical examination.

(b) **Curriculum requirements.** The 1000 clock hour Facial/Esthetics Instructor course curriculum is prescribed as follows: (Note: Hours may be measured in credits and ratio ~~is~~ as recognized by ~~the United States Department of Education~~)

as recognized by a national accreditation entity as recognized by the United States Department of Education.)

- (1) Orientation 60 clock hours
- (2) Introduction to teaching and curriculum 120 clock hours
- (3) Course outlining and development; lesson planning; teaching techniques; teaching aids; developing and administering and grading examinations 330 clock hours
- (4) Board rules, regulations and statutes, cosmetology school management and record keeping 90 clock hours
- (5) Teaching - assisting in classroom and clinic 150 clock hours
- (6) Practice teaching - classroom and clinic 250 clock hours
- (7) Total hours 1000 hours

(c) **Minimum student kit contents/training supplies.** A Facial/Esthetics Instructor ~~trainingsupplies arekit equipment~~ is required as follows:

- (1) textbook or manual
- (2) workbook
- (3) Board Statute, Rules and Regulations Book

175:10-3-43. Hairbraiding Technician course entrance and curriculum requirements

(a) **Entrance requirements.** Hairbraiding Technician course entrance requirements are the same as for a Basic course pursuant to OAC 175:10-3-16.

- (1) Each student shall be provided an approved textbook or manual before commencing classroom training.
- (2) A Hairbraiding Technician student shall not be allowed to perform patron services until such time as he/she has been training in safety and disinfection procedures on the clinic services performed ~~received at least 80 clock hours of practice and classroom~~ instruction under the direct supervision of a licensed Instructor.
- (3) ~~Kit is required on or before completion of practice and classroom instruction hours.~~

(b) **Curriculum requirements.** The 40 ~~600~~ clock hour or curriculum is prescribed as follows: (Note: Hours may be measured in credits and ratio ~~is~~ as recognized by ~~the United States Department of Education as recognized by~~ a national accreditation entity ~~as recognized by the United States Department of Education.~~)

- (1) Bacteriology, chemistry, shampooing, disinfection and sanitation (includes hair and scalp disorders) 10~~100~~ clock hours
- (2) Hairbraiding/hairweaving skills (includes purpose and effect, procedures, repair, removal of weft, sizing and finishing, extension and maintenance/care of braids/weaves) 10~~300~~ clock hours
- (3) ~~Salon development (includes business administration and law, insurance, professional ethics, record keeping, business telephone techniques, salesmanship, displays, advertising, hygiene and public health) 180 clock hours~~
- (34) Board rules, regulations and statutes 20~~30~~ clock hours
- (45) Total hours 40~~600~~ hours

(c) **Minimum student kit contents/training supplies.**

(1) A Hairbraiding Technician minimum training supplies arekit equipment is required as follows:

- (A1) textbook or manual
- (B2) four (4) hair brushes
- (C3) four (4) hard rubber combs or other good quality combs (shall include rat-tail, color, regular and/or barber type)
- (D4) hair extension material
- (E5) one (1) comb-out cape
- (F6) one (1) box of curl clips (100 per box)
- (G) ~~one (1) kit or tray to contain student personal training equipment~~
- (2) ~~In addition to the list of equipment in (1) of this subsection, the school shall have immediately available for student training:~~
 - (A7) an adequate supply of protective gloves (disposable)
 - (B8) an adequate supply of neck strips
 - (C9) visual aid equipment in addition to the chalk, marker board or acceptable alternative.

(d) Upon completion of the 40 hours of training, a passing score of 75% is required on the Board's written sanitation and safety examination to be eligible for licensure.

175:10-3-44. Manicurist/Nail Technician Instructor course entrance and curriculum requirements

(a) **Entrance requirements.**

(1) Student registered in the manicurist/nail technician instructor course must:

- (A) hold an Oklahoma manicurist/nail technician license or be registered for the manicurist examination. If any person enrolled prior to examination shall fail to appear or shall fail to pass manicurist test, he/she shall immediately cease manicurist/nail technician instructor training until such time as he/she shall again register for and show proof of achieving a passing score on the manicurist examination.
- (B) hold a high school diploma or General Education Development Certificate.
- (C) file registration application for manicurist/Nail Technician Instructor course including fee of \$5.00 with the Board.

(2) Each student shall be provided with an approved text book or manual before commencing training.

(3) A person licensed as a Facial/Esthetics Instructor and holds a current Manicurist license, may be eligible for Manicurist/Nail Technician Instructor licensure by registering and passing the Manicurist/Nail Technician Instructor practical examination.

(b) **Curriculum requirements.** The 1000 clock hour Manicurist/Nail Technician Instructor course curriculum is prescribed as follows: (Note: Hours may be measured in credits and ratio ~~is~~ as recognized by ~~the United States Department of Education as recognized by~~ a national accreditation entity ~~as recognized by the United States Department of Education.~~)

- (1) Orientation 60 clock hours

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- (2) Introduction to teaching and curriculum 120 clock hours
- (3) Course outlining and development; lesson planning; teaching techniques; teaching aids; developing, administering and grading examinations 330 clock hours
- (4) Board rules, regulations and statutes, cosmetology school management and record keeping 90 clock hours
- (5) Teaching - assisting in classroom and clinic 150 clock hours
- (6) Practice teaching - classroom and clinic 250 clock hours
- (7) Total hours 1000 hours

(c) **Minimum training supplies**~~student kit contents.~~ Manicurist/Nail ~~Manicurist/nail~~ technician instructor minimum ~~training supplies are kit equipment~~ is required as follows:

- (1) textbook or manual
- (2) workbook
- (3) Board Statute, Rules and Regulations Book

175:10-3-45. Barber course entrance and curriculum requirements

(a) **Entrance requirements.** A Barber course entrance requirements are the same as for a Basic cosmetology course pursuant to OAC 175:10-3-16.

- (1) Each student shall be provided an approved textbook or manual before commencing classroom training.
- (2) A Barber student shall not be allowed to perform patron services until such time as he/she has been trained in safety and disinfection procedures on the clinic services performed under the direct supervision of a licensed Instructor.
- ~~(3) Kit is required on or before completion of practice and classroom instruction hours.~~

(b) **Curriculum requirements.** The 1500 clock hour curriculum for the barber course is prescribed as follows: (Note: Hours may be measured in credits and ratio is as recognized by the United States Department of Education as recognized by a national accreditation entity as recognized by the United States Department of Education.)

- (1) Safe work practices, infection control, bacteriology, implements, tools, equipment, sterilization, disinfection and safety 155 clock hours
- (2) Salesmanship, job search, shop management, history of barbering and professional image 175 clock hours
- (3) Anatomy, physiology, chemistry, electricity and light therapy, properties and disorders of skin, scalp and hair, hair and scalp treatments 200 clock hours
- (4) Facial massage and treatment 40 clock hours
- (5) Haircutting and styling 580 clock hours
- (6) Chemical relaxing, soft curl perms, permanent waving 95 clock hours
- (7) Hair coloring 150 clock hours
- (8) Men's hairpieces, mustache, beard design and shaving 65 clock hours
- (9) Board rules, regulations and statutes 40 clock hours
- (10) Total hours 1500 hours

(c) **Public barber school.** The 1500 clock hour curriculum (1000 hours pure barber plus 500 hours of barber related high

school subjects) is prescribed for public school, parochial school, private school or home schooled students in the following situations:

- (1) Barber students that are currently attending high school, parochial, private school or a home school.
- (2) Persons that did not otherwise complete their barber training while registered as a barber student in high school, parochial school, or a home school.

(A) Students who shall qualify for training in this matter must complete 1000 clock hours in a Basic barber course and 500 hours of approved related subjects. The official parochial, private school or home school high school transcript shall serve as documentation for the 500 hours of related instruction. The transcript must show passing grades in related subjects and completion of at least the first semester of the twelfth (12th) grade. Related subjects shall run concurrently with and shall be in no instance older than three (3) years at time of enrollment in a barber school course. The curriculum as follows has a recommended completion time of two (2) school years.

(B) Adult students registered in a barber school are not eligible to train under the 1000 hours pure barber plus 500 hours of barber related high school subjects unless qualified under (c) (1) and (2) of this rule.

(d) **Minimum barber student training supplies**~~student kit contents.~~

~~(1) A Barber training supplies are student kit minimum equipment is required as follows:~~

- ~~(A1) one (1) approved text on theory of barbering~~
- ~~(B2) one (1) razor-type hair shaper and shaper blades~~
- ~~(C3) one (1) pair each hair cutting shears and thinning shears~~
- ~~(D4) one (1) tweezer~~
- ~~(E5) six (6) assorted hair brushes~~
- ~~(F6) twelve (12) combs (including tail, all purpose and/or barber-type)~~
- ~~(H7) one (1) shampoo cape~~

~~(1) one (1) kit or tray to contain student personal training equipment~~

~~(2) In addition to the list of equipment in (1) of this Section the school shall immediately have available for student training:~~

- ~~(A8) permanent wave rods~~
- ~~(B9) other hair restructuring supplies~~
- ~~(C10) an adequate supply of applicator bottles or chemical bowl and brush~~
- ~~(D11) an adequate supply of protective gloves (disposable)~~
- ~~(E12) an adequate supply of neck strips~~
- ~~(F13) an adequate supply of hair clippers~~
- ~~(G14) an adequately supplied products dispensary to appropriately train students in classes~~
- ~~(H15) visual aid equipment in addition to the chalk or marker board~~

175:10-3-46. Master Barber instructor course, entrance and curriculum requirements

- (a) **Entrance requirements.**
 - (1) Student registered in the barber instructor course must:
 - (A) hold an Oklahoma Barber license or be registered for the Barber examination. If any person enrolled prior to examination shall fail to appear or fail to pass the Barber exam, he/she shall immediately cease instructor training until such time as he shall again register for and show proof of achieving a passing score on the barber examination.
 - (B) hold a High School Diploma or General Education Development Certificate.
 - (C) file registration application for barber instructor course including fee of \$5.00 with the Board.
 - (2) Each student shall be provided with an approved textbook or manual before commencing training.
- (b) **Curriculum requirements.** The 1000 clock hour Master Barber Instructor course curriculum is prescribed as follows: (Note: Hours may be measured in credits and ratio is as recognized by the United States Department of Education as recognized by a national accreditation entity as recognized by the United States Department of Education.)
 - (1) Orientation 60 clock hours
 - (2) Introduction to teaching and curriculum 120 clock hours
 - (3) Course outlining and development; lesson planning; teaching techniques; teaching aids; developing and administering and grading examinations 330 clock hours
 - (4) Board rules, regulations and statutes, school management and record keeping 90 clock hours
 - (5) Teaching - assisting in the classroom and clinic 150 clock hours
 - (6) Practice teaching - classroom and clinic 250 clock hours
 - (7) Total hours 1000 clock hours
- (bc) Master Barber Instructor students are assigned practice in classes actually scheduled by the school. Practice teaching by barber instructor students will be in the barber course. Practice teaching must be supervised by a licensed Barber instructor.
- (ed) A master barber instructor student is not allowed to perform patron services. The master barber instructor student shall only demonstrate for or otherwise assist students under his supervision.
- (de) **Minimum student training supplies kit contents.** A master barber instructor minimum kit equipment is required as follows:
 - (1) textbook or manual
 - (2) workbook
 - (3) Board Statute, Rules and Regulations Book

PART 7. GENERAL OPERATIONS AND LICENSING REQUIREMENTS

175:10-3-55. Student application and contracts

- (a) A new student application, contract and other required documents must be submitted before student commences training in any course. Student registration form must contain all applicable information including social security information.
- (b) A student must be given a copy of the student contract at enrollment time.
- (c) A copy of each student/school contract must be kept on file in the school.
- (d) A student/school contract shall not be changed after a copy is submitted to the Board unless a change in contract is initialed by each involved party. A copy of the initialed contract shall be given to student at time of any change and a copy submitted to the Board within five (5) days of a change, noted with revised date.
- (e) A student shall be registered in only one school at any given time.

175:10-3-60. Attendance and other records and requirements

- (a) **Minimum attendance per week.** A part time schedule shall be submitted and approved by the Board. Student shall attend a clock hour school at least three (3) hours per day, five (5) days per week or a total of fifteen (15) hours per week.
- (b) **Daily sign-in/time clock or other records maintained in a clock hour school.** In addition to maintaining a current record of student hours, clock hour schools shall keep a record of daily attendance. Students registered in a clock hour school shall sign or clock in and out of each class daily.
- (c) **Credit hour records maintained in a credit hour school.** Credit hour schools shall maintain a current record of credit hours earned by each student.
- (d) **Practical practice records.** Clock and credit hour schools shall maintain a record of clinic practical practices and theory credit or clock hours earned by each student.
- (e) **Student hour retention.** School shall retain records of students for three (3) years.
- (f) **Record availability.** All attendance and educational records shall be available during inspection or upon request of the Board as allowed under the Cosmetology and Barbering Act.
- (g) **Quarterly submission of hour reports.** All schools shall be required to submit a report of student hours earned to the Board quarterly no later than January 10th, April 10th, July 10th, October 10th, May 10th, September 10th, November 10th.

SUBCHAPTER 7. SANITATION, DISINFECTION AND SAFETY STANDARDS FOR COSMETOLOGY AND BARBER ESTABLISHMENTS, SALONS AND SCHOOLS

175:10-7-4. Furnishings; windows; ceilings; walls; floors

- (a) Furniture shall be of washable material and shall be kept clean. ~~If upholstered furniture is used in the Establishment, it shall be covered with clean, washable slip covers.~~ Breaks

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or cracks in ~~leather or vinyl covered~~ furniture must be repaired immediately.

- (b) Windows must be kept in a clean condition.
- (c) Each work/styling station shall be provided with adequate light and fixtures which shall be kept in a sanitary and safe condition.
- (d) Ceilings and walls shall be of an easily cleaned, smooth and unbroken surface.
- (e) Curtains, partitions or wall hangings shall be kept clean at all times.
- (f) Floors in Establishments and schools shall be maintained in a clean manner.
- (g) Carpet is prohibited for use in work areas (shampoo and styling areas) of an Establishment or school.
- (h) Each work/styling station shall be provided with a waste container which shall be emptied and cleaned each day.

175:10-7-6. Disinfecting agents for use in schools and related establishments

- (a) Disinfectants for use by Establishments and schools shall be used only if registered with the Environmental Protection Agency (EPA) for use as a disinfectant to achieve its intended purpose in accordance with the product label.
- (b) To disinfect and minimize corrosion of metal instruments, immerse and wipe thoroughly with an EPA approved disinfectant or spray with approved oil base disinfectant and store in a cabinet or closed container free from contamination between use and service for each patron.
- (c) All disinfection immersion liquid must be changed daily or sooner if visibly contaminated.
- (d) All customer contact items, including neck rests, arm rests and seats, must be cleaned and disinfected between customers.
- (e) UV light boxes for sanitation purposes are prohibited.
- (f) Any products banned by the FDA shall not be used for any cosmetology/barbering service.

175:10-7-18. Disinfection precautions before and after each patron service

- (a) The hands of the licensee, student or apprentice shall be washed and the integrity of the skin carefully examined before and after performing a service for any person. If any abrasion, cut, scratch, open lesion or infection is evidenced, protective or disposable gloves shall be worn while performing services in order to reduce risk or transmission of infectious bacteria/virus/disease.
- (b) Styptic pencils and lump alum are prohibited. Liquid or powdered astringent shall be used to check bleeding and shall be applied with separate, clean, sterile gauze or cotton which shall be disposed of immediately after use.
- (c) Any licensee who can reasonably anticipate, as the result of performing any cosmetology or barbering service, contact with blood and other potentially infectious material shall use universal precautions, and shall wear protective disposable gloves while performing the services. Gloves shall not be re-used and shall be disposed of properly immediately after use.

- (d) Implements and tools that cannot be disinfected must be disposed of after one use.

175:10-7-29. Facial procedures, devices and equipment

- (a) Licensees are prohibited from performing facial procedures using cosmetic exfoliating substances or devices that effect more than the top layer (stratum corneum) or outer most layer of dead cells on the skin. Procedures which use any cosmetic exfoliation substance or device to remove viable (living) skin below the stratum corneum are deemed beyond the scope of practice of persons and Establishments licensed by the Board of Cosmetology and Barbering.
- (b) Cosmetic exfoliating substances may include alpha hydroxyl acids (glycolic and lactic acids), beta hydroxyl acids, salicylic acid, Jessner's solutions, resorcinol and other substances intended to affect no more than the stratum corneum.
- (c) Cosmetic exfoliating devices may include FDA (U.S. Food and Drug Administration) registered and/or approved devices, provided that such devices affect no more than the stratum corneum.
- (d) Invasive procedures which result in the removal, destruction, incision or piercing of the skin beyond the stratum corneum is prohibited.
- (e) Roll on wax products are prohibited.

175:10-7-31. Manicuring equipment

The use of the credo blade, rasp or knife is prohibited for use by licensees.

[OAR Docket #17-467; filed 6-19-17]

TITLE 175. STATE BOARD OF COSMETOLOGY AND BARBERING CHAPTER 20. MASSAGE THERAPY

[OAR Docket #17-468]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 1. General Provisions [NEW]
 - 175:20-1-1 [NEW]
 - 175:20-1-2 [NEW]
- Subchapter 3. Advisory Board on Massage Therapy [NEW]
 - 175:20-3-1 [NEW]
- Subchapter 5. Licensure of Massage Therapists [NEW]
 - 175:20-5-1 [NEW]
 - 175:20-5-2 [NEW]
 - 175:20-5-3 [NEW]
 - 175:20-5-4 [NEW]
 - 175:20-5-5 [NEW]
 - 175:20-5-6 [NEW]
- Subchapter 6. Continuing Education [NEW]
 - 175:20-7-1 [NEW]
- Subchapter 9. Standards of Professional Conduct [NEW]
 - 175:20-9-1 [NEW]
 - 175:20-9-2 [NEW]
 - 175:20-9-3 [NEW]
 - 175:20-9-4 [NEW]
- Subchapter 11. Grounds for Discipline [NEW]
 - 175:20-11-1. [NEW]
- Subchapter 13. Complaints and Hearings [NEW]

175:20-13-1 [NEW]
Subchapter 15. Fee Schedule [NEW]
175:20-15-1 [NEW]

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59 O.S. § 2016; State Board of Cosmetology and Barbering

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Superseded rules:

- Subchapter 1. General Provisions [NEW]
- 175:20-1-1 [NEW]
- 175:20-1-2 [NEW]
- Subchapter 3. Advisory Board on Massage Therapy [NEW]
- 175:20-3-1 [NEW]
- Subchapter 5. Licensure of Massage Therapists [NEW]
- 175:20-5-1 [NEW]
- 175:20-5-2 [NEW]
- 175:20-5-3 [NEW]
- 175:20-5-4 [NEW]
- 175:20-5-5 [NEW]
- 175:20-5-6 [NEW]
- Subchapter 6. Continuing Education [NEW]
- 175:20-7-1 [NEW]
- Subchapter 9. Standards of Professional Conduct [NEW]
- 175:20-9-1 [NEW]
- 175:20-9-2 [NEW]
- 175:20-9-3 [NEW]
- 175:20-9-4 [NEW]
- Subchapter 11. Grounds for Discipline [NEW]
- 175:20-11-1. [NEW]
- Subchapter 13. Complaints and Hearings [NEW]
- 175:20-13-1 [NEW]
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- 175:20-15-1 [NEW]

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n/a

GIST/ANALYSIS:

The Massage Therapy Practice Act became effective August 25, 2016. The proposed permanent rules support the statutory language already in effect. Emergency rules were passed and shall expire on September 14, 2017 so permanent rules are therefore being proposed.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S.,

SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 1. GENERAL PROVISIONS

175:20-1-1. Purpose

This chapter provides information pertinent to the licensure and regulation of massage therapists by the State Board of Cosmetology and Barbering pursuant to the Massage Therapy Practice Act (59 O.S. §§ 4200 et seq.).

175:20-1-2. Definitions

The following rules and terms shall have the same meaning throughout this chapter unless the context clearly indicates otherwise:

"Advisory Board" means the Advisory Board on Massage Therapy.

"Board" means the State Board of Cosmetology and Barbering.

"Direct access" means the ability that the public has to seek out treatment by a massage therapist without the direct referral from a medical or health care professional.

"Massage therapist" means an individual who practices massage or massage therapy and is licensed under the Massage Therapy Practice Act. A massage therapist uses visual, kinesthetic, and palpatory skills to assess the body and may evaluate a condition to the extent of determining whether massage is indicated or contraindicated.

"Massage therapy" means the skillful treatment of the soft tissues of the human body. Massage is designed to promote general relaxation, improve movement, relieve somatic and muscular pain or dysfunction, stress and muscle tension, provide for general health enhancement, personal growth, education and the organization, balance and integration of the human body and includes, but is not limited to:

(A) the use of touch, pressure, friction, stroking, gliding, percussion, kneading, movement, positioning, holding, range of motion and nonspecific stretching within the normal anatomical range of movement, and vibration by manual or mechanical means with or without the use of massage devices that mimic or enhance manual measures; and

(B) the external application of ice, heat and cold packs for thermal therapy, water, lubricants, abrasives and external application of herbal or topical preparations not classified as prescription drugs.

"Massage therapy school" means a facility providing instruction in massage therapy.

"Seated massage" means any massage provided to the human body while the massage recipient is seated, including massage and techniques performed on clothed clients.

SUBCHAPTER 3. ADVISORY BOARD ON MASSAGE THERAPY

Permanent Final Adoptions

175:20-3-1. Composition, powers and duties of Advisory Board

(a) Title 59 O.S. §4200.4(C) creates the Advisory Board on Massage Therapy. The Advisory Board shall consist of five (5) members appointed by the Governor for four-year terms. The composition of the Advisory Board shall be as follows:

- (1) three members shall be licensed massage therapists and have practiced in Oklahoma for not less than three (3) years prior to their appointment;
- (2) one member shall be an administrator or faculty member of a nationally accredited school of massage therapy; and
- (3) one member shall be a citizen member.

(b) The Advisory Board shall assist the Board in carrying out the provisions of the Massage Therapy Practice Act regarding the qualifications, examination, registration, regulation, and standards of professional conduct of massage therapists.

(c) The Advisory Board shall elect from its members a Chair and Vice Chair. Meetings may be called by the Chair as needed for the Board to fulfill its duties.

SUBCHAPTER 5. LICENSURE OF MASSAGE THERAPISTS

175:20-5-1. Original licensure

(a) The Board may issue a license to practice massage therapy to a person who:

- (1) files a completed application on a form prepared by the Board;
- (2) submits satisfactory evidence in the form of a birth certificate, driver's license or other government-issued identification that the person is at least eighteen (18) years of age;
- (3) provides documentation that the applicant currently maintains liability insurance for practice as a massage therapist;
- (4) provides a certificate and certified transcript from a state-licensed massage school showing successful completion of at least five hundred (500) hours of formal education in massage therapy;
- (5) provides a certified copy of test scores showing the applicant has completed and passed the Massage and Bodywork Licensing Examination (MBLEx);
- (6) states under penalty of perjury in a manner prescribed on the application as to whether the applicant has in any jurisdiction:
 - (A) pleaded guilty, nolo contendere or been convicted of a felony;
 - (B) pleaded guilty, nolo contendere or been convicted of a misdemeanor involving moral turpitude;
 - (C) pleaded guilty, nolo contendere or been convicted of a violation of federal or state controlled dangerous substance laws
- (7) submits a current criminal history information report obtained from the Oklahoma State Bureau of Investigation.

(b) A criminal history background information report required by this section shall be current if dated no more than thirty (30) days prior to the date on which the applicant submits a completed application to the Board. The OSBI criminal history background report shall include a search of the Department of Corrections Sex Offender Database and Violent Offender Database. All fees required for the criminal history background report shall be paid by the applicant.

(c) The Board may deny a license or impose probationary conditions when the applicant has engaged in unprofessional conduct that has endangered or is likely to endanger the health, welfare or safety of the public. Evidence of conduct that endangers or is likely to endanger the health, welfare or safety of the public may include but shall not be limited to:

- (1) pleading guilty, nolo contendere or being convicted of a felony;
- (2) pleading guilty, nolo contendere or being convicted of a misdemeanor involving moral turpitude;
- (3) pleading guilty, nolo contendere or being convicted of a violation of federal or state controlled dangerous substance laws; or
- (4) violating any provision of the Massage Therapy Practice Act or any rule of the Board.

175:20-5-2. Licensure by reciprocity

(a) The Board may issue a license by reciprocity to a person who:

- (1) submits an application on a form prepared by the Board;
- (2) possesses a valid license or registration to practice massage therapy issued by the appropriate examining board under the laws of any other state or territory of the United States, the District of Columbia or any foreign nation;
- (3) has met educational and examination requirements equal to or exceeding those established pursuant to the Massage Therapy Practice Act;
- (4) provides documentation that the applicant currently maintains liability insurance for practice as a massage therapist;
- (5) states under penalty of perjury in a manner prescribed on the application as to whether the applicant has in any jurisdiction:
 - (A) pleaded guilty, nolo contendere or been convicted of a felony;
 - (B) pleaded guilty, nolo contendere or been convicted of a misdemeanor involving moral turpitude; or
 - (C) pleaded guilty, nolo contendere or been convicted of a violation of federal or state controlled dangerous substance laws
- (6) submits a current criminal history information report obtained from the state or territory of the United States, the District of Columbia or foreign nation where the applicant is licensed. If no such report is available from the state, territory or foreign nation, the applicant shall submit a criminal history background information report from the Oklahoma State Bureau of Investigation.

(b) The applicant from another state or territory of the United States, the District of Columbia or a foreign nation may be required to provide evidence that documents have been certified as valid by a creditable agency as recognized by the Board. Any cost incurred for validation of documents shall be paid by the applicant.

(c) A criminal history background information report required by this section shall be current if dated no more than thirty (30) days prior to the date on which the applicant submits a completed application to the Board and shall include a search of sex offender and violent offender databases. All fees required for the criminal history background report shall be paid by the applicant.

(d) The Board may deny a license or impose probationary conditions when the applicant has engaged in unprofessional conduct that has endangered or is likely to endanger the health, welfare or safety of the public. Evidence of conduct that endangers or is likely to endanger the health, welfare or safety of the public may include but shall not be limited to:

- (1) pleading guilty, nolo contendere or being convicted of a felony;
- (2) pleading guilty, nolo contendere or being convicted of a misdemeanor involving moral turpitude;
- (3) pleading guilty, nolo contendere or being convicted of a violation of federal or state controlled dangerous substance laws; or
- (4) violating any provision of the Massage Therapy Practice Act or any rule of the Board.

175:20-5-3. License renewal

(a) Massage therapy licenses shall be renewed biennially on the last day of the birth month of the licensee.

(b) In order to renew a license, a licensee shall:

- (1) submit a renewal application on a form prepared by the Board;
- (2) demonstrate completion of all continuing education requirements in a manner prescribed by the Board;
- (3) provide documentation that the applicant currently maintains liability insurance for practice as a massage therapist;
- (4) remit all required fees for renewal; and
- (5) states under penalty of perjury in a manner prescribed on the application as to whether the applicant has in any jurisdiction:
 - (A) pleaded guilty, nolo contendere or been convicted of a felony;
 - (B) pleaded guilty, nolo contendere or been convicted of a misdemeanor involving moral turpitude; or
 - (C) pleaded guilty, nolo contendere or been convicted of a violation of federal or state controlled dangerous substance laws

(d) A thirty-day grace period shall be allowed after the end of the renewal period. During the grace period, a license may be renewed upon payment of the renewal fee and a late fee as prescribed by the Board.

(e) If a massage therapist license is not renewed by the end of the thirty-day grace period, the license shall be placed on

inactive status for a period not to exceed one (1) year. No person shall practice massage therapy while the license is in inactive status.

(f) If within a period of one (1) year from the date the license was placed on inactive status the massage therapist wishes to resume practice, the massage therapist shall notify the Board in writing and, upon receipt of proof of completion of all continuing education requirements and payment of a reactivation fee, the license shall be restored in full.

(g) If a license is not reactivated within one (1) year from the date that it was placed in inactive status, the license shall automatically expire. If the person who held the expired license wishes to practice as a massage therapist, the person shall apply for an original license and shall meet all requirements for original licensure as prescribed in this chapter.

175:20-5-4. Licensee address and name change

Each person holding a license shall notify the Board of any change in name and/or address within thirty (30) days after the change. Any name change shall require court or other legal documentation of the change before the change may be recognized and recorded in files of the Board.

175:20-5-5. Report of disciplinary action in another jurisdiction

Each person holding a license shall notify the Board within thirty (30) days of disciplinary action taken against the licensee by another state, territory, foreign nation or other jurisdiction where the person is licensed to practice massage therapy. The licensee shall also notify the Board when the licensee's application for licensure is denied by another state, territory, foreign nation or other jurisdiction.

175:20-5-6. Report of criminal plea or conviction

Each person holding a license shall notify the Board within thirty (30) days of pleading guilty, no contest (nolo contendere), or being convicted of a felony or misdemeanor other than a misdemeanor traffic violation.

SUBCHAPTER 7. CONTINUING EDUCATION

175:20-7-1. Continuing education requirement

(a) A licensee shall complete sixteen (16) hours of continuing education per license period. Acceptable continuing education shall address topics within the scope of practice of massage therapy or related business practices and may include training in CPR or First Aid. In order to receive credit for CPR or First Aid, the licensee must take a complete course with certification. If the licensee has lapsed, the licensee shall complete an additional two (2) hours related to best practices for sanitation and safety before the license can be restored to active status.

(b) The Board shall accept continuing education approved or provided by any of the following:

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- (1) a state-licensed or accredited massage therapy school;
- (2) an accredited institution of higher education;
- (3) local, state, or national chapters of professional organizations that address improvement of the profession, including but not limited to the National Certification Board for Therapeutic Massage and Bodywork (NCBTMB) and the Federation of State Massage Therapy Boards (FSMTB).
- (c) Continuing education may be in the form of in-person instruction or distance learning.
- (d) Each licensee shall, at the time of making application for renewal, sign a statement on the application certifying that the licensee has completed the required hours of continuing education and provide verifiable evidence of completion.
- (e) Each licensee shall maintain verifiable of completion of the continuing education activity until the licensee submits the next application for renewal.

SUBCHAPTER 9. STANDARDS OF PROFESSIONAL CONDUCT

175:20-9-1. Professional conduct

- (a) A licensee shall maintain current knowledge of massage practice and perform services only if the licensee has the necessary knowledge, training or skill to perform the technique.
- (b) A licensee shall be clean, fully-clothed and professional in dress and appearance. A licensee shall not practice in the nude, while partially nude, or in clothing designed to arouse or gratify the sexual desire of any individual.
- (c) A licensee shall not engage in an activity, interest or influence that conflicts with the licensee's obligation to act in the best interest of the client.
- (d) A licensee shall not exploit a relationship with a client for the licensee's personal advantage, including, but not limited to, a personal, sexual, romantic, or financial relationship.
- (e) A licensee shall not engage in a romantic or sexual relationship with a client during the time that a therapist/client relationship exists.
- (f) A licensee shall conduct business with honesty and integrity.
- (g) A licensee shall be truthful in advertising and marketing, and not misrepresent services, charges for services, credentials, training, experience or result.
- (h) A licensee shall not massage the genitalia of a client.
- (i) A licensee shall only massage the breasts of a female client if:
 - (1) the licensee has training in techniques related to therapeutic treatment of mammary tissue;
 - (2) the massage is ordered by a licensed physician, documentation of which is maintained by the licensee; and
 - (3) signed written consent is obtained from the client.
- (j) A licensee shall not practice when under the influence of alcohol, drugs or any illegal substances, with the exception of legal or prescribed medication in dosages that do not impair the licensee's ability to render massage therapy services in a safe manner.

- (k) A licensee may refuse to treat any person or any part of the body for just or reasonable cause.
- (l) A licensee shall immediately modify or terminate treatment at the client's request regardless of prior consent.
- (m) A licensee shall report to the Board if the licensee has first-hand knowledge or evidence of unlicensed practice or evidence indicating any unethical or illegal act that has been committed by another licensee.
- (n) A licensee shall not perform pregnancy massage unless the licensee has been trained in techniques related to pregnancy or prenatal massage and has first obtained an informed written consent for the treatment from the client.
- (o) A licensee shall not use fraud, misrepresentation or deception in obtaining a massage therapy license, in renewing a license, in passing a massage therapy license examination, in assisting another to obtain a license or pass a license examination, in providing massage therapy services, or in conducting any other activity related to the practice of massage therapy.
- (p) A licensee shall cooperate with any inspection or investigation conducted by the Board.
- (q) Upon request, licensee shall produce proof of licensure and photo ID.

175:20-9-2. Client records

- (a) A licensee shall maintain the confidentiality of client information at all times and not disclose the client's identity or other information unless release of information is:
 - (1) consented to in writing by the client;
 - (2) required for the purpose of immediate treatment of the client by a third party; or
 - (3) otherwise required by law.
- (b) A licensee shall maintain client files and business records for at least three (3) years from the date of service and in a manner that secures client confidentiality.
- (c) A licensee shall dispose of client records in a secure manner that prevents disclosure of personal information.
- (d) A licensee shall obtain informed written consent from all clients. If the client is a minor, the licensee shall obtain written consent from the client's parent or legal guardian. The client intake form shall include the client's name, gender, date of birth, date of session, pertinent medical history, client sensitivities, allergies and medication.
- (e) If a written plan of treatment is required, the client file shall include the intake form, progress notes signed by the licensee, complaints, ongoing assessments, client's response to treatment, referrals to other professionals if indicated, and goals or desired outcome of treatment medications as disclosed by the client.
- (f) Written consent without an intake form but with notification of pre-existing conditions that could affect a massage for a sports event massage, a public demonstration or a chair or seated massage.

175:20-9-3. Sanitation and safety standards

- (a) All client contact items and work areas must be cleaned and disinfected between client therapy sessions.

- (b) Disinfectants shall only be used if registered with the Environmental Protection Agency for use as a disinfectant to achieve its intended purpose in accordance with the product label. Licensees shall be responsible for product knowledge.
- (c) Licensees shall wash their hands, forearms and above the elbows after each client session.
- (d) Clean towels, gowns, linens and sheets shall be used for each client.
- (e) Clean towels, gowns, linens and sheets shall be kept in a closed area that is free from contamination.
- (f) A suitable hamper-type container shall be provided for soiled towels, gowns, linens or sheets.
- (g) All liquids, creams and other products shall be kept in clean, closed containers.
- (h) All products used on a client must be dispensed by a spatula, scoop, spoon, squeeze bottle, pump, dropper or similar dispenser so that the remaining product is not contaminated.
- (i) Products applied to one client cannot be removed and reused on another client.
- (j) Licensees shall observe universal precautions as published by the Centers for Disease Control in the event of exposure to blood or bodily fluids.
- (k) No licensee shall massage any person when the surface to be massaged or has open cuts, lesions or infection.

175:20-9-4. Client draping and privacy

- (a) A licensee shall use appropriate draping to protect the client's physical and emotional privacy. When a client remains dressed for a seated massage or sports massage, draping is not required.
- (b) A licensee shall provide a private area for the client to change before and after service. The licensee shall respect the client's privacy while changing unless the client requires assistance due to age or disability and the client consents to assistance.

SUBCHAPTER 11. GROUNDS FOR DISCIPLINE

175:20-11-1. Grounds for discipline

- (a) The Board may take the following disciplinary action against a licensee:
 - (1) refuse to renew a license;
 - (2) suspend or revoke a license;
 - (3) issue an administrative reprimand; or
 - (4) impose probationary conditions.
- (b) The Board may take disciplinary action upon a finding that the licensee has violated any provision of the Massage Therapy Practice Act, any rule of the Board or has engaged in any unprofessional conduct that endangers or is likely to endanger the health, welfare or safety of the public. Evidence of conduct that endangers or is likely to endanger the health, welfare or safety of the public may include but shall not be limited to:
 - (1) pleading guilty, nolo contendere or being convicted of a felony;

- (2) pleading guilty, nolo contendere or being convicted of a misdemeanor involving moral turpitude; or
- (3) pleading guilty, nolo contendere or being convicted of a violation of federal or state controlled dangerous substance laws.

SUBCHAPTER 13. COMPLAINTS AND HEARINGS

175:20-13-1. Complaints and disciplinary proceedings

- (a) Disciplinary proceedings may be instituted by sworn complaint of any person, including members of the Board, and shall conform to the provisions of the Administrative Procedures Act.
- (b) Complaints shall be made, and investigations and disciplinary proceedings shall be conducted, as provided for in Subchapter 5 of Chapter 1 of this Title.
- (c) A license holder who has been found guilty and sanctioned by the Board shall be responsible for the payment of all costs of the disciplinary proceedings and any administrative fees imposed.

SUBCHAPTER 15. FEE SCHEDULE

175:20-15-1. Massage Therapy Practice Act license and penalty fees

- (a) The following license and penalty fees are hereby adopted:
 - (1) Massage Therapist License (prior to May 1, 2017) - \$25.00
 - (2) Massage Therapist License (after May 1, 2017) - \$50.00
 - (3) Massage Therapist License by Reciprocity - \$65.00
 - (4) License Renewal - \$50.00
 - (5) Duplicate license (in case of loss or destruction of original license and/or renewal application) - \$5.00
 - (6) Notary Fee - \$1.00
 - (7) Certification of Records - \$10.00
 - (8) Late fee (for licenses renewed during the one-month grace period) - \$10.00
- (b) All fees shall be submitted to the Board in the form of a cashiers check, money order or business check. Personal checks are not accepted by the Board.

[OAR Docket #17-468; filed 6-19-17]

**TITLE 210. STATE DEPARTMENT OF EDUCATION
CHAPTER 1. STATE BOARD OF EDUCATION**

[OAR Docket #17-436]

RULEMAKING ACTION:
PERMANENT final adoption

Permanent Final Adoptions

RULES:

Subchapter 5. Due Process
210:1-5-6. Suspension and/or revocation of certificates [AMENDED]

AUTHORITY:

State Board of Education; 70 O.S. § 3-104; 22 O.S. § 18

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n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

Two provisions are added to the rule governing the suspension and revocation of certificates issued by the State Board of Education to teachers, administrators, and other school personnel. Language is added to subsection (k) providing that an individual who has had a certificate revoked may apply for reinstatement if the revocation was based on an offense which has been expunged by a court of competent jurisdiction. A new subsection (l) is also added, directing the State Board of Education to notify the superintendents of all Oklahoma school districts to the extent possible when an individual's certificate has been suspended or revoked by the Board.

CONTACT PERSON:

Lori Murphy, Assistant General Counsel, Oklahoma State Department of Education, Room 1-17, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma. Telephone number: (405) 522-5260

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 5. DUE PROCESS

210:1-5-6. Suspension and/or revocation of certificates

(a) **Application.** The rules and regulations of the State Board of Education governing the suspension and revocation of certificates apply to the following: superintendents of schools, principals, supervisors, librarians, school nurses, school bus drivers, visiting teachers, classroom teachers and other personnel performing instructional, administrative and supervisory services in the public schools. Except as otherwise specifically provided by law, the issuance or denial of a new certificate shall not be considered an individual proceeding subject to the process and procedures set forth in this Section.

(b) **Grounds for revocation.** A certificate shall be revoked only for:

(1) A willful violation of a rule or regulation of the State Board of Education, or the United States Department of Education; or

(2) A willful violation of any federal or state law, or

(3) A conviction for any of the offenses or bases for revocation set forth in 70 O.S. §§ 3-104 or 3-104.1; or

(4) For other proper cause.

(c) **Duty to report and refrain from illegal activity.**

It shall be a violation of State Board of Education rules and regulations for any person holding a valid teaching certificate to be aware of and fail to report, or knowingly participate in any activity deemed illegal while participating in job-related activities of student organizations, athletic and scholastic competitions, fairs, stock shows, field trips, or any other activity related to the instructional program. Willful violation of (b)(1)-(b)(4) of this regulation or the failure to report or knowing participation in any activity deemed illegal may result in recommendation of revocation or suspension of the certificate, or such other penalty, as may be determined after due process by the State Board of Education.

(d) **Right to hearing on revocation of an existing certificate.** No certificate shall be revoked until the holder of the certificate has been provided with a copy of the application to revoke the certificate and opportunity for a hearing provided by the State Board of Education in accordance with the following procedures:

(1) **Filing of application to revoke a certificate.** An individual proceeding to revoke a certificate shall be initiated by filing an application to revoke a certificate. An application to revoke a certificate shall be filed with the Secretary of the State Board of Education by the State Department of Education. The application shall name the holder of the certificate to be revoked as the respondent in the action, and shall contain:

(A) A statement of the legal authority and jurisdiction under which the applicant seeks to initiate the proceeding and the hearing is to be held;

(B) A reference to each particular statute and/or rule involved;

(C) A short and plain statement of the allegations asserted; and

(D) A statement of the facts alleged to give rise to the revocation. The application shall also state a proposed effective date for the relief requested (e.g., revocation), which shall be set no earlier than forty-five (45) calendar days from the date the complaint is filed.

(2) **Informal disposition.** Informal disposition of the application to revoke a certificate may be made by stipulation, agreed settlement, consent order, or default, unless otherwise precluded by law. Written notice signed by each party or counsel representatives shall be delivered to the Secretary of the State Board of Education prior to the time of the scheduled hearing.

(3) **Notice to parties.** Within three (3) business days of the date the application to revoke a certificate is filed with the Secretary of the State Board of Education, the Secretary shall send a copy of the application along with a notice

of intent to revoke the certificate by certified or registered mail, restricted delivery with return receipt requested, to the holder of the certificate. It is the responsibility of every certificate holder to notify the State Department of Education upon a change of address, and the mailing address on file for each certificate holder shall be presumed to be a proper address for service of notice. Service of notice of intent to revoke a certificate shall be deemed complete upon certified or registered mailing of the notice to the certificate holder's last known address. In addition to the requirements of notice set forth at 75 O.S. § 309, the notice of intent to revoke the certificate shall include:

(A) A statement setting forth the proposed effective date of revocation of the certificate; and

(B) A statement advising the holder that if the holder fails to appear for a hearing and contest the revocation, the allegations in the application for revocation will be deemed confessed and the Board may issue a final order to effect revocation of the certificate as of the effective date proposed in the notice.

(e) **Emergency Action.** Pursuant to 75 O.S. § 314, in the event the State Board of Education finds that public health, safety, or welfare imperatively requires emergency action, the State Board of Education may issue an emergency order summarily suspending a certificate pending an individual proceeding for revocation or other action. Such proceedings shall be promptly instituted and determined. Such an order shall include specific findings of fact specifying the grounds for the emergency action. Within three (3) business days of the issuance of the order by the Board, a copy of the order shall be sent to the holder of the certificate via certified or registered mail, delivery restricted to the certificate holder, with return receipt requested.

(f) **Hearing procedures.**

(1) **Hearing and appointment of a hearing officer.** Upon filing the application with the Secretary of the Board, the Secretary shall set the matter for a hearing. The Board, at its discretion, may utilize a hearing officer to conduct the hearing. If utilized, the hearing officer shall be appointed by the Chairperson of the Board.

(2) **Attendance of witnesses.** If the complainant, or the holder of the certificate wants any person to attend the hearing and testify as a witness, he/she shall notify the Chairperson of the State Board of Education at least fifteen (15) calendar days prior to the hearing, in writing, giving the name and address of the desired witness, and the Chairperson shall thereupon subpoena, by mail, the desired witness to attend in accordance with the provisions of this subsection. Every person testifying at a revocation hearing shall be sworn to tell the truth. The parties to the hearing shall exchange witness and exhibit lists and any exhibits no later than fifteen (15) calendar days prior to the hearing.

(3) **Subpoenas.** Subpoenas and/or subpoenas duces tecum may be issued in accordance with the following procedures:

(A) **Issuance of subpoenas.** Subpoenas for the attendance of witnesses, or for the production of books,

records, papers, objects, or other evidence of any kind as may be necessary and proper for the purposes of a proceeding shall be issued by the Secretary of the Board at the direction of the Chairperson; upon order of the Board; or at the request of any party to a proceeding before the Board. The signature of the Secretary shall be sufficient authentication for any subpoena.

(B) **Service of subpoenas.** Subpoenas shall be served in any manner prescribed for service of a subpoena in a civil action in the district courts of the State of Oklahoma.

(C) **Objections to and compliance with subpoenas.** Any party to the proceeding may move to quash a subpoena or subpoenas duces tecum issued in accordance with the provisions of this Section, provided that, prior to quashing a subpoena or subpoenas duces tecum the agency shall give notice to all parties. A subpoena or subpoenas duces tecum may not be quashed if any party objects.

(D) **Enforcement of subpoenas.** Upon the failure of any person to obey a subpoena, or upon the refusal of any witness to be sworn or make an affirmation or to answer a question put to her or him in the course of any individual proceeding or other authorized action of the Board, the Board as soon as convenient shall consider the issue of enforcement of the subpoena. By resolution, it may direct application to the district or superior court of the county of such person's residence or to any judge thereof for an order to compel compliance with the subpoena or the furnishing of information or the giving of testimony. Meanwhile, the hearing or other matters shall proceed, so far as is possible, but the Board at its discretion at any time may order a stay or continuance of the proceedings for such time as may be necessary to secure a final ruling in the compliance proceedings.

(E) **Costs of issuance and service of subpoenas.** The costs covering the issuance and service of subpoenas and all witness fees incurred on behalf of a party to the proceedings, other than the Board, shall be borne by the party on whose behalf they are incurred.

(4) **Right to representation.** Any party to the individual proceeding shall at all times have the right to representation by counsel, provided that such counsel must be duly licensed to practice law by the Supreme Court of Oklahoma, and provided further that counsel shall have the right to appear and act for and on behalf of the party represented.

(5) **Legal counsel to State Board of Education.** The attorney for the State Board of Education shall present evidence to the Board, in furtherance of the application. If deemed necessary by the Chairperson of the Board, a request may be made of the Attorney General to provide counsel to the Board to rule on questions of admissibility of evidence, competency of witnesses, and any other questions of law. In the event that counsel is not requested

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from the Attorney General the Chairperson of the Board will rule on the evidence, competency of the witness and other questions of law.

(6) **Disqualification of a Board member or hearing officer.** A Board member or hearing officer shall withdraw from any individual proceeding in which he or she cannot accord a fair and impartial hearing or consideration. Any party may request the disqualification on the ground of his or her inability to give a fair and impartial hearing by filing an affidavit promptly upon discovery of the alleged disqualification, stating with particularity the grounds upon which it is claimed that a fair and impartial hearing cannot be accorded. The issue shall be determined promptly by the Board, or if it affects a member of the Board, by the remaining members thereof, if a quorum. Upon the entry of an order of disqualification affecting a hearing officer, the Board shall either assign a replacement hearing officer, or conduct the hearing itself. Upon the entry of an order of disqualification affecting a Board member, the Governor immediately shall appoint a member pro tempore to sit in place of the disqualified member in that proceeding.

(7) **Notice of facts.** The Board shall give notice to all parties, prior to, or at the hearing, of any facts of which it proposes to take official notice. Any party or her/his attorney may request that official notice be taken of any fact qualified for such notice by the statutes of this state. If such official notice is taken, it shall be stated in the record, and all parties shall have opportunity to contest and give evidence in rebuttal or derogation of the official notice.

(8) **Presentation and consideration of evidence.** The State Board of Education shall consider only evidence upon the specific cause contained in the notice, and evidence will be heard for such cause. Questions of the admissibility of evidence shall be governed by the provisions of 75 O.S. § 310.

(9) **Order of procedure.** The order of procedure at the hearing shall be as follows:

- (A) Opening statements by legal counsel of both parties;
- (B) Presentation of evidence by both parties followed by cross-examination of witnesses, and questions by State Board members or the hearing officer;
- (C) Closing arguments by legal counsel of both parties; and
- (D) Submission of case to the Board or the hearing officer for decision.

(10) **Continuance of a hearing.** The Board or hearing officer may continue or adjourn the hearing at any time for a specified time by notice or motion. The Board or hearing officer may grant a continuance upon motion of a party for good cause shown if written request is filed and served on all parties of record and filed with the Secretary of the Board at least five (5) days prior to the date set for hearing. A respondent may be granted only one (1) continuance.

(g) **Deliberations and decisions.** Deliberations by the Board or the hearing officer in an individual proceeding may be held in executive session pursuant to the provisions of the Open Meeting Act set forth at 25 O.S. § 307.

(1) **Decision.** Decisions shall be issued in accordance with the following procedures:

(A) After hearing all evidence, and all witnesses, the State Board of Education or, if applicable, the hearing officer, shall render its decision on whether the certificate shall be revoked.

(B) The decision of the State Board of Education or a hearing officer presiding at the hearing shall be announced at the conclusion of the hearing and notification of that decision shall be by certified or registered mail, restricted delivery with return receipt requested to the holder of the certificate.

(C) If the holder of the certificate fails to appear at the scheduled hearing without prior notification within the time frame to request a stay or continuance set forth in (f)(10) of this Section, demonstration of good cause, the Board or hearing officer shall hold the party in default and issue an order sustaining the allegations set forth in the application.

(D) If the applicant fails to appear at the scheduled hearing without prior notification within the time frame to request a stay or continuance set forth in subsection (f)(10) of this Section, demonstration of good cause, or fails to prove the allegations by clear and convincing evidence, the application shall be dismissed.

(2) **Findings of fact and conclusions of law.** After the decision is announced, but before issuance of the final order, if the Board has not heard the case or read the record of the individual proceeding, the hearing officer shall provide the parties with an opportunity to prepare and submit proposed findings of fact and conclusions of law in accordance with the provisions of 75 O.S. § 311. After the parties have been given notice and an opportunity to file exceptions, present briefs and oral arguments to the proposed findings of fact and conclusions of law, the Board may take action to accept, reject, or modify the proposed Findings and Conclusions of the hearing officer. The Board shall render findings of fact and conclusions of law. All findings of fact made by the Board shall be based exclusively on the evidence presented during the course of the hearing or previously filed briefs, (made a part of the record), of the testimony of witnesses taken under oath.

(3) **Final order.** As the final determination of the matter, the final order shall constitute the final agency order and shall comply with the requirements set forth at 75 O.S. § 312. If no motion for rehearing, reopening or reconsideration of the order is filed in accordance with (h) of this Section, the final agency order shall represent exhaustion of all administrative remedies by the State Board of Education. All final orders in an individual proceeding shall be in writing and made a part of the record. Final orders are to be issued by the Chairperson of the Board or the presiding officer for transmission to the parties by the Secretary of the Board. Within five (5) business days of the date of issuance of the final order, parties shall be notified of a final order either personally or by certified mail, return receipt requested. Upon request, a copy of

the order shall be delivered or mailed to each party and the party's attorney of record, if any.

(4) **Communication with parties.** Unless required for the disposition of ex parte matters authorized by law, the Chairperson and the members of the Board, the hearing officer, or the employees or the agents of the Board shall not communicate, directly or indirectly, in connection with any issue of fact, with any person or party, nor, in connection with any issue of law, with any party or his or her representative except upon notice and opportunity for all parties to participate. The Chairperson and members of the Board or their employees may communicate with one another and have the aid and advice of one or more personal assistants. Advice may also be secured from the Attorney General's office.

(h) **Record of hearing.**

(1) The record of a hearing shall be set forth in such form and detail as the Chairperson or the Board may direct. The hearing may also be fully transcribed, and shall be placed on file in the Secretary's office. Parties to the proceeding may have the proceedings transcribed by a court reporter at their own expense. In accordance with the requirements of 75 O.S. § 309, the record shall include:

- (A) All pleadings, motions, and intermediate rulings;
- (B) Evidence received or considered during the individual proceeding;
- (C) A statement of matters officially noticed;
- (D) Questions and offers of proof, objections, and rulings thereon;
- (E) Proposed findings and exceptions;
- (F) Any decision, opinion, or report by the Board or a hearing officer presiding at the hearing; and
- (G) All other evidence or data submitted to the Board or hearing officer in connection with their consideration of the case.

(2) The State Board Secretary shall electronically record the proceedings, with the exception of the executive sessions. The recording shall be made and maintained in accordance with the requirements of 75 O.S. § 309, and a copy shall be provided to any party to the proceeding upon request. If the requesting party should desire the tape(s) to be transcribed by a court reporter, the requesting party shall bear the expense.

(i) **Rights to a rehearing, reopening or reconsideration.**

(1) A petition for rehearing, reopening or reconsideration of a final order must be filed with the Secretary of the State Board within ten (10) days from the entry of the order. It must be signed by the party or his or her attorney, and must set forth with particularity the statutory grounds upon which it is based. However, a petition based upon fraud practiced by the prevailing party or upon procurement of the orders by perjured testimony or fictitious evidence may be filed at any time. All petitions for rehearing, reopening, or reconsideration will be considered

and ruled upon as soon as the convenient conduct of the Board's business will permit.

(2) A petition for a rehearing, reopening, or reconsideration shall set forth the grounds for the request. The grounds for such a petition shall be either:

- (A) Newly discovered or newly available evidence, relevant to the issues;
- (B) Need for additional evidence adequately to develop the facts essential to proper decision;
- (C) Probable error committed by the Agency in the proceeding or in its decision such as would be grounds for reversal on judicial review of the order;
- (D) Need for further consideration of the issues and the evidence in the public interest; or
- (E) A showing that issues not previously considered ought to be examined in order to properly dispose of the matter. The grounds which justify the rehearing shall be set forth by the State Board of Education which grants the order, or in the petition of the individual making the request for the hearing.

(3) It is the burden of the party requesting a rehearing to notify the opposing party of the appeal.

(4) Rehearing, reopening, or reconsideration of the matter may be heard by the State Board of Education or may be referred to a hearing officer. The hearing must be confined to those grounds on which the recourse was granted.

(j) **Judicial review.** Any person or party aggrieved or adversely affected by a final order in an individual proceeding is entitled to certain judicial review in accordance with the provisions of the Oklahoma Administrative Procedures Act, and the procedures set forth therein shall govern appeals.

(k) **Applications for reinstatement of a license certificate.** After five (5) years of the effective date of revocation of a license certificate, or after expungement of the offense(s) that formed the basis for the revocation by a court of competent jurisdiction, an individual may apply for reinstatement of the license certificate in accordance with the application procedures set forth by the State Department of Education.

(l) **Notifications of suspension or revocation.** Upon the suspension or revocation of an individual's certificate, the State Board of Education shall notify the superintendent of the district that most recently employed the certified individual based upon the individual's certification number and the personnel reports currently on file with the State Department of Education. In addition, the State Board shall to the extent possible notify the superintendents of all Oklahoma school districts. Notification shall also be provided to the extent possible to certification officers in each state or territory of the United States.

[OAR Docket #17-436; filed 6-16-17]

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

[OAR Docket #17-437]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions
210:10-1-4. Length of term [AMENDED]

AUTHORITY:

State Board of Education; 70 O.S. § 3-104; 70 O.S. § 109

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

August 25, 2016

COMMENT PERIOD:

September 15, 2016 through October 17, 2016

PUBLIC HEARING:

October 17, 2016

ADOPTION:

October 27, 2016

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

October 27, 2016

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's Declaration on June 13, 2017

FINAL ADOPTION:

June 13, 2017

EFFECTIVE:

September 11, 2017

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The rule outlining the minimum length of a school year must be updated to incorporate both scheduling options now available to school districts. Historically, the minimum length of the school year was one hundred eighty (180) days. House Bill 1864 (2009) added an option for school districts to adopt a total-hours rather than total-days school calendar, with a minimum of one thousand eighty (1,080) hours per school year that school must be in session. The rule is amended to include the 1,080 total-hours approach, and the October 15 deadline by which school districts must inform the State Board of Education they have adopted this option.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 1. GENERAL PROVISIONS

210:10-1-4. Length of term

(a) The minimum length of ~~term~~ the school year will be one hundred eighty (180) days or one thousand eighty (1,080) hours ~~ten (10) months, (180 days actually taught).~~ ~~Provided provided not to exceed up to five (5) days or thirty (30) hours per school year of 180 days required~~ may be used for attendance of professional meetings. A school district

that adopts a 1,080 hours policy rather than a 180 day policy shall notify the State Board of Education prior to October 15 of the applicable school year. Where professional days are taken, they shall be so recorded in the register of attendance in a like manner as holidays are recorded. The legal aggregate days attendance will be divided by days actually taught to obtain the legal average daily attendance. Any school district holding less than a full term will have its state aid reduced proportionately. No district may have less than a full term of school unless conditions over which it has no control exist that would prevent the district's holding a full term. In cases where sites within a district have different length terms the average daily membership (ADM) and average daily attendance (ADA) should be calculated for each site separately.

(b) School activities must be under the direction or supervision of the teacher or supervisor whether such activities take place within or without the school building or school grounds in order to be considered a school day or part of a school day. Pupils dismissed and not under the direction or supervision of the teacher cannot be considered as participating in scheduled school activities. A student serving as a Page to the Legislature may be counted in attendance.

(c) All pupils attending any school within a school district including underage, overage, non-resident, and non-transferred pupils shall have their names entered in the attendance register and have their attendance recorded in the same manner as any other pupil.

[OAR Docket #17-437; filed 6-16-17]

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

[OAR Docket #17-673]

RULEMAKING ACTION:

PERMANENT final adoption of assessment system recommendations pursuant to House Bill 3218 (2016)

RULES:

Subchapter 13. Student Assessment
210:10-13-1.1. Assessment system [NEW]

AUTHORITY:

House Bill 3218 (2016), Section 5(C)(7) (not codified); State Board of Education

ADOPTION:

December 15, 2016

SUBMISSION OF ADOPTED STANDARDS TO LEGISLATURE:

February 6, 2017

LEGISLATIVE APPROVAL:

March 7, 2017

EFFECTIVE:

September 11, 2017

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The rule sets forth Oklahoma's new student assessment system developed pursuant to House Bill 3218 (2016). House Bill 3218 directed the State Board of Education to study and develop a statewide system of assessments in consultation with the State Regents for Higher Education, Commission for

Educational Quality and Accountability, State Board of Career and Technology Education, and Secretary of Education and Workforce Development. On March 7, 2017, the Legislature adopted House Joint Resolution 1028 approving the assessment system recommended by the State Board of Education. House Bill 3218 (2016), Section 5(C)(7) directs the State Board of Education to submit final approved assessment requirements for publication in the Oklahoma Administrative Code in the same manner as agency rules.

CONTACT PERSON:

Lori Murphy, Assistant General Counsel, Oklahoma State Department of Education, Room 1-17, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma. Telephone number: (405) 522-5260

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULE IS EFFECTIVE AS OF SEPTEMBER 11, 2017:

SUBCHAPTER 13. STUDENT ASSESSMENT

210:10-13-1.1. Assessment system

(a) **Definitions.** The following terms, when used in this Section, shall have the following meaning, unless the context clearly indicates otherwise:

- (1) **"College and career readiness (CCR)"** means that students graduate from high school prepared to enter and succeed in postsecondary opportunities, whether college or career.
- (2) **"Criterion-referenced"** means an assessment that compares a student's performance to a predetermined standard.
- (3) **"Cut score"** means, for each assessment, the score which the Commission for Educational Quality and Accountability has established as the minimum score required to meet the state's performance target for students taking the assessment.
- (4) **"Lexile"** means a score used within the Lexile framework for reading, which represents either the difficulty of a text or a student's reading ability level.
- (5) **"Norm-referenced"** means an assessment that compares a student's performance to the performance of others who take the assessment.
- (6) **"Quantile"** means a score used within the Quantile framework for mathematics that represents a forecast of, or a measure of, a student's ability to successfully work with certain math skills and concepts.
- (7) **"Scale score"** means a raw score that has been adapted through a customized set of mathematical procedures (e.g., scaling and equating) to account for differences in difficulty across multiple forms, and to enable the score to represent the same level of difficulty from one year to the next.
- (8) **"Summative assessment"** means an assessment conducted at the end of a defined period, such as an academic term or school year, which evaluates student performance against a set of learning targets for the instructional period.

(b) **Requirements for a system of assessments.** House Bill 3218 (2016) directed the State Board of Education to study and develop recommendations for a statewide system of student assessments, which were then submitted to the Oklahoma

Legislature for review. The full report of recommendations is available on the State Department of Education website. The assessment system recommended by the State Board of Education and subsequently approved by the Legislature was developed subject to the following requirements under 70 O.S. § 1210.508:

- (1) Alignment with the Oklahoma Academic Standards;
- (2) Comparability of Oklahoma student performance with the performance of students in other states;
- (3) Capability of yielding both norm-referenced and criterion-referenced scores;
- (4) A track record of statistical reliability and accuracy; and
- (5) For assessments administered in high school, a measure of future academic performance.

(c) **Goals.** Pursuant to the requirements to study and develop recommendations for a system of assessments, the State Department of Education convened an Assessment and Accountability Task Force that included educators, parents, tribal leaders, lawmakers, and business and community leaders from across the state. In consultation with experts in the fields of educational assessment and accountability, the Task Force identified the following as primary goals for Oklahoma's student assessment system:

- (1) Provide instructionally useful information to teachers and students, with appropriate detail and timely reporting;
- (2) Provide clear and accurate information to parents and students regarding achievement and progress toward college and career readiness (CCR);
- (3) Provide meaningful information to support evaluation and enhancement of curriculum and programs; and
- (4) Provide information to appropriately support federal and state accountability decisions.

(d) **Summative assessments for grades three (3) through eight (8).** The assessment system adopted by the State Board of Education and approved by the Legislature includes the following components for student assessment in grades three (3) through eight (8):

- (1) **Content alignment and timing.**
 - (A) The Oklahoma Academic Standards will be maintained as the focus of state assessments, and assessments will continue to be administered at the ends of grades three (3) through grade eight (8).
 - (B) An adequate assessment of writing will be included to support coverage of the Oklahoma English Language Arts (ELA) standards.
- (2) **Intended purpose and use.**
 - (A) Assessments will support the calculation of growth for students in at least grades four (4) through eight (8).
 - (B) Assessments will demonstrate sufficient technical quality to support the intended purposes and current uses of student accountability, for example grade three (3) promotion based on reading assessment and driver license eligibility based on grade eight (8) English Language Arts (ELA) assessment.

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(3) **Score interpretation.**

(A) Assessments will provide a measure of performance indicative of whether students appear to be on track to college and career readiness (CCR).

(B) Assessments will support criterion-referenced interpretations which measure student performance against the Oklahoma Academic Standards, and report individual claims including but not limited to scale score, Lexile, Quantile, content cluster, and growth performance.

(C) Assessments will support norm-referenced information to help contextualize the performance of students statewide using a feature such as intra-state percentiles.

(4) **Reporting and state comparability.**

(A) Assessments will support aggregate (group) reporting on claims including but not limited to scale score, Lexile, Quantile, content cluster, and growth performance.

(B) The assessment system will utilize the existing National Assessment of Educational Progress (NAEP) data to establish statewide comparisons at grades four (4) and eight (8). NAEP data will also be used during standard-setting activities to ensure the College and Career Readiness (CCR) cut score is set using national and other state data.

(e) **Summative assessments for high school.** The assessment system adopted by the State Board of Education and approved by the Legislature includes the following components for student assessment in high school:

(1) **Content alignment and timing.** A commercial college-readiness assessment (e.g., SAT, ACT) will be used in lieu of state-developed high school assessments in grades nine (9) or ten (10), with alignment to standards and other peer review requirements being a consideration.

(2) **Intended purpose and use.**

(A) The assessment will demonstrate sufficient technical quality to support the need for multiple and differing uses of assessment results.

(B) The possibility of linking college-readiness scores to information of value for students and educators will be explored (e.g., readiness for post-secondary opportunities, remediation risk).

(C) A focus on rigorous expectations of college and career readiness will be maintained.

(D) The assessment will ensure that all students in Oklahoma can be provided with a reliable, valid, and fair score regardless of the accommodations provided or the amount of time needed for a student to take the test, and will further ensure that scores reflecting college and career readiness can be provided to the accepting institution or employer of each student.

(3) **Score interpretation.**

(A) The assessment will support criterion-referenced interpretations of student performance against the Oklahoma Academic Standards, and report individual claims appropriate for high school students.

(B) The assessment will provide evidence to support claims of college and career readiness (CCR). These claims should be supported using theoretically related data in standard-setting activities (e.g., measures of college readiness and other nationally available data), and validated empirically using available postsecondary data linking to performance on the college-readiness assessment.

(C) The assessment will provide norm-referenced information to help contextualize the performance of students statewide using a feature such as intra-state percentiles.

(4) **Reporting and state comparability.**

(A) The assessment system will support aggregate (group) reporting on claims at appropriate levels of categorization for high school assessments (e.g., grade, subgroup, teacher, building/district administrator, state).

(B) The assessment system will support the ability to provide norm-referenced information based on other states that administer the same college-ready assessments, as long as unreasonable administration constraints do not inhibit those comparisons.

[OAR Docket #17-673; filed 8-7-17]

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

[OAR Docket #17-438]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 13. Student Assessment

210:10-13-16. Student exceptions and exemptions related to graduation requirements for end-of-instruction exams [REVOKED]

AUTHORITY:

State Board of Education; 70 O.S. § 3-104; 70 O.S. § 1210.523 (repealed)

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

August 25, 2016

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October 27, 2016

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

October 27, 2016

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's Declaration on June 13, 2017.

FINAL ADOPTION:

June 13, 2017

EFFECTIVE:

September 11, 2017

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

210:10-13-16 laid out the state graduation requirements that were in place under the Achieving Classroom Excellence Act (ACE), and an appeal process for students who were denied a diploma under the requirement to pass four of the seven end-of-instruction exams required by 70 O.S. § 1210.523. This rule must be revoked because 70 O.S. § 1210.523 was repealed by House Bill 3218 (2016), and the ACE end-of-instruction exam graduation requirements are no longer in place.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 13. STUDENT ASSESSMENT

210:10-13-16. Student exceptions and exemptions related to graduation requirements for end-of-instruction exams [REVOKED]

(a) **Definitions.** Words and terms in this section shall have the following meaning:

- (1) **"Alternate method"** means demonstrating mastery of state academic content standards through an End of Course Project designed and approved by the State Board of Education. An End of Course Project is a project integrating and applying the knowledge and skills gained throughout a course to address a practical, real world challenge.
- (2) **"Alternate test"** means a state or national test approved by the Oklahoma State Board of Education for one or more of the subject areas assessed by an end-of-instruction (EOI) exam, which equals or exceeds the rigor of the EOI exam.
- (3) **"Extenuating Circumstances"** means circumstances which are unexpected, significantly disruptive, beyond a student's control, and which may have materially affected his/her academic performance.
- (4) **"Proficient/Satisfactory"** means achieving at least the minimum score for demonstrating mastery as defined by the State Board of Education on an academic achievement test of the Oklahoma School Testing Program (OSTP).

(b) **ACE graduation requirements.** In accordance with 70 O.S. § 1210.523(A)-(E), students may graduate from a public high school with a standard diploma by demonstrating mastery in the state academic content standards for Algebra I; English II; and two of the following five: Algebra II, Biology I, English III, Geometry, and United States History. Students may demonstrate mastery by attaining at least a satisfactory or proficient score on the EOI exams or the following ways:

- (1) Students who do not attain at least a satisfactory or proficient score on any of the four required EOI exams may be eligible to graduate with a standard diploma by

completing at least one of the steps below until a satisfactory or proficient score is attained and all other graduation requirements are met:

- (A) Students shall be provided one or more remediation opportunities and will either:
 - (i) Retake the EOI exam(s) needed to fulfill graduation requirements;
 - (ii) Score satisfactory or proficient on a State Board of Education approved alternate test in the subject area. The approved alternate test may be taken prior to or subsequent to the EOI exam; or
 - (iii) Demonstrate mastery of the subject matter through an End of Course Project which includes meeting the level of mastery defined by the rubrics explained in paragraph (b)(2) of this section.
- (B) School districts will only provide remediation for students while they are enrolled in public school.
- (C) An alternate test may be used to meet the graduation requirements for more than one EOI exam. A student may take more than one alternate test to meet the graduation requirements.
- (D) Remediation opportunities will be outlined in the local school district remediation plan (70 O.S. § 1210.523). School districts shall document a student's failure to participate in remediation including written acknowledgement of the graduation requirements by the student's parent or guardian.
- (E) School districts shall document a student's failure to complete test retake opportunities. Documentation shall include written acknowledgement by the student's parent or guardian of the graduation requirements related to EOI tests.

(2) Students who have not attained a satisfactory or proficient score on one or more EOI exams needed to graduate may demonstrate mastery through an End of Course Project (Alternate Method):

- (A) In order to demonstrate mastery and graduate through an alternate method on EOI exams, students must complete an End of Course Project for Algebra I, Algebra II, Biology I, English II, English III, Geometry, or United States History. End of Course Projects will be designed by the State Department of Education and approved by the State Board of Education.
 - (i) End of Course Projects for English II and English III must include a response to literature and a writing sample of comparable rigor to the EOI exams.
 - (ii) End of Course Projects for Biology I must include the process standards as assessed through laboratory experiments.

(B) End of Course Projects shall be classified by the State Department of Education and submitted to the State Board of Education for approval in three different categories: Category A, Category B, or Category C. Category A projects shall be offered to all students who choose the Alternate Method. Category B projects shall be offered as an Alternate Method to students as directed by an IEP and/or LIEP, and shall

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incorporate additional, varied approaches for students to demonstrate mastery of the state academic content standards. Category C projects shall be offered as an Alternate Method to students with the most significant cognitive disabilities and shall be designed for students who are participating in an OAAP assessment for that subject area in accordance with the student's IEP.

(C) School districts shall submit completed student End of Course Project(s) to the State Department of Education by April 1, August 1, or November 1 of each year. Projects will be evaluated and returned within 45 business days. Subject to the availability of funds, the State Department of Education may contract with individuals, educational institutions, or companies to evaluate these End of Course Projects. Evaluators shall use rubrics approved by the State Board of Education for determining student mastery of state academic content standards through End of Course Projects. If funds are not available, End of Course Projects will be evaluated at the local school district level according to requirements of the State Board of Education, and school districts shall submit reports of all student End of Course Project(s) either in progress or completed by April 1, August 1, and November 1 of each year.

(D) End of Course Projects must be retained for a minimum of 5 years from completion.

(3) Students who do not receive instruction in Oklahoma public schools may demonstrate mastery in required subjects by submitting documentation of proficiency on an equivalent state EOI exam(s) in the state in which instruction was received; attaining at least a satisfactory or proficient score (as defined by the Oklahoma State Board of Education) on the Oklahoma EOI exam(s); meeting the approved level of proficiency on an alternate test(s); demonstrating mastery through an End of Course Project(s) as described in (b)(1) and (b)(2) of this section.

(4) Students who do not have an opportunity to take required EOI exams without extending the date of graduation may demonstrate mastery in required subject areas by meeting the approved level of proficiency on an alternate test(s) or an End of Course Project(s).

(5) Students who have an Individualized Education Program (IEP) in accordance with the Individuals with Disabilities Education Act (IDEA) may demonstrate mastery of state academic content standards through a modified proficiency score on the state assessment(s) as established by the IEP Team. Any deviation from the standard conditions, accommodations, or proficiency score on the state assessment(s) must be established on the student's IEP, and shall be recorded on the student's cumulative record.

(6) Students who have an Individualized Education Program (IEP) in accordance with the Individuals with Disabilities Education Act (IDEA) that directs that the student is to be assessed with alternate achievement standards through the Oklahoma Alternate Assessment

Program (OAAP) may demonstrate mastery of state academic content standards upon a determination by the school district that the student has met all of the following criteria:

(A) The student's special education teacher of record, after consultation with the student's teacher in each subject in which the student failed to meet the requirements of (b) of this Section, provides the student with a written recommendation that the student should graduate with a standard diploma. The written recommendation shall be signed by the special education teacher of record, and shall include:

(i) A signed written statement by the principal of the student's school indicating support of the recommendation for graduation; and

(ii) Documentation demonstrating the acquired knowledge of the student by alternate measures as required by the IEP;

(B) The student completes remediation opportunities to the extent required by the IEP;

(C) The student retakes the exam in each subject in which the student failed to meet the requirements of (b) of this Section if the IEP requires retake opportunities;

(D) The student maintains at least a "C" average or the equivalent in each subject in which the student failed to meet the requirements of (b) of this Section; and

(E) The student meets all other graduation requirements of the school district in which the student is enrolled.

(7) Students who have scored ten percent (10%) above the cut scores annually approved by the State Board of Education on a designated alternate test shall have been deemed to have satisfactorily demonstrated mastery of state academic content standards in the subject area for which the alternative test has been approved by the State Board of Education and shall be exempt from taking the EOI exams in the corresponding subject area for which the alternate test has been approved. For purposes of this paragraph, the designated alternate tests shall be limited to the following exams:

(A) The American College Testing Program (ACT);

(B) The Scholastic Aptitude Test (SAT); or

(C) The ACT Plan or Preliminary Scholastic Aptitude Test/National Merit Scholarship Qualifying Tests (PSAT/NMSQT).

(8) Students who have attained a score that is equal to or above the cut scores annually approved by the State Board of Education on a designated alternate test shall have been deemed to have satisfactorily demonstrated mastery of state academic content standards in the corresponding subject area for which the alternate tests has been approved by the State Board of Education and shall be exempt from taking the EOI exams in the corresponding subject area for which the alternate test

has been approved. For purposes of this paragraph, the alternate tests shall be limited to the following exams:

- (A) Advanced Placement (AP) course exams;
- (B) The ACT WorkKeys job skills assessment;
- (C) College Level Examination Program (CLEP) exams; or
- (D) International Baccalaureate (IB) exams.

(9) The exemptions and exceptions set forth in this Section pertain only to ACE end-of-instruction graduation requirements. Nothing in this subsection shall be interpreted as exempting students from the course graduation requirements for completion of curriculum units or sets of competencies at the secondary level as set forth in 70 O.S. §11-103.6.

(10) Each year school districts shall report to the State Department of Education through the School District Reporting Site, by school site, the number of students issued standard diplomas based on the exceptions and exemptions outlined in these rules, including the categories of exceptions and exemptions granted.

(c) ~~ACE cumulative record.~~ In order to facilitate the monitoring of student progress toward meeting the graduation requirements of 70 O.S. § 1210.523, districts will maintain an Achieving Classroom Excellence (ACE) Demonstration of Mastery cumulative record for those students who do not attain at least a satisfactory or proficient score on any of the required EOI exams. All school districts in the state shall use this cumulative record uniform document, or all information required on the uniform document must be contained within the district's student information system. The State Department of Education will provide an electronic version of this cumulative record to the districts. This cumulative record shall accompany the student when transferring to a new district. For each student who meets the graduation requirements, the student's transcript shall read, "The student has met the graduation requirement of demonstrating mastery in the state academic content standards."

(d) **Appeal of denial of a standard diploma.** Any student who has been denied a standard diploma by the school district in which the student is or was enrolled for failing to meet the educational requirements of 70 O. S. § 1210.523 may appeal the denial to the State Board of Education in accordance with the following procedures:

(1) **Who may petition for appeal.** Petitions for appeal of a denial of a student diploma may be filed by the following:

- (A) A parent or legal guardian of a student or an individual who has been issued letters of guardianship of the person of a student pursuant to the Oklahoma Guardianship and Conservatorship Act, or an adult who has assumed permanent care and custody of a student in accordance with local district policies and 70 O.S. §1-113(A)(1) may file an appeal with the State Board of Education as a petitioner on behalf of the student if the student is either considered a minor child as of the date of denial of the student's diploma; if the student is considered legally incompetent as of the date of denial of the student's diploma; or both.

(B) A student who is not otherwise considered legally incompetent may file a petition for appeal directly with the State Board of Education as a petitioner if the student has either:

- (i) Obtained the legal age of majority set forth under Oklahoma law; or
- (ii) Rights of majority have been conferred upon the student by a judicial order recognized by the courts of the State of Oklahoma.

(C) A school, school district, or local school board in which a student is or was enrolled may not name itself as a Petitioner for a student or file a petition on behalf of a student. Any petition for appeal submitted by a school district as a petitioner on behalf of a student shall be grounds for automatic dismissal of the petition for appeal.

(2) **Filing requirements.** A petition for appeal must comply with the following requirements:

(A) **Time of filing.** A notice of appeal must be submitted in writing for filing to the Secretary of the State Board of Education within thirty (30) days after the date the student, parent(s) of the student, or legal guardian of the student receives a written notice of denial of a standard diploma issued by the school district or local board of education. In absence of receipt of a written notice of denial of a standard diploma, a diploma shall be deemed denied if not granted within ninety (90) days of the last day of the last semester of the last school year in which the student attended school.

(B) **Method of filing.** Petitions for appeal may be submitted for filing to the Secretary of the State Board of Education in person or by mail. A petition submitted for filing by mail may be accepted for filing if the mailing envelope contains a postmark dated on or before the date of the filing deadline.

(C) **Verification of a petition for appeal.** The petition for appeal must be signed by the petitioner(s) and the school district's Superintendent or the Superintendent's legal designee, for the purpose of verifying that, to the best of the individual's knowledge, the information submitted in the appeal is accurate and correct.

(D) **Acceptance of a petition for filing.** Upon receipt of the petition for appeal, the Secretary of the Board shall acknowledge receipt of the request in writing and notify the student and/or parent or legal guardian when the appeal shall be submitted to the State Board of Education for action. All timely filed petitions for appeal shall be brought to the State Board of Education for action. The Board shall take action on the petition no later than forty five (45) days after the date of receipt of a timely filed petition.

(3) **Review of petitions.** The State Board of Education shall appoint a committee consisting of employees of the State Department of Education to assign a case number for reference, review the petitions for appeal, and identify the basis for which the standard diploma was denied.

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~~(A) **Factors considered in recommending acceptance or denial of an appeal.** The committee shall make a recommendation of action on the appeal to the State Board of Education based on the following criteria:~~

- ~~(i) Completion and scores of EOI exams;~~
- ~~(ii) Remediation and retests of EOI exams;~~
- ~~(iii) Completion and scores of Alternate tests approved by the State Board of Education;~~
- ~~(iv) Completion of End of Course Projects approved by the State Board of Education;~~
- ~~(v) Completion or scores of alternative methods approved by the State Board of Education;~~
- ~~(vi) The existence of an extenuating circumstance, as defined in section (a) of this rule;~~
- ~~(vii) The availability of testing opportunities;~~
- ~~(viii) Other methods identified by the student, which demonstrate mastery of state academic content standards, referenced in section (b) of this rule, not to include completion of the course;~~
- ~~(ix) The exhaustion of reasonable alternative methods and exemptions and exceptions approved by the State Board of Education, including the existence of extenuating circumstances; and~~
- ~~(x) Whether action is appropriate based on the statutory language of 70 O. S. § 1210.523. Petitions for appeal which are untimely filed shall be submitted to the Board with a recommendation for denial based upon untimeliness.~~

~~(B) **Deficiencies in petitions for appeal.** The State Board of Education may provide petitioners with an opportunity to remedy deficiencies in an appeal filed in an inaccurate or incomplete manner in accordance with the following procedures:~~

- ~~(i) Prior to submission to the State Board of Education with a recommendation for denial based upon a deficiency in the petition, the petitioner shall be notified in writing of the deficiency in the appeal and provided five (5) business days from the receipt of written notification to resolve any deficiencies identified in the petition for appeal.~~
- ~~(ii) Within five (5) business days from receipt of the written notification of deficiency, Petitioner shall either:
 - ~~(I) Provide the Board with all information and/or documentation necessary to remedy the deficiency; or~~
 - ~~(II) In the event a petitioner requires additional time to remedy the deficiency, Petitioner may request a stay/continuance of thirty (30) calendar days and provide the Board a signed waiver of the forty five (45) day deadline in accordance with subparagraph (4)(A) of this section. Failure by a petitioner to complete the steps necessary to timely remedy a deficiency in a petition in accordance with the procedures~~~~

~~set forth in (d)(3)(B)(ii) shall result in a recommendation submitted to the State Board of Education for denial based on deficiency.~~

~~(C) Upon completion of review of the petition, the committee shall submit to the Board:~~

- ~~(i) A copy of each petition for appeal;~~
- ~~(ii) A written explanation of the petition;~~
- ~~(iii) Copies of all evidence and/or documentation submitted to the Board by a petitioner in support of the appeal;~~
- ~~(iv) Any additional information that may be necessary for the Board to take action;~~
- ~~(v) A recommendation of either acceptance or denial of the petition.~~

~~(4) **Dismissals of petitions for appeal.** At any time after filing, a petition for appeal may be dismissed by the Board prior to final action in accordance with the following procedures:~~

~~(A) Grounds for dismissal of a petition may be based upon a demonstration of evidence of one or more of the following circumstances:~~

- ~~(i) The appeal has been rendered moot (e.g., petitioner subsequently meets all ACE requirements during the pendency of the appeal);~~
- ~~(ii) Appeal is filed by a party who is not a proper petitioner as set forth by (d)(1) of this section;~~
- ~~(iii) The appeal is premature (e.g., petitioner's diploma has not yet been denied);~~
- ~~(iv) Denial of diploma was based on factors unrelated to failure to demonstrate mastery of state academic content standards set forth in 70 O.S. § 1210.523 (e.g., denial based upon lack of credit hours necessary to meet graduation requirements set forth in 70 O.S. § 11-103.6);~~
- ~~(v) Inaction by Petitioner (e.g., failure to timely respond to requests for additional evidence or information from the State Board) or~~
- ~~(vi) Dismissal is requested by the Petitioner.~~

~~(B) Prior to dismissal, petitioner shall be provided with reasonable notice of intent to dismiss the appeal and opportunity to respond in accordance with the following procedures:~~

- ~~(i) The notice of intent to dismiss the appeal shall conform to the requirements of notice set forth in 75 O.S. § 309, and shall include:
 - ~~(I) A statement notifying the Petitioner of the forty five (45) day time requirement set forth in 70 O. S. § 1210.523;~~
 - ~~(II) A statement providing the Petitioner with five (5) business days from Petitioner's receipt of notice of intent to dismiss, to respond to the notice of intent to dismiss by either submitting a written opposition to dismissal, or requesting a stay/continuance of the action in accordance with the procedures set forth in (d)(5)(A) of this section; and~~~~

(III) A statement that Petitioner's failure to respond to the notice of intent to dismiss within five (5) business days from Petitioner's receipt of notice of intent to dismiss the appeal may result in dismissal of the petition by the Board without further action on the appeal.

(5) **Notice of action on petition recommended to the Board.** Following review of the petition for appeal, the Petitioner shall receive written notification as to the recommended action (i.e., acceptance or denial of the petition) that will be presented to the State Board. Written notification of the recommended action must be received by the Petitioner at least five (5) business days prior to the meeting of the State Board of Education in which the recommendation will be presented.

(A) At any time prior to final action on the appeal, the State Board may grant a stay or continuance of an action on an appeal upon receipt of a motion for continuance by Petitioner and a written waiver by Petitioner of the forty five (45) day deadline for action upon an appeal set forth at 70 O.S. § 1210.523 and accompanying rules.

(B) Recommendations for denial of a petition for appeal shall be based upon the grounds set forth in paragraph (d)(3) of this section.

(6) **Action on a petition for appeal.** After review of the petition for appeal in accordance with the procedures set forth in (d)(3) of this section, the State Board of Education shall take action on a petition for appeal based on the merits of the written information provided in the appeal.

(A) The Board shall consider a petition for appeal in the form of a "Consent Docket," which shall be considered as one item.

(B) Any member of the Board may request that a petition for appeal be removed from the "Consent Docket" for discussion or to be separately considered. If such a request is made, the matter shall be removed from the docket and presented for individual action by the State Board of Education.

(C) In the event the Board determines that there is insufficient evidence in order to make an effective or proper ruling on the appeal, the State Board of Education may, by a vote of the majority of members, remove a petition for appeal from the "Consent Docket" and set a hearing for further review and consideration in accordance with the procedures set forth at (d)(7) of this section.

(7) **Procedures for hearings on appeal of a petition.** If the Board determines a hearing is necessary, the Secretary of the Board shall conduct a hearing in accordance with the Oklahoma Administrative Procedures Act, 75 O.S. § 309 et seq. and with the following procedures:

(A) The Board shall provide the Petitioner(s) and all interested parties, if any, with reasonable notice of the hearing and opportunity to appear at the hearing to present explanation of the petition, evidence submitted to the Board, and/or any additional information that Petitioner believes may be necessary for the

Board to take action. Any proper party to the appeal shall have the right to designate legal counsel to appear and act for and on behalf of the party represented, provided that such counsel must be duly licensed to practice law by the Supreme Court of Oklahoma.

(B) In addition to the contents of the notice required by 75 O.S. § 309, the notice shall also advise Petitioner of:

(i) The forty five (45) day time requirement set forth in 70 O.S. § 1210.523;

(ii) Petitioner's opportunity to submit a motion and waiver of Petitioner's right to final action of the board along with a waiver of the forty five (45) day time requirement in accordance with the procedures set forth in (d)(5)(A) of this section; and

(iii) A statement that Petitioner's failure to respond to the notice of petition and/or appear at the hearing, may result in dismissal of the petition for appeal.

(C) The school district in which the student is or was enrolled shall be named as an "Interested Party" and shall be provided with notice and opportunity to appear and present evidence at the appeal hearing before the State Board of Education.

(D) The determination of the State Board of Education shall be considered a final agency order, shall be issued in writing, and shall conform to the requirements of final agency orders set forth in 75 O.S. § 312.

(e) **Exceptions and Exemptions to Student Requirements to Demonstrate Mastery of State Academic Content Standards.** The State Board of Education may approve the petition for appeal of students and grant a waiver of one or more EOI assessments for students who have provided evidence of the existence of at least one of the following:

(1) Facts documenting events, conditions, or situations which fall within the definition of "extenuating circumstances" set forth in paragraph (a)(3) of this section; or

(2) Demonstration of mastery of the state academic content standards referenced in subsection (b) of this rule, by successful completion of a higher level course in the same subject matter and attaining a satisfactory or proficient score in an EOI exam in that same course.

(f) **Reporting appeal data.** By September 1 of each year, each school district shall report to the State Department of Education all data necessary for the Board to complete the annual report required pursuant to 70 O.S. § 1210.523 by the October 1 deadline. The report provided to the State Department of Education shall include, at a minimum, the total number of students in the school district who filed petitions for appeal of denials of diplomas which occurred in the previous school year, and the total number of those petitions filed which were granted. Data shall include subtotals of number of appeals filed and granted for each school site. Information collected pursuant to state statute shall be made available to the district's Regional Accreditation Officer (RAO) during the accreditation process.

(g) **Re-enrollment for remediation.** Students who have successfully completed all courses necessary to graduate from

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high school with a standard diploma but were denied a standard diploma for failing to meet the graduation requirements 70 O.S. § 1210.523 shall be eligible for re enrollment in the school district that denied the student a standard diploma until the student has reached the age of twenty one (21) years old. Enrollment shall be solely for the purpose of obtaining all remediation and/or intervention and opportunities necessary for the student to demonstrate mastery of state academic content standards in the subject area or areas in which the student failed to demonstrate mastery in accordance with the requirements of this Section. Students who re enroll in the school district pursuant to this subsection shall be exempt from the hourly instructional requirements of 70 O.S. § 1-111 and the six period enrollment requirements of 70 O.S. § 11-103.6. State aid funding for students enrolling part time in accordance with the provisions of this subsection shall be calculated in accordance with the provisions of 70 O.S. § 1210.526(D).

(h) ~~Oklahoma School for the Blind and the Oklahoma School for the Deaf.~~ The Oklahoma School for the Blind and the Oklahoma school for the Deaf shall be deemed local education agencies ("LEAs") solely for the purposes of purchasing, administering and obtaining results for the EOI exams necessary to comply with the requirements of 70 O.S. § 1210.523 for the students attending their schools.

[OAR Docket #17-438; filed 6-16-17]

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

[OAR Docket #17-439]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 13. Student Assessment

210:10-13-21. Academic Assessment Monitoring Program (AAMP)

[AMENDED]

AUTHORITY:

State Board of Education; 70 O.S. § 3-104; 70 O.S. § 1210.505 et seq.; 70 O.S. § 3-130 et seq.; 20 U.S.C. § 7844

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

February 1, 2017

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ADOPTION:

March 23, 2017

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March 28, 2017

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's Declaration on June 13, 2017.

FINAL ADOPTION:

June 13, 2017

EFFECTIVE:

September 11, 2017

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The rule addressing the Academic Assessment Monitoring Program, established to evaluate schools' implementation of required academic assessments, is updated to reflect changes to federal and state law. Legal citations to the *Elementary and Secondary Education Act* (ESEA) now refer to the section numbers as revised in the *Every Student Succeeds Act of 2015* (ESSA), and a reference to a discontinued federal administrative guide is corrected to the current version. Provisions that address charter schools are also updated, because state law now provides for charter school sponsors other than school districts.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 13. STUDENT ASSESSMENT

210:10-13-21. Academic Assessment Monitoring Program (AAMP)

(a) **Purpose.** The Oklahoma State Department of Education (OSDE) shall establish and implement the Academic Assessment Monitoring Program (AAMP) to evaluate school district implementation and compliance with both Federal and State law and regulations related to academic assessments. The rules will bring the state into compliance with the following state and federal statutes and regulations:

(1) Student Achievement and School Accountability Programs (SASA) for Formula Grant Programs,

(2) The Elementary and Secondary Education Act (ESEA), as reauthorized by the Every Student Succeeds Act (ESSA), requires under Section 930420 U.S.C. § 7844 (a)(1) ~~requires~~ that a State Education Agency (SEA) ensure that programs authorized under the ESEA are administered in accordance with all applicable statutes, regulations, program plans, and applications,

(3) ~~ESEA Section 930420 U.S.C. § 7844(a)-(B)(3)~~ requires that an SEA adopt and use proper methods of administering each ESEA program, including the correction of deficiencies in program operations that are identified through audits, monitoring, or evaluation,

(4) ~~Section 80.4034 C.F.R. § 200.328 of the Education Department General Administrative Regulations (EDGAR) Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards~~ requires an SEA to monitor grant and sub-grant activities to ensure compliance with applicable Federal requirements, and the Oklahoma School Testing Program (OSTP) Act at Title 70 O.S. § 1210.505 Student Assessment et seq., Oklahoma School Testing Program (OSTP), and Oklahoma Administrative Codes Code (OAC) sections 210:10-13-2, 4, 6, 7, 9, 10, 11, 18, and 20.

(5) This monitoring program is intended to:

- (A) Ensure the testing of all eligible students, proper training of school district staff is conducted, test security is maintained, assessments are administered consistently and in a uniform manner as mandated in the Oklahoma Administrative ~~Codes~~Code (OAC) sections 210:10-13-2, 4, 6, 7, 9, 10, and 11;
 - (B) Ensure that the OSDE receives from districts data of the highest quality, as mandated in the Oklahoma Administrative Code (OAC) 210:10-13-4, 18, and 20, and;
 - (C) Assist the staff of the OSDE to better advise and partner with districts regarding accountability and assessments.
- (b) **Applicable entities.** These rules are applicable to all public schools, school districts, charter schools, and other educational entities within the state that participate in the OSTP.
- (c) **Schedule of district monitoring.** All public school districts will be monitored at least once during the five (5) year cycle.
- (1) School districts shall be scheduled for monitoring using a random selection process. Of the districts to be monitored within a particular year, five (5) percent will be randomly selected for site monitoring. The remaining ninety-five (95) percent will be monitored using a desk monitoring procedure.
 - (2) Additional school districts may receive a special desk or on-site monitoring and compliance review based on any of the following criteria:
 - (A) Observed statistical irregularities or discrepancies with student assessment data Oklahoma Administrative Code (OAC) 210:10-13-18, and 20 (e.g., statistical improbable growth in the percentage of student scoring proficient, questionable erasure analysis, and/or unusual change in student demographics);
 - (B) An established pattern of testing violations identified in the Oklahoma Administrative Code (OAC) at 210:10-13-2, 4, 6, 7, 9, 10, 11, 18, and 20 or irregularities as reported to the OSDE (e.g., vendor reports, invalidations, improper test administration, failure to attend or conduct yearly training);
 - (C) Documented concerns (e.g., parent and community, noncompliance issues from prior years, other technical assistance requests), and/or;
 - (D) Testing irregularities discovered through previous annual random monitoring.
- (d) **Notification of monitoring schedule.** The monitoring schedule will be updated on an annual basis and posted to the OSDE Web site. Any new school site and/or district will be added to the cycle when the yearly update occurs. School sites and or districts that cease operation within the state shall be removed from the list. The Office of Accountability and Assessments will notify the superintendent of the school district in writing at least ten (10) working days prior to the opening of the testing window that the school district will be monitored during the upcoming testing window and will identify whether the monitoring will be on-site or desk monitoring. Additional schools monitored under (c) (2) of these rules, will be notified

in writing at least twenty (20) working days before the opening of the testing window.

- (e) **Monitoring procedures.**
 - (1) **On-site monitoring.**
 - (A) OSDE will send the district an On-site Monitoring Checklist ten (10) working days before the opening of ~~at the~~ testing window to the District Superintendent and District Test Coordinator of the school district to be monitored.
 - (B) The superintendents of districts receiving an on-site monitoring notification letter will submit the district and site testing schedules to the OSDE, Office of Accountability and Assessments five (5) working days prior to the opening of the testing window. If a change in the testing schedule occurs by the district, prior to on-site monitoring, the district must notify the OSDE, Office of Accountability and Assessments immediately.
 - (C) The OSDE, Office of Accountability and Assessments notification letter of monitoring will indicate which site(s) within the district have been selected for monitoring.
 - (D) At a minimum, one elementary school, one middle school, and one high school site within the district will be monitored as applicable.
 - (E) ~~If charter schools have been established within the school district, these sites~~Charter schools may also be monitored.
 - (2) **Desk monitoring.**
 - (A) The staff of the Office of Accountability and Assessments will analyze across a ~~four~~five (5) year period all pertinent testing and educational data for the school district being monitored (e.g., percent of students tested across cohort).
 - (B) The Desk Monitoring notification letter will indicate which site(s) within the district have been selected for monitoring.
 - (C) At a minimum, one elementary school, one middle school and one high school site within the same district will be monitored as applicable.
 - ~~(D) If charter schools have been established within the school district, these sites may also be monitored.~~
 - ~~(E)~~ District Superintendents and District Test Coordinators of the school district to be monitored will receive a Desk Monitoring Checklist, ten (10) working days before the opening of ~~at the~~ testing window. The section of the checklist titled, "District Provided Documentation" must be completed and documents returned to the Office of Accountability and Assessments of the Oklahoma State Department of Education within twenty (20) working days from the last testing day of the ~~End of Instruction (EOI)~~online assessment window.
 - (E) Charter schools may also be monitored.
- (f) **Failure to comply with state and federal regulations related to Academic Assessment.**
 - (1) The Office of Accountability and Assessments will provide monitoring results to the district superintendent

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forty five (45) working days from the end of the 20 day submission date of the On Site or Desk Monitoring documents from the school district being monitored. The monitoring results will inform a district that they have met or not met requirements of Subsection (a) of these rules related to student academic testing. Districts will be designated as in compliance if all requirements have been met, or if any monitored area is found deficient then the district and the school will be designated as noncompliant. If a district is designated as noncompliant, the Office of Accountability and Assessment staff will annually conduct monitoring activities until the district is in compliant status.

(2) Districts that remain in noncompliance for two consecutive years will receive a deficiency on their accreditation report.

[OAR Docket #17-439; filed 6-16-17]

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

[OAR Docket #17-440]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 13. Student Assessment

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

AUTHORITY:

State Board of Education; 70 O.S. § 3-104; 70 O.S. § 1210.508; 70 O.S. § 1210.545; 70 O.S. § 1210.521 et seq. (repealed)

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

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APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's Declaration on June 13, 2017.

FINAL ADOPTION:

June 13, 2017

EFFECTIVE:

September 11, 2017

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

House Bill 3218 (2016) amended the statutes that govern Oklahoma's student assessment system, and the rule that addresses the school accountability system must be updated to incorporate the changes. Further revision of 210:10-13-22 will likely be necessary next year to reflect additional changes, but the rule must be amended at this time to reflect the repeal of the Achieving Classroom Excellence (ACE) Act and the elimination of End-of-Instruction (EOI) exams. In order to streamline the process of calculating school ("A-F") report cards, the "Initial Data Verification" period

for schools to confirm the accuracy of their submitted data is proposed to be amended to fifteen (15) calendar days, from the current thirty (30) days. The 10-day "Calculation Verification" window that follows the Initial Data Verification period will remain the same.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 13. STUDENT ASSESSMENT

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

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

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

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

(A) Fifty percent (50%) on whole school performance, as measured by allocating one (1) point for each student who scores proficient or advanced on the ~~critierion-referenced tests and end of instruction tests~~ assessments and alternative assessments administered to students pursuant to the provisions of the Oklahoma School Testing Program at 70 O.S. §§1210.508 ~~and 1210.523~~, summing the points, and dividing the points by the total number of students taking the tests;

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

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

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

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

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

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

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

(1) The scores will be computed from the number of eligible students enrolled in the school. Eligible students shall include all students enrolled for the full academic year ("FAY") in the school and taking the State's ~~annual standardized assessments adopted pursuant to 70 O.S. § 1210.508 or end of instruction tests. For end of instruction exams, only first opportunity students are included in the calculation of eligible students.~~ A student shall be considered a FAY student if the student is enrolled within the first twenty (20) instructional days of the school's instructional year through and including the date of administration of the exam, and has not experienced an enrollment lapse of ten (10) or more consecutive instructional days. The FAY determination shall be based on continuous enrollment and shall not be based on attendance determinations.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (iii) Change from Unsatisfactory to Advanced = 1.0
 - (iv) Change from Limited Knowledge to Proficient or Satisfactory = 1.0
 - (v) Change from Limited Knowledge to Advanced = 1.0
 - (vi) Change from Proficient or Satisfactory to Advanced = 1.0
 - (vii) Remain Proficient or Advanced from Year 1 to Year 2 = 1.0
 - (viii) Remained at Unsatisfactory from Year 1 to Year 2 and Meets or Exceeds State Average Positive Change or remained at Limited Knowledge from Year 1 to Year 2 and Meets or Exceeds State Average Positive Change = 1.0
 - (ix) Remained at Unsatisfactory from Year 1 to Year 2 and Fails to Meet or Exceed State Average Positive Change or remained at Limited Knowledge from Year 1 to Year 2 and Fails to Meet or Exceed State Average Positive Change = 0
 - (x) Remained at Unsatisfactory from the previous school year to the current school year, or remained at Limited Knowledge from the previous school year to the current school year, but demonstrates substantial improvement within a proficiency level = 1.0
- (C) For purposes of this subparagraph, a student's improvement within a proficiency level will be considered "substantial improvement" if the student demonstrates an increase in Oklahoma Performance Index ("OPI") score from the previous school year to the current school year that meets or exceeds the average positive increase amongst all students in the State who increased their OPI score from the previous school year to the current school year.
- (D) A letter grade shall be earned based on the following criteria:
- (i) 90 points or Above = A
 - (ii) 80 - 89 points = B
 - (iii) 70 - 79 points = C
 - (iv) 60 - 69 points = D
 - (v) 59 points or Below = F
- (3) **Growth of the lowest twenty-five percent of students.** Improvement of the lowest twenty-five percent (25%) of students in reading and math shall be aggregated, as required by 70 O.S. § 1210.545. The score shall be calculated in whole and by subject-matter by assigning one point for each student in the bottom quartile who improves proficiency levels or improves substantially within a proficiency level from the previous school year to the current school year, divided by the number of students taking the test.
- (A) The calculation of a positive change in OPI score that meets or exceeds the State's average growth represents the number of eligible students who have:
- (i) Improved their state standardized assessment achievement level or state standardized

- alternative assessment achievement level, as applicable, from the previous school year to the current school year; or
 - (ii) Retained their state standardized assessment achievement level or state standardized alternative assessment achievement level and such change in OPI from the previous school year to the current school year met or exceeded the State average of students with positive OPI change.
- (B) The score shall be based on improved state standardized assessment ~~and end-of-instruction-test~~ performance from the previous school year to the current school year. Points based on student gains shall be summed and divided by the number of exams administered, and shall include only eligible students for whom comparative test scores exist. The growth of the lowest twenty-five percent (25%) shall be calculated based on the following criteria:
- (i) Change from Unsatisfactory to Limited Knowledge = 1.0
 - (ii) Change from Unsatisfactory to Proficient or Satisfactory = 1.0
 - (iii) Change from Unsatisfactory to Advanced = 1.0
 - (iv) Change from Limited Knowledge to Proficient or Satisfactory = 1.0
 - (v) Change from Limited Knowledge to Advanced = 1.0
 - (vi) Change from Proficient or Satisfactory to Advanced = 1.0
 - (vii) Remain Proficient or Advanced from Year 1 to Year 2 = 1.0
 - (viii) Remained at Unsatisfactory from Year 1 to Year 2 and Meets or Exceeds State Average Positive Change or remained at Limited Knowledge from Year 1 to Year 2 and Meets or Exceeds State Average Positive Change = 1.0
 - (ix) Remained at Unsatisfactory from Year 1 to Year 2 and Fails to Meet or Exceed State Average Positive Change or remained at Limited Knowledge from Year 1 to Year 2 and Fails to Meet or Exceed State Average Positive Change = 0
 - (x) Demonstrates substantial improvement within a proficiency level = 1.0
- (C) For purposes of this subparagraph, a student's improvement within a proficiency level will be considered "substantial improvement" if the student demonstrates an increase in Oklahoma Performance Index ("OPI") score from the previous school year to the current school year that meets or exceeds the average positive increase amongst all students in the State who increased their OPI score from the previous school year to the current school year.
- (D) A letter grade shall be earned based on the following criteria:
- (i) 90 points or Above = A
 - (ii) 80 - 89 points = B
 - (iii) 70 - 79 points = C

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(iv) 60 - 69 points = D

(v) 59 points or Below = F

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(h) **Technical assistance.** Annually, the Oklahoma State Department of Education shall publish technical assistance specifically detailing the weighted formula used for computing bonus points. Technical assistance shall be published in time for school districts to make meaningful use of the information and data.

(i) **School Performance Grading Scale.** The School Performance Grade shall be based on a combination of the

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

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

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

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

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

(B) Circumstances identified before, during, or following the administration of any state assessment where the validity or integrity of the test results are

called into question and are subject to review as determined by the State Department of Education.

(k) **Data verification by school sites/districts.** School sites shall be provided an opportunity to review all data used to calculate the school performance grade and the calculation of the school performance grade.

(1) **Initial Data Verification.** Initial data verification of the data used to calculate school performance grades shall occur throughout the school year as data becomes available to the State Department of Education. School district accountability staff shall have the opportunity to perform data verification and confirm that data being used to calculate school performance grades are accurate prior to the review period required by (k)(2) of this rule. The school district shall have at least ~~thirtyfive~~ (3015) calendar days to review and request corrections to each new data component, as it becomes available. No requests for changes to data shall be made after the expiration of the respective ~~thirtyfive~~ (3015) calendar day review period. For purposes of this paragraph only, a "new data component" means a data component that has not been previously submitted to the State Department of Education in accordance with other state or federal reporting requirements.

(2) **Calculation Verification.** Prior to the final release of school performance grades, a school district shall have at least ten (10) calendar days to certify the calculation of the performance grade. If the school district determines that a different performance grade should be assigned because of the omission of certified student data, a data miscalculation, or special circumstances that might have affected the grade assigned, school districts may submit a request for a review of the data calculation to the State Department of Education. All evidence supporting the district's claim of a calculation error and documentation of all elements to be reviewed by the Department must be submitted within the time limits specified in this subsection. No request for review of the calculation shall be accepted after the expiration of the ten (10) calendar day review period. Changes to the criteria, data, or process shall not be considered as part of this review.

(3) **Data deemed certified.** To ensure timely issuance of the school report cards in accordance with the requirements of 70 O.S. § 1210.545, any data component verification or calculation verification for which a district fails to timely review and certify as accurate in accordance with the provisions of (1) or (2) of this subsection shall be deemed certified as accurate by the district and districts shall not be permitted to request further corrections to the data.

(l) **Final determination.** The Oklahoma State Board of Education's determination of a school's performance grade shall be final.

(m) **Planned System Enhancements.** As indicated in this subsection, planned enhancements will occur in the System of School Improvement and Accountability. The Superintendent of Public Instruction will periodically recommend additional changes to the system to the State Board of Education for

approval as necessary to ensure that continuous improvements are made in the educational programs of the State. Performance data shall be reviewed annually to determine whether to adjust the school grading scale for the following year's school grades. Adjustments may include, but shall not be limited to grading criteria, classification of school type, point calculations, point requirements, and minimum points necessary to obtain a certain grade. Adjustments may reset the minimum required number of points for each grade.

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

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

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

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

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

(n) **Students who attend traditional public school districts online.** A student who attends a traditional (non-charter) public school district through a full-time online program offered by the district shall have their achievement data included for accountability purposes in the school site that claims membership for the student.

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

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

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§ 1210.545 and the accompanying provisions set forth in this Section.

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

[OAR Docket #17-440; filed 6-16-17]

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

[OAR Docket #17-441]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 11. Early Childhood Education Programs
210:15-11-2. Rules and regulations for early childhood education programs [AMENDED]

AUTHORITY:

State Board of Education; 70 O.S. § 3-104; 70 O.S. § 1-114

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

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n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

House Bill 2404 (2016) added a new provision to the statute on free attendance at public schools. 70 O.S. § 1-114(B)(3) directs the State Board of Education to promulgate a rule creating exemptions to the maximum age at which a child may attend an early childhood (pre-kindergarten or "pre-k") program. The rule provides that school districts are authorized to adopt policies for exemptions to the maximum age limit for enrollment in the district's early childhood programs. Under the rule, school districts are encouraged to consider exemption guidelines which take into consideration that young children may differ in developmental age due to factors including, but not limited to, premature birth and illness or injury during childhood.

CONTACT PERSON:

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,
THE FOLLOWING RULES ARE CONSIDERED
FINALLY ADOPTED AS SET FORTH IN 75 O.S.
SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE
DATE OF SEPTEMBER 11, 2017:**

SUBCHAPTER 11. EARLY CHILDHOOD EDUCATION PROGRAMS

210:15-11-2. Rules and regulations for early childhood education programs

(a) The number of children in a group shall not exceed twenty (20). The adult child ratio shall not exceed 1:10. Any enrollment that exceeds ten (10) shall require the employment of a teacher assistant.

(b) The school district shall ensure the teacher assistant is provided professional development in early childhood education.

(c) A child may attend less than the two and one-half (2 1/2) hours a day the first five (5) days of the semester.

(d) The program shall encourage family involvement to support the child's education experience.

(e) The learning environment shall:

(1) be arranged to provide for individual and group learning experiences

(2) be equipped with movable furniture of the correct size

(3) have adequate materials and supplies available in sufficient quantities to meet the needs of the children in the class

(4) have restroom facilities that will accommodate four-year-olds

(5) provide for a playground area that is accessible and safe

(f) It is recommended that space requirements be based on thirty-five (35) square feet per child, and that the classroom have a sink with running water.

(g) The curriculum shall be appropriate for the age and developmental level of the students. A process to provide continuity between the early childhood program and the kindergarten program shall be established.

(h) The school district shall provide for individual student screening and referral for vision and hearing.

(i) A school district is authorized to adopt a policy providing for exemptions to the maximum age limit for half-day or full-day early childhood programs. Such a policy may allow for enrollment in the district's early childhood programs by students who are older than five (5) if they meet the district's criteria for early childhood program age exemptions. A school district that adopts an early childhood program age exemption policy is encouraged to consider guidelines which take into account that young children may differ in developmental age due to factors including, but not limited to, premature birth and significant illness or injury during early childhood. Adoption of a maximum age exemption policy for early childhood programs does not relieve a school district of its obligations to identify

and serve students with disabilities under the Individuals with Disabilities Education Act (IDEA). A student who is granted an exemption and enrolled in a school district's early childhood program under an age exemption policy shall be included as a half-day or full-day early childhood program student for State Aid purposes in the district's weighted pupil grade level calculations.

[OAR Docket #17-441; filed 6-16-17]

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

[OAR Docket #17-442]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 39. Student Apprenticeship, Internship, and Mentorship Programs [NEW]

210:15-39-1. Student apprenticeship, internship, and mentorship programs [NEW]

AUTHORITY:

State Board of Education; 70 O.S. § 3-104; 70 O.S. § 1210.528 et seq.

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n/a

GIST/ANALYSIS:

The Apprenticeships, Internships and Mentorships (AIM) Act of 2016 (House Bill 2535) authorizes the governing board of any public, charter, or private school in Oklahoma to enter into agreements with public or private organizations, beginning in school year 2017-2018, for the purpose of creating internship or apprenticeship programs for high school juniors and seniors. Under the Act, each school's governing board is authorized to adopt relevant policies. The Act directs the State Department of Education to promulgate any necessary rules, and the rule requires schools to have a policy in place before entering an internship, mentorship, or apprenticeship program agreement with a public or private organization.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S.

SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 39. STUDENT APPRENTICESHIP, INTERNSHIP, AND MENTORSHIP PROGRAMS

210:15-39-1. Student apprenticeship, internship, and mentorship programs

(a) Policies authorized. The governing body of any public school, charter school, or private school in Oklahoma is authorized to adopt policies regarding student internship, mentorship, and apprenticeship programs. Such policies may provide for participation in the programs by high school juniors and seniors. Policies may allow participation in internship, mentorship, or apprenticeship programs to satisfy elective course requirements as a student's schedule permits, but a student may not use program participation to replace any other state education requirement. Any policy adopted by a school's governing body under this authorization shall include qualifying criteria that public or private organizations must meet to be eligible for an internship, mentorship, and/or apprenticeship program agreement.

(b) Agreements authorized. Beginning with the 2017-2018 school year, the governing body of each public school district, charter school, or private school may enter into an agreement with one or more public or private organizations for the purpose of creating internship, mentorship, and/or apprenticeship programs as addressed in the policies of the governing body. The provisions of 70 O.S. § 1210.528-1 notwithstanding, a school district that has an existing agreement with an outside entity to offer internships or similar arrangements as part of an alternative education program prior to November 1, 2016 may continue to participate in such existing agreements as a component of the district's alternative education program.

[OAR Docket #17-442; filed 6-16-17]

**TITLE 210. STATE DEPARTMENT OF EDUCATION
CHAPTER 20. STAFF**

[OAR Docket #17-443]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 9. Professional Standards: Teacher Education and Certification

Part 9. Teacher Certification

210:20-9-91. Student internship, mentorship, and apprenticeship programs [AMENDED]

AUTHORITY:

State Board of Education; 70 O.S. § 3-104; 70 O.S. § 6-190; 70 O.S. § 18-114.14

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n/a

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n/a

GIST/ANALYSIS:

House Bill 2946 (2016) added provisions to the teacher certification statutes authorizing the State Board of Education to issue an Oklahoma teaching certificate to a teacher who holds a valid teaching certificate issued in another country, and meets all other requirements established by the Board. This amendment adds a new subsection to the rule that governs new teaching certificates, establishing the requirements an out-of-country applicant must meet to be eligible for consideration for an Oklahoma teaching certificate. Requirements include: verification of lawful presence in the United States, baccalaureate degree or equivalent, current valid out-of-country teaching certificate, verification of teaching experience, recommendation by a school administrator or education official, criminal history record check, and English proficiency. Applicants are responsible for obtaining any necessary translation and analysis of documents in a language other than English, and bear the costs of translation and/or analysis by a reputable educational credential evaluation service.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 9. PROFESSIONAL STANDARDS: TEACHER EDUCATION AND CERTIFICATION

PART 9. TEACHER CERTIFICATION

210:20-9-91. Application for new certificates

The application processes for individuals seeking new certificates are described separately for individuals completing requirements at an in-state college or an out-of-state college.

(1) **Graduates of Oklahoma colleges and universities.** The application process for graduates of Oklahoma colleges and universities is as follows:

(A) The completed application may be submitted to the director of teacher education at the recommending college or sent directly to the State Department of Education along with an official up-to-date transcript(s) and the appropriate processing fee. See 210:20-9-9 (d)

(B) The signature of the director of teacher education verifies that the applicant has met the requirements of the institution's approved teacher education program for the license/certificate sought and that the applicant possesses the character and general fitness to be a teacher. Application approval by the State Department of Education verifies that the applicant has met an approved program.

(i) Vocational certificate applicants: The director of teacher education at the recommending institution or the applicant will forward the application to the appropriate state supervisor at the Oklahoma Department of Career and Technology Education. After approving the application the state supervisor will send it, along with supporting documents, to the State Department of Education.

(ii) Nonvocational certificate applicants: The director of teacher education at the recommending institution shall forward the approved application, along with supporting documents, to the State Department of Education.

(2) **Graduates of out-of-state colleges and universities.** The application process for graduates of out-of-state colleges and universities is as follows:

(A) The applicant will submit the following items to the State Department of Education as part of the application process:

- (i) the completed application form
- (ii) official up-to-date transcripts of all college course work
- (iii) documentation the applicant has completed an accredited teacher preparation program
- (iv) the appropriate processing fee for each class of certificate sought. See 210:20-9-9 (d)

(B) For vocational certificate applications, the applicant will submit all items in (2) (A) of this section directly to the State Department of Education.

(3) **Applicants who are certified out-of-state.** ~~The following provisions apply to applicants for Oklahoma teaching certificates who already hold certificates issued by another state:~~

~~(A) The State Board of Education shall issue a teaching certificate to an applicant who submits a valid out-of-state teaching certificate issued by a state or territory of the United States, a completed application for certification, and the applicable certification fee, and has on file with the State Department of Education a current Oklahoma criminal history record check from the Oklahoma State Bureau of Investigation and a national criminal history record check as defined in 74 O.S. § 150.9. The applicant shall be responsible for the costs of the criminal history record checks. The Oklahoma certificate shall be valid only for the subject areas and grade levels most closely aligned to those recognized on the applicant's out-of-state certificate. An applicant who holds valid teaching certificates issued by more than one state is eligible for Oklahoma certification in the subject~~

area(s) most closely aligned to any subject area(s) listed on any of the valid out-of-state certificates submitted to the State Department of Education. An applicant who is issued an Oklahoma teaching certificate under this subsection may be eligible for up to five (5) years of credit for documented and verified out-of-state teaching experience.

~~(B) An applicant who submits documentation of five (5) years or more of successful teaching experience as a certified teacher in an accredited school shall not be required to take any competency examinations in the subject areas and grade levels most closely aligned to those recognized on the applicant's out of state certificate. An applicant with fewer than five (5) years of successful teaching experience as a certified teacher in an accredited school must attain a passing score on the Oklahoma Subject Area Test (OSAT) for each area in which certification is sought.~~

(4) Applicants who are certified out-of-country. The temporary certification of visiting teachers from outside the United States, who serve in teaching positions in Oklahoma schools as guest or exchange teachers under the provisions of 22 C.F.R. § 62.24, is governed not by this section but by OAC 210:20-9-98. The following provisions apply to applicants for Oklahoma teacher certification who hold a teacher certification issued in a country other than the United States:

(A) Completed application and documentation. To be eligible for consideration for an Oklahoma teaching certificate based on teaching credentials issued in a country outside the United States, an applicant must submit a completed application for certification, the applicable certification fee, and verifiable documentation of each of the requirements of this section to the State Department of Education. It is the responsibility of the applicant to obtain translation and any necessary analysis of documentation in a language other than English. The applicant shall be responsible for the costs of any necessary translation and/or analysis.

(B) Verification of lawful presence in the United States. In accordance with 8 U.S.C. § 1621 and 56 O.S. § 71, an applicant for certification based on an out-of-country teacher certification must provide proof of lawful presence in the United States. Under federal and state law an applicant for a state benefit such as professional licensure is not required to be a U.S. citizen, but if the applicant is not a U.S. citizen they must document that they are a qualified alien under the federal Immigration and Nationality Act who is lawfully present in the U.S. Because lawful presence is distinct from work authorization under federal immigration and labor laws, an applicant who meets all criteria for teacher certification under this subsection may be eligible for certification prior to receiving authorization to work in the United States. The State Board of Education and the State Department of Education have no authority regarding

an individual's eligibility for employment under federal law, and make no representation regarding the employment authorization status of an individual who is issued an Oklahoma teaching certificate under this subsection. A school district is responsible for verifying the work authorization status of every individual employed by the district.

(C) Baccalaureate degree or equivalent. To be eligible for consideration for an Oklahoma teaching certificate, an applicant must submit documentation verifying that the individual has received a baccalaureate college degree (4-year undergraduate degree), or the equivalent of a baccalaureate degree in the higher education system of the country where the degree was conferred. It is the responsibility of the applicant to obtain any necessary translation and analysis of their foreign education credentials from a reputable educational credential evaluation service approved by the State Department of Education, including but not limited to services approved by the National Association of Credential Evaluation Services (NACES). The applicant shall be responsible for the costs of any necessary translation and/or analysis.

(D) Out-of-country teaching certification and statement of good standing.

(i) An applicant for Oklahoma certification under this subsection must submit a copy of their valid current teacher certification issued outside the United States. An applicant who holds teaching credentials issued in more than one country may submit each valid current teaching certification, but is only required to submit the most recently issued out-of-country certification. It is the responsibility of the applicant to obtain any necessary translation and analysis of the certification(s) from a reputable educational credential evaluation service. The applicant shall be responsible for the costs of any necessary translation and/or analysis.

(ii) An Oklahoma teaching certificate issued under this subsection shall be valid only for the subject areas and grade levels most closely aligned to those recognized on the applicant's out-of-country teaching certificate. For an applicant who holds teaching certifications issued by more than one licensing jurisdiction, the Oklahoma teaching certificate may include the grade level(s) or subject area(s) most closely aligned to the grade level(s) or subject area(s) recognized on any of the applicant's currently valid certifications. If the applicant's out-of-country teaching certification does not specify subject areas, the applicant may provide verification of teaching experience in one or more subjects that correspond to Oklahoma certification areas, plus documentation of a passing score on the Oklahoma Subject Area Test (OSAT) in the subject area(s).

(iii) The applicant must also submit written verification, on the letterhead of the licensing authority that issued their out-of-country teaching certification, or the school system where they were most recently employed, indicating their good standing as a member of the teaching profession whose teaching certification has not been revoked or suspended. If the applicable entity does not use an official letterhead, an alternative verification method such as notarization or apostille may be acceptable subject to the approval of the State Department of Education Office of Certification. It is the responsibility of the applicant to obtain any necessary translation and analysis of the statement of good standing from a reputable educational credential evaluation service, or a reputable translation service, subject to the approval of the Office of Certification. The applicant shall be responsible for the costs of any necessary translation and/or analysis.

(E) **Verification of teaching experience.** An applicant must submit documentation confirming that they were employed as a teacher for at least two (2) of the five (5) years preceding the application for Oklahoma certification. Teaching experience may be confirmed with a properly completed and verified "Proof of Teaching Experience" form upon approval of the State Department of Education Office of School Personnel Records. An applicant who is issued an Oklahoma teaching certificate under this subsection may be eligible for up to five (5) years of credit for documented and verified out-of-country teaching experience.

(F) **Recommendation by school administrator or education official.** An applicant must submit a letter of recommendation from a national, regional, or local education official or school administrator who has worked with or evaluated the applicant in a professional capacity. It is the responsibility of the applicant to obtain any necessary translation of the letter of recommendation from a reputable educational credential evaluation service, or a reputable translation service, subject to the approval of the Office of Certification. The applicant shall be responsible for the costs of any necessary translation and/or analysis.

(G) **Criminal history record check and statement of eligibility for certification.** An applicant shall have on file with the State Department of Education a current Oklahoma criminal history record check from the Oklahoma State Bureau of Investigation and a national criminal history record check as defined in 74 O.S. § 150.9. In addition to the criminal history record checks required by state law, an applicant for Oklahoma certification under this subsection must affirm that they have not been convicted in any jurisdiction, and have not received a suspended or deferred sentence in any jurisdiction, for a crime or attempted crime which would make an

individual ineligible for teacher certification under 70 O.S. § 3-104(6)(a) if committed or attempted in Oklahoma.

(H) **English proficiency.** So that they may adequately instruct and communicate with students, an applicant for Oklahoma certification based on a teacher certification issued in another country must be proficient in spoken and written English. By submitting an application for certification under this subsection, an applicant affirms that their command of spoken and written English is equivalent, at a minimum, to competence under the Test of English as a Foreign Language (TOEFL), the International English Language Testing System (IELTS), the American Council on the Teaching of Foreign Languages (ACTFL) oral and written English proficiency assessments, or a similar reputable English language competence examination, subject to the approval of the Office of Certification.

[OAR Docket #17-443; filed 6-16-17]

TITLE 210. STATE DEPARTMENT OF EDUCATION CHAPTER 20. STAFF

[OAR Docket #17-444]

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Subchapter 9. Professional Standards: Teacher Education and Certification
Part 9. Teacher Certification
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SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The rule addressing Noncitizen Visiting Teacher Certification has been amended to reflect a change to the controlling federal regulations. The state rule previously only allowed for the one-year teaching credential issued to visiting teachers to be renewed on a year-to-year basis for a maximum of three (3) years. The federal regulation governing visas for visiting teachers

has been amended to allow for an extension of up to two (2) years beyond the initial 3-year period, for a total of up to five (5) years authorized for noncitizen visiting teachers. Oklahoma's state rule on visiting teachers is now updated to allow for the maximum 5-year visa period.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 9. PROFESSIONAL STANDARDS: TEACHER EDUCATION AND CERTIFICATION

PART 9. TEACHER CERTIFICATION

210:20-9-98. Administrative requirements of teacher certification

(a) **Evaluation of foreign credentials.** Foreign credentials must be either analyzed by a recognized translation service or an Oklahoma college before the State Department of Education will accept them.

(b) **Noncitizens of the United States.** Requirements for noncitizens seeking an Oklahoma teaching credential are as follows:

(1) Noncitizens of the United States will be required to submit documentation proving lawful presence with the application before an Oklahoma teaching credential may be issued or reissued.

(2) The Oklahoma teaching credential may be issued/reissued for no longer than the validity of the documentation proving lawful presence. If the documentation proving lawful presence does not have an expiration date that affects the duration of a noncitizen's lawful presence, then the teaching credential shall have the same validity period as the teaching credential of a U.S. citizen.

(c) **Noncitizen Visiting Teacher Certification.** The State Board of Education may, upon request of a local school district, issue an international visiting teacher certification pursuant to 70 O.S. § 3-104(6).

(1) An international visiting teacher certification may be issued to applicants who meet the following criteria:

(A) Applicant presents a document from an accredited public school district in this state offering employment following certification;

(B) Applicant must be a citizen of a country other than the United States and hold a J-1 visa issued by the United States Department of State;

(C) Applicant holds the equivalent of a bachelor's degree or higher from an accredited college or university in the subject area the applicant intends to teach and in the case of world languages, if the applicant is not a proficient native speaker of the target language

to be taught, applicant has completed a major in the target language to be taught;

(D) Applicants who seek to teach world languages must have a minimum of three years of teaching experience in the target language requested to be taught unless the applicant is a proficient native speaker of the target language to be taught;

(E) Applicant is a participant in a visiting teacher program approved by the Oklahoma State Department of Education;

(F) Applicant must demonstrate proficiency at the advanced-low level of the American Council on the Teaching of Foreign Languages' (ACTFL) proficiency scale in both spoken and written English; and

(G) Applicant must complete an orientation program prior to employment and must be assigned a mentor teacher by the district.

(2) Applicants meeting all qualifications shall be granted a one-year teaching credential which may be renewed on a year-to-year basis for a maximum of ~~three~~five (5) years upon request of the employing district.

(d) **Native American Language Teacher Certification.** The State Board of Education may, upon application, issue a teacher certification in Native American Languages. For purposes of this subchapter, a "Native American Language" means the historical, traditional languages spoken by Native Americans. For purposes of this subchapter, "Native American" shall have the meaning set forth in 25 U.S.C § 2902(1)-(2).

(1) A Native American language certification may be issued to applicants who meet the qualifications set forth in 210:20-9-104(b) and provide documentation that the applicant has met the following criteria:

(A) Applicant has obtained a certification of proficiency in the language sought to be certified in accordance with the provisions of 210:20-9-104(b);

(B) Applicant has completed a background check conducted by the State Department of Education in accordance with the provisions of 70 O.S. § 5-142; and

(C) Applicant has submitted a portfolio documenting applicant's experience in teaching the Native American language in which the applicant has been certified by a tribe and any other experience related to education.

(D) Any applicant who does not hold an Oklahoma traditional or alternative teaching credential must complete a school orientation program prior to employment and must be assigned a mentor teacher by the district.

(2) Applicants meeting all of the criteria set forth in this subsection shall be granted a provisional Native Language teacher certification for a period of one year. After the expiration of the one year provisional term, the Native Language teacher certification may be renewed in accordance with the following provisions:

(A) For an applicant who does not hold an Oklahoma traditional or alternative teaching credential,

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the Native Language certification may be renewed on a year-to-year basis if:

- (i) Renewal is requested by the employing district; and
 - (ii) As a condition of the first two renewals of the teaching certificate, applicant provides evidence of completion of 60 clock hours/points of a professional teaching development program each year. For purposes of (ii) of this subparagraph, a professional teaching development program may include:
 - (I) Programs, seminars, or conferences recognized for professional development credit by an Oklahoma public school district at the time the teacher attends; or
 - (II) Higher education coursework in teacher education from an accredited college or university.
 - (B) For an applicant who holds an Oklahoma traditional or alternative teaching certificate, the Native Language teacher certification may be renewed for a five (5) year period.
- (e) **Privacy and access.** Any person, with proper identification, that makes a written or oral request, will be informed of the certification status of any individual subject to certification. No other information will be given to a third party without the written consent of the person about whom the information is sought.
- (1) College transcripts and other supporting documents will neither be duplicated by nor released by the State Department of Education.
 - (2) An original out-of-state teaching certificate may be returned, upon written request, to the applicant.
- (f) **Multiple applications.** When application is made at the same time for two (2) or more certificates of the same class, only a single processing fee will be charged.
- (1) Applications may be made for multiple classes of certificates on one (1) form. There is a fee for each class.
 - (2) When application is made at different times for two (2) or more certificates, a fee will be charged for each certificate requested.
- (g) **Duplicate/update certificates.** A certificate may be duplicated or updated by submitting a written request and paying the fee.
- (h) **Change of name.** A legal change of last name on a certificate may be accomplished at any time upon written request and paying the fee.
- (i) **Refusal of certification.** No certificate will be issued unless all requirements for the certificate in question are fully met. In addition, no certificate will be issued if the attempt to become certified is based on misrepresentation, forgery, or fraud.
- (j) **Grounds for cancellation of certificates.** Any certificate, credential, or endorsement obtained by misrepresentation, forgery, fraud, or issued by error will be cancelled. Upon written request the holder must surrender the certificate in question to the State Department of Education.

(k) **Felony as grounds for noncertification.** No person shall receive an Oklahoma certificate who has been convicted of a felony, any crime involving moral turpitude, or a felony violation of the narcotics laws of the United States or the State of Oklahoma, provided the conviction was entered within the ten (10) year period immediately preceding application for teacher certification.

(l) **Revocation of teaching certificate.** Teaching certificates issued by authority of the Oklahoma State Board of Education may be revoked by the board for willful violation of any rule or regulation of the board or any federal or state law or other proper cause. A certificate will be revoked only after a sufficient hearing has been given to the teacher before the State Board of Education in accordance with the hearing procedures set forth at 210:1-5-6.

(1) No person whose certificate has been revoked in Oklahoma or any other state shall be issued an Oklahoma certificate unless the revoked certificate has been fully reinstated by the revoking state and grounds for the revocation do not conflict with Oklahoma law.

(2) A person who has either voluntarily surrendered a teaching certificate in another state, been denied certification in another state or has had a certificate suspended in another state is not eligible for Oklahoma certification until an investigation has resolved the issues surrounding the surrender, denial, or suspension of certification.

(m) **Extending provisional certificates.** A request for extension of validity of any expired provisional certificate will be presented to the State Board of Education only when extenuating circumstances seem to justify its consideration. These requests shall be submitted in writing by the employing superintendent. A superintendent who holds an expired provisional certificate needs to have the president of the local board of education make the written request.

(n) **Degree/college credit accepted for certification regulations.** Only degrees conferred by state or regionally accredited colleges and universities recognized by the Oklahoma State Board of Education will be accepted by the Professional Standards Section as part of the requirements for teacher certification. Only work completed in state and regionally accredited colleges and universities, or transfer credit validated by them, will be accepted as a basis for teacher certification. For purposes of Oklahoma certification, state-accredited colleges and universities are considered to be colleges and universities accredited by the Oklahoma State Regents for Higher Education or their counterpart in other states (a statewide higher education coordinating board/agency of control). Regionally accredited colleges and universities are considered to be colleges and universities accredited by regional institutional accrediting bodies recognized by the United States Department of Education.

(o) **Fee for duplicate certificates.** The State Board of Education shall charge and collect reasonable fees for the issuance and duplication of certificates.

[OAR Docket #17-444; filed 6-16-17]

**TITLE 210. STATE DEPARTMENT OF
EDUCATION
CHAPTER 20. STAFF**

[OAR Docket #17-445]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 9. Professional Standards: Teacher Education and Certification

Part 9. Teacher Certification

210:20-9-110. Alternative placement teaching certificates [AMENDED]

AUTHORITY:

State Board of Education; 70 O.S. § 3-104; 70 O.S. § 6-122.3

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

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APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's Declaration on June 13, 2017

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SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

House Bill 3025 (2016) amended the qualifications and requirements for Alternative Placement Certification, and the rule addressing Alternative Placement teaching certificates is updated accordingly. Applicants were historically required to have completed a college major corresponding to an area of certification, but that is no longer a requirement. Applicants must now (1) hold a college degree and (2) demonstrate competency in an area of certification, and the rule provides several different means of demonstrating subject competency. Options for documenting subject area competency include completion of an academic major, relevant work and/or volunteer experience, publication in an academic or trade journal, or other means for demonstrating competency subject to the approval of the State Department of Education.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

**SUBCHAPTER 9. PROFESSIONAL STANDARDS:
TEACHER EDUCATION AND CERTIFICATION**

PART 9. TEACHER CERTIFICATION

210:20-9-110. Alternative placement teaching certificates

(a) **Issuance of provisional alternative teaching certificates.** The State Department of Education shall issue a three (3) year, nonrenewable provisional alternative placement teaching certificate to an individual who completes the application for an alternative placement teaching certificate and submits all documentation necessary to verify that the applicant meets all of the following criteria:

(1) ~~The applicant holds at least a baccalaureate degree from an institution whose accreditation is recognized by the Oklahoma State Regents for Higher Education and has attained a retention/graduation grade point average of not less than 2.50 on a 4.0 scale; Post-secondary education.~~ The applicant for alternative placement certification holds:

(A) At least a baccalaureate degree from an institution whose accreditation is recognized by the Oklahoma State Regents for Higher Education and has attained a retention grade point average of not less than 2.50 on a 4.0 scale; or

(B) A terminal degree in any field from an institution accredited by a national or regional accrediting agency recognized by the United States Department of Education, verified as a terminal degree by the Oklahoma State Regents for Higher Education; or

(C) At least a baccalaureate degree from an institution whose accreditation is recognized by the Oklahoma State Regents for Higher Education, and has completed at least two (2) years of qualified work experience. For purposes of this section, qualified work experience must be documentable through standard employment verification procedures, and relevant to a certification area or area of specialization as determined by the State Board of Education, the Office of Educational Quality and Accountability, the Department of Career and Technology Education, and/or the State Regents for Higher Education.

(2) ~~The applicant has either:~~

~~(A) Earned a major in a field of study that corresponds to an area of specialization for an Elementary Secondary Certificate, a Secondary Certificate or a career technical certificate; or~~

~~(B) Provided a letter from the registrar or academic dean of the college or school from which the applicant graduated verifying that the applicant has completed a major in a field that corresponds to an area of specialization for an Elementary Secondary Certificate, a Secondary Certificate or a career technology certificate;~~

(3) ~~The applicant can document either:~~

~~(A) Two (2) years of work experience in the applicant's degree field area, unless the applicant is participating in the federal Troops to Teachers Program; or~~
~~(B) Completion of post baccalaureate coursework in the applicant's degree field area;~~

(2) **Competency in a certification area.** In addition to having completed qualifying post-secondary education, the applicant demonstrates competency in an area of

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specialization for an elementary-secondary certificate, a secondary certificate, or a vocational-technical certificate. Competency in a certification area may be demonstrated through the following:

- (A) Completion of an academic major, or at least thirty (30) credit hours of post-secondary coursework, in a field that corresponds to a certification area.
- (B) Completion of an academic minor, or at least fifteen (15) credit hours of post-secondary coursework, in a field that corresponds to a certification area, plus at least one (1) year of qualified work experience or relevant volunteer experience in the same field. Volunteer experience must be verified through documentation and/or references.
- (C) At least three (3) years of qualified work experience or relevant volunteer experience in a field that corresponds to an area of certification, or a combination of relevant work and volunteer experience totaling at least three (3) years, plus a written recommendation from an employer or volunteer coordinator.
- (D) Successful completion of a relevant professional exam (e.g. accountancy, nursing).
- (E) Publication of a relevant article in a peer-reviewed academic journal or trade journal.
- (F) Other documentable means of demonstrating competency, subject to the approval of the State Department of Education.

(43) Intent to earn standard certification. The applicant declares the intention to earn standard certification by means of an alternative placement program that meets the requirements of 70 O.S. § 6-122.3 in not more than three (3) years; An applicant shall be deemed to have declared their intent to earn standard certification through submitting a completed application for alternative certification.

(54) Teacher competency examinations. The applicant has passed all of the following teacher competency examinations:

- (A) The Oklahoma General Education Test (OGET); and
- (B) The Oklahoma Subject Area Test (OSAT) in ~~the each~~ area of specialization for which certification is sought;

(65) Intent to serve as a public school teacher. The applicant declares their intention to serve as a teacher at an Oklahoma public school. An applicant shall be deemed to have declared their intent to seek employment at an accredited Oklahoma public school district through submitting a completed application for alternative certification, provides one of the following types of documentation:

- (A) A letter from an accredited Oklahoma public school district offering employment to the applicant in the area of specialization for which the applicant seeks certification that is conditioned upon the applicant's enrollment in an alternative certification program approved by the State Board of Education; or
- (B) A letter from the applicant declaring the applicant's intention to seek employment as a teacher in

an Oklahoma public school district accredited by the Oklahoma State Department of Education; and

(7) The applicant has received a favorable recommendation for certification from the Teacher Competency Review Panel (TCRP) for evaluation of the applicant's qualifications and career accomplishments.

(b) Requirements for enrollment in an alternative certification program. As a prerequisite to enrollment in an alternative placement program set forth in 70 O.S. § 6-122.3, applicants shall meet all of the following requirements;

(1) The applicant has never been denied admittance to a teacher education program approved by the Oklahoma State Regents for Higher Education, the North Central Association of Colleges and Schools and by the Oklahoma Commission for ~~Teacher Preparation~~ Educational Quality and Accountability to offer teacher education programs; and has never been enrolled in and subsequently failed courses necessary to successfully meet the minimum requirements of the program;

(2) The applicant has on file with the director of teacher education at an Oklahoma institution of higher education a plan for meeting standard certification requirements within three (3) years; and

(3) The applicant is participating in the teacher residency program set forth in 70 O.S. § 6-195, ~~unless the residency program has been suspended for lack of funding.~~

(c) Requirements for professional education instruction. Participants in alternative placement programs as addressed in subsection (b) must complete between six (6) and eighteen (18) credit hours of professional education instruction, or between ninety (90) and two hundred seventy (270) clock hours of school district-approved professional development, with the minimum hours of instruction required dependent on the applicant's prior level of education and/or experience. Professional education requirements must be completed within three (3) years after entering the Alternative Placement program. For all participants, professional education instruction must include at least one college credit course addressing pedagogical principles and at least one college credit course addressing classroom management. For each year of documented experience in the relevant certification area, a participant's total required professional education may be reduced by three (3) credit hours or forty-five (45) clock hours, provided all participants must complete at least six (6) credit hours or ninety (90) clock hours of professional education instruction. Minimum required instructional hours shall be determined as follows:

(1) For alternative placement program participants who hold a terminal degree, six (6) credit hours or ninety (90) clock hours of professional education instruction are required.

(2) For alternative placement program participants who hold a non-terminal degree beyond a baccalaureate degree, twelve (12) credit hours or one hundred eighty (180) clock hours of professional education instruction are required.

(3) For alternative placement program participants who hold a baccalaureate degree, eighteen (18) credit hours

or two hundred seventy (270) clock hours of professional education instruction are required.

~~(ed)~~ **Issuance of standard alternative—teaching certificates.** The State Department of Education shall issue a standard teaching certificate to an individual who successfully completes all of the requirements set forth in (a), ~~and (b), and (c)~~ of this Section within three (3) years of the date of issuance of the applicant's provisional alternative teaching certificate and meets all of the following requirements:

- (1) The applicant has passed the Oklahoma Professional Teaching Exam (OPTE) for either elementary/middle level or secondary level; and
- (2) The applicant has completed all professional education requirements of the alternative placement program set forth in 70 O.S. § 6-122.3 and the administrative rules and/or adopted policies of the State Board of Education.

~~(de)~~ **No student teaching experience required.** Student teaching and/or pre-student teaching field experience shall not be required of alternative program applicants as a condition of receiving a provisional or standard certificate pursuant to the provisions of this Section.

~~(f)~~ **Criminal history record check.** Prior to employing an alternatively certified teacher, the district board of education shall request a criminal history record check of the individual under the provisions of 70 O.S. § 5-142.

~~(eg)~~ **State Board of Education exceptions.** In accordance with the requirements of 70 O.S. § 6-122.3, the State Board of Education may grant a waiver or exception to any of the requirements of this Section and may grant a certificate upon demonstration of specific competency in the subject area of specialization by the applicant. An applicant for alternative certification who does not have at least two (2) years of relevant work experience, but demonstrates competency in the subject area in which certification is sought, may request an exception to the work experience requirement of 70 O.S. § 6-122.3.

[OAR Docket #17-445; filed 6-16-17]

**TITLE 210. STATE DEPARTMENT OF EDUCATION
CHAPTER 20. STAFF**

[OAR Docket #17-446]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 23. School Board Members
210:20-23-3. Requirements for new and incumbent school board member training [AMENDED]

AUTHORITY:

State Board of Education; 70 O.S. § 3-104; 70 O.S. § 5-110

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

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Approved by Governor's Declaration on June 13, 2017.

FINAL ADOPTION:

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SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The rule addressing instructional requirements for local school board members is amended to clarify that board members who are appointed to fill a seat for fifteen (15) months or less may carry forward credit for training completed during the short-term appointment, if they are elected to the board for the subsequent term. The previous rule language did not allow for this carryover, and the rule has been amended to better reflect the school board member training statute at 70 O.S. § 5-110, which allows for training completed "within fifteen (15) months following or preceding election."

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 23. SCHOOL BOARD MEMBERS

210:20-23-3. Requirements for new and incumbent school board member training

(a) **Definitions.** The following words and terms, when used in this subchapter, shall have the following meaning:

(1) **"Approved instruction"** means instruction provided through workshops for the purpose of meeting the school board member instruction and continuing education requirements set forth in 70 O.S. §§5-110 and 5-110.1. Workshops providing instruction to qualify for credit pursuant to this Section and 210:20-23-4 shall include all in-state workshops, seminars, conferences, and/or conventions that are conducted by the State Department of Education, the Oklahoma Department of Career and Technology Education, the Oklahoma State School Boards Association, and all approved local professional development programs of the board member's district. Other programs must have ~~joint~~ prior approval in writing by the State Department of Education ~~and the Oklahoma Department of Career and Technology Education.~~ Requests for such approval must be in writing.

(2) **"Incumbent school board member"** means an individual who currently serves as a member of a district school board by either election or appointment and who also served as a school board member through either election or appointment to the term immediately prior to the

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current term of office, but does not include individuals who served a short-term appointment of fifteen (15) months or less during the previous term.

(3) **"New school board member"** means an individual who has been elected or appointed to serve as a member of a district school board and who has not been previously appointed or elected to serve as a school board member to the term immediately prior to the current term for which the member has been elected or appointed. For purposes of training requirements, an individual who has served a short-term appointment of fifteen (15) months or less during the previous term is considered a new school board member.

(b) **Training for new school board members.** Within fifteen (15) months ~~after~~of the date of election or appointment, each new school board member shall complete at least twelve (12) hours of approved instruction on education issues that meet all of the following requirements:

- (1) At least one (1) hour on public school finance and/or, if appropriate, Career Technology finance;
- (2) At least one (1) hour on the Oklahoma Open Records Act and Oklahoma Open Meeting Act;
- (3) At least one (1) hour on ethics; and
- (4) At least nine (9) hours of approved instruction in other educational issues ~~authorized~~ by 70 O.S. § 5-110, including the following areas:

- (A) Legal issues impacting local school districts;
- (B) School employment and due process law;
- (C) New laws;
- (D) Special education law; or
- (E) Additional hours of instruction in ~~legal~~ issues related to topics set forth in (1) through (3) of this subsection, provided that no hour of instruction shall be counted more than once to meet the required twelve (12) hours of new board member instruction.

(c) **Training for incumbent school board members.** Within fifteen (15) months ~~after~~of the date of election or appointment, each incumbent school board member shall complete at least six (6) hours of approved instruction that meets all of the following requirements:

- (1) At least one (1) hour of instruction in public school finance and/or, if appropriate, Career Technology finance;
- (2) At least one (1) hour of instruction on the Oklahoma Open Records Act and the Oklahoma Open Meeting Act;
- (3) At least one (1) hour of instruction on ethics; and
- (4) At least three (3) hours of approved instruction in other educational issues in the topics referenced in this subsection and/or in (b)(1) through (b)(4) of this Section, provided that no hour of instruction shall be counted more than once to meet the required six (6) hours of training required by this subsection.

(d) **Short-term appointments.** School board members who hold their seats by appointment for less than fifteen (15) months prior to the date of the next election shall be excused from the training requirements in (b) and (c) of this Section. While training is not required for short-term appointees, in the event a short-term appointee is elected to serve on the board for the subsequent term, any hours of approved

instruction earned during the short-term appointment may carry forward to apply toward the training requirements of 70 O.S. § 5-110 or 70 O.S. § 5-110.1. However, the provisions of this subsection do not excuse an appointed board member from any training requirements of 70 O.S. § 5-110 incurred during the incumbent's previous term or any future training requirements incurred upon future election or appointment.

(e) ~~Carry over of excess~~**Excess approved instruction credits.** Any hours of approved instruction in excess of the requirements of this Section that have been earned during a school board member's current term of office may be applied toward the continuing education requirements of 70 O.S. §5-110.1, provided that:

- (1) With the exception of approved training hours earned during short-term appointments, No excess hours of approved instruction shall be permitted to carry over into a subsequent term of office; and
- (2) No hour of instruction shall be counted more than once to meet any of the training requirements set forth in this Section or in 210:20-23-4.

[OAR Docket #17-446; filed 6-16-17]

TITLE 210. STATE DEPARTMENT OF EDUCATION CHAPTER 20. STAFF

[OAR Docket #17-447]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 29. Standards of Performance and Conduct for Teachers
210:20-29-5. Principle III [AMENDED]

AUTHORITY:

State Board of Education; 70 O.S. § 3-104; 70 O.S. § 6-101.21; 70 O.S. § 6-101.22

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

September 12, 2016

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September 11, 2017

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

Pursuant to House Bill 1017 (1990), the State Board of Education promulgated Standards of Performance and Conduct for Teachers as administrative rules. 70 O.S. § 6-101.21 requires the Standards of Performance and Conduct to include the statutory grounds for dismissal of career teachers, which are codified in the rules as "Principle III". House Bill 2957 (2016)

and previous bills amended 70 O.S. § 6-101.22, "Reasons for Dismissal of Career Teachers", and the rule addressing grounds for dismissal must be aligned with the new statutory language. One change to the statute that must be incorporated into the rule is the requirement to dismiss a teacher who has been convicted of an offense requiring sex offender registration. The amendment also adds the new statutory language allowing for dismissal of a teacher who has been found to have engaged in acts that could form the basis of criminal charges sufficient to result in the revocation of a certificate under 70 O.S. § 3-104(6)(a), which primarily lists crimes involving the sexual exploitation of children.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 29. STANDARDS OF PERFORMANCE AND CONDUCT FOR TEACHERS

210:20-29-5. Principle III

(a) ~~A career teacher may be dismissed or not reemployed for.~~ A career teacher may be dismissed or not reemployed for:

- (1) ~~Willful neglect of duty;~~ Willful neglect of duty;
- (2) ~~Repeated negligence in performance of duty;~~ Repeated negligence in performance of duty;
- (3) ~~Mental or physical abuse to a child;~~ Mental or physical abuse to a child;
- (4) ~~Incompetency;~~ Incompetency;
- (5) ~~Instructional ineffectiveness;~~ Instructional ineffectiveness;
- (6) ~~Unsatisfactory teaching performance;~~ Unsatisfactory teaching performance;
- (7) ~~Any reason involving moral turpitude.~~ Any reason involving moral turpitude; or
- (8) Abandonment of contract.

(b) ~~Subject to the provisions of the Teacher Due Process Act, a probationary teacher may be dismissed or not reemployed for cause.~~ Subject to the provisions of the Teacher Due Process Act, a probationary teacher may be dismissed or not reemployed for cause.

(c) ~~A teacher convicted of a felony shall be dismissed or not reemployed unless a presidential or gubernatorial pardon has been issued.~~ A teacher shall be dismissed or not reemployed, unless a presidential or gubernatorial pardon has been issued, if during the term of employment the teacher is convicted in any state or federal court of any felony offense, or any sex offense subject to the Oklahoma Sex Offenders Registration Act or any other state or federal sex offender registration provisions.

(d) ~~A teacher may be dismissed, refused employment or not reemployed after a finding that such person has engaged in criminal sexual activity or sexual misconduct that has impeded~~

~~the effectiveness of the individual's performance of school duties. As used in this subsection:~~

- (1) ~~"Criminal sexual activity" means the commission of an act as defined in Section 886 of Title 21 of the Oklahoma Statutes, which is the act of sodomy; and~~
- (2) ~~"Sexual misconduct" means the soliciting or imposing of criminal sexual activity.~~ [70:6-101.22] A teacher may be dismissed, refused employment, or not reemployed after a finding that such person has engaged in acts that could form the basis of criminal charges sufficient to result in the denial or revocation of a certificate for a reason set forth in subparagraph a of paragraph 6 of 70 O.S. § 3-104.

[OAR Docket #17-447; filed 6-16-17]

**TITLE 210. STATE DEPARTMENT OF EDUCATION
CHAPTER 20. STAFF**

[OAR Docket #17-448]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 37. Adjunct Teachers
210:20-37-2. Adjunct teachers [AMENDED]

AUTHORITY:

State Board of Education; 70 O.S. § 3-104; 70 O.S. § 6-122.3

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

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n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

House Bill 3102 (2016) amended the statute governing alternative placement and adjunct teachers, expanding the number of clock hours that adjunct teachers are authorized to provide classroom instruction from ninety (90) hours per semester to two hundred seventy (270) hours per semester. Each school district establishes its own requirements and salary for adjunct teachers, who must pass a background check, but under 70 O.S. § 6-122.3 are not required to hold a teaching certificate. The amendment to the adjunct teachers rule incorporates the expansion of authorized teaching hours for adjuncts, and also clarifies that if a district employs a certified teacher as an adjunct, the certified individual's salary shall be the amount they would be entitled to on the state minimum salary schedule, pro-rated to the number of hours taught.

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Permanent Final Adoptions

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 37. ADJUNCT TEACHERS

210:20-37-2. Adjunct teachers

Rules which pertain to adjunct teachers are:

- (1) The local school district shall determine the specific qualifications, duties, and responsibilities of adjunct teachers.
- (2) The employment of persons to serve as adjunct teachers shall be approved by the local board of education.
- (3) The local district shall request a felony record search of any person approved for adjunct employment.
- (4) Formal notification of the employment of adjunct teachers shall be provided to the State Department of Education within thirty (30) days of the date of employment.
- (5) Adjunct teachers shall be limited to two hundred seventy (270) clock hours of classroom teaching per semester.
- (56) For individuals who do not hold a valid Oklahoma teaching certificate, Hours hours taught while serving as an adjunct teacher shall not count towards teaching experience or recency for purposes of meeting certification or recertification requirements, tenure, or retirement benefits, or for placement on the state minimum salary schedule. For individuals who hold a valid Oklahoma teaching certificate, hours taught while serving as an adjunct teacher may apply toward teaching experience and recency under the experience accrual guidelines of 210:25-3-4(b).
- (7) Salary for an uncertified individual employed as an adjunct teacher shall be established by the school district. Salary for a certified individual who serves as an adjunct teacher shall be the amount the individual would be entitled to on the state minimum salary schedule if they were serving as a full-time teacher, pro-rated to the number of hours taught.
- (68) Adjunct teachers employed to coach school athletic teams shall have successfully completed a course in the care and prevention of athletic injuries.

[OAR Docket #17-448; filed 6-16-17]

TITLE 210. STATE DEPARTMENT OF EDUCATION CHAPTER 20. STAFF

[OAR Docket #17-449]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 41. Teacher and Leader Effectiveness

210:20-41-1. Teacher and Leader Effectiveness Evaluation System overview [AMENDED]

210:20-41-2. Quantitative components of the Teacher and Leader Effectiveness Evaluation System [NEW]

210:20-41-3. Qualitative components of the Teacher and Leader Effectiveness Evaluation System [AMENDED]

AUTHORITY:

State Board of Education; 70 O.S. § 3-104; 70 O.S. § 6-101.10 et seq.

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INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The rules addressing the Teacher and Leader Effectiveness Evaluation System (TLE) are amended to incorporate changes made to the TLE system by House Bill 2957 (2016). Changes include: the definition of "teacher" is updated pursuant to 70 O.S. § 1-116; references to Student Academic Growth (SAG) data and other repealed quantitative components are eliminated; "district evaluation rating" is established as the new term for a teacher or leader's holistic rating; requirements for individualized programs of professional development are outlined; and evaluator training is addressed.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 41. TEACHER AND LEADER EFFECTIVENESS

210:20-41-1. Teacher and Leader Effectiveness Evaluation System overview

(a) **Purpose and application.** To ensure that each Oklahoma student is provided with effective instruction that contributes to student success, each school district board of education shall maintain and annually review a written policy of evaluation for all teachers and leaders, to be based upon the minimum criteria for the Teacher and Leader Effectiveness Evaluation System (TLE) outlined at 70 O.S. § 6-101.16. For purposes of the TLE, "leader" means a principal, assistant principal, or any other school administrator who is responsible for supervising classroom teachers. "Teacher" means a duly certified person who is employed to serve as a counselor, librarian,

or school nurse/classroom teacher, or in any other instructional capacity.

(b) **Five-tier rating system.** Each teacher and leader evaluated under the TLE shall be rated on a five-tier scale, and assigned one of the following ratings. Regardless of any additional rating terminology used in an evaluation framework implemented by a school district, a teacher's or leader's district evaluation rating shall be expressed as one of the following five ratings:

- (1) Superior;
- (2) Highly effective;
- (3) Effective;
- (4) Needs improvement; or
- (5) Ineffective.

(c) **Annual evaluations.** Every teacher and leader shall be evaluated annually, and provided with feedback for the purpose of improving student learning outcomes. Both the quantitative and qualitative components of the TLE shall be calculated each year for every teacher and leader, with the following limited exceptions: Each teacher or leader shall receive a district evaluation rating based on the components of the TLE as set forth in 70 O.S. § 6-101.16(b), and expressed as a rating on the five-tier scale shown in subsection (b). For all district evaluations, student performance, including performance on the statewide criterion-referenced tests if available, shall be discussed with the teacher and may be one of the considerations for the teacher's district evaluation rating. A career teacher as defined in 70 O.S. § 6-101.3 who has received a "Superior" or "Highly effective" rating under the TLE may be evaluated once every three (3) years, but shall participate annually in developing a professional growth goal. A probationary teacher as defined in 70 O.S. § 6-101.3 shall be provided formative feedback from the evaluation process at least two times per school year, once during the fall semester and once during the spring semester.

(1) A first year teacher's TLE evaluation shall be based solely on qualitative components, as set forth at 210:20-41-3(b). During the first year of teaching, no Student Academic Growth (SAG) data will be collected. During the second year of teaching, the TLE evaluation score will still be derived entirely from qualitative components, but SAG data will be collected to be applied to the following year's evaluation.

(2) A career teacher who has received a "Superior" or "Highly effective" rating under the TLE may be evaluated once every two years. SAG quantitative data for these teachers shall continue to be collected and reported annually, as this data will be a necessary component of the teacher's next scheduled evaluation.

(3) A teacher or leader who moves to an Oklahoma school district from out of state shall be evaluated during their first school year in Oklahoma based solely on qualitative components, as set forth at 210:20-41-3(b). During the first year of teaching in Oklahoma, SAG data will be collected to be applied to the following year's evaluation.

(4) A teacher or leader who retires or leaves teaching or administrative employment, but returns to a teaching or

administrative position, shall be evaluated solely on qualitative components during the year they return to service. SAG data will be collected during the year they return to service, to be applied to the following year's evaluation.

(d) **Remediation plans and instructional coaching.** For all teachers rated as "Needs improvement" or "Ineffective", comprehensive remediation plans and instructional coaching shall be provided. Each school district's written policy for evaluation shall include guidelines for comprehensive remediation plans and an instructional coaching program.

(e) **Teachers and leaders who change positions.** For an educator who serves as a teacher one year and an administrator the following year, the SAG data acquired during the year of employment as a teacher shall carry over as the SAG data applied to TLE evaluation during the educator's first subsequent year of employment as an administrator. For an educator who serves as an administrator one year and a teacher the following year, the SAG data acquired during the year of employment as an administrator shall carry over as the SAG data applied to TLE evaluation during the educator's first subsequent year of employment as a teacher.

(d) **Individualized programs of professional development.** Every school district board of education shall maintain and annually review a written policy of professional development in addition to, or as a component of, its written policy of evaluation. The policy of professional development adopted by a school district shall provide for the development of a focused and individualized program of professional development for the teacher or administrator that is consistent with the qualitative components of the TLE. Professional development completed pursuant to an individualized program of professional development shall count toward the total number of points a teacher or administrator is required to complete as established by the school district pursuant to 70 O.S. § 6-194, provided that the implementation of individualized programs of professional development does not increase the professional development points requirements. Every school district policy of professional development shall:

(1) Establish an annual professional growth goal for the teacher or administrator that is developed by the teacher or administrator in collaboration with the evaluator. Every teacher or administrator will participate in establishing an annual professional growth goal, including career teachers with a "Superior" rating during the years they are not required to be evaluated.

(2) Be tailored to address a specific area or criteria identified through the qualitative components of the TLE.

(3) Allow the teacher or administrator to actively engage with learning practices that are evidence-based, researched practices that are correlated with increased student achievement.

(4) Be supported by resources that are available and supplied by the school district and the State Department of Education.

(e) **Evaluator training.** Prior to conducting evaluations, every individual designated by a school district board of education to conduct personnel evaluations shall participate in training that addresses the requirements of Oklahoma's

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Teacher and Leader Effectiveness Evaluation System. Training provided to a school district's evaluators through a vendor which addresses the district's adopted framework, but does not specifically address Oklahoma's TLE components, will not satisfy the TLE training requirement.

(f) **Reporting.** Every school district must transmit data collected for TLE purposes to the State Department of Education through the current information upload system designated by the agency.

(g) **Confidentiality of records.** The State Department of Education shall keep records of annual evaluations received pursuant to TLE confidential. TLE records which in any way identify a current or former public employee shall not be subject to disclosure under the Oklahoma Open Records Act.

210:20-41-2. Quantitative components of the Teacher and Leader Effectiveness Evaluation System

For districts choosing, at their own expense, to use quantitative measures of teachers and leaders as part of the district evaluation rating, such measures shall include a minimum of one reliable, research-based measure approved by the State Board of Education.

210:20-41-3. Qualitative components of the Teacher and Leader Effectiveness Evaluation System

(a) **Proportion of overall rating.** ~~Fifty percent (50%) of the ratings of teachers and leaders shall be based on qualitative assessment components which are rigorous and fair.~~

(ba) **Qualitative assessment of teachers.** An evidence-based qualitative assessment tool for the assessment of teachers must include observable and measurable characteristics of personnel and classroom practices that are correlated to student performance success. These characteristics shall include, but not be limited to:

- (1) Organizational and classroom management skills;
- (2) Ability to provide effective instruction;
- (3) Focus on continuous improvement and professional growth;
- (4) Interpersonal skills; and
- (5) Leadership skills.

(eb) **Qualitative assessment of leaders.** An evidence-based qualitative assessment tool for the assessment of administrators must include observable and measurable characteristics of personnel and site management practices that are correlated to student success. These characteristics shall include, but not be limited to:

- (1) Organizational and school management, including retention and development of effective teachers and dismissal of ineffective teachers;
- (2) Instructional leadership;
- (3) Professional growth and responsibility;
- (4) Interpersonal skills;
- (5) Leadership skills; and

(6) Stakeholder perceptions.

[OAR Docket #17-449; filed 6-16-17]

TITLE 210. STATE DEPARTMENT OF EDUCATION CHAPTER 25. FINANCE

[OAR Docket #17-450]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 5. Budgeting and Business Management
Part 2. Personnel and Procedures
210:25-5-10. The encumbrance clerk [AMENDED]
210:25-5-11. The school district treasurer [AMENDED]

AUTHORITY:

State Board of Education; 70 O.S. § 3-104; 70 O.S. § 5-190

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

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INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

70 O.S. § 5-190, the statute directing what training is required for school district treasurers and encumbrance clerks, was amended by House Bill 2315 (2016) to allow for the training requirements to be satisfied by instruction completed within three (3) years prior to employment in the position. The rules governing school district encumbrance clerks and treasurers previously only provided for training within nine (9) months after employment, and are updated to reflect the new prior-instruction option.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 5. BUDGETING AND BUSINESS MANAGEMENT

PART 2. PERSONNEL AND PROCEDURES

210:25-5-10. The encumbrance clerk

(a) **Duties and responsibilities.** The encumbrance clerk shall be employed by the district board of education and may also serve as the minute clerk. The encumbrance clerk is responsible for the following duties:

- (1) Maintain Appropriation and Encumbrance Ledger.
- (2) Determine that encumbrances do not exceed appropriations and are for purpose of appropriation charged.
- (3) May complete purchase orders.
- (4) Transmit warrants to vendor(s).
- (5) Perform such other duties as the board or its committees may require.

(b) **Required forms and documents.** In performing the required duties of the position the Encumbrance Clerk needs the following forms and documents:

- (1) A supply of approved purchase order blanks.
- (2) A supply of approved warrant blanks.
- (3) A copy of the following:
 - (A) S.A.&I Form 2661, Estimate of Needs.
 - (B) S.A.&I. Form 307, Request for approval of State Aid and/or Federal Funds.
 - (C) Form 308 - Cash Fund Estimate and Request for Appropriation.
 - (D) Form 150 - Supplemental Estimate
- (4) Other forms to meet board's requirements.

(c) **Additional duties - dual appointments as minute clerk.** If also serving as the minute clerk additional duties to perform:

- (1) Maintain an accurate journal of the proceedings of the board of education.
- (2) Perform such other duties as the board or its committees may require.

(d) **Encumbrance clerk training and continuing education requirements.** Every school district encumbrance clerk shall complete the following training requirements in accordance with the provisions of 70 O.S. § 5-190:

(1) **Encumbrance clerk training.** Within nine (9) months after the first day of employment as an encumbrance clerk by a local school district, or within three (3) years prior to employment in the position, every school district encumbrance clerk shall complete at least twelve (12) hours of approved instruction that meets all of the following requirements:

- (A) Any courses of instruction or workshop of courses offered for purposes of meeting the requirements of this subsection shall be approved for credit by the State Department of Education Office of Financial Services;
- (B) The instruction shall address all of the following topics:
 - (i) School finance laws of the State;
 - (ii) Accounting;
 - (iii) Ethics;
 - (iv) Duties and responsibilities of a school district encumbrance clerk.

(2) **Encumbrance clerk continuing education.** In addition to the requirements of (1) of this subsection, every school district encumbrance clerk shall be required

to complete an additional twelve hours (12) of approved continuing education instruction every three (3) years from the date of initial employment with a school district. The twelve (12) hours of required continuing education instruction shall meet all of the requirements for encumbrance clerk training set forth in (1) of this subsection.

(e) **Certificates of completion.** As a condition of course approval, every instructor of a school district encumbrance clerk course or coordinator of a workshop of school district encumbrance clerk courses shall provide a certificate of completion to encumbrance clerks upon successful completion of the course or workshop offered for the purpose of fulfilling the requirements of (d) of this Section. Upon completion of the course, copies of the certificate, signed by the course instructor or the workshop coordinator, shall be forwarded by the encumbrance clerk to the district board president or the board president's designee.

(f) **Compliance.** Failure to comply with the training requirements set forth in this Section shall result in a deficiency on the accreditation report of the school district that employs the encumbrance clerk.

210:25-5-11. The school district treasurer

(a) **Overview.** The law requires the county treasurer of each county to also be the school district treasurer for all school districts in the County, except that the board of education in each school district may appoint a local treasurer. All school districts are also allowed to employ an assistant local treasurer. An assistant local treasurer may perform any of the duties and exercise any of the powers of the local treasurer with the same force and effect. A school district treasurer or assistant treasurer may also serve as a minute clerk. The local treasurer and/or assistant treasurer shall be a resident of this state. A local treasurer or assistant local treasurer may be appointed for more than one school district. Since the State Auditor and Inspector is directly charged by law to prescribe the forms and procedures for the operation of the county treasurer's office, nothing herein is intended to disturb or supersede any directive or advice from the Auditor's Office. It is, however, agreed upon by the above mentioned office and the Department of Education that if the treasurer follows the principles and procedures as provided below for the operation of the local treasurer's office of the school district, a valuable service to boards of education, taxpayers and the general public will occur.

(b) **Duties and responsibilities.** The Treasurer is required by law to:

- (1) Ensure that warrants shall show warrant number, fiscal year, and fund against which the warrant is being drawn.
- (2) Code all receipts using the Oklahoma Cost Accounting System dimensions of Fiscal Year, Fund, Project Reporting, Source of Revenue, Program, and Operational Unit, to the bold dimension for State Department of Education requirements. If coded in detail have ability to roll dimensions to the bold for magnetic media transfer to State Department of Education.

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(3) The Treasurer of a School District shall keep the following computerized records based on the following format:

- (A) SA&I, Form 208 (1967) Treasurer's General Ledger.
- (B) SA&I, Form 2061 (1967) Treasurer's Cash Ledger.
- (C) SA&I, Form 2062 (1967) Treasurer's Investment Ledger.
- (D) SA&I, Form 207 (1967) Treasurer's Warrant Ledger.
- (E) SA&I, Form 411 (1967) Treasurer's Receipt.
- (F) SA&I, Form 410 (1967) Treasurer's Check.
- (G) SA&I, Form 1141 (1967) Bond Register.
- (H) Deposit Books.
- (I) Such other records as may be deemed advisable or useful.

- (4) The Treasurer shall also maintain adequate files of:
- (A) Paid Warrants--Warrants purchased with a treasurer's check, shall be filed by group in the numerical order of the treasurer's checks which paid them. Each group of warrants paid by a treasurer's check shall also have a copy of the treasurer's check with which they were purchased attached to them.
 - (B) Voided Warrants--Shall be filed in the numerical order of their issuance by fund and by fiscal year in a separate file and shall be sufficiently mutilated to prevent their being cashed but not mutilated as to not be identifiable.
 - (C) Paid Bonds and Coupons.
 - (D) Canceled Bonds and Coupons.
 - (E) Bank and fiscal agency statements, including deposit tickets and paid warrants/checks.
 - (F) County Clerk's remittance advises.
 - (G) Copies of any directive from the County Clerk or County Excise Board supplementing, changing or transferring appropriation balances.
 - (H) State Board of Education notices and allocation of State and Federal Aid.
 - (I) School board resolutions pertinent to the conduct of the School Treasurer's office and duties.
 - (J) Letters, memos, or other supporting data pertaining to transactions of the school district or to the operation of the Treasurer's office.
 - (K) Any other files which may be considered advisable or useful.

(c) **Treasurer training and continuing education requirements.** Every school district treasurer who does not also act as the county treasurer shall complete the following training requirements in accordance with the provisions of 70 O.S. § 5-190:

- (1) **Treasurer clerk training.** Within nine (9) months after the first day of assuming duties as a local school district treasurer, or within three (3) years prior to employment in the position, every school district treasurer shall complete at least twelve (12) hours of approved instruction that meets all of the following requirements:

(A) Any courses of instruction or workshop of courses offered for purposes of meeting the requirements of this subsection shall be approved for credit by the State Department of Education Office of Financial Services;

(B) The instruction shall address all of the following topics:

- (i) School finance laws of the State;
- (ii) Accounting;
- (iii) Ethics;
- (iv) Duties and responsibilities of a school district treasurer.

(2) **Treasurer continuing education.** In addition to the requirements of (1) of this subsection, every school district treasurer shall be required to complete an additional twelve hours (12) of approved continuing education instruction every three (3) years from the date of initial employment with a school district. The twelve (12) hours of required continuing education instruction shall meet all of the requirements for treasurer training set forth in (1) of this subsection.

(d) **Certificates of completion.** As a condition of course approval, every instructor of a school district treasurer course or coordinator of a workshop of school district treasurer courses shall provide a certificate of completion to treasurers upon successful completion of the course or workshop offered for the purpose of fulfilling the requirements of (c) of this Section. Upon completion of the course, copies of the certificate, signed by the course instructor or the workshop coordinator, shall be forwarded by the treasurer to the district board president or the board president's designee.

(e) **Compliance.** Failure to comply with the training requirements set forth in this Section shall result in a deficiency on the accreditation report of the school district that employs the treasurer.

[OAR Docket #17-450; filed 6-16-17]

TITLE 210. STATE DEPARTMENT OF EDUCATION CHAPTER 30. SCHOOL FACILITIES AND TRANSPORTATION

[OAR Docket #17-451]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 5. Transportation

210:30-5-8. School bus driver certification [AMENDED]

AUTHORITY:

State Board of Education; 70 O.S. § 3-104; 47 O.S. § 15-109

**SUBMISSION OF PROPOSED RULES TO GOVERNOR AND
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n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The rule regarding school bus driver certification is amended to provide that the annual health certificate required for school bus drivers may be signed not only by a physician, but also by an Oklahoma-licensed nurse or physician assistant working under the supervision of a physician. The rule previously limited the health certificate signature to physicians only, but in practice, it is often nurses and physician assistants who perform routine physical exams such as the annual health certification. School districts requested expansion of the authorized signatures for bus drivers' annual health certificates to include a licensed nurse or physician assistant working under the supervision of a licensed physician.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 5. TRANSPORTATION

210:30-5-8. School bus driver certification

(a) **General criteria.**

(1) Pursuant to the authority granted to the State Board of Education in 70 O.S. § 3-104(6) to regulate school bus drivers and 47 O.S. § 15-109, no board of education shall have authority to enter into any written contract with a school bus driver who does not hold a valid Oklahoma School Bus Driver's Certificate issued by the State Board of Education authorizing said bus driver to operate a school bus within the State of Oklahoma.

(2) In order to obtain and maintain a standard Oklahoma School Bus Driver's Certificate, the State Board of Education requires all public school bus drivers to:

(A) Successfully complete a school bus driver training course approved by the State Department of Education;

(B) Possess and maintain a valid Commercial Driver's License (CDL) issued by the Oklahoma State Department of Public Safety, which includes the following endorsements required by 70 O.S. § 6-110.1 in accordance with the qualifications determined by the Department of Public Safety:

(i) A school bus "S" endorsement; and

(ii) For drivers of vehicles designed to transport sixteen (16) or more passengers (including the driver), a passenger "P" endorsement; and

(C) Comply with all other health and safety qualifications set forth in this Section.

(3) No school district board of education shall assign or allow to be assigned any school bus driving duty involving the transportation of students to any employee or volunteer, regardless of contract status (e.g. coach, teacher, mechanic), unless that person has all required supporting documentation required for school bus drivers on file with the school district and a valid Oklahoma State Department of Education School Bus Driving Certificate as provided for in this section.

(4) The State Board of Education recognizes the substantial public interest in safe school bus transportation of children. Therefore, in addition to meeting the vision standards required to obtain a CDL from the Department of Public Safety, in order to obtain a standard or emergency Oklahoma School Bus Driver's Certificate, all school bus drivers must have:

(A) A visual acuity of not less than twenty-four (20/40) (Snellen) in each eye with or without corrective lenses; and

(B) Not less than twenty-four (20/40) (Snellen) with both eyes with or without corrective lenses; and

(C) A minimum field of vision of 70 degrees horizontal median vision in each eye.

(5) The use of tobacco by a school bus driver is not permitted during the operation of the bus while hauling pupils. The use of any intoxicating or non-intoxicating alcoholic beverage by the driver eight (8) hours prior to or during the operation of a school bus is strictly prohibited. The use of any controlled dangerous substance seventy-two (72) hours prior to or during the operation of a school bus is strictly prohibited. The possession of any controlled dangerous substance on a school bus is strictly prohibited.

(6) All school bus drivers shall have an annual health certificate signed by a physician licensed by this state, or a nurse or physician assistant who is licensed to practice in this state and who is working under the supervision of a medical doctor (MD) or doctor of osteopathy (DO) licensed by this state. The certificate shall be filed in the office of the chief administrative officer of the local school district or designee of the chief administrative officer attesting that such physician, or other authorized health care professional working under the supervision of a physician, has examined the applicant and that the applicant has no sign or symptoms of ill health, and is otherwise, from the observation of such physician or other authorized health care professional, physically and mentally capable of safely operating a school bus. As an alternative to the annual physical examination requirements for school bus drivers, school districts may adopt a policy that utilizes a biannual physical examination, provided the examination

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is in compliance with the physical qualifications and examination requirements at Subpart E of the Federal Motor Carrier Safety Regulations, 49 CFR §§ 391.41 to 391.50.

(7) Substitute and activity school bus drivers shall meet all the requirements prescribed for regular bus drivers.

(8) At a minimum, the chief administrative officer of the local school district or designee of the chief administrative officer shall conduct an annual driving record check of all school bus drivers, including substitute and activity drivers. The Oklahoma State Department of Education shall be immediately notified of any violation(s) that make a school bus driver ineligible to hold an Oklahoma School Bus Driver's Certificate.

(9) The State Board of Education shall revoke the bus driver's certificate of any holder who fails to comply with the provisions of this Section.

(10) School districts who fail to comply with the provisions of this section shall be subject to penalty pursuant to 210:30-5-2.

(b) **School bus driver certificate requirements.**

(1) The chief administrative officer of the local school district or designee of the chief administrative officer shall certify to the State Department of Education that each applicant submitted for Standard Five-Year Certification:

- (A) Is at least 18 years of age;
- (B) Has successfully completed a special school bus drivers' course approved by the State Department of Education;
- (C) Holds a valid Commercial Drivers license (CDL) appropriate for the type of vehicle driven with the proper endorsements required by the Department of Public Safety;
- (D) Has not been convicted of a felony, or pled guilty or nolo contendere to a felony during the last ten years; and
- (E) Has passed a driving record check, and no certificate shall be issued to any person who, within the preceding three (3) years:
 - (i) Has had a license suspended or revoked, canceled or withdrawn pursuant to the Implied Consent Laws at 47 O.S. § 751 et seq.;
 - (ii) Has a conviction for a violation of 47 O.S. § 11-902 which includes driving, operating or being in actual physical control of a vehicle while under the influence of alcohol or any intoxicating drug;
 - (iii) Has been convicted or plead guilty to a violation of 47 O.S. § 761, operating a motor vehicle while impaired by consumption of alcohol;
 - (iv) Has been convicted of any municipal violation of driving under the influence of alcohol or drugs or operating a motor vehicle while impaired or being in actual physical control of a motor vehicle while impaired; or
 - (v) Has had four (4) or more traffic violations (excluding parking violations).

(2) The chief administrative officer of the local school district or designee of the chief administrative officer shall certify to the State Department of Education that the

applicant for an Emergency One-Year School Bus Driver Certificate (Not Renewable):

- (A) Is at least 18 years of age;
- (B) Holds a valid Commercial Driver's License with the proper endorsements required by the Department of Public Safety; and
- (C) Has passed a driving record check and meets the requirements set forth in (1)(D)-(E) of this subsection.

(3) Requirements for Renewal of the Standard Five-Year Certificate include:

- (A) Every five (5) years, each driver shall have successfully completed four (4) hours per year of inservice training approved by the State Department of Education;
- (B) The chief administrative officer of the local school district or designee of the chief administrative officer shall certify to the State Department of Education that the applicant meets all requirements for standard certification; [47 O.S. § 15-109]
- (C) Each applicant has a health certificate on file signed by a licensed physician, or a nurse or physician assistant who is licensed to practice in this state and who is working under the supervision of a medical doctor (MD) or doctor of osteopathy (DO), and meets all vision requirements;
- (D) Each applicant has not been convicted or pled guilty to a felony in the last ten (10) years;
- (E) The applicant's driving record has been checked and meets all other State Board of Education requirements for certification; and
- (F) Notwithstanding the provisions of this paragraph, in order to renew any school bus driver certificate which has been expired for more than one year, a driver must successfully complete a renewal course approved by the State Department of Education. Such a course must, at a minimum, include topics on:
 - (i) Railroad crossings;
 - (ii) Emergency evacuation procedures;
 - (iii) Mirror placement;
 - (iv) Pick-up and drop-off procedures;
 - (v) Sound driving practices; and
 - (vi) Accident procedures.

(4) During the period that the application for issuance of a new or renewed school bus driver certificate is pending, applicants must immediately notify the State Department of Education Transportation Section of any arrest, citation, or conviction of any disqualifying offense set forth in (1)(E) of this subsection; any moving violation; or any involvement in a traffic accident.

(c) **Certification of drivers with a monocular vision condition.**

(1) Individuals who wish to obtain an Oklahoma School Bus Driver's Certificate and meet all other requirements of this Section, but cannot meet the vision requirements in (a)(3) of this Section in both eyes due to the presence of a monocular vision condition, may obtain an exemption from the vision requirements of (a)(3) of

this Section by providing evidence showing that Applicant is exempt from the requirements of 49 C.F.R. § 391.41, has fully adapted to the monocular vision condition, and is capable of safely operating a school bus for the purpose of transporting school children. Such evidence must consist of documentation for each one of the following:

(A) Documentation establishing that Applicant's vision condition has been present and unchanged for three years or more prior to the application for an exemption from the vision requirements of (a)(3) of this Section;

(B) Documentation establishing that Applicant has experience in safely operating a Commercial Motor Vehicle with the monocular vision condition within the three (3) year period immediately preceding the date of the application for an exemption from the vision requirements of (a)(3) of this Section; and

(C) One of the following:

(i) An authority letter issued by the Oklahoma State Department of Public Safety (DPS) qualifying the individual as exempt from the vision requirements of 49 C.F.R. § 391.41; or

(ii) A letter or waiver issued by the Federal Motor Carrier Safety Administration (FMCSA) documenting that the applicant has received a waiver from the vision requirements of 49 C.F.R. § 391.41.

(2) Documentation of the evidence required by (1)(A) of this subsection shall consist of documentation for each one of the following:

(A) Applicant must have been examined by a licensed ophthalmologist or optometrist within sixty (60) days prior to obtaining the Commercial Driver License and within one year of applying for the State Department of Education monocular vision exemption. Applicant must provide the State Department of Education a copy of the official Oklahoma State Department of Public Safety vision form documenting the examination.

(B) In addition, if not included on the official Oklahoma State Department of Public Safety vision form, Applicant must submit additional documentation, in which a licensed ophthalmologist or optometrist identifies and describes:

(i) The nature of the vision deficiency, including how long the individual has had the deficiency;

(ii) The date of the examination;

(iii) Whether the applicant's vision is stable;

(iv) The visual acuity of each eye, corrected and uncorrected;

(v) The field of vision of each eye, including central and peripheral fields, testing to at least 120 in the horizontal. (Formal perimetry is required. The doctor must submit the formal perimetry test for each eye and interpret the results in degrees of field of vision.);

(vi) Whether the applicant has the ability to recognize the colors of traffic control signals and devices showing red, green, and amber; and

(vii) The ophthalmologist/optometrist's medical opinion as to whether the individual has sufficient vision to perform the driving tasks required to operate a school bus.

(3) Documentation of the evidence required by (1)(B) of this subsection shall consist of each of the following:

(A) Applicant must provide documentation of experience in operating a commercial motor vehicle (as defined by 47 O.S. §§ 1-107.1, 1-107.2, or 1-107.3) while the Applicant has a monocular vision condition for the three (3) year period immediately preceding the date of this application which includes the following information:

(i) For any applicant employed as a driver of a commercial motor vehicle, the DOT # or ICC# of Applicant's employer(s); for any applicant with driving experience as an independent motor carrier, a list of names, addresses, and phone numbers of customers for whom Applicant performed transportation services through the operation of a commercial motor vehicle on public highways;

(ii) A list of all dates (month/date/year) during the three (3) year period for which Applicant performed services driving and/or operating a commercial motor vehicle, and the number of hours driven per week; and

(iii) A list of all types of commercial motor vehicles operated by Applicant and gross vehicle weight rating ("GVWR") of each vehicle operated by Applicant;

(B) Acceptable forms of required documentation of the Applicant's driving experience described in (3) of this paragraph may include either:

(i) A signed, notarized statement from the individual's present or past employer(s) on company letterhead; or

(ii) An affidavit by the Applicant.

(C) Applicant shall provide the State Department of Education with a Motor Vehicle Report demonstrating that applicant's driving record during the three (3) year period prior to the date the application is filed:

(i) Contains no suspensions or revocations of Applicant's driver's license for the operation of any motor vehicle (including Applicant's personal vehicle);

(ii) Contains no record of involvement in an accident involving negligence attributable to the monocular vision condition;

(iii) Contains no record of a serious traffic offense attributable to the monocular vision condition (e.g., erratic unsafe lane changes, following too closely, etc.)

(4) Individuals who receive the vision exemption to drive a bus for an accredited school in Oklahoma must

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submit to their employer a copy of the documentation required by (1)(C) of this subsection.

(d) Certification of drivers with insulin-dependent diabetes mellitus.

(1) Any person with diabetes mellitus requiring insulin by injection shall not be eligible for a school bus certificate unless the individual meets all other requirements of (a) and (b) of this Section, and the individual possesses and maintains either:

(A) An authority letter issued by the Oklahoma State Department of Public Safety (DPS) qualifying the individual as exempt from the physical requirements of 49 C.F.R. § 391.41; or

(B) A letter or waiver issued by the Federal Motor Carrier Safety Administration (FMCSA) documenting that the applicant has received a waiver from the physical requirements of 49 C.F.R. § 391.41.

(2) Upon hire, exempted individuals will be required to agree to and comply with the following conditions:

(A) Blood glucose levels shall be self-monitored one (1) hour prior to driving and at least once every four (4) hours while driving a school bus or on duty by using a portable glucose monitoring device with a computerized memory, and take corrective action if necessary;

(B) The individual shall maintain blood glucose logs, three months from the current date (or the date that insulin use began, whichever is shorter).

(i) If the employing district has cause to require a medical evaluation as authorized by (5) of this subsection, logs maintained pursuant to this subsection must be provided to the Oklahoma board certified medical doctor (MD) or doctor of osteopathy (DO) treating the individual.

(ii) Blood glucose logs must be created by an electronic blood glucose meter that stores every reading, records date and time of reading, and from which data can be downloaded and printed.

(C) The individual shall carry a source of rapidly absorbable glucose at all times while operating a school bus; and

(D) The individual shall meet the annual physical examination requirements for drivers with metabolic diseases set forth by the Department of Public Safety in OAC 595:10-5.

(E) The individual shall notify the Department of Public Safety and the State Department of Education of any changes in physical or mental ailments or conditions which may cause loss of control or partial control or may otherwise render the individual incapable of properly controlling a school bus.

(3) Superintendents or their designees who hire individuals who hold a diabetes exemption certification must keep on file in a separate medical record:

(A) A current copy of the diabetes exemption certificate of the individual;

(B) The contact information of the board certified medical doctor (MD) or doctor of osteopathy (DO) who is treating the individual;

(C) Record of the annual medical certification issued by the board certified medical doctor (MD) or doctor of osteopathy (DO) pursuant to (1)(B) of this subsection; and

(D) Copies of any medical certifications obtained pursuant to (5) of this subsection.

(4) An individual holding a diabetes exemption certificate shall immediately notify the superintendent (or the superintendent's designee) of the school district in which the individual is employed if the individual's blood glucose level is outside of a range of 100 mg/dl to 400 mg/dl one (1) hour prior to driving. Upon receipt of such notice, the superintendent or the superintendent's designee shall not allow the individual holding the diabetes exemption certificate to drive. If the individual's blood glucose level is below 100 mg/dl or above 400 mg/dl, then the driver cannot operate a school bus or transport school children as an employee of any school district until the blood glucose measure is within the target range.

(5) In the event an individual holding a diabetes exemption is involved in an incident directly caused by the individual's diabetic condition, the individual cannot operate a school bus or transport school children as an employee of any school district until the individual has been certified in writing as medically able to safely resume work related duties by the Oklahoma board certified medical doctor (MD) or doctor of osteopathy (DO) by whom they are being treated.

[OAR Docket #17-451; filed 6-16-17]

TITLE 210. STATE DEPARTMENT OF EDUCATION CHAPTER 35. STANDARDS FOR ACCREDITATION OF ELEMENTARY, MIDDLE LEVEL, SECONDARY, AND CAREER AND TECHNOLOGY SCHOOLS

[OAR Docket #17-452]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 3. Standards for Elementary, Middle Level, Secondary, and Career and Technology Schools
210:35-3-47. School reports and records [AMENDED]

AUTHORITY:

State Board of Education; 70 O.S. § 3-104; 70 O.S. § 24-114

**SUBMISSION OF PROPOSED RULES TO GOVERNOR AND
CABINET SECRETARY:**

October 12, 2016

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Approved by Governor's Declaration on June 13, 2017

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June 13, 2017

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September 11, 2017

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

House Bill 2784 (2016) amended the statute governing the storage of student records. The rule addressing student records is updated to reflect the statutory changes, which include an authorization for school districts to store records electronically, and a requirement to maintain student transcripts for eighty (80) years. The amendments to the law require districts to develop policies for the destruction of non-transcript student records five to seven (5-7) years after the student graduates or withdraws from the district, and the rule update also addresses HB 2784's requirement for districts to notify former students (or the parents/guardians of minors) when non-transcript records are scheduled for destruction.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 3. STANDARDS FOR ELEMENTARY, MIDDLE LEVEL, SECONDARY, AND CAREER AND TECHNOLOGY SCHOOLS

PART 5. STANDARD III: ADMINISTRATION AND ORGANIZATION

210:35-3-47. School reports and records

Well-delineated policies and procedures for records and reports shall be developed and kept current. School districts may store all documents and information in student records either electronically or in paper format.

- (1) Records and reports needed for effective planning, operation, evaluation, and reporting shall be kept relative to the following components of the educational program:
 - (A) Administrative operations
 - (B) Curriculum
 - (C) Guidance
 - (D) Health services
 - (E) Instructional supplies
 - (F) Media services
 - (G) School Plant
 - (H) Staff
 - (I) Student activities
 - (J) Student personnel

(2) The permanent record of the student, including social security number as permitted by law, shall be current and filed in the superintendent's or principal's office. Standardized test results, student's school activities, attendance and citizenship dates shall be included as a part of the permanent records. Proper safeguards shall be taken with these records to protect the confidentiality of individuals and the human rights of all students. Health and immunization records should be kept separately.

(3) One person in each school shall be responsible for all personally identifiable information to assure that no unauthorized person will be able to obtain the information without written parental permission.

(4) Students shall be officially enrolled upon receipt of their immunization records as required by law and transcripts or grade cards. Information pertaining to grades, graduation tests, college admission test, rank in class of graduating seniors, and other pertinent information required under 70 O.S. § 24-114 shall be recorded on the transcript. A student's transcript shall be maintained by the school district for not less than eighty (80) years following the graduation, transfer, or withdrawal of the student from the district. Because of the likelihood of changes to electronic data storage systems and practices during the timeframe that transcripts must be maintained, districts that store student records electronically are encouraged to make any necessary format conversions of student transcript records each time the district makes a significant change to its electronic data storage system, so that transcripts will be retrievable if the original storage format becomes obsolete.

(5) Principals shall furnish transcripts and immunization records of students within three business days when requested to do so by school officials.

(6) School administrators shall be familiar with and assure compliance with state attendance laws.

(7) Attendance records shall be completed and made available for auditing at the close of the school year. The principal or a competent person under his or her supervision shall record the attendance daily.

(A) Pupils absent from school in which they are regularly enrolled may be considered as being in attendance if the reason for such absence is to participate in scheduled school activities under the direction and supervision of a regular member of the faculty.

(B) Closing classroom work early for seniors for commencement or other activities is prohibited by the State Board of Education. Any school district which does not require students to attend school for the full term shall be in violation of the State Board of Education policy and shall be cited for the violation on the final accreditation report as presented for approval by the State Board of Education for the upcoming school year.

(C) Classroom activities and instruction shall continue until the end of the school term. Students given excused absences during examination periods, for

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sickness or any other reason, shall not be counted as being in attendance.

(8) Attendance records and teachers' grade books shall be filed with the district superintendent or his/her designee at the close of the school year.

(9) Permanent records of staff and students shall be retained in the school.

(10) Except for transcript records as defined in 70 O.S. § 24-114, school districts shall dispose of information in a student record at a time established by district policy that is between five (5) and seven (7) years after the student has graduated, transferred, or withdrawn from the district. Prior to the destruction of student records under this provision, school districts shall provide notification to the student or, if the student is under eighteen (18), to the student's parent or guardian, that the student's non-transcript records are scheduled to be destroyed. Notifications may be sent to the student or parent/guardian's last known mailing address and/or email address. Such notification must include an option for the student/parent to request the physical records, if in hard copy format, or a copy of the records if they are stored electronically. Students/parents shall be allowed at least thirty (30) days following notification to request the records before the records may be destroyed by the school district. If a district's policy includes the option for students/parents to request the student records scheduled for destruction by postal mail, the district may require the student/parent to pay the necessary postage, provided that no fee shall be charged if the student/parent retrieves the records in person. A school district shall be deemed to have fulfilled the requirement to notify a student/parent prior to the destruction of student records if notification is directed to the last known contact information available to the district.

~~(1011)~~ Any person who has completed at least thirty (30) hours of college credit at an accredited college or university in Oklahoma may be awarded a high school diploma by the State Department of Education, upon written request and verification of supporting documentation.

(A) A person wishing to apply for a diploma under these provisions must submit a written request to the State Department of Education. This request must be submitted with an official copy of the diploma applicant's transcript from an Oklahoma college or university showing at least thirty (30) credit hours earned.

(B) An official copy of the applicant's transcript may be submitted in either hard copy or electronic form. Acceptance of an official transcript in electronic form may require direct submission to the State Department of Education by the diploma applicant's college or university.

(C) Any person who has previously been an Oklahoma student and has earned at least thirty (30) hours of college credit at an accredited college or university may apply for a diploma under this section, regardless of whether the credits were earned at an institution located in Oklahoma. A former Oklahoma student

applying for a diploma after earning credits from an accredited college or university outside Oklahoma must submit an official transcript showing credits earned, as well as documentation showing that the applicant was previously an Oklahoma student.

[OAR Docket #17-452; filed 6-16-17]

TITLE 210. STATE DEPARTMENT OF EDUCATION CHAPTER 35. STANDARDS FOR ACCREDITATION OF ELEMENTARY, MIDDLE LEVEL, SECONDARY, AND CAREER AND TECHNOLOGY SCHOOLS

[OAR Docket #17-453]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 3. Standards for Elementary, Middle Level, Secondary, and Career and Technology Schools

Part 19. Standard X: School Facilities

210:35-3-186. Site and buildings: size and space; accessibility; maintenance; health and safety [AMENDED]

AUTHORITY:

State Board of Education; 70 O.S. § 3-104; 70 O.S. § 5-148; 70 O.S. § 5-149

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SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

House Bill 2931 (2016) amended 70 O.S. §§ 5-148 and 5-149 to change the requirements for certain types of school safety drills. Prior to HB 2931, public schools were required to conduct two (2) "lockdown drills" and two (2) "intruder drills" per school year. The amended statutory provisions now require four (4) "security drills" in place of the former lockdown and intruder drills, and the rule addressing school building health and safety is updated to reflect the new drill requirements.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

**SUBCHAPTER 3. STANDARDS FOR
ELEMENTARY, MIDDLE LEVEL, SECONDARY,
AND CAREER AND TECHNOLOGY SCHOOLS**

PART 19. STANDARD X: SCHOOL FACILITIES

210:35-3-186. Site and buildings: size and space; accessibility; maintenance; health and safety

(a) **General requirements for school facilities.** All school facilities shall meet the following requirements:

(1) The site and building(s) shall be properly sized and equipped for the number of occupants and grades served in accordance with the requirements of 70 O.S. § 5-131.

(2) Adequate space shall be provided for classrooms, specialized instructional areas, support facilities and other areas as needed, these areas being grouped and arranged in such manner to provide optimum instructional function and class control.

(b) **Accessibility requirements for school facilities.** The site and building(s) shall be readily accessible, and shall meet all requirements of state and federal law in providing access for students with disabilities.

(c) **Capital improvement plans.** Each school district shall develop and adopt a four-year capital improvement plan for all public schools in the district that meets the requirements of 70 O.S. 18-153 and 210:30-1. School facilities shall be able to accommodate changes in curriculum and/or equipment within a program.

(d) **Maintenance of school facilities and equipment.** Programs for preventive and corrective maintenance shall be developed and implemented to ensure that the site and building(s) will be clean, in good repair, and maintained with consideration for function and aesthetic values. Equipment, furnishings, and supplies in proper quantity and quality shall be maintained; and a system shall be developed and implemented for inventory, issue, usage, storage, repair, and replacement.

(e) **Health and safety.** The site and building(s) shall ensure that the health and safety of all school students, school personnel, and school visitors are properly safeguarded.

(1) **Building code compliance.** Where required, the facility shall have utility systems, plumbing systems, electrical systems, mechanical systems, emergency systems, building interiors and building envelope designed, built, and maintained to all federal, state, and local standards, codes and/or other legal requirements.

(2) **Loading and unloading zones.** The site shall be as free as possible from hazards, provide a safe area for (un)loading of vehicles, with adequate lighting, signage and drainage.

(3) **Hazardous materials.** Appropriate programs pertaining to hazardous materials, hazardous waste, asbestos, underground storage tanks, lead contamination, and other applicable life, health, and/or safety matters shall be developed and implemented in accordance with federal, state, and local statutes, regulations, and codes.

(4) **Emergency warning and prevention systems.** Proper precautions shall be taken to prevent injuries. All equipment and facility safety features shall be in place and properly maintained, including, but not limited to safety goggles in accordance with the requirements of 70 O.S. §24-117 and respirators in accordance with the requirements of 70 O.S. §24-118.

(f) **School safety inspections.** The school's administration shall ensure that qualified personnel conduct a safety/emergency/disaster procedure review at least annually and safety inspections of site, building(s), and equipment regularly.

(g) **School safety drills.** Each public school district shall adopt policies and procedures for each type of safety drill required by this subsection. All safety drills shall conform to the written plans and procedures adopted by the district for protecting against natural and man-made disasters and emergencies as required by Title 63 O.S. § 681 and 70 O.S. §§ 5-148 and 5-149.

(1) **Compliance documentation.** Each public school district shall document compliance with the requirements of this subsection by each school site in writing as follows:

(A) The records for each fire drill shall be preserved for at least three (3) years and shall be made available to the State Fire Marshal or the designated agent of the State Fire Marshal upon request. In addition, one copy of the fire drill compliance report shall remain at each school site and one copy shall be filed with the school district's administrative office;

(B) In addition to the fire drill documentation required by (1)(A) of this subsection, each public school district shall document all other required safety drills in writing by school site. One copy of the safety drill compliance report shall remain at each school site and one copy shall be filed with the school district's administrative office. Each school district shall also submit documentation in writing for each school site to the Oklahoma Office of Homeland Security Oklahoma School Security Institute in accordance with the Institute's established forms, policies and/or procedures; and

(C) Each school district shall make all of its safety compliance reports required by this subsection available to the Regional Accreditation Officer during the accreditation process.

(2) **Safety drill types and requirements.** Each school district shall ensure that every public school within the district shall conduct no fewer than ten (10) safety drills per school year at each school site. All students and teachers at the public schools shall participate. Safety drills conducted in accordance with this subsection shall meet all of the following requirements:

(A) **Fire drills.** Each public school district shall conduct a minimum of two (2) fire drills per school year. Each fire drill shall be conducted within the first fifteen (15) days of the beginning of each semester. The fire drills shall include the sounding of a distinctive audible signal designated as the fire alarm signal.

(B) **Tornado drills.** Each public school district shall conduct a minimum of two (2) tornado drills per school year, in which all students and school employees participate. At least one (1) tornado drill shall be conducted in the month of September and at least one (1) tornado drill shall be conducted during the month of March.

~~(C) **Lockdown drills.** All public schools shall have a minimum of two (2) lockdown drills each school year. No lockdown drill shall be conducted at the same time of day as a previous lockdown drill conducted in the same school year.~~

~~(D) **Intruder drills.** In addition to the two lockdown drills required in this subsection, all public schools shall conduct two (2) intruder drills per school year. Intruder drills shall be conducted for the purpose of mitigating injuries or deaths by execution of a plan as an alternative to the lockdown drills required by (2)(C) of this subsection. The two required intruder drills shall be conducted within the first fifteen (15) days of each semester.~~

(C) **Security drills.** Each public school shall conduct a minimum of four (4) security drills per school year, with two (2) security drills conducted per semester. One security drill shall be conducted within the first fifteen (15) days of each semester. No security drill shall be conducted at the same time of day as a previous security drill conducted in the same school year. Security drills shall be conducted for the purpose of securing school buildings to prevent or mitigate injuries or deaths that may result from a threat around or in the school.

~~(E) **Additional safety drills.** The principal of each public school shall, at the direction of the district superintendent, utilize the remaining two (2) required safety drills for one or more of the following purposes:~~

- (i) To conduct additional drills of any of the types provided in this subsection;
- (ii) To conduct one or more drill(s) developed by the district that is consistent with the risks assessed for the school facility; or
- (iii) To conduct one or more drills in accordance with recommendations submitted by the Safe School Committee as authorized by the provisions of 70 O.S. § 24-100.5 or any assisting fire or law enforcement department.

[OAR Docket #17-453; filed 6-16-17]

**TITLE 210. STATE DEPARTMENT OF EDUCATION
CHAPTER 35. STANDARDS FOR ACCREDITATION OF ELEMENTARY, MIDDLE LEVEL, SECONDARY, AND CAREER AND TECHNOLOGY SCHOOLS**

[OAR Docket #17-454]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 3. Standards for Elementary, Middle Level, Secondary, and Career and Technology Schools
Part 19. Standard X: School Facilities
210:35-3-188. Child Abuse and Neglect Hotline signs in schools [NEW]

AUTHORITY:

State Board of Education; 70 O.S. § 3-104; 70 O.S. § 1210.162

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

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ADOPTION:

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FINAL ADOPTION:

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September 11, 2017

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

House Bill 2432 (2016) requires each public school to post a clearly visible sign in English and Spanish that contains the telephone number of the Child Abuse and Neglect Hotline operated by the Department of Human Services. 70 O.S. § 1210.162 directs the State Board of Education to promulgate a rule relating to the size and location of the required signs, and the rule gives guidelines for size and placement.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 3. STANDARDS FOR ELEMENTARY, MIDDLE LEVEL, SECONDARY, AND CAREER AND TECHNOLOGY SCHOOLS

PART 19. STANDARD X: SCHOOL FACILITIES

210:35-3-188. Child Abuse and Neglect Hotline signs in schools

(a) **Requirement to post a visible sign.** Each public school in Oklahoma shall post a sign or signs, in English and Spanish, showing the toll-free telephone number of the Child Abuse and Neglect Hotline operated by the Department of Human Services (DHS). Sample signs in English and Spanish are available on the State Department of Education website.

(b) **Content.** For school districts that choose to design their own hotline awareness signs, the following guidelines apply to content:

- (1) The English and Spanish text must communicate the same information;
- (2) The words "child abuse or neglect" and the telephone number of the DHS hotline must be prominent in the design; and
- (3) The content should convey that anyone who suspects child abuse or neglect should contact the hotline (for example, "You can stop child abuse. If you think that a child is the victim of abuse, neglect, or exploitation, tell someone.").

(c) **Location.** The sign(s) shall be posted in a clearly visible location in a public area of the school that is readily accessible to students. If separate signs are used for the Spanish and English versions, both must be displayed in the same location. The bottom edge of the sign(s) should be a minimum of forty inches (40") and a maximum of seventy inches (70") from the floor, unless the architecture of the public location chosen for display requires a higher placement height. Examples of appropriate public areas to post the sign(s) include, but are not limited to: near the school's main entry doors, outside the school's main office, or inside the cafeteria or another room frequented by all students. A school may post additional copies of the sign(s) in less public areas, such as inside restrooms or classrooms, provided at least one English and Spanish version are posted in a clearly visible public area.

(d) **Size and font.** If separate signs are used for English and Spanish text versions, the minimum size of each sign shall be eight and one-half by eleven inches (8 1/2" x 11"). If both English and Spanish text appear on the same sign, the minimum size shall be eight and one-half by fourteen inches (8 1/2" x 14"). Based on the visibility guidelines of the Americans with Disabilities Act, the font used shall not be italic, script, or highly decorative, and the words "child abuse" and the telephone number of the DHS hotline should appear in a font size at least one inch (1") high on the printed sign(s). For signs placed higher than seventy inches (70") above the floor, all text must be at least one inch (1") high. The colors of the sign background and the text should contrast for easy visibility, for example dark colors should be used for text if the background is a light color, and white or a very light color should be used for text if the background is a dark color. School districts that design their own signs are encouraged to consider color blindness and other potential visibility issues when choosing a design.

[OAR Docket #17-454; filed 6-16-17]

**TITLE 210. STATE DEPARTMENT OF EDUCATION
CHAPTER 35. STANDARDS FOR ACCREDITATION OF ELEMENTARY, MIDDLE LEVEL, SECONDARY, AND CAREER AND TECHNOLOGY SCHOOLS**

[OAR Docket #17-455]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 3. Standards for Elementary, Middle Level, Secondary, and Career and Technology Schools
Part 21. Standard XI: Accreditation Status
210:35-3-201. Statement of the standard [AMENDED]

AUTHORITY:

State Board of Education; 70 O.S. § 3-104; 70 O.S. § 3-104.3; 70 O.S. § 3-104.4; Public Law No. 114-95, the *Every Student Succeeds Act* (ESSA)

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SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The administrative rule that outlines how accreditation status is determined for Oklahoma schools is updated to remove terminology that is no longer in use following adoption of the federal *Every Student Succeeds Act* (ESSA). The designation "school in need of improvement" was incorporated into the accreditation status rule from the *No Child Left Behind Act* (NCLB), the previous version of the *Elementary and Secondary Education Act* which was superseded by ESSA in December 2015, so those designations are no longer appropriate as a factor in accreditation.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 3. STANDARDS FOR ELEMENTARY, MIDDLE LEVEL, SECONDARY, AND CAREER AND TECHNOLOGY SCHOOLS

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PART 21. STANDARD XI: ACCREDITATION STATUS

210:35-3-201. Statement of the standard

(a) Each public school site, including charter school sites, must submit an Application for Accreditation to the Accreditation Standards Section of the State Department of Education by the due date specified on the Application. School sites are accredited for one year. An accredited school site shall meet all applicable regulations and statutory requirements at the beginning of and throughout the school year.

(b) Accreditation status of school sites shall be classified according to the following categories:

- (1) Accredited With No Deficiencies--All standards are being met.
 - (2) Accredited With Deficiencies--A school site fails to meet one or more of the standards but the deficiency does not seriously detract from the quality of the school's educational program.
 - (3) Accredited With Warning--A school site:
 - (A) fails to meet one or more of the standards and the deficiency seriously detracts from the quality of the school's educational program; ~~and/or,~~
 - (B) ~~is designated as a school in need of improvement in school years 2011-2012 or later;~~
 - (4) Accredited With Probation--A school site:
 - (A) consistently fails to remove or make substantial progress towards removing all deficiencies noted the previous year; and/or,
 - (B) consistently violates regulations; and/or,
 - (C) deliberately and unnecessarily violates one or more of the regulations; ~~and/or,~~
 - (D) ~~is declared as a School Improvement School in school years 2009-2010 and 2010-2011 and designated as a school in need of improvement in school year 2011-2012; and/or;~~
 - (E) ~~is designated as a school in need of improvement for three or more consecutive years beginning in school year 2011-2012.~~
 - (5) Nonaccredited--The school site is no longer recognized by the State Board of Education.
- (c) If a school site is placed on warning or probation, the school board and administration will meet with ~~a committee~~ one or more representatives from the Accreditation Section to review their accreditation status. After the review from the ~~committee~~ representative(s), a determination will be made concerning warning, probation or nonaccredited status. The Accreditation Section will then present a recommendation to the State Board of Education.

[OAR Docket #17-455; filed 6-16-17]

TITLE 210. STATE DEPARTMENT OF EDUCATION CHAPTER 35. STANDARDS FOR ACCREDITATION OF ELEMENTARY, MIDDLE LEVEL, SECONDARY, AND CAREER AND TECHNOLOGY SCHOOLS

[OAR Docket #17-456]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 9. Additional Standards for Secondary Schools
Part 7. Standard IV: Curriculum, Instruction, Assessment and Climate
210:35-9-31. Program of studies and graduation requirements
[AMENDED]

AUTHORITY:

State Board of Education; 70 O.S. § 3-104; 70 O.S. § 11-103.6; 70 O.S. § 1210.523 (repealed)

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SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The rule that outlines the graduation requirements for Oklahoma high school students must be updated to remove requirements related to End-of-Instruction (EOI) exams and the Achieving Classroom Excellence (ACE) Act, which were repealed by House Bill 3218 (2016).

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 9. ADDITIONAL STANDARDS FOR SECONDARY SCHOOLS

PART 7. STANDARD IV: CURRICULUM, INSTRUCTION, ASSESSMENT AND CLIMATE

210:35-9-31. Program of studies and graduation requirements

(a) **General provisions.** Every student at every high school shall have the opportunity to acquire all the competencies to matriculate at a comprehensive graduate institution of the Oklahoma State System of Higher Education without the necessity of enrolling at the university in secondary-level courses. Each student will have the opportunity to attain proficiency in the ~~Priority Academic Student Skills~~Oklahoma Academic Standards.

(b) **Definitions.** The following definitions shall apply to this subsection:

(1) **"Contextual methodology"** means academic content and skills taught by utilizing real-world problems and projects in a way that helps students understand the application of that knowledge.

(2) **"Courses approved for college admission requirements"** means courses which are approved by the Oklahoma State Regents for Higher Education for admission to an institution within the Oklahoma State System of Higher Education.

(3) **"Qualified agricultural courses"** means courses that have been determined by the State Board of Education to offer the sets of competencies set forth in the Oklahoma Academic Standards for one or more science content areas and which correspond to academic science courses and are taught by teacher who is certified and considered "highly qualified" to teach in the science course taught. Qualified agricultural education courses shall include, but are not limited to, Horticulture, Plant and Soil Science, Natural Resources and Environmental Science, and Animal Science.

(4) **"Rigor"** means a level of difficulty that is appropriate for the grade level and that meets state and/or national standards;

(5) **"Sets of competencies"** means instruction in those skills and competencies that are specified skills and competencies adopted by the State Board of Education without regard to specified instructional time;

(6) **"Unit"** means a Carnegie Unit which is given for the successful completion of a course that meets the equivalent of 120 clock hours within the school year.

(c) **Total minimum graduation requirements.** In order to graduate with a standard diploma from a public high school accredited by the State Board of Education, students shall complete twenty-three (23) units or sets of competencies in grades nine (9) through twelve (12), which shall include either:

(1) Seventeen (17) units or sets of competencies of the college preparatory/work ready curriculum requirements set forth in (d) of this Section, plus six (6) elective units or sets of competencies; or

(2) Fifteen (15) units or sets of competencies of the core curriculum requirements set forth in (e) of this Section, plus eight (8) elective units or sets of competencies.

(d) **College preparatory/work ready curriculum requirements.** In order to graduate with a standard diploma from a public high school accredited by the State Board of Education, students shall complete the following college preparatory/work

ready curriculum units or sets of competencies at the secondary level:

(1) Four (4) units or sets of competencies of English to include:

- (A) Grammar;
- (B) Composition;
- (C) Literature; or
- (D) Any English course approved for college admission requirements;

(2) Three (3) units or sets of competencies of mathematics, limited to:

- (A) Algebra I;
- (B) Algebra II;
- (C) Geometry;
- (D) Trigonometry;
- (E) Math Analysis;
- (F) Calculus;
- (G) Advanced Placement Statistics; or
- (H) Any mathematics course with content and/or rigor above Algebra I and approved for college admission requirements;

(3) Three (3) units or sets of competencies of laboratory science, limited to:

- (A) Biology;
- (B) Chemistry;
- (C) Physics; or
- (D) Any laboratory science course with content and/or rigor equal to or above Biology and approved for college admission requirements;

(4) Three (3) units or sets of competencies of history and citizenship skills, including:

- (A) One (1) unit of American History;
- (B) One-half (1/2) unit of Oklahoma History;
- (C) One-half (1/2) unit of United State Government; and
- (D) One (1) unit of a course that has been approved for college admission requirements in one of the following subjects:

- (i) History;
- (ii) Government;
- (iii) Geography;
- (iv) Economics;
- (v) Civics; or
- (vi) Non-Western culture;

(5) Two (2) units or sets of competencies in one (1) of the following:

- (A) Two (2) units of the same foreign, Native American, or non-English language; or
- (B) Two (2) units of computer technology approved for college admission requirements, whether taught at a high school or a technology center school, including:

- (i) Computer programming;
- (ii) Computer hardware;
- (iii) Business computer applications (excluding keyboarding or typing courses) such as:
 - (I) Word processing;
 - (II) Databases;

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- (III) Spreadsheets;
- (IV) Graphics;
- (6) One (1) additional unit or set of competencies selected from:
 - (A) The categories of units or sets of competencies set forth in (1) through (5) of this subsection; or
 - (B) Career and technology courses approved for college admission requirements;
- (7) One (1) unit or set of competencies of
 - (A) Fine arts such as music, art, or drama; or
 - (B) Speech.

(e) **Core curriculum requirements in lieu of college/work ready curriculum requirements.** Upon written approval of the parent or legal guardian of a student, a student may enroll in the core curriculum requirements in lieu of the college/work ready curriculum requirements set forth in (d) of this Section. The fifteen (15) units of credit required for high school graduation with a standard diploma in accordance with the provisions of this subsection are:

(~~A~~1) Language Arts: Four (4) units or sets of competencies, to consist of:

- (~~i~~A) One (1) unit or set of competencies of grammar and composition; and
- (~~ii~~B) Three (3) units or sets of competencies which may include, but are not limited to, the following courses:

- (~~i~~) American Literature;
- (~~ii~~) English Literature;
- (~~iii~~) World Literature; or
- (~~iv~~) Advanced English Courses or
- (~~v~~) Any other English courses with content and/or rigor equal to or above grammar and composition;

(~~B~~2) Mathematics: Three (3) units or sets of competencies, to consist of:

- (~~i~~A) One (1) unit or set of competencies of Algebra I or Algebra I taught in a contextual methodology; and
- (~~ii~~B) Two (2) units or sets of competencies which may include, but are not limited to, the following courses:

- (~~i~~) Algebra II;
- (~~ii~~) Geometry or Geometry taught in a contextual methodology;
- (~~iii~~) Trigonometry;
- (~~iv~~) Math Analysis or Precalculus;
- (~~v~~) Calculus;
- (~~vi~~) Statistics and/or Probability;
- (~~vii~~) Computer Science, if taught by a teacher who is certified to teach mathematics;
- (~~viii~~) Other contextual mathematics courses which enhance technology preparation taught at a comprehensive high school;
- (~~ix~~) Other contextual mathematics courses which enhance technology preparation taught at a technology center school by a teacher certified in the secondary subject area, when taken in the

eleventh (11th) or twelfth (12th) grade, and approved by the State Board of Education and the independent district board of education; or
(~~X~~x) Any other mathematics courses with content and/or rigor equal to or above Algebra I.

(~~C~~3) Science: Three (3) units or sets of competencies, to consist of:

- (~~i~~A) One (1) unit or set of competencies of Biology I or Biology I taught in a contextual methodology; and
- (~~ii~~B) Two (2) units or sets of competencies in the areas of life, physical, or earth science or technology which may include, but are not limited to, the following courses:

- (~~i~~) Chemistry I;
- (~~ii~~) Physics;
- (~~iii~~) Biology II;
- (~~iv~~) Chemistry II;
- (~~v~~) Physical Science;
- (~~vi~~) Earth Science;
- (~~vii~~) Botany;
- (~~viii~~) Zoology;
- (~~ix~~) Physiology;
- (~~x~~) Astronomy;
- (~~xi~~) Applied Biology/Chemistry;
- (~~xii~~) Applied Physics;
- (~~xiii~~) Principles of Technology;,
- (~~xiv~~) Qualified agricultural education courses; or
- (~~xv~~) Other contextual science courses which enhance technology preparation taught at a comprehensive high school;
- (~~xvi~~) Other contextual science courses which enhance technology preparation taught at a technology center school when taken in the eleventh (11th) or twelfth (12th) grade, taught by a certified teacher, and approved by the State Board of Education and the independent district board of education;
- (~~xvii~~) Other science courses with content and/or rigor equal to or above Biology I.

(~~D~~4) Social Studies: Three (3) units or sets of competencies, to consist of:

- (~~i~~A) One (1) unit or set of competencies of United States History;
- (~~ii~~B) One-half (1/2) to one (1) unit or set of competencies of United States Government;
- (~~iii~~C) One-half (1/2) unit or set of competencies of Oklahoma History; and
- (~~iv~~D) One-half (1/2) to one (1) unit or set of competencies which may include, but are not limited to, the following courses:
 - (~~i~~) World History;
 - (~~ii~~) Geography;
 - (~~iii~~) Economics;
 - (~~iv~~) Anthropology; or

~~(v)~~ Other social studies courses with content and/or rigor equal to or above United States History, United States Government, and Oklahoma History; and

~~(5)~~ Arts: Two (2) units or sets of competencies which may include, but are not limited to, courses in Visual Arts and General Music.

(f) **Other curriculum requirements.** In addition to the curriculum requirements set forth in (c) through (e) of this subsection, each secondary school shall ensure that the following curriculum requirements are met:

(1) **Personal Financial Literacy Passport.** Beginning with the seventh grade, students shall fulfill the requirements for a Personal Financial Literacy Passport in order to graduate with a standard diploma from a public high school accredited by the State Board of Education.

(A) The requirements for a Personal Financial Literacy Passport shall be the satisfactory completion and demonstration of satisfactory knowledge in all fourteen (14) areas of instruction during grades seven (7) through twelve (12). The fourteen (14) areas of instruction are:

- (i) Understanding interest, credit card debt, and online commerce;
- (ii) Rights and responsibilities of renting or buying a home;
- (iii) Savings and investing;
- (iv) Planning for retirement;
- (v) Bankruptcy;
- (vi) Banking and financial services;
- (vii) Balancing a checkbook;
- (viii) Understanding loans and borrowing money, including predatory lending and pay-day loans;
- (ix) Understanding insurance;
- (x) Identity fraud and theft;
- (xi) Charitable giving;
- (xii) Understanding the financial impact and consequences of gambling;
- (xiii) Earning an income; and
- (xiv) Understanding state and federal taxes.

(B) Instruction in these fourteen areas must align and meet the Personal Financial Literacy academic standards as adopted by the Oklahoma State Board of Education.

(C) School districts shall have the option of determining when each of the fourteen (14) areas of instruction listed above shall be presented to students in grades seven (7) through twelve (12). Options include:

- (i) Integration into one or more existing courses of study;
- (ii) A separate Personal Financial Literacy course; and/or
- (iii) Use of State Department of Education Personal Financial Literacy online modules of learning.

(D) The Oklahoma State Department of Education online modules of learning and the assessments shall be available to all students as determined by the local school district.

(E) In order to facilitate the monitoring of student progress towards achieving the Personal Financial Literacy Passport, districts shall maintain a Personal Financial Literacy Passport cumulative record. The Personal Financial Literacy Passport cumulative record shall be a uniform document used by all school districts within the state. The State Department of Education shall provide an electronic version of the Personal Financial Literacy Passport cumulative record to the districts. Completion of the fourteen (14) areas of instruction of Personal Financial Literacy shall be documented on the student's high school transcript. The Personal Financial Literacy Passport cumulative record shall accompany the student when transferring to a new district.

(F) Elementary districts, PK-8, may enter into a vertical articulated curriculum agreement with an independent district, PK-12, for facilitating and sharing of the personal financial literacy curriculum and instruction.

(G) Teachers providing instruction in personal financial literacy shall be certified in accordance with the provisions of the Passport to Financial Literacy Act at 70 O.S. § 11-103.6h.

(H) School districts shall assess the knowledge of all students who transfer into an Oklahoma school district from out of state after the seventh grade.

(i) If the school district determines that the transferred student has successfully completed instruction in any or all of the areas of personal financial literacy instruction at the previous school in which the student was enrolled, or if the student demonstrates satisfactory knowledge of any or all of the areas of personal financial literacy instruction through an assessment approved by the State Department of Education, the school district may exempt the student from completing instruction in that area of personal financial literacy instruction.

(ii) Students who transfer into an Oklahoma school district from out of state after the junior year of high school may be granted an exception from the requirements of the personal financial literacy passport in accordance with the provisions of 70 O.S. 11-103.6.

(2) **Recommended curriculum.** School districts shall strongly encourage students to complete two units or sets of competencies of foreign languages and two units or sets of competencies of physical and health education.

(3) **Credit toward graduation requirements.** Credits for meeting curriculum requirements toward graduation shall be determined in accordance with all of the following provisions:

(A) No student shall receive credit for high school graduation more than once for completion of the same

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unit or set of competencies to satisfy the core curriculum requirements.

(B) Credit for all units or sets of competencies required in (d) and (e) of this Section shall be given when such units or sets of competencies are taken prior to ninth (9th) grade if:

- (i) The teachers are certified or authorized to teach the subjects for high school credit; and
- (ii) The required rigor of the course is maintained.

(C) Notwithstanding the provisions of (3)(B) of this subsection, the three units or sets of competencies in mathematics required in (d) or (e) of this Section shall be completed in the ninth (9th) through twelfth (12th) grades. If a student completes any required courses or sets of competencies in mathematics prior to ninth grade, the student may take any other mathematics courses or sets of competencies to fulfill the requirement to complete three (3) units or sets of competencies in grades nine (9) through twelve (12) after the student has satisfied the requirements of subsection (d) or (e) of this Section.

~~(D) Successful completion of an alternative assessment set forth in 210:10-13-16(b)(7)-(8) shall not constitute a basis for awarding a student credit for any course in which a student has failed the end of instruction exam and failed to attend in accordance with local district attendance policies.~~

~~(4) **Achieving Classroom Excellence Act.** The curriculum requirements for graduation set forth in (e) through (f) of this Section and 70 O.S. § 11-103.6 are in addition to and separate from the requirements of the Achieving Classroom Excellence Act set forth at 70 O.S. § 1210.523 and the accompanying regulation at 210:10-13-16. Students must fulfill the applicable requirements (or, in some cases, qualify for applicable exceptions or exemptions) of both statutes to be eligible to be awarded a standard diploma.~~

(g) **Additional accreditation requirements.** In addition to the curriculum requirements set forth in (c) through (f) of this Section, all public school districts shall ensure that its schools' secondary programs are designed to meet all of the following requirements:

(1) As a condition of receiving accreditation from the State Board of Education, all school districts shall require all students in grades nine (9) through twelve (12) to enroll in a minimum of six periods, or the equivalent in block scheduling or other scheduling structure that allows for instruction in sets of competencies, of rigorous academic and/or rigorous vocational courses each day, which may include arts, vocal and instrumental music, speech classes, and physical education classes. However, students re-enrolled in high school solely for the purpose of ~~receiving ACE remediation in accordance with the provisions of 210:10-13-16(g) completing curricular requirements as authorized by 70 O.S. § 11-103.6(O)~~ shall be exempt from this requirement.

(2) Each high school's academic program shall be designed to prepare all students for employment and/or postsecondary education. The secondary academic program shall be designed to provide the teaching and learning of the skills and knowledge in the ~~Priority Academic Student Skills~~ Oklahoma Academic Standards. All high schools accredited by the State Department of Education shall offer the college preparatory/work ready curriculum required for the students to earn a standard diploma during grades nine (9) through twelve (12). To meet graduation requirements, local options may include courses taken by advanced placement, concurrent enrollment, correspondence courses, supplemental online courses, or courses bearing different titles.

(3) The secondary academic programs may also provide the traditional units of credit to be offered in grades nine (9) through twelve (12) with each secondary school offering and teaching at least thirty-eight (38) units or their equivalent each school year. Four (4) of these units may be offered on a two-year alternating plan with thirty-four (34) units or their equivalent to be taught in the current school year. In schools with other than a four-year organization, these units shall be offered and taught in conjunction with the affiliated schools containing those grade levels. Career and technology center courses in which secondary students are enrolled may count toward the thirty-eight (38) required units of credit or their equivalent.

(4) District boards of education can make exceptions to state high school graduation curriculum requirements for students who move to this state from another state after their junior year of high school.

(A) After a student from another state enrolls in an accredited Oklahoma high school the school board can make an exception to the high school graduation curriculum requirements of 70 O.S. §11-103.63. Individual exceptions can only be made when there are differing graduation requirements between the two states and completing Oklahoma graduation requirements will extend the student's date of graduation beyond the graduation date for the student's class.

(B) The district must report all exceptions made to state graduation requirements for these senior students to the State Department of Education each school year. All exceptions made at each district high school will be forwarded to the State Department of Education on or before July 1 of each year. Districts may report the information on the Annual Statistical Report. This reporting provision does not include students who have individualized education programs pursuant to the Individuals with Disabilities Education Act (IDEA) and who satisfy graduation requirements through the individualized education program.

(5) District boards of education shall waive the Oklahoma History graduation requirement for children of military families who transition with the military from another state and who have satisfactorily completed a similar state history class in another state. "Children of

military families", as defined in 70 O.S. § 510.1, means "a school-aged child(ren), enrolled in Kindergarten through Twelfth grade, in the household of an active duty member".

(6) In order for a course offered by a supplemental educational organization to be counted for purposes of student academic credit and towards graduation requirements, the local board of education must verify that the course meets all requirements in 70 O.S. § 11-103.6.) Upon verification, the local school board of education's request for course approval shall be submitted to the State Board of Education for final approval.

[OAR Docket #17-456; filed 6-16-17]

**TITLE 210. STATE DEPARTMENT OF EDUCATION
CHAPTER 35. STANDARDS FOR ACCREDITATION OF ELEMENTARY, MIDDLE LEVEL, SECONDARY, AND CAREER AND TECHNOLOGY SCHOOLS**

[OAR Docket #17-457]

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PERMANENT final adoption

RULES:

Subchapter 25. Student Entrance and Progression Through the System
210:35-25-3. Annual student dropout reports to local school boards
[AMENDED]

AUTHORITY:

State Board of Education; 70 O.S. § 3-104; 70 O.S. § 35e

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n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

Senate Bill 1004 (2016) amended 70 O.S. § 35e to eliminate the requirement for school districts to submit quarterly dropout reports to the State Board of Education, requiring instead one annual submission of a district's pupil dropout information. The rule addressing dropout reports is updated to remove language that had required quarterly submissions.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 25. STUDENT ENTRANCE AND PROGRESSION THROUGH THE SYSTEM

210:35-25-3. Annual student dropout reports to local school boards

(a) The principal or a representative of each site serving students in Grades 7-12 shall review and discuss in a local school board meeting, the certified annual site dropout report submitted by the school district to the State Department of Education. The local review and discussion shall occur at the next open school board meeting after the district certifies the ~~four quarterly reports as well as the reentry checklist if applicable~~ annual report. The discussion shall be reflected in the board minutes.

(b) Each school site that serves students in Grades 7-12 is required to submit online its accounting of dropouts to the State Department of Education ~~quarterly and~~ annually. Each report is certified locally as an accurate accounting of the dropouts for each site. The annual ~~reentry checklist~~ report is due to the State Department of Education ~~no later than October 19 of each year on the date designated by the agency~~, for inclusion in the annual state dropout report to the State Board of Education, the Governor, and the State Legislature. ~~This reentry checklist report should be used to generate the annual report to the local school board.~~

[OAR Docket #17-457; filed 6-16-17]

**TITLE 210. STATE DEPARTMENT OF EDUCATION
CHAPTER 40. GRANTS AND PROGRAMS-IN-AID**

[OAR Docket #17-458]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 31. Public School Classroom Support Grants [NEW]
210:40-31-1. Public School Classroom Support Grants [NEW]

AUTHORITY:

State Board of Education; 70 O.S. § 3-104; 70 O.S. § 1-123

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INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

70 O.S. § 1-122 established a fund consisting of contributions designated on Oklahoma income tax and corporate tax forms, donated by taxpayers for the benefit of the Public School Classroom Support Revolving Fund. The fund is to be used for the purpose of "providing grants to public school classroom teachers for supplies, materials, or equipment for the class or classes taught by the teacher" (70 O.S. § 1-123). The State Board of Education is authorized to establish rules for the implementation of grants to be issued from the Public School Classroom Support Revolving Fund, and the rule lays out guidelines for the Public School Classroom Support Grants program. The rule includes eligibility requirements for grant applicants, such as defining who is included in the statutory term "classroom teacher" and outlining general criteria for selection. Minimum (\$1,000) and maximum (\$5,000) amounts for grant requests are established. To be eligible for consideration a classroom teacher's grant application must include an articulated purpose that aligns with the Oklahoma Academic Standards, or with the year's grant focus in the event the State Department of Education announces a particular focus for an upcoming grant year. The rule provides that the entire amount available in the grant fund will not be expended during any single year, since taxpayer contributions to the fund vary annually, and maintaining a fund balance will allow grants to be awarded every year although donations may vary.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 31. PUBLIC SCHOOL CLASSROOM SUPPORT GRANTS

210:40-31-1. Public School Classroom Support Grants

(a) **Purpose.** The State Board of Education is authorized to award one or more grants annually to classroom teachers from funds available in the Public School Classroom Support Revolving Fund established pursuant to 70 O.S. § 1-123. A grant awarded under this section shall be used by the grantee teacher for the purpose of purchasing supplies, materials, or equipment for their class or classes. To ensure the continuing availability of the grant program, which is funded by taxpayer donations that vary annually, the full amount available in the Public School Classroom Support Revolving Fund may not be awarded during a single year.

(b) **Eligibility.** A public school classroom teacher in Oklahoma is eligible to apply for a Public School Classroom Support Grant. A certified educator employed under Oklahoma Cost Accounting System (OCAS) Job Class Code 210, "Teacher", or OCAS Job Class Code 213, "Resource Teacher", shall be considered a classroom teacher for purposes of the Public School Classroom Support Grant program.

(c) **Limitations.** The minimum amount that may be requested for each Public School Classroom Support Grant is \$1,000, and the maximum amount that may be requested is \$5,000. A classroom teacher may receive an individual Public School Classroom Support Grant only once. A teacher who has previously applied for a grant, but has not received one, is eligible to apply again in subsequent years. A teacher may submit one application per year for an individual Classroom Support Grant, and may also be included in one shared grant application per year, provided that a teacher may not be awarded an individual grant and a shared grant during the same year. A teacher who has been one of the recipients of a shared grant may not apply for another shared grant for a period of two (2) years following the year the shared grant was received.

(d) **Focus areas and focus goals.** In order to maximize the efficacy of resources donated by Oklahoma taxpayers to the Public School Classroom Support Revolving Fund, the State Department of Education may designate focus areas and/or focus goals that will apply to the upcoming year's Public School Classroom Support Grant cycle. In the event the State Department of Education designates focus areas and/or focus goals for the following year's Public School Classroom Support Grants, grant applications must be relevant to one or more of the stated focuses to be eligible for consideration. If the State Department of Education does not designate a focus area and/or focus goal prior to the end of the calendar year to apply to the following year's grant cycle, grant applications must articulate a purpose intended to promote student learning in one or more content areas or skills aligned with the Oklahoma Academic Standards to be eligible for consideration.

(e) **Distribution of grants.** To the extent possible, subject to the availability of funds, grants will be awarded each year to at least one recipient who represents each of the following categories:

- (1) An early childhood or elementary school.
- (2) A middle or junior high school.
- (3) A high school.
- (4) An alternative school, alternative academy, or alternative education program as defined by 70 O.S. § 1210.568.
- (5) A school in a "small school district" as defined by 70 O.S. § 18-201.1(B)(3).
- (6) A school in a district with an average daily membership of thirty thousand (30,000) or more.
- (7) A school in a district that is not a "small school district" and has an average daily membership lower than thirty thousand (30,000).

(f) **Grant applications.** Applications will be accepted from January 1 through March 31 of each year, with grants awarded for the following school year. Each application must contain:

- (1) The amount of the requested grant, with a minimum amount of \$1,000 and a maximum amount of \$5,000.
- (2) The purpose of the requested grant, which must be intended to promote student learning in one or more content areas or skills, and the supplies, materials, and/or equipment to be funded.

**TITLE 218. OFFICE OF EDUCATIONAL QUALITY AND ACCOUNTABILITY
CHAPTER 10. EDUCATIONAL QUALITY**

[OAR Docket #17-435]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 5. Educator Preparation Program Accreditation
218:10-5-3 [AMENDED]
- 218:10-5-4 [AMENDED]
- Subchapter 7. Educator Assessment
218:10-7-1 [AMENDED]
- Subchapter 8. Teaching Certification Scholarship Program [NEW]
218:10-8-1 [NEW]

AUTHORITY:

Office of Educational Quality and Accountability; 70 O.S. Supp. 1998, §6-180 et seq.

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n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

Adopted rules align the educator preparation program accreditation processes with those of the Council for Accreditation of Educator Preparation as well as changes in assessment requirements for out-of-state certified educators. Rules also reflect implementation of the provisions of the Teaching Certification Scholarship Program Act.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 5. EDUCATOR PREPARATION PROGRAM ACCREDITATION

218:10-5-3. Specific state standards for program accreditation

(a) The following standards apply to both undergraduate and graduate programs. The governance and administration of the total educator preparation program standard is based on

(3) The applying teacher's plan for using the proposed materials and/or equipment in their classroom to achieve the stated purpose.

(4) A proposed budget itemizing how grant funds will be spent if awarded, which includes the appropriate Oklahoma Cost Accounting System (OCAS) codes for the planned expenditures. The OCAS manual that lists the expenditure codes is updated annually and is available on the State Department of Education website.

(5) The name and signature of the applying teacher and the administrator of the school site where the teacher is employed. For shared grants, the names and signatures of all applying teachers should be included along with the name and signature of the site administrator.

(g) **Criteria.** Grant applications will be evaluated by an Oklahoma State Department of Education (OSDE) selection committee, which will make recommendations for each year's grant awards to the State Board of Education. The selection committee will include curriculum specialists who have trained on the rubric that will apply to the specific evaluation criteria that have been announced for the grant year. Applications will be evaluated according to the following general criteria, in addition to any specific criteria announced for a grant year with a designated focus:

(1) An articulated purpose for the requested grant that is intended to promote student learning in one or more content areas or skills.

(2) A specific plan for incorporating supplies, materials, and/or equipment funded by the requested grant into the applying teacher's course(s) for the stated purpose.

(3) Alignment of the purpose and plan for the requested grant with:

(A) The Oklahoma Academic Standards, if a focus area or focus goal has not been designated for the grant year, or

(B) One or more of the focus area(s) and/or focus goal(s), if the State Department of Education has designated focus area(s) and/or focus goal(s) for the grant year.

(h) **Shared grants.** Two (2) or more teachers at the same school site may apply for a shared grant to be used for the same purpose in more than one classroom. One application should be submitted for a shared grant. If a shared grant is awarded, the funded amount of the grant will be shared by the participating teachers listed on the application, with appropriate distribution of the grant funds among participating classrooms to be the responsibility of the participating teachers and the site administrator. A teacher who has been one of the recipients of a shared grant is not eligible to apply for another shared grant for two (2) years following the year the shared grant was received.

[OAR Docket #17-458; filed 6-16-17]

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the premise that there must be a recognizable and functioning governance entity within the institution's administrative structure which has responsibility for designing, approving and continuously evaluating and developing educator preparation programs. This governing unit may be a council, committee, department, school, college, or any other recognizable entity, which includes the administration of educator preparation as one of its functions. The governing unit membership and responsibilities include the following:

(1) Membership on the educator preparation governing unit shall be defined by written policy to include:

(A) A majority of the members who have a minimum of three years teaching experience in public schools;

(B) A majority of the members in the governance unit who are currently teacher education faculty members;

(C) Some faculty members who shall represent the arts and sciences;

(D) A designated director of educator preparation defined as the institution's official representative for educator preparation. The authority and responsibilities of this individual shall be clearly defined in written policies; and

(E) A clearly defined process whereby faculty members and administrators become members and the terms of office.

(2) The responsibilities of the educator preparation governing unit shall be defined by written policy to include:

(A) Responsibilities of the officers of the unit;

(B) Responsibilities of the unit's standing committees; and

(C) Responsibilities in the following areas as they are related to educator preparation:

(i) Admission/retention in educator preparation;

(ii) Field experience and student teaching (admission and placement);

(iii) Development of courses and program curricula; and program review, evaluation and planning.

(3) Program review, evaluation and revision responsibilities include:

(A) The governance unit shall conduct at least one systematic review, evaluation, and when appropriate, revision of all educator preparation programs within each accreditation period;

(B) Periodic program reviews and revisions shall be based on, but not limited to, stated goals and objectives; and

(C) The process for conducting program review, evaluation, and revision shall include, but not be limited to, participation by the following:

(i) Educator preparation faculty and arts and science faculty;

(ii) Graduates of the programs;

(iii) Students currently in the program;

(iv) Teachers and administrators from the public schools;

(v) Parents of P-12 students and business and community leaders who are actively involved in assisting P-12 schools.

(4) Documentation related to the budget-making process and level of financial support shall include the following:

(A) A clearly defined budget-making process for all teacher education programs; and

(B) An analysis showing that the institution's financial support for programs in educator preparation are maintained at a level appropriate for a professional preparation program.

(b) Educator preparation faculty workload policies, including class-size and online course delivery, should allow faculty members to be effectively engaged in teaching, scholarship, assessment, advisement, collaborative work in P-12 schools, and service. Faculty loads for teaching on campus and online generally do not exceed 12 hours for undergraduate teaching and nine hours for graduate teaching per semester or the equivalent. Supervision of clinical practice does not generally exceed 18 candidates for each full-time equivalent faculty member per semester or the equivalent.

(c) Candidate-related standards are to be consistent with accreditation standards.

(d) Program decisions of the professional education unit are to be guided by a conceptual framework, which establishes the shared vision for the preparation of teacher candidates.

(1) The conceptual framework application for state initial accreditation.

(2) The conceptual framework shall consist of:

(A) The program's philosophy, purposes, professional commitments and dispositions;

(B) A knowledge base that provides the foundation for the framework;

(C) Performance expectations for candidates that align with professional, state and institutional standards; and

(D) A system by which candidate performance is regularly assessed.

(e) The following guidelines are to be used to collect and maintain data on each institution's educator preparation program:

(1) The institution shall establish a process which seeks information and program input from educator preparation faculty; faculty from arts and sciences and other programs and disciplines which are appropriate; candidates within the educator preparation program; teachers, administrators, parents, guardians or custodians of students; and business and community leaders.

(2) The institution shall establish procedures to inform the public regarding the educator preparation program and to solicit and receive public input.

(3) The self-study shall be accessible to any interested party under the Oklahoma Open Records Act.

(4) The submitted institutional plan must be approved by the institution's governing board.

- (5) Annual reviews and reports indicating program changes.
- (f) The following policies, procedures and guidelines are used to direct the content and candidates' experiences of each institution's teacher preparation program.
- (1) Programs require teacher candidates to have speaking and listening skills at a novice high level in a language other than English.
 - (2) General studies requirements for candidates include the arts, communication, history, literature, mathematics, philosophy, sciences, English, government, and the social sciences.
 - (3) Programs establish cohort or colleague groups within the institution to assist teacher candidates in achieving competencies, better adapting to the school environment and furthering professional growth.
 - (4) Candidates complete a well-planned sequence of courses and/or experiences in pedagogical studies that ensures student competency in the Oklahoma State Department of Education Full Subject Matter Competencies for Teacher Licensure and Certification.
 - (5) The guidelines and standards for program reviews representing specialty organizations and national learned society standards are used in developing programs in each content area.
 - (6) Secondary and elementary/secondary teacher candidates have undergraduate majors or their equivalents, in a subject area.
 - (7) Teacher candidates in early childhood, elementary, and special education have subject area concentrations, which allow qualification as a generalist. To qualify as a generalist, candidates must document competency in mathematics, science, language arts, and social studies as identified in the CAEP professional learned societies' standards and State Department of Education Full Subject Matter Competencies for early childhood, elementary and special education.
 - (8) Teacher candidate coursework includes the study of substance abuse symptoms identification and prevention; mental illness symptoms identification and mental health issues; classroom management skills; and classroom safety and discipline issues.
 - (9) Effective September 1, 2015 teacher candidates must have a minimum of 60 hours of diverse field experiences prior to their student teaching experience.
 - (10) Teacher candidates are provided with advisement services to assist them in taking course work designed to maximize their opportunities for certification and employment. At a minimum, teacher candidates are provided information on the latest supply and demand information concerning teacher employment, state salary structure, and teaching shortage areas.
 - (11) Substantive collaboration and classroom interaction with students accompanies theoretical curriculum, thus allowing teacher candidates the opportunity to apply theory to actual classroom situations.
 - (12) Instruction integrates pedagogical competencies or skills with experiences in the school setting.
 - (13) Teacher candidates are provided with opportunities to have parental, family and community involvement within their pre-service programs.
 - (14) The unit establishes and publishes a set of criteria/competencies for exit from each professional education program. These criteria/competencies reflect the Oklahoma Department of Education General Teacher Competencies and/or subject matter competencies outlined in the CAEP national (professional) learned societies' standards.
 - (15) The unit establishes and publishes the criteria/competencies for exit and satisfactory completion adhering to all rules and regulations established by the Oklahoma State Department of Education.
 - (16) A candidate's mastery of a program's stated exit criteria or competencies is assessed through the use of multiple sources of data such as culminating experience, portfolios, interviews, videotaped and observed performance in schools, standardized tests and course grades.
 - (17) Effective September 1, 2015 mentor teachers are required to have minimum of three years of teaching experience in the area in which they are certified.
- (g) The following guidelines are to be used to facilitate the professional learning of faculty: Teacher education faculty continue their professional learning during their tenure at an institution of higher education to ensure that the future teachers of Oklahoma are taught by professional educators fully trained in their areas of expertise. Professional development for teacher educators and arts and sciences faculty should be focused on the faculty members' ability to model such effective teaching strategies as inquiry, group discussions and collaborative learning.
- (h) The following policies are to be used to evaluate individual program areas at each institution:
- (1) The institution shall submit program reviews for each required program area based upon the CAEP/State guidelines and accreditation schedule.
 - (2) Following the completion of each program evaluation, the institution will receive written notification of each program's status. Recognition decisions will include the following categories: recognized, recognized with conditions, recognized with probation, further development required, and not recognized.
 - (3) If the program is recognized, it will retain its status through the semester and year of the institution's next accreditation visit. To retain recognition, another program report must be submitted before that review.
 - (4) If the program is recognized with conditions, a report addressing the conditions to recognition must be submitted within 18 months of the date of the status report. The report must address the conditions specified by the reviewers. Once acceptable data has been submitted, the condition(s) will be removed. If the program does not submit acceptable information within the designated timeframe, the decision reverts to "not recognized."
 - (5) If the program decision is recognized with probation or further development required, a revised report addressing the issues identified by the reviewers must be

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submitted within 12 months, or the unit may submit a new program report for recognition within 12 months. If the revised report adequately addresses the concerns cited by reviewers, the program decision will be changed to "recognized" or "recognized with conditions." If the program is unsuccessful after two attempts, the program status will be changed to "not recognized."

(6) A program can receive a decision of "not recognized" only after two submissions are unsuccessful in reaching either "recognized" or "recognized with conditions." If the program is not recognized, a revised report addressing unmet standards may be submitted within 12 months of the date of the recognition report. [This report will be sent to the original team if possible.] If the program does not receive a recognized decision within 12 months, admission of new candidates will not be allowed. The unit may elect to submit a new program report for recognition within 12 months. [This report will be sent to a new team of reviewers].

(7) Programs which are required to submit through CAEP and receive an initial decision of "recognized with probation" or "further development required" may apply to OEQA for state recognition and thus recommend teacher candidates for certification under the following conditions:

(A) The program must have an aggregated pass rate of all candidates on the Oklahoma Subject Area Test (OSAT) of 80% or more over a three-year period. An application for program recognition must be submitted to OEQA containing basic program information as well as current recognition status and future submission deadlines; however an additional review will not be required.

(B) Institutions must submit a revised program report according to applicable CAEP/SPA or OEQA guidelines as appropriate addressing concerns cited in the review. If the revised report is not recognized, the unit must submit additional revised reports according to guidelines. The unit must exhaust all available CAEP options for revision.

(C) Programs which do not meet the required 80% pass rate on the OSAT may apply to OEQA for state recognition only after the unit has exhausted all available CAEP options for revision. The application for state recognition must address concerns cited by reviewers in the final report.

(D) Programs receiving state recognition under these conditions will maintain recognition until the submission period prior to the unit's next scheduled accreditation visit, at which time the unit will be expected to submit a program review to CAEP or OEQA, as appropriate.

(8) Units may receive conditional approval for new programs. These programs must undergo reviews as outlined in the New Certification Program Procedures for Established Units guidelines before receiving full recognition. State recognition will be retained through the semester and year of the unit's next accreditation visit.

Programs with national Specialized Professional Association's are required to submit to CAEP within 18 months of receiving a recognized with conditions decision.

(9) Programs that do not comply with the procedures detailed in items (h)3-7 will no longer be eligible to recommend candidates for licensure and certification.

(10) An institution with a non-compliant program may apply to the CEQA for a waiver if there is evidence that the non-compliant status of a program is due to transitioning national standards.

(i) Gifted Education and Elementary Math Specialist programs, requiring no more than eighteen hours of graduate level coursework, designed as endorsement programs for certified educators are submitted to OEQA for process approval.

218:10-5-4. Standards for Oklahoma educator preparation programs

(a) Effective September 1, 2016 standards as defined by CAEP shall apply to undergraduate and graduate programs.

(1) Standard One: Content and pedagogical knowledge. The educator preparation program ensures that candidates develop a deep understanding of the critical concepts and principles of their discipline and, by completion, are able to use discipline-specific practices flexibly to advance the learning of all students toward attainment of college- and career-readiness standards.

(2) Standard Two: Clinical partnerships and practice. The educator preparation program ensures that effective partnerships and high-quality clinical practice are central to preparation so that candidates develop the knowledge, skills, and professional dispositions necessary to demonstrate positive impact on all P-12 students' learning and development.

(3) Standard Three: Candidate quality, recruitment, and selectivity. The educator preparation program demonstrates that the quality of candidates is a continuing and purposeful part of its responsibility from recruitment, at admission, through the progression of courses and clinical experiences and to decisions that completers are prepared to teach effectively and are recommended for certification. The educator preparation program demonstrates that development of candidate quality is the goal of educator preparation in all phases of the program. This process is ultimately determined by a program's meeting of Standard 4.

(4) Standard Four: Program impact. The educator preparation program demonstrates the impact of its completers on P-12 student learning and development, classroom instruction, schools, and the satisfaction of its completers with the relevance and effectiveness of their preparation.

(5) Standard Five: Educator preparation program quality assurance and continuous improvement. The educator preparation program maintains a quality assurance system comprised of valid data from multiple measures, including evidence of candidates' and completers' positive impact on P-12 student learning and development. The educator preparation program supports continuous improvement

that is sustained and evidence-based and that evaluates the effectiveness of its completers. The educator preparation program uses the results of inquiry and data collection to establish priorities, enhance program elements and capacity and test innovations to improve completers' impact on P-12 student learning and development.

- (b) ~~Teacher candidate portfolios.~~
 - (1) ~~Institutions shall require all initial and advanced certification program(s) students to develop a portfolio following the guidelines outlined in this section.~~
 - (2) ~~A portfolio is a documented profile of an individual's accomplishments, learning, and strengths related to the competencies, state and national standards, and outcomes established by the CEQA, OSRHE, State Department of Education and institution.~~
 - (3) ~~The portfolio, for purposes related to institutional accreditation is a unit of measure which presents evidence that the institution is providing initial, on going, and focused opportunities and avenues which lead to student achievement of competencies, state and national standards and outcomes determined by the CEQA, OSRHE, State Department of Education and institution.~~
 - (4) ~~Institutions will provide for review during each regularly scheduled accreditation visit:~~
 - (A) ~~The unit's portfolio handbook containing a written philosophy related to portfolio development and assessment which is consistent with the institution's and unit's mission and conceptual framework, as well as written policies, criteria, and institutional rubric(s) related to the assessment of the portfolio as a whole or individual artifacts contained in the portfolios for all individuals enrolled in initial and advanced programs.~~
 - (B) ~~Two representative candidate portfolios for each program offered. OEQA will randomly select one candidate portfolio in each program area and the second will be selected by the unit. Portfolios should represent candidates at the final transition point.~~
 - (C) ~~In addition, annual reports must include any revision in the institution's portfolio process.~~
 - (5) ~~Institution's pre service and/or advanced portfolio process. The teacher education unit and programs shall:~~
 - (A) ~~Require the portfolio development process to begin with enrollment into the professional education course work;~~
 - (B) ~~Have a written portfolio handbook(s) containing a written philosophy related to portfolio development and assessment which is consistent with the institutions and unit's mission and conceptual framework(s);~~
 - (C) ~~Have written policies, criteria, and institutional rubrics related to the portfolio assessment(s) of individual(s) enrolled in initial and advanced certification programs.~~
- (eb) Annual report. Each Oklahoma educator preparation unit shall submit an annual report to the OEQA. This report will satisfy the requirements for the CEQA, OSRHE, State

Department of Education, and CAEP/AACTE. The following information will be included in the report:

- (1) Changes that occurred in implementation of the standards outlined in the Institution Plan as a result of local and statewide evaluations/assessments, public hearings or other reasons;
- (2) Progress made in addressing the areas for improvement, if any, identified by the most recent on-site visit by the on-site accreditation review team;
- (3) Quantitative data related to the unit's programs as required in the AACTE/CAEP Annual Report. These data shall reflect information pertaining to supply and demand for teacher candidates;
- (4) Program changes being implemented for OEQA and CAEP continued accreditation;
- (5) Report on resources devoted to technology;
- (6) Report on professional development activities of faculty;
- (7) Report on the number of hours each faculty member taught or were in direct contact with students in public schools;
- (8) Report on the number of graduate students admitted conditionally and the success rates.
- (9) Report on the results of the assessment of teaching skills in the area of reading instruction as administered to candidates in elementary, early childhood education, and special education.
- (10) Report on the participation in the alternative placement programs offered by the institution.
- (11) Report on the procedures used to inform the public regarding the institution's teacher education program and the manner through which public input is solicited and received.
- (12) Annually, the OEQA shall provide feedback to any institution if their annual report indicates that progress is not being made in addressing areas for improvement.
- (13) Complete copies of the annual reports for public institutions will be distributed to OSRHE and summary data for all institutions will be distributed to constituents based on reporting requirements outlined in 70 O.S., Section 6-186.
- (14) The OEQA will produce a report describing the accreditation status of each institution. This report will devote a section to each institution separately and include a summary of CAEP and OEQA review findings.

SUBCHAPTER 7. EDUCATOR ASSESSMENT

218:10-7-1. Educator assessment regulations

- (a) **Examinees - initial licensure and certification.**
 - (1) Any individual who applies for a teaching license/certification must successfully complete the competency examination as defined by the OEQA. The competency examination is made up of three components: The Oklahoma General Education Test (OGET), the Oklahoma Subject Area Test (OSAT) and the Oklahoma Professional Teaching Exam (OPTE).

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- (2) See Appendix A for competency exam requirements by certification area and test codes.
- (b) **Examinees - additional certification.**
- (1) Individuals wishing to add a certification area to an existing teaching credential must successfully complete the Oklahoma Subject Area Test for the field of the desired certification.
- (2) Individuals wishing to add a teaching certification area to an existing license or standard certificate in Speech Language Pathologist, School Nurse, School Psychometrist and/or School Psychologist must successfully complete the Oklahoma Subject Area Test and the Oklahoma Professional Teaching Exam for the field of the desired certification.
- (3) See Appendix A for competency exam requirements by certification area and test codes
- (c) **Examinees - alternative placement program.**
- (1) Individuals seeking a teaching license via the Alternative Placement Program must successfully complete the Oklahoma General Education Test and the Oklahoma Subject Area Test. A licensed teacher via the Alternative Placement Program seeking a standard certificate must successfully complete the Oklahoma Professional Teaching Exam.
- (2) See Appendix A for competency exam requirements by certification area and test codes.
- (d) **Examinees-out of state certification.** Individuals seeking an Oklahoma license/certification who are certified educators in another state(s) ~~shall meet the same assessment requirements as all other individuals seeking initial licensure/certification. Individuals having successfully completed comparable examination(s), as determined by OEQA, shall be exempt from the corresponding part(s) of Oklahoma's assessment requirement. Certified out-of-state educators, with 5 years of successful teaching experience in out-of-state accredited schools and seeking Oklahoma certification, and have successfully completed a competency examination used in the majority of other states or comparable customized exam,~~ will be exempt from meeting the Oklahoma educator assessment requirements for the subject/grade levels most closely aligned with their out-of-state certification.
- (e) **Examinees - testing conditions and requirements compliance.**
- (1) If an examinee fails to comply with the conditions and requirements specified or referenced on the *Certification Examinations for Oklahoma Educators Test* website, including the *Conditions of Test Participation*, or take any prohibited actions, the test results may be voided, no refund will be issued, no portion of the testing fee can be applied toward the cost of any future test administrations and/or the examinee's registration may be cancelled.
- (2) If an examinee's test score is found to be unverifiable by either the testing company or the OEQA, the examinee will be allowed one (1) retake under controlled conditions at no cost to the examinee.

SUBCHAPTER 8. TEACHING CERTIFICATION SCHOLARSHIP PROGRAM

218:10-8-1. Teaching Certification Scholarship Program

- (a) **Scholarship Program.** The Commission for Educational Quality and Accountability shall establish the Teaching Certification Scholarship Program. The purpose of the program shall be to provide qualifying teacher candidates who are seeking certification with a scholarship toward the cost of competency examinations required by Section 6-187 of Title 70 of the Oklahoma Statutes, subject to the availability of funds.
- (1) Scholarships are limited to one per teacher candidate.
- (2) Teacher candidates must be currently seeking initial certification.
- (b) **Scholarship application.** OEQA will develop the scholarship application and any associated deadlines.
- (c) **The Application Review Committee.** OEQA will designate the place and time for applications to be read and scored by the Application Review Committee. The Application Review Committee will consist of one representative from
- (1) Oklahoma State Regents for Higher Education
- (2) Oklahoma State Department of Education
- (3) Office of Educational Quality and Accountability
- (4) Oklahoma Association of Colleges for Teacher Education
- (5) Oklahoma Pre-K through 12 grade public school teacher
- (d) **Selection of scholarship recipient.**
- (1) The Application Review Committee will consider one or more of the following:
- (A) Degree which applicant's essay conveys scholarship need
- (B) Conveyance of commitment to teaching in an accredited school district in Oklahoma
- (C) Demonstration of professional disposition
- (2) Scholarship recipients will be selected based on scores determined within the application process, ranking from highest to lowest based on application score
- (e) **Payment and reimbursement of competency examination fees.**
- (1) OEQA will make payment for competency examination fees for each scholarship candidate upon signing a letter of intent
- (2) If the scholarship recipient does not teach at a school district in Oklahoma upon achieving certification, he or she shall be required to reimburse OEQA for the full amount awarded

[OAR Docket #17-435; filed 6-16-17]

**TITLE 230. STATE ELECTION BOARD
CHAPTER 10. THE COUNTY ELECTION BOARD**

[OAR Docket #17-656]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 3. Election Personnel
 - Part 1. County Election Board Members and Employees
 - 230:10-3-10. Compensation claims for the Chairman and Vice Chairman [REVOKED]
- Subchapter 7. General Administration of the County Election Board Office
 - Part 7. Public Records
 - 230:10-7-59. Public Records [AMENDED]
 - Part 9. Finances
 - 230:10-7-73. County Election Board member claims compensation and mileage reimbursement [AMENDED]
 - 230:10-7-76. Special Depository Account [AMENDED]
 - 230:10-7-82. Expenses paid through Special Depository Account [REVOKED]
 - 230:10-7-83. Reimbursement to County General Fund [AMENDED]
 - 230:10-7-85. Retention of County Election Board financial records [AMENDED]

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Title 26 O.S., Section 2-107; Secretary of the State Election Board

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The rules promulgated by the Secretary of the State Election Board are intended to provide both consistent interpretation of various requirements of federal and state election laws and to establish uniform procedures to be observed by all County Election Boards in Oklahoma in the implementation of such election laws. These rules are the foundation of Oklahoma's one-of-a-kind election system.

The rules amended and/or revoked in this Chapter are needed to update certain County Election Board procedures concerning compensation for County Election Board members and to incorporate new statutory requirements concerning the confidentiality of personal identification data acquired by the County Election Board on voter registration application forms.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 3. ELECTION PERSONNEL

PART 1. COUNTY ELECTION BOARD MEMBERS AND EMPLOYEES

230:10-3-10. Compensation claims for the Chairman and Vice Chairman [REVOKED]

~~(a) Claims for compensation owed by the State Election Board must be filed on the County Board Member Claim forms provided by the State Election Board. Such claims shall be prepared by the County Election Board Secretary and filed promptly.~~

~~(b) In the event a meeting is held specifically to transact business for another governmental entity, such as a school district or a municipality, the entire cost of the meeting shall be paid by that entity. If more than one entity is involved in a meeting, the cost of the meeting shall be prorated among the entities that benefit from the meeting. For example, if five school districts are involved, the \$35 paid to each Board member is prorated among the districts so that each will pay \$7 plus one fifth of the mileage reimbursement. The entity's share of the Board meeting will be included in the Record of Expense submitted to the entity following the election.~~

~~(c) When a school district election is held on the same day as a county election, the county pays all the cost of the County Election Board meeting to certify the election. However, if another entity such as a municipality also holds an election on the same day as the county and school district elections, the cost of the County Election Board meeting is divided equally between the county and the other entity and the school district pays nothing.~~

~~(d) All compensation owed to County Election Board members for meetings held for a county election that does not coincide with a state election, for which compensation is paid by the State Election Board, shall be paid by the County Clerk from a County Election Board budget account and FICA shall be withheld. Mileage reimbursement for County Election Board members may be paid either through a budget account by the County Clerk or through the Special Depository Account by the County Election Board Secretary.~~

SUBCHAPTER 7. GENERAL ADMINISTRATION OF THE COUNTY ELECTION BOARD OFFICE

PART 7. PUBLIC RECORDS

230:10-7-59. Public records

~~(a) All records of the County Election Board, except as specifically designated otherwise in federal or state law, must be made available for public inspection, copying and/or mechanical reproduction during regular office hours. [51:24A.5] The County Election Board must provide prompt, reasonable access to its records but may establish reasonable procedures to protect the integrity and organization of its records and to prevent excessive disruptions of its essential functions.~~

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(b) According to state law, a voter's full or partial driver license number or Social Security number provided on a voter registration application form shall not be considered a public record and shall be kept confidential by the County Election Board. [26:4-112; 51:24A.5] When providing copies of original voter registration application forms in the Central File or from the cancellation file, a full or partial driver license or Social Security number shall be masked or obscured on the original while the copy is made or shall be blacked out on the copy. Under no circumstances shall an original voter registration application form in the Central File or cancellation file be permanently altered to conceal these numbers. In the event that an election official in another jurisdiction or law enforcement personnel request a copy of an original registration form with these numbers left visible, contact the State Election Board immediately.

PART 9. FINANCES

230:10-7-73. County Election Board Member Claims member compensation and mileage reimbursement

~~Claims for compensation owed to the Chairman and Vice Chairman by the State Election Board shall be filed each month with the State Election Board. No claim shall be filed if the County Election Board has no meeting in a particular month. Claims should be filed between the first and tenth day of the month. See 230:10-3-10.~~

(a) The State Election Board shall be responsible for the total amount of compensation and mileage reimbursement for the County Election Board Chairman and Vice Chairman for each authorized meeting held to conduct business related to a regular or special federal or state election. The State Election Board also shall be responsible for County Election Board member compensation and mileage for meetings held to conduct other business mandated by statute that is unrelated to a specific federal or state election. See (h) of this Section.

(b) The county shall be responsible for compensation and mileage reimbursement for the County Election Board Chairman and Vice Chairman for meetings held to conduct business related to a county election that is not held concurrently with a regular or special federal or state election in that county.

(c) School districts, municipalities, and other entities authorized to call elections held by the County Election Board shall be responsible for compensation and mileage reimbursement owed to the County Election Board Chairman and Vice Chairman for meetings held to conduct business related to such regular or special elections. When two or more entities conduct regular or special elections on the same election date, the amount of County Election Board member compensation and mileage shall be divided equally among the entities, unless the elections are held concurrently with a regular or special state or county election.

(d) The County Election Board member compensation described in this Section shall be paid at the rate established by

state law. Mileage expenses shall be reimbursed at the rate currently prescribed by the state Office of Management and Enterprise Services.

(e) The Secretary of the County Election Board, who is a member of the County Election Board, shall not be entitled to the compensation and mileage described in this Section. The Secretary's compensation is detailed in 230:10-3-8.

(f) County Election Board member compensation and mileage reimbursement shall be included in the Record of Expense submitted to the appropriate entity following the election. Payment for the election expenses listed in the Record of Expense shall be remitted by the appropriate entity within 30 days of receiving the Record of Expense. Upon receipt of such payment, the County Election Board Secretary shall deposit the payment in the Special Depository Account and shall reimburse the County General Fund for the amount of compensation.

(g) Compensation for County Election Board members shall be paid by the County Clerk after FICA and any other applicable taxes have been withheld. Mileage reimbursement may be paid directly from the Special Depository Account by the County Election Board Secretary or by the County Clerk from a County Election Board budget account or other designated county account.

(h) The State Election Board shall be responsible for County Election Board member compensation and mileage for meetings held to organize the County Election Board following the appointment of County Election Board members to new terms as described in Title 26 O.S., Section 2-111.2 and for the appointment of Precincts Officials to new terms as described in Title 26 O.S., Sections 2-124 and 2-125. The State Election Board shall provide a form to the County Election Board Secretary to file claims for County Election Board member compensation and mileage for meetings held as provided in this subsection.

230:10-7-76. Special Depository Account

(a) The County Election Board must use a County Election Board Special Depository Account for receipt and disbursement of monies received by the Board. [26:3-108] The Special Depository Account is operated through the County Treasurer's office. It is used to receive funds such as candidate filing fees, deposits for contests of candidacy, deposits for contests of election, funds for compensation of Precinct Officials and Absentee Voting Boards, payments for school elections and payments for municipal elections. Deposits shall be made daily as funds are received, and disbursements shall be made as soon as legally possible. Any balance continuing in the Special Depository Account after all appropriate disbursements have been made shall ~~only~~ be only from forfeited candidate filing fees or from processing fees received for County Campaign Committee Statements of Organization ~~only~~.

(b) The County Election Board Secretary shall be authorized to make expenditures from the ~~amount balance of forfeited candidate filing fees~~ and processing fees in the Special Depository Account for any lawful purpose. [26:3-108] ~~However, before expending funds from the balance of filing and processing fees.~~

the Secretary shall seek approval from the State Election Board staff for the expenditure.

(c) The following election expenses always shall be paid by the County Election Board Secretary with vouchers from the Special Depository Account:

(1) Compensation and mileage reimbursement for Precinct Officials, Absentee Voting Board members, and special purpose precinct workers for all elections.

(2) Expenses related to elections conducted for school districts, technology center districts, municipalities, and other local entities authorized to call elections conducted by the County Election Board.

(d) Funds received from the State Election Board or from school districts, technology center districts, municipalities, and other local entities for County Election Board member compensation, overtime compensation for County Election Board employees, and compensation for part-time or temporary employees shall not be paid by the County Election Board Secretary from the Special Depository Account. Funds received for such compensation shall be reimbursed to the county general fund, as described in 230:10-7-83 and in 230:10-7-132. All such compensation shall be paid by the County Clerk with warrants from a County Election Board budget account after FICA and any other applicable federal or state taxes have been withheld. All such compensation shall be reported by the County Clerk on W-2 forms each year.

230:10-7-82. Expenses paid through Special Depository Account [REVOKED]

~~For statewide elections, the state's and the county's share of compensation for Precinct Officials, the Absentee Voting Boards, and special purpose precinct workers are paid through the Special Depository Account. All other expenses are handled by submitting purchase orders to the County Clerk. The expenses then may be paid by the County Clerk with warrants drawn on the County Election Board's budget account or on another county account or they may be paid from the Special Depository Account after appropriate funds have been deposited there in payment of the purchase orders. All compensation and mileage reimbursements paid in connection with regular or special county elections not held in conjunction with a federal or state election for County Election Board members, for overtime and mileage reimbursement for County Election Board employees, and compensation for part time help, are paid by submitting purchase orders to the County Clerk. For school district and municipal elections, all warrants received from the entities are deposited in the Special Depository Account and vouchers are written to pay incurred in the election. However, all compensation and mileage reimbursement in connection with a regular or special school, municipal, or other election paid to County Election Board members; overtime compensation and/or mileage reimbursement for County Election Board personnel; and compensation for part time help shall be paid through a County Election Board budget account by the County Clerk and FICA and any other applicable taxes shall be withheld from such compensation.~~

230:10-7-83. Reimbursement to County General Fund

At the end of each month, all fees received from school districts and municipalities for postage, telephone or other budget item expenses incurred by the entity in an election shall be reimbursed to the County General Fund. Funds received from the State Election Board for County Election Board member compensation and mileage reimbursement for meetings held to conduct business in connection with a regular or special federal or state election and for meetings to conduct other business required by statute shall be reimbursed to the County General Fund. Funds received from school districts, municipalities, and any other entities for County Election Board member compensation, part-time help, and overtime compensation and mileage reimbursement for County Election Board employees shall be reimbursed to the County General Fund as outlined in 230:10-7-132. Such reimbursements shall be made immediately upon receipt of the funds from the entity or from the State Election Board. All fees collected for copying documents shall be reimbursed to the County General Fund. The Secretary shall issue a voucher from the Special Depository Account to the County Treasurer in the appropriate amount.

230:10-7-85. Retention of County Election Board financial records

(a) The Secretary of the County Election Board shall have the responsibility to ensure that financial records are retained as required by law.

(b) Original financial records and/or records for which the County Election Board's copy is the only copy shall be retained for five years. These original records include but are not limited to the following.

(1) Budget account records. ~~The following original~~ Original records of the County Election Board's budget accounts that are maintained in MESA shall be retained for five years. Similar records and reports created and printed from OEMS prior to July 1, 2013, shall be retained through June 30, 2018.

(A) ~~OEMS reports.~~ OEMS reports. ~~Records of the budget accounts maintained in OEMS include the Day Ledger.~~

(B) ~~Manual records.~~ Manual records. ~~Records of the budget accounts maintained manually include the Day Ledger sheets.~~

(2) Special Depository Account records. ~~The following~~ Special Depository Account reports from MESA shall be considered original records of the County Election Board's Special Depository Account and shall be retained for five years. Similar reports created in and printed from OEMS prior to July 1, 2013, shall be retained through June 30, 2018.

(A) ~~OEMS reports.~~ OEMS reports on the Special Depository Account which constitute original records include the

(A) Ledger Sheet;

(B) Election Balance Sheets;

(C) County Election Board Election Expense List;

(D) Pre-Election Expense Claims; ~~Pre Election Expense Claims Compilation;~~

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~~(E) Records of Expense; Records of Expense Compilation;~~

(F) Contest Balance Sheets;

~~(G) Contest Records of Expense; Contest Records of Expense Compilation;~~

(H) Voucher Control Log;

(I) Voucher Detail Report ~~and~~

(J) Voucher Registry;

~~(B) Manual records. Records of the Special Depository Account maintained manually which constitute original records include Ledger Sheets, forfeited filing fee records, and records of contest expenses.~~

(3) **Other records.** Other records which are required to be retained for five years include but shall not be limited to the following items:

(A) County Board Member Claim, ~~gold copy, - any copies dated prior to August 1, 2016.~~

(B) Precinct Expense Claim Envelopes-

(C) Duplicate copies of receipts issued by County Election Board-

(D) Cancelled vouchers-

(E) Voided vouchers-

(F) Invoices, statements and other documentation of expenses paid through the Special Depository Account-

(G) Receipts for transfers/deposits to County General Fund-

(c) Records for which the County Election Board retains only a copy and for which the original is retained by another county officer for five years shall be retained for two years following the most recent audit by the State Auditor and Inspector. These records include but shall not necessarily be limited to the following items.

(1) Copies of purchase orders.

(2) Copies of vouchers.

(3) Copies of deposit tickets.

(4) Copies of the Monthly Report of County Officers.

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TITLE 230. STATE ELECTION BOARD CHAPTER 10. THE COUNTY ELECTION BOARD

[OAR Docket #17-657]

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RULES:

Subchapter 7. General Administration of the County Election Board

Part 5. Maintaining the Office

230:10-7-45. Retention of Precinct Registries and affidavits [AMENDED]

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The rule amended in this Chapter updates certain County Election Board procedures concerning the retention of Precinct Registries for a period of time following elections. Extending the retention period for Precinct Registries is intended to help resolve questions from voters who may have been inactive for some period of time and eventually cancelled as provided by law, but who claim to have voted more recently than records in MESA indicate. Such questions can often be answered by looking at specific Precinct Registries to ensure that credit for voting was given accurately. Retaining Precinct Registries for a longer period of time also provides additional avenues for research on voter participation and other topics. Allowing the Precinct Registries to be scanned and retained digitally for a portion of the retention period will alleviate difficulties that County Election Board offices may have providing secure storage for paper Registries for longer than 24 months.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 7. GENERAL ADMINISTRATION OF THE COUNTY ELECTION BOARD

PART 5. MAINTAINING THE OFFICE

230:10-7-45. Retention of Precinct Registries and affidavits

(a) All Precinct Registries and all used Absentee Voter Affidavits, Voter Assistance Forms and Spoiled Ballot Affidavits shall be retained for 24-60 months after the date of the election. These items shall be stored together in a container bearing the date of the election and the date on which they may be destroyed.

(b) All original, paper Precinct Registries shall be retained for 24 months following the date of the election. After 24 months, the County Election Board Secretary is authorized to scan all original Precinct Registries. After scanning the Precinct Registries and verifying that the scanned copies are both legible and complete, the original Precinct Registries may be destroyed and the digital copies shall be retained for the remaining 36 months of the 60-month retention period.

(c) All used ATI Session Logs, Absentee Voter Affidavits, Spoiled Ballot Affidavits, Voter Assistance Forms, and Provisional Ballot Refusal forms shall be retained for 24 months

after the date of the election. These forms may be stored together, organized by precinct, in a container labeled with the election date and the date on which they may be destroyed.

[OAR Docket #17-657; filed 7-14-17]

TITLE 230. STATE ELECTION BOARD
CHAPTER 25. BALLOT PRINTING

[OAR Docket #17-658]

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RULES:

- Subchapter 3. Responsibilities for Ballot Printing
230:25-3-3. County Election Board responsibilities for printing ballots [AMENDED]
Subchapter 7. Competitive Bidding Process for Ballot Printing
230:25-7-7. Notification of State Election Board [NEW]

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The rules promulgated by the Secretary of the State Election Board are intended to provide both consistent interpretation of various requirements of federal and state election laws and to establish uniform procedures to be observed by all County Election Boards in Oklahoma in the implementation of such election laws. These rules are the foundation of Oklahoma's one-of-a-kind election system.

The rules amended in this Chapter are needed to update certain County Election Board procedures concerning ballot printing.

Since implementing the first statewide voting device system in 1992, the State Election Board has included races for county officers and county questions on the state ballot as a courtesy to the counties and for the convenience of voters. That courtesy extended to printing ballots for Runoff Primary Elections for county officer races through the state's contract ballot printer even when there was no Runoff for a federal, state, or district office in the county.

The amendments assign the responsibility and expense of printing Primary and Runoff Primary Election ballots for county officer races and county questions to the county when there is no federal, state, or state district election in the county on the same election day.

The change to long-standing custom was implemented in 2016 to accommodate State Election Board budget reductions required by declared revenue failures in the second half of FY 2016, and to reduce costs in FY2017.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 3. RESPONSIBILITIES FOR BALLOT PRINTING

230:25-3-3. County Election Board responsibilities for printing ballots

(a) The County Election Board shall be responsible for printing ballots, at county expense, for Primary and Runoff Primary Elections for county officers if there is no federal or state office, state legislative office, district office, or nonpartisan judicial office on the ballot in the county on the same election date. The County Election Board shall be responsible for printing ballots, at county expense, for county questions. A county question may be printed on the state ballot for Primary and Runoff Primary Elections if there is a state ballot and if there is adequate space available on the state ballot for the county question. County questions shall not be printed on the state ballot for the biennial General Election.

(b) County Election Board responsibilities for printing ballots for county, municipal, school district or other local elections shall include, but shall not be limited to, the following items:

(1) arranging for the necessary bid process to occur. See 230:25-7-1. Entering all office, candidate, and proposition or question text into MESA.

(2) receiving, proofreading, and approving ballot proofs provided by the State Election Board before printing begins. See 230:25-17-2.

(b-c) In the case of municipal elections, school district elections and other local elections the County Election Board shall be responsible for paying the ballot printing bill from the proceeds of the reimbursement for post-election expenses from the entity for which the election was conducted.

(e-d) In the case of a multi-county election, ballots for each affected county in the election shall be printed by the printer holding the affected county's ballot printing contract. Ballots for the control (parent) county shall be printed by the printer holding its ballot printing contract. Each affected County Election Board shall receive the bill for ballot printing from its own ballot printer and shall include this expense in the Record of Expense submitted to the control (parent) County Election Board following the election.

SUBCHAPTER 7. COMPETITIVE BIDDING PROCESS FOR BALLOT PRINTING

230:25-7-7. Notification of State Election Board

The County Election Board Secretary shall notify the Ballot Generation Services division of the State Election Board

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when a new county ballot printing contract is awarded. The notification shall identify the commercial printer that received the contract and shall include contact information for the printer.

[OAR Docket #17-658; filed 7-14-17]

TITLE 230. STATE ELECTION BOARD CHAPTER 30. ABSENTEE VOTING

[OAR Docket #17-659]

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RULES:

- Subchapter 5. Applications for Absentee Ballots
230:30-5-8.2. Validity of applications for absentee ballots for all elections [AMENDED]
230:30-5-9. Rejected applications [AMENDED]
230:30-5-13. Application for absentee ballots may be submitted electronically [AMENDED]
Subchapter 7. Absentee Voting Boards
230:30-7-6.1. Training for Absentee Voting Board members [AMENDED]
230:30-7-6.2. Designation of in-person absentee polling place [AMENDED]
230:30-7-7. Supplies for Absentee Voting Board [AMENDED]
Subchapter 9. Processing Applications
230:30-9-1. Applications ~~processed on day received~~ entered in MESA when received [AMENDED]
230:30-9-5. Processing applications from uniformed services and overseas voters [AMENDED]
230:30-9-5.1. Transmitting absentee ballots to uniformed services and overseas voters by fax [REVOKED]
230:30-9-5.2. ~~Transmitting Online absentee ballots ballot delivery to uniformed services voters and overseas voters by electronic mail~~ [AMENDED]
230:30-9-5.3. Compliance with federal MOVE Act deadline mandatory [NEW]
230:30-9-7.1. Uniformed services and overseas voters in restricted records status [NEW]
230:30-9-9. Obtaining absentee ballot applications submitted online [NEW]
Subchapter 11. Receiving and Processing Absentee Ballots
230:30-11-1.1. Receiving hand-delivered absentee ballots from voters [NEW]
230:30-11-5. Last time for receiving ballots [AMENDED]
230:30-11-7. Undeliverable absentee ballots returned by postal service to County Election Board [AMENDED]

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n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The rules amended in this Chapter are needed to update certain County Election Board procedures concerning the administration of absentee voting. Several new rules are added to establish rules and procedures concerning new absentee voting options such as applications submitted online, ballots delivered online to uniformed services and overseas voters, voted absentee ballots delivered in person to the County Election Board by some voters, and to update references to new or substantially revised publications, forms, and other materials.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 5. APPLICATIONS FOR ABSENTEE BALLOTS

230:30-5-8.2. Validity of applications for absentee ballots for all elections

(a) Absent voters, nursing home voters, physically incapacitated voters, voters charged with the care of physically incapacitated persons, and veteran center voters may apply for absentee ballots for all elections in which they are eligible to vote. Such applications for all elections shall be considered valid through December 31 of the calendar year in which they are received. Absentee voters who apply for all elections shall be required to submit a new application for absentee ballots for each calendar year.

(b) Applications for absentee ballots received from uniformed services voters and overseas voters shall be considered applications for all elections in which the voter is eligible to vote. Applications for absentee ballots received from uniformed services voters and overseas voters shall be considered valid through the next two regularly scheduled federal General Elections. For example, an application for absentee ballots from a uniformed services or overseas voter received in February, 2004, shall be considered valid through the federal General Election in November, 2006. An application received in December, 2004, shall be considered valid through the federal General Election in November, 2008.

(c) If absentee ballots mailed to the address provided by the voter on an application for absentee ballots that requests ballots for all elections are returned undelivered to the County Election Board by the postal service, the Secretary of the County Election Board shall ~~be authorized to cancel/deactivate the application in MESA. The application information may be deleted from MESA, as instructed in 230:30-11-7. The Secretary shall indicate on the outside of the returned absentee ballot mailing envelope that the application is cancelled as a result of the returned, undelivered ballots. The returned envelope shall be retained for 24 months. (See 230:30-11-7(a) for instructions to retain such undeliverable absentee ballots.)~~

230:30-5-9. Rejected applications

(a) **Reasons for rejection.** An application for absentee ballots shall be rejected if any one of the following conditions, or combination of the following conditions, occurs.

- (1) The applicant is not a registered voter in the county.
- (2) The application is not properly signed, except as provided in (d) of this Section.
- (3) The applicant is not eligible to vote in the election for which ballots are requested.
- (4) The application does not contain sufficient information to determine which ballots to send.
- (5) The application is received later than 5 p.m. on Wednesday preceding the election.
- (6) The application is illegible.

(b) **Processing rejected application.** In the event that a voter's application for absentee ballots must be rejected, the application shall be entered into MESA and the reason for the rejection shall be noted on the screen. MESA will create a Notice of Rejection of Absentee Ballot Application for the voter which will detail the reason the application was rejected. If an Application for In-Person Absentee Ballots has been rejected, the application shall not be entered into ~~OEMS~~ MESA and, therefore, no Notice of Rejection will be created.

(c) **Form of rejection.** In the event that a voter's application for regular mail absentee ballots must be rejected for any reason, the Secretary shall print the Notice of Rejection of Absentee Ballot Application created by MESA and mail it to the voter. [26:14-133] If there is sufficient time for the voter to return a corrected application, a new application form shall be enclosed with the notice. In the event that an emergency incapacitated voter's application for absentee ballots must be rejected, the Secretary shall so advise the voter's agent and shall provide the agent with a Notice of Rejection of Absentee Ballot Application form, which shall be completed by the Secretary.

(d) **Exception for applications received by electronic mail from uniformed services and overseas voters to signature requirements for some absentee ballot applications.** Generally, absentee ballot applications must be signed by the applicant. However, some exceptions to this requirement shall be granted to some applicants who submit their applications through certain electronic methods.

- (1) Applications submitted by uniformed services and overseas voters on the Federal Post Card Application that are received from uniformed services and overseas voters by electronic mail shall ~~may~~ be accepted and processed without a physical, hand-written signature.
- (2) Applications submitted with the online absentee ballot application on the State Election Board website may be signed digitally and a physical, handwritten signature is not required.

230:30-5-13. Application for absentee ballots may be submitted electronically

(a) Any registered voter may apply for absentee ballots for any election for which he or she is eligible and may submit the application to the County Election Board in the county of his or her residence by United States mail, by electronic mail, by fax,

or by other means of electronic communication designated by the Secretary of the State Election Board as provided by Title 26 O.S. 2014 Supp., Section 14-105.

(b) The Secretary of the State Election Board may establish an online absentee ballot application tool for the purpose of applying for and submitting applications for absentee ballots. Such an online application tool shall meet the following criteria.

- (1) The online absentee ballot application tool shall require the applicant to provide the following information, which is necessary to confirm an applicant's status as a registered voter and to determine that the voter is eligible to receive ballots for an election, and to determine where the absentee ballots should be sent.
 - (A) Voter's name
 - (B) Date of birth
 - (C) Address of voter registration
 - (D) Address ballots should be sent
 - (E) Other information deemed necessary by the Secretary of the State Election Board

(2) The application tool ~~should~~ shall allow the voter to designate whether the application is for a single election or for all elections in which the voter may be eligible in a calendar year or for any other term permitted by law.

(3) The application tool ~~should~~ shall allow an applicant to specify, if applicable, that he or she is physically incapacitated or confined to a nursing home.

(4) The application tool should ~~allow~~ direct an applicant to specify, if applicable, that he or she who is a member of one of the uniformed services of the United States or an overseas citizen and therefore covered by the federal Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) to the Federal Voting Assistance Program website to complete a federal post-card application (FPCA) form.

(5) The online absentee ballot application tool should prepare a letter or form containing all the required information and specifications named in (1) through (3) of this subsection.

(6) ~~The online absentee ballot application tool shall allow the applicant to print, sign, and mail, email, fax, or personally deliver the application to the State Election Board or to the appropriate County Election Board.~~

(7) The online absentee ballot application tool may allow the applicant to sign the application digitally and submit it electronically. ~~The completed application must be transmitted directly to the State Election Board or to the appropriate County Election Board by mail, email, or fax through the online absentee ballot application tool.~~

(8-7) ~~The website landing page for the online absentee ballot application tool shall display information about the statutory deadline for absentee applications preceding an election. The application tool must clearly state that the application must be received at the State Election Board or the appropriate County Election Board by the statutory deadline for an election in order for it to be processed and ballots issued for that election.~~

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~~(9-8) Other~~—The online application tool also shall meet any other criteria deemed necessary by the Secretary to ensure security, ~~and~~ privacy of voter information, ~~or~~ and to prevent fraudulent use.

(c) Any organization, entity, or individual interested in promoting voter participation through absentee voting ~~will be able~~ may link to the online absentee ballot application tool on the State Election Board's website.

(d) No online ballot application shall be accepted by the State Election Board or any County Election Board from any organization, entity or individual that creates its own absentee ballot application tool unless:

(1) The information described in (a) of this Section is required by its application tool;

(2) It provides to applicants the ability to sign the application digitally;

(3) It produces a written ballot request; and

(4) The written request is transmitted by facsimile or electronic email by the applicant to the State Election Board or the appropriate County Election Board.

SUBCHAPTER 7. ABSENTEE VOTING BOARDS

230:30-7-6.1. Training for Absentee Voting Board members

(a) The Secretary of the County Election Board shall train the Absentee Voting Board members in their duties before the Absentee Voting Board makes its first visit to a nursing home or veteran center or first provides service to in-person absentee voters. The State Election Board provides the County Election Board Secretary with instructions for conducting training for both nursing home and in-person Absentee Voting Board members.

(1) Absentee Voting Board Procedures for Nursing home—Home Absentee Voting Board. Training for members of a nursing home Absentee Voting Board shall include a review of ~~the blue Instructions for Absentee Voting Board sheet~~ this publication. The Secretary also shall review the specific types of ballots and the potential combinations of ballots, the contents of the pink absentee voter packet, and the use of the Absentee Voting Board Record, the Spoiled Ballot Affidavit, and the ~~Precinct Problem Solver section of Election Day Reference and Problem Solver in the Precinct Official Notebook.~~

(2) Absentee Voting Board Procedures for In-person Absentee Voting Board. Training for members of an in-person Absentee Voting Board shall include a review of ~~the green Instructions for Absentee Voting Board for In Person Absentee Ballots sheet~~ this publication. The Secretary shall provide instructions for ~~a computer with access to the Internet and the using MESA software to~~ verify a voter's registration information and registration status and shall review the specific types of ballots and potential combinations of ballots. The Secretary also shall review the uses of the Spoiled Ballot Affidavit, the Voter Assistance Form, the Ballot Accounting Forms, ~~located in the Precinct Problem Solver section of and the Election~~

~~Day Reference and Problem Solver in the Precinct Official Notebook. The Secretary also shall provide instructions on the use of the voting device, the procedures for opening and closing the in person absentee polling place and the disposition of the election results storage device, ballots and other items. If the in person Absentee Voting Board uses a computer with access to the Internet and the MESA software, the Secretary shall instruct the Board members to obtain updated voter registration information from inactive voters.~~

(b) Following the initial training for nursing home and in-person Absentee Voting Board members, the Secretary shall provide a review of the Absentee Voting Board's duties and procedures, if necessary, before ~~it serves~~ they serve in any election.

230:30-7-6.2. Designation of in-person absentee polling place

(a) The Secretary of the County Election Board shall designate the location of the in-person absentee polling place. The in-person absentee polling place shall not be required to be located within the physical confines of the County Election Board office. However, it shall be located as near the County Election Board office as is practicable. The in-person Absentee Voting Board members must have access either to the Central File or to a computer with access to the Internet and the MESA software to verify that applicants for in-person absentee ballots are registered voters. The in-person absentee polling place shall be subject to the same requirements for accessibility as a regular precinct polling place. Only one in-person absentee polling place shall be designated for an election, except that the Secretary of a County Election Board in a county with 100,000 or more registered voters may designate more than one in-person absentee polling place as outlined in (b) of this Section. More than one in-person Absentee Voting Board may be on duty at ~~the~~ an in-person absentee polling place.

(b) The Secretary of the County Election Board in any county with 100,000 or more registered voters may, with the approval of the Secretary of the State Election Board, designate additional in-person absentee polling places within the county. The Secretary of the County Election Board in such county shall submit a written request for the approval of the State Election Board Secretary for one or more additional in-person absentee polling places for one or more specific election dates.

230:30-7-7. Supplies for Absentee Voting Board

(a) **Supplies for nursing home Absentee Voting Board.** The Secretary shall assemble the necessary supplies for the nursing home Absentee Voting Board. Necessary supplies include, but are not limited to, a pink Incapacitated Voter Packet with ballots for each voter; a ballot box; ~~ink~~ black ballpoint pens; ballot markers; the Absentee Voting Board Additional Ballot Accounting Form; the Absentee Voting Board Record; ~~Instructions for Absentee Voting Board; Absentee Voting Board Procedures for Nursing Home Absentee Voting Board; a~~

copy of the Precinct Official Notebook; Oklahoma Voter Registration Application forms; Address Information Requested handouts; Request to Cancel Registration of Deceased Voter forms; and an adequate number of extra ballots for each type of ballot to replace ballots that may be spoiled by the voter.

(b) **Supplies for in-person Absentee Voting Board.** The Secretary shall assemble the supplies necessary for the Absentee Voting Board to provide service to in-person absentee voters. These supplies include, but are not limited to, ~~green Applications—Application~~ for In-Person Absentee Ballots forms, ~~copies of Instructions for Voting by In-Person Absentee Ballot~~; ballots; secrecy folders; a voting device; plastic seals for the election results storage medium compartment cover; one voting device key envelope; a padded bag or an envelope for the election results storage medium; an Envelope for Tally Report; ballot transfer boxes; a long white State Election Board seal for each ballot transfer box; black ballpoint pens; ~~the In-Person Absentee Ballot Accounting Form~~; a quantity of Oklahoma Voter Registration Application forms; Address Information Requested handouts; a copy of Absentee Voting Board Procedures for In-Person Absentee Voting Board; and a copy of the Precinct Official Notebook.

SUBCHAPTER 9. PROCESSING APPLICATIONS

230:30-9-1. Applications ~~processed on day received~~ entered in MESA when received

~~Each application for absentee ballots shall be processed~~ Absentee ballot applications shall be entered in MESA on the same day it is received. In the event the volume of absentee applications being received makes it impossible or impractical to enter all such applications on the day received, applications shall be entered within 48 hours of receipt. In all cases except for nursing homes—home and emergency incapacitated voters, ballots shall be mailed or electronically transmitted—provided electronically, as provided in 230:30-9-5.1 and 230:30-9-5.2, to the voter the same day the applications are entered in MESA if absentee ballots are available at the time the application is received. If absentee ballots have not yet been received when an application is received and entered, the ballots shall be mailed or provided electronically as soon as possible after the absentee ballots are received from the printer.

230:30-9-5. Processing applications from uniformed services and overseas voters

(a) **Applications from uniformed services and overseas voters.** Applications for absentee ballots received from uniformed services voters and overseas voters are processed differently than applications from other absentee voters. Uniformed services voters and overseas voters are not required to be registered to vote in the county in order to apply to vote by absentee ballot. However, when an application for absentee ballots is received from a person who is not a registered voter in the county, information from the Federal Post Card Application form will be used to register that person in the county provided that the applicant's residence address is located within

the county. All applications received from uniformed services voters and overseas voters are considered to be applications for all elections in which the voter is eligible to vote, except as outlined in (c) of this Section. Applications from these voters shall be processed according to the procedures outlined in (b) of this Section.

(b) **Applications received by mail, by fax, or by electronic mail.** Uniformed services voters and overseas voters may submit applications for absentee ballots, usually the Federal Post Card Application (FPCA) form, to the County Election Board by mail, by fax, or by electronic mail. Upon receipt of an application for absentee ballots from a uniformed services or overseas voter, the Secretary of the County Election Board shall cause the application to be processed according to the following procedure.

(1) If the application was received by electronic mail, take these steps.

(A) Print a copy of the electronic mail message and a copy of the attached FPCA form.

(B) Reply to the electronic mail message to notify the voter that the application was received.

(2) Indicate on the application form the date on which it was received at the County Election Board office.

(3) Indicate on the application form whether it was received by mail, by fax, or by electronic mail.

(4) Enter the application information into MESA.

(A) If the voter's address is not located within the county, the application information shall not be entered. The printed application form shall be forwarded immediately to the correct County Election Board. The date the application was received in the first county shall be the received date for the application.

(B) If the voter's address is located within the county, but the voter is not currently registered in the county, follow the appropriate software instructions to enter the application information in MESA to create both a new voter registration record and an absentee ballot application record for this individual.

(C) If the voter's address is located within the county and the voter is a currently registered voter in the county, follow the appropriate software instructions to enter the application information in MESA to create an absentee ballot application record.

(5) If the voter provided an expiration date ~~for the absentee ballot application in Section 6, Additional Information, or stated anywhere~~ on the FPCA that ballots are requested for only a specific election, enter it—the expiration date or specific election date in the appropriate field in MESA. If the voter did not provide an expiration date or a specific expiration—election date, the system will default to the appropriate date that includes the next two federal general elections.

(6) ~~Designate the elections for which the voter will receive ballots. If the voter requested that ballots be transmitted by electronic mail, check "e-mail." This voter will receive ballots for state and federal elections by electronic mail and ballots for all other elections by regular mail.~~

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~~(See 230:30-9-5.2 for additional information about requests to transmit ballots by electronic mail.) Determine the voter's preferred method of receiving absentee ballots.~~

~~(A) If the voter ranks "Email/Online" or "Mail" as first choice, check the "Mail" or "Online" box in MESA.~~

~~(B) If a voter ranks "Fax" as first choice, look at the voter's second choice and check the appropriate box in MESA. (Oklahoma no longer delivers absentee ballots by fax to uniformed services and overseas voters.)~~

(7) Write on the application form the voter identification number assigned by MESA.

(8) If ballots are available, immediately follow the appropriate steps.

~~(A) If the voter requested that ballots be mailed prefers to receive absentee ballots by mail, prepare a uniformed services/overseas voter packet with the correct ballots for the voter and mail it.~~

~~(B) If the voter requested that a ballot for a state or federal election also be transmitted by fax, follow the instructions in 230:30-9-5.1 to prepare and transmit the appropriate state or federal ballot and balloting materials.~~

~~(C) If the voter requested that ballots be transmitted by electronic mail prefers to receive absentee ballots online, follow the instructions in see 230:30-9-5.2 to prepare and transmit the appropriate state or federal ballot and balloting materials.~~

(9) If the absentee ballot application information was used to create a new voter registration record for the voter, ~~follow the appropriate software instructions to print a file copy of the absentee ballot application information entered in from MESA. File this the copy in the appropriate absentee application file. File the voter's original absentee ballot application form FPCA in the Central File. See 230:15-9-18(b).~~

(c) **Validity of applications received from uniformed services and overseas voters.** Applications for absentee ballots from uniformed services voters and overseas voters shall be considered valid through the next two federal General Elections as outlined in 230:30-5-8.2, unless the voter indicates that the request is for a specific election date or an earlier expiration date on the FPCA form. ~~In the event that a uniformed services or an overseas voter requests that ballots be transmitted by electronic mail, ballots shall be provided by electronic mail for state and federal elections only.~~ If ballots mailed to a uniformed services or overseas voter's address are returned undelivered to the County Election Board, the County Election Board Secretary shall be authorized to consider the application invalid and shall be authorized to delete the application from MESA. The Secretary shall indicate on the outside of the returned absentee ballot outer envelope that the voter's absentee ballot application has been cancelled as a result of the returned, undelivered ballots. The returned envelope shall be retained for 24 months.

(d) **Updating existing FPCA.** Upon receipt of an FPCA or other communication from a uniformed services voter or

an overseas voter that includes an electronic mail address to be used for absentee voting purposes, the Secretary shall determine whether the voter has a currently valid application on file. If so, the Secretary shall update the voter's application information in MESA and shall remove the existing application form from the file and replace it with the newly received form. [26:14-118(B)] The Secretary shall note on the removed form the reason for the removal and shall retain it for 24 months.

230:30-9-5.1. Transmitting absentee ballots to uniformed services and overseas voters by fax [REVOKED]

~~(a) The Secretary of the County Election Board is authorized to transmit an absentee ballot for federal and statewide offices to a uniformed services voter or an overseas voter by facsimile device (fax) only under the following circumstances:~~

~~(1) The voter submits an application for absentee ballots and specifically requests that the Secretary transmit by fax a ballot for federal offices to the voter.~~

~~(2) The application is received by the County Election Board Secretary in the county of the voter's residence no later than 5 p.m. Wednesday preceding the election.~~

~~(3) The voter provides a fax number for receiving the ballot and related materials.~~

~~(b) The Secretary shall process the application for absentee ballots according to the procedure outlined in 230:30-9-5 and shall prepare and mail regular absentee ballots to the voter. The Secretary then shall prepare the following materials and immediately shall transmit them by fax to the voter:~~

~~(1) Fax cover sheet and letter to voter~~

~~(2) Instructions for Voting by Write in Absentee Ballot~~

~~(3) A state write in absentee ballot for the election~~

~~(A) Determine the appropriate state write in absentee ballot for the voter.~~

~~(B) Verify that the county name is stamped on both the stub and the ballot and that the stub is correctly numbered.~~

~~(C) Detach the ballot. Leave the numbered stub in the book of ballots.~~

~~(D) Enter the appropriate Congressional District number in the space provided on the ballot.~~

~~(4) A list of the candidates for federal and statewide offices in the election~~

~~(5) Instructions for Faxing Voted Ballot to State Election Board~~

~~(6) A return fax cover sheet~~

~~(e) After transmitting the materials described in (b) of this Section, the Secretary shall attach the original cover sheet to the application form, and then shall file the application in the appropriate absentee voting materials file. Ballots for any future elections not involving federal and statewide offices for which the voter is eligible shall be mailed to the voter at the appropriate time according to the procedure outlined in 230:30-9-5(a).~~

230:30-9-5.2. Transmitting Online absentee ballots ballot delivery to uniformed services voters and overseas voters by electronic mail

(a) ~~The Secretary of the County Election Board is authorized to transmit absentee ballots and related balloting materials by electronic mail to uniformed services and overseas voters for any election under the following specific circumstances. [26:14-118(B)]~~

~~(1) The voter has provided a residence address located within the county and the voter is eligible to vote in the election.~~

~~(2) The voter has a valid Federal Post Card Application (FPCA) form, or other valid application as described in 230:30-5-1.1, on file with the County Election Board and is eligible to receive an absentee ballot. [26:14-118(B)]~~

~~(3) The voter provides an electronic mail address. [26:14-118(B)]~~

~~(4) The voter specifically requests that ballots and balloting materials be transmitted by electronic mail. [26:14-118]Uniformed services voters, overseas voters, and the eligible spouses and dependents of both groups, may request online delivery of their absentee ballots. The FPCA provides a place for the voter to indicate his or her preferred ballot delivery method. Voters who request online delivery are required to provide a valid email address and the last four digits of their Social Security numbers.~~

~~(1) Voters who prefer online ballot delivery but who do not include the last four digits of their Social Security numbers will receive a notice by email that their request for online delivery cannot be honored until they provide the last four digits of their Social Security numbers. Absentee ballots will be mailed to these voters instead.~~

~~(2) Voters who request online delivery but whose provided email address prove to be incomplete or invalid will receive absentee ballots by mail.~~

(b) ~~Upon receipt of an FPCA that includes a request for ballots to be transmitted by electronic mail, the Secretary shall process the application as outlined in 230:30-9-5. However, instead of preparing ballots to be mailed or faxed as described in that Section, the Secretary shall cause the following procedures to be observed:~~

~~(1) The Secretary shall determine the correct absentee ballot style for the voter.~~

~~(2) The Secretary shall prepare an electronic mail message to the voter and shall attach each of the following electronic documents to the message.~~

~~(A) The PDF of the appropriate ballot style for the voter~~

~~(B) The PDF of the Affidavit~~

~~(C) The PDF of the Instructions for Returning Voted Ballot to County Election Board.~~

~~(3) The Secretary shall enter manually the date the ballot is transmitted by electronic mail in the voter's application information in MESA. This step must be completed prior to requesting absentee mailing labels to prevent a label from formatting for this voter.~~

~~(4) The Secretary shall complete the Ballot Accounting Form for Electronic Mail Ballots. When an application for absentee ballots from a uniformed services or overseas voter is entered in MESA with "Online" delivery selected, the voter will receive an e-mail from the County Election Board generated by the Oklahoma Military and Overseas Ballots Online system (OMOBO) confirming receipt of the application and providing information about accessing ballots online. If more than one e-mail address has been entered in MESA for a uniformed services or overseas voter, all system-generated e-mails are sent to all recorded e-mail addresses.~~

~~(1) Application received and ballots are immediately available. This e-mail notifies the voter that his or her new application for absentee ballots has been received and processed and that ballots are available for a current election. This e-mail contains a hyperlink to the OMOBO system login page. The e-mail does not contain a ballot.~~

~~(2) Application received but ballots are not immediately available. This e-mail notifies the voter that the application for absentee ballots has been received and processed and that the voter will receive another e-mail when ballots are available for an election.~~

~~(3) Ballots are available. This e-mail notifies a voter with a current application on file ballots are available for an election. The e-mail contains a hyperlink to the OMOBO login page. The e-mail does not contain a ballot.~~

(c) ~~In the event that an e-mail sent to a uniformed services or overseas voter cannot be delivered ("bounces"), the OMOBO system will mark the e-mail address "Undeliverable" in MESA. If more than one e-mail address has been entered in MESA, emails will continue to be sent to the other address. In the event that all e-mail addresses entered in MESA for a voter are marked "Undeliverable," the voter's ballot delivery method will be changed automatically to "Mail" and mailing labels will be created for the voter. The mailing labels will print the next time County Election Board personnel generate and print absentee mailing labels for uniformed services and overseas voters. County Election Board personnel shall monitor the E-mail Activity Log in MESA on a regular basis from the first time "ballots available" e-mails are sent for an election through the day of the election. Upon finding a bounced e-mail listed on the E-mail Activity Log, County Election Board personnel immediately shall verify that the e-mail address in MESA was entered correctly.~~

~~(1) If an error is found, correct the e-mail address, uncheck the "Undeliverable" box beside the address, and save the updated application. If the corrected address is the only e-mail address for that voter, a new "ballots available" e-mail will be generated and sent by OMOBO. (If another valid e-mail address is available in MESA, a new e-mail will not be sent at this time.)~~

~~(2) If the e-mail address in MESA appears to be correct, request and print absentee ballot mailing labels, prepare a ballot packet, and mail the absentee ballots.~~

~~(d) The e-mails sent to uniformed services and overseas voters are generated automatically by the OMOBO system. When the State Election Board staff finalizes the electronic versions~~

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of the ballots for an election, a process is initiated for each county that generates and sends the "ballots available" e-mails to the eligible voters. A message appears in the Election Control Panel window in MESA to notify the County Election Board that OMOBO ballots are available and e-mails have been sent. Absentee application information in MESA syncs with the OMOBO system every six hours and sends e-mails to new applicants through election day.

230:30-9-5.3. Compliance with federal MOVE Act deadline mandatory

(a) Both Oklahoma law and the federal Military and Overseas Voter Empowerment Act (MOVE Act) require absentee ballots to be mailed or made available online not less than 45 days preceding an election involving federal offices. The law also requires that new absentee ballot applications received between 45 days preceding an election involving federal offices and the deadline for absentee ballot applications (5 p.m. Wednesday preceding the election) shall be processed and ballots mailed or "ballots available" e-mails sent within 48 hours of the receipt of the application.

(b) The County Election Board Secretary shall be responsible for confirming that all uniformed services and overseas voters with an active absentee ballot application in MESA on the date of the MOVE Act deadline have either received an e-mail notification that ballots are available online or that ballots have been mailed. The Secretary shall, before close of business on the date of the MOVE Act deadline, take the following steps to confirm compliance with the 45-day deadline.

(1) Verify that all Federal Post Card Applications received by mail or by e-mail have been entered in MESA. Check the inbox for all County Election Board e-mail accounts that may be used by uniformed services or overseas voters. Check the fax machine.

(2) Request and print both the E-mail Activity Log and the Election Date Ballot List reports in MESA to verify that every voter who should have received an e-mail notice that ballots are available online is listed. If the E-mail Activity Log lists any bounced e-mails, determine whether an e-mail was successfully delivered to an alternate e-mail address or whether mailing labels already have been created and ballots mailed.

(3) Calculate ballots and ballot labels for uniformed services and overseas voters. If the calculation reports any unprocessed ballots or labels, immediately follow the appropriate MESA instructions to generate and print the labels. Prepare the ballot packets and deliver them to the local post office as soon as possible.

(c) On the next business day following the date of the MOVE Act deadline, request and print the MOVE Act Compliance Report and compare it to the Election Date Ballot List report. Confirm that all uniformed services and overseas voters with active applications in MESA received either e-mail notification or a ballot by mail. Request and print the MOVE Act Deadline Compliance Statistics report and enter by hand the first date absentee ballots were mailed to uniformed services and overseas voters. Sign and date the report and fax or e-mail it to the State Election Board no later than 12 p.m.

(d) State law requires adherence to the MOVE Act deadline for regular or special elections for state offices and state legislative offices.

230:30-9-7.1. Uniformed services and overseas voters in restricted records status

Uniformed services voters, their spouses, and their eligible dependents may apply to the Secretary of the County Election Board in the county of their voting residence for restricted records status. See 230:15-9-25. Uniformed services voters in restricted records status may vote only by mail absentee ballot. They are not eligible for online delivery of their absentee ballots through the Oklahoma Military and Overseas Ballots Online system. The elections in which these voters are eligible to vote and the absentee ballots they are eligible to receive shall be identified and mailing labels must be prepared manually. Voter history credit shall be maintained manually. When MOVE Act compliance, as outlined in 230:30-9-5.2, is required for an election, ballots must be mailed to these voters no later than 45 days preceding the election. All information about and all documentation of uniformed services voters in restricted records is removed from MESA and from all public files. All such documentation shall be retained in a locked file cabinet or other secure location in the County Election Board office. No information about uniformed services voters in restricted records status shall be released to any unauthorized person without a court order.

230:30-9-9. Obtaining absentee ballot applications submitted online

(a) The online absentee application tool on the State Election Board website delivers the submitted applications to the appropriate County Election Board through MESA. These applications submitted online must be printed and entered into MESA like any other absentee ballot application. Absentee ballot applications may be submitted online at any time. The Secretary of the County Election Board shall be responsible for printing online absentee ballot applications on a daily basis and entering them into MESA as required by 230:30-9-1.

(b) The online absentee application tool formats an Oklahoma Absentee Ballot Application form and populates it with the information entered by an applicant. Based upon the information entered by the applicant, the forms produced by the system may be printed by type:

- (1) CI B voter charged with the care of an incapacitated person;
- (2) PI B physically incapacitated voter;
- (3) NV B nursing home/veteran center voter; and
- (4) ST B standard (all other voters).

(c) Reports are available both at the County Election Board and the State Election Board to allow monitoring of applications submitted through the online absentee application tool. You must request and examine these reports daily to be sure that all applications received are being printed and processed in a timely manner.

(1) The Online Absentee Application Statistics report lists by type the number of absentee ballot applications submitted to the county in a specified date range.

(2) The Online Absentee Application Statistics Log report lists information about each application submitted online to the county. It may be sorted and printed by voter's name or by application type.

(d) The online absentee ballot application tool directs uniformed services and overseas voters to the Federal Voting Assistance Program website to complete and submit a Federal Post Card Application. However, a uniformed services or overseas voter is not prevented from using the application tool on the State Election Board website. In the event an applicant enters an APO or FPO address or an address located outside the United States as the "mail ballots to" address on an application, it should be entered as a uniformed services or overseas application.

SUBCHAPTER 11. RECEIVING AND PROCESSING ABSENTEE BALLOTS

230:30-11-1.1. Receiving hand-delivered absentee ballots from voters

(a) Beginning January 1, 2017, voters who submit standard (no excuse) absentee ballot applications and receive standard (yellow) affidavits are entitled to return their own voted absentee ballots to the County Election Board office in person through the end of regular office hours on the day preceding the election.

(1) The absentee ballot and materials must be sealed inside the Return Envelope provided in the voter's absentee ballot packet. The printed return address label on the envelope must indicate "Type: ST."

(2) The voter must provide proof of identity that meets the same requirements as the proof of identity required during in-person absentee voting and at the precinct polling place on election day. See 230:35-5-58 (a) (2) (A). A voter who does not have or who declines to provide appropriate proof of identity shall be instructed to mail the envelope to the County Election Board.

(3) Verify with the proof of identity document that the person is the voter whose name is on the printed return address label on the Return Envelope.

(4) Write or stamp the received date on the front of the Return Envelope. Note on the front of the envelope that the ballot was delivered in person by the voter.

(5) Record receipt of the absentee ballot in MESA by scanning the barcode on the return address label, by entering the ballot ID number printed on the return address label, or by manually locating the voter's absentee ballot information.

(6) Immediately place the sealed return envelope in the same locked ballot box used to secure absentee ballots returned by mail.

(b) Absentee ballots cannot be hand-delivered to the County Election Board office by a voter who applied as a physically incapacitated voter (PI) or as a caregiver for an incapacitated

person (CI) voter. Absentee ballots cannot be hand-delivered to the County Election Board office by a voter who applied as a uniformed services (US) or overseas voter (OV). Absentee ballots cannot be hand-delivered to the County Election Board office when the office is not open. Any absentee ballot left at the County Election Board office when the office is not open shall be rejected and shall not be counted.

(c) In the event that a voter who submitted a standard application for absentee ballots appears at the County Election Board office to hand-deliver an absentee ballot that is not properly sealed inside the envelope set mailed to the voter with the absentee ballot, the Secretary may provide a set of envelopes B a ballot secrecy envelope, a standard (yellow) affidavit envelope, and a Return Envelope B and a new return address label to the voter. The voter shall be instructed to have the voter's signature on the affidavit envelope notarized and to return the properly sealed envelope set in person or to mail it.

230:30-11-5. Last time for receiving ballots

(a) ~~Absentee ballots returned by regular mail.~~ Regular mail absentee ballots and ~~emergency incapacitated absentee ballots~~ must be received by the Secretary of the County Election Board no later than 7 p.m. on the day of the election. [26:14-104, ~~14-115.1~~] The Secretary shall check his post office box shortly before 7 p.m. to make certain that all eligible ballots are received. The Secretary shall make arrangements with the Postmaster to assure that all absentee ballots received in time will be processed. If a ballot is received after 7 p.m. on election day, the rejection information shall be entered in the voter's application information in MESA. This will cause a Notice of Rejection of Absentee Ballots letter to be created for the voter. This letter shall be mailed to the voter as soon as it is printed possible. [26:14-133]

(b) **Uniformed services and overseas absentee ballots returned by fax.** Absentee ballots returned by fax from uniformed services and overseas must be received by the County Election Board office no later than 7 p.m. on the day of the election. [26:14-104; 26:14-118.1] If a ballot is received by fax after 7 p.m. on election day, the rejection information shall be entered in the voter's application information in MESA. This will cause a Notice of Rejection of Absentee Ballots letter to be created for the voter. This letter shall be mailed to the voter as soon as possible. [26:14-133]

(c) **Emergency incapacitated absentee ballots returned by agent.** Emergency incapacitated absentee ballots returned by the voter's agent must be received by the Secretary of the County Election Board no later than 7 p.m. on the day of the election. [26:14-115.1] If an emergency incapacitated voter's agent arrives at the County Election Board office with the ballot after 7 p.m., the rejection information shall be entered in the voter's application information in MESA. This will cause a Notice of Rejection of Absentee Ballots letter to be created for the voter. This letter shall be mailed to the voter as soon as possible. [26:14-133]

(d) **Standard absentee ballots returned in person by voter.** Standard (no excuse) absentee voters may return their own voted absentee ballots in person to the County Election Board office through the end of the County Election Board's

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posted regular office hours on the day preceding the election.
See 230:30-11-1.1.

230:30-11-7. Undeliverable absentee ballots returned by postal service to County Election Board

(a) In the event that absentee ballots mailed to a voter are returned to the County Election Board by the postal service because they are undeliverable as addressed, County Election Board personnel shall note on the envelope the date the undeliverable ballots were received and shall set them aside in a secure place. Such returned undeliverable absentee ballots shall be retained for 24 months with other absentee voting materials for the election. Do not mail the ballots to another address unless it is provided in writing by the voter in the form of a new application for absentee ballots. If the voter's application includes additional upcoming elections, the application shall be considered cancelled and shall be ~~deleted from deactivated in MESA~~. See 230:30-5-8.2.

(b) When the postal service returns undeliverable absentee ballots to the County Election Board, the Secretary is not required to try to contact the voter to obtain a new or a corrected mailing address. The Secretary may choose to do so, however, if there is sufficient time for such communication before the election, or if the voter has applied for absentee ballots for additional upcoming elections. If the Secretary chooses to contact the voter, the following guidelines should be observed. See (c) of this Section for the suggested contents of a letter to the voter.

(1) If the postal service has provided a forwarding address on the returned mailing envelope, mail a letter to the voter at that address.

(2) If the ballots were not mailed to the voter's residence address, mail a letter to the voter at the residence address or to the mailing address provided on the voter's voter registration application.

(3) If the ballots were mailed to a uniformed services voter or an overseas voter and were returned with a forwarding address, mail a letter to the voter at that address.

(4) If the voter provided an e-mail address on the original application for absentee ballots, send an e-mail to the voter.

(c) Prepare a letter to the voter explaining that the absentee ballots could not be delivered to the voter by the postal service at the address provided on the absentee ballot application form and that ballots cannot be mailed again to that address. Enclose or attach a new application form and ask the voter to fill it out with a new or a corrected mailing address and to return it. Include the deadline for absentee ballot applications for the affected election, or for the next election covered by the original application.

(d) If a voter whose absentee ballots were returned undelivered by the postal service contacts the County Election Board to inquire about the ballots, follow the procedures outlined in 230:30-17-1 through 230:30-17-4 to replace the ballots.

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TITLE 230. STATE ELECTION BOARD CHAPTER 35. ELECTION CONDUCT

[OAR Docket #17-660]

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PERMANENT final adoption

RULES:

Subchapter 3. County Election Board Responsibilities

Part 5. Precinct Official Payroll

230:35-3-31.1. Secretary shall determine mileage for Precinct Officials [REVOKED]

230:35-3-34. Funds for statewide elections [AMENDED]

230:35-3-42. Payment of balance of expenses [AMENDED]

230:35-3-47. Reconciliation of Precinct Official and Absentee Voting Board member compensation [AMENDED]

Part 11. Election Day

230:35-3-75. Precinct procedures in ~~The Manual for Precinct Election Officials - Election Day Reference and Problem Solver~~ section of Precinct Official Notebook [AMENDED]

230:35-3-76. Familiarity with procedure necessary [AMENDED]

Part 13. After the Polls Close

230:35-3-84.1. Determining number of signatures on Provisional Ballot Rosters [AMENDED]

230:35-3-85.1. Election night recounts [AMENDED]

230:35-3-85.3. Removing election results storage device from voting device [AMENDED]

Part 17. Disposition of Materials

230:35-3-99. Disposing of Precinct Registries [AMENDED]

Subchapter 5. Instructions for Precinct Election Officials

Part 1. Precinct Election Board

230:35-5-1. Purpose [AMENDED]

230:35-5-2. Publication of ~~The Manual for Precinct Election Officials - Election Day Reference and Problem Solver~~ [AMENDED]

230:35-5-8. Authority of Inspector [AMENDED]

Part 5. Preparations ~~on~~for Election Day

230:35-5-32. Preparation of voting device [AMENDED]

Part 7. General Guidelines

230:35-5-40. Problems [AMENDED]

Part 15. After the Polls Close

230:35-5-70. Closing the polls [AMENDED]

230:35-5-75.1. Obtaining Detail ~~Report~~ and Tally Report [AMENDED]

230:35-5-75.2. Securing the voting device [AMENDED]

230:35-5-79. Inspector returns to the County Election Board office [AMENDED]

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Some rules amended in this Chapter are needed to update certain County Election Board procedures concerning compensation and mileage for County Election Board members. Other amendments in this Chapter are needed to

update the titles of publications, forms, and reports used by Precinct Officials on election day, to eliminate an obsolete procedure, and to correct a scrivener's error.

Other rules amended in this Chapter are needed to reflect changes in the procedure to report provisional ballots cast in the county and the retention period for Precinct Registries and Detail and Tally Reports.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 3. COUNTY ELECTION BOARD RESPONSIBILITIES

PART 5. PRECINCT OFFICIAL PAYROLL

230:35-3-31.1. Secretary shall determine mileage for Precinct Officials [REVOKED]

~~(a) The Inspector shall be reimbursed for mileage for two round trips from home to the County Election Board office to receive and return election supplies and materials. The Secretary shall determine the total number of miles traveled by all Inspectors and shall include the appropriate number of miles in the Pre Election Expense Claim for the election.~~

~~(b) A Precinct Official or special purpose precinct worker assigned to work at a polling place located ten miles or more from his or her home may be reimbursed for mileage on election day. The Secretary shall determine whether the polling place to which the Precinct Official is assigned is located ten miles or more from the Precinct Official's home. The Secretary may consider not only the straight line distance between the assigned polling place and the Precinct Official's home but also the distance along the most reasonable route likely to be traveled by the Precinct Official to reach the assigned polling place.~~

~~(c) If the Secretary determines that a Precinct Official, or special purpose precinct is entitled to receive mileage as outlined in (b), the amount of such mileage reimbursement shall be included on the Pre Election Expense Claim if a reasonable estimate of the amount can be made when the claim is prepared. Otherwise, it shall be included as an item on the Record of Expense following the election.~~

~~(1) The Inspector assigned to work at a polling place located ten miles or more from his or her home shall receive mileage reimbursement for a one-way trip from home to the polling place on election day. This shall be in addition to the mileage reimbursement specified in (a) of this Section.~~

~~(2) The Judge, Clerk, or a special purpose precinct worker shall receive mileage reimbursement for a round trip from home to the polling place on election day.~~

~~(d) The State Election Board shall maintain the correct mileage rate in MESA.~~

230:35-3-34. Funds for statewide elections

In the event of a statewide election, the Secretary shall submit a Pre-Election Expense Claim form together with a requisition to the County Clerk and shall follow the procedure established in the county to transfer the county's share of Precinct Official ~~and~~ special-purpose precinct worker, ~~and~~ Absentee Voting Board member compensation into the County Election Board Special Depository Account. [26:3-105.1(E)] A separate Pre-Election Expense Claim shall be submitted to the State Election Board for the state's share of Precinct Official, special-purpose precinct worker, and for all Absentee Voting Board member compensation and mileage. [26:3-105.1(E)]

230:35-3-42. Payment of balance of expenses

Within 30 days following submission of the Record of Expense, the Secretary should receive a warrant from the entity to cover the balance of the expenses incurred in the elections. The Secretary shall deposit the warrant in the County Election Board Special Depository Account and disburse funds for the unpaid expenses incurred in the election. [26:3-105.1(D)] In the case of state elections, however, the balance of expenses incurred in the election, including County Election Board member compensation and FICA, shall be paid from the County Election Board's budget account by the County Clerk. Mileage reimbursement for County Election Board members may be paid by the County Election Board from the Special Depository Account or by the County Clerk from a County Election Board budget account. In county elections, all unpaid expenses shall be paid from the County Election Board's budget account by the County Clerk.

230:35-3-47. Reconciliation of Precinct Official and Absentee Voting Board member compensation

Upon receipt of the Record of Expense, the State Election Board shall determine whether there was an overpayment or an underpayment in the amount pre-paid by the State Election Board for Precinct Official, special-purpose precinct worker, and Absentee Voting Board compensation and mileage. If there was either an overpayment or an underpayment of a Pre-Election Expense Claim or a Record of Expense paid by the State Election Board, an adjustment or other provisions will be made. [26:3-105.1(E)]

PART 11. ELECTION DAY

230:35-3-75. Precinct procedures in The Manual for Precinct Election Officials Election Day Reference and Problem Solver section of Precinct Official Notebook

Procedures for conduct of elections at the precinct level are contained in The Manual for Precinct Election Officials the Election Day Reference and Problem Solver section of the Precinct Official Notebook (Subchapter 5 of this Chapter).

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Every Inspector, Judge and Clerk is required to observe these procedures.

230:35-3-76. Familiarity with procedure necessary

The Secretary and Assistant Secretary or Chief Clerk of the County Election Board shall be thoroughly familiar with the procedures outlined in ~~The Manual for Precinct Election Officials~~ the Election Day Reference and Problem Solver section of the Precinct Official Notebook (Subchapter 5 of this Chapter).

PART 13. AFTER THE POLLS CLOSE

230:35-3-84.1. Determining number of signatures on Provisional Ballot Rosters

The number of signatures on the Provisional Ballot Rosters from each precinct in the county shall be determined by the Secretary of the County Election Board on election night. The total number of signatures on Provisional Ballot Rosters may be made public, but no additional information concerning provisional ballots shall be released prior to 1 p.m. on Friday following the election.

- (1) Count the signatures on each page of the Provisional Ballot Roster for a precinct and record the total number of signatures for the precinct on the Provisional Ballot Precinct Log. If there were no provisional ballots cast in a precinct, enter a zero on the Log.
- (2) When all precinct returns have been received and canvassed, determine the total number of provisional ballots cast in the county by adding the precinct totals together. Enter the total number of signatures in the space provided on the Provisional Ballot Precinct Log.
- (3) ~~Fax or e-mail a copy of the Provisional Ballot Precinct Log to the State Election Board.~~ Enter the total number of signatures in the Election Night Status window in MESA.
- (4) If this is a multi-county school or municipal election and yours is an affected county, fax or e-mail a copy of the Provisional Ballot Precinct Log to the parent County Election Board.
- (5) Make a copy of the Provisional Ballot Precinct Log available for public inspection in the County Election Board office. Copies may be distributed to any interested party.

230:35-3-85.1. Election night recounts

(a) **Precinct ballots.** Election night recounts are allowed only under the following circumstances.—~~Precinct Officials failed to remove and count ballots from the emergency compartment before obtaining the Totals Printout.~~

- (1) Precinct Officials failed to remove and count ballots in the emergency compartment of the ballot box before they closed the polls on the voting device.
 - (A) If Precinct Officials properly segregated the uncounted ballots from the counted ballots by placing the uncounted ballots inside the Envelope for Tally

Report, only the uncounted ballots will be included in the election night recount. See 230:35-5-75.3(e)(6).

(B) If Precinct Officials mixed uncounted ballots from the emergency compartment with the counted ballots from the main compartment of the ballot box by placing them in the ballot transfer case, all ballots cast at the polling place will be included in the election night recount.

- (2) Both the election results storage device and the backup memory device from a voting device have failed and no results can be obtained from either device. If this occurs, all ballots cast on that voting device will be included in the election night recount.
- (3) Comparison of the Detail Report with the Ballot Accounting Form(s), Spoiled Ballot Affidavit, and the ATI Session Log reveals a discrepancy of 2% or greater between the number of ballots issued and the number of ballots processed by the voting device.
- (4) The Secretary of the County Election Board is directed by the State Election Board to conduct an election night recount of all ballots cast at a precinct polling place in order to resolve a problem not referenced in this Section.

(b) **Absentee ballots from early voting or mail and nursing home absentee ballots.** Absentee ballots cast during early voting may be recounted on election night only under the circumstances described in (a) of this section. Mail and nursing home absentee ballots may be recounted on election night only under the circumstance outlined in (a)(2) of this Section.

(c) **Procedure for election night recount.** An election night recount shall be conducted on a voting device especially designated and prepared for election night recounts. (Counties with a high-speed ballot scanner for counting mail and nursing home absentee ballots also may perform election night recounts on the high-speed scanner.) If all the ballots for a large precinct or for a precinct where voters received more than one ballot must be included in an election night recount, more than one voting device may be prepared and used. The ballots shall be divided as evenly as possible among all the voting devices being used to perform the election night recount. The election night recount shall be conducted in public view and in the presence of the County Election Board members and a representative of the County Sheriff. [26:7-134.1] If possible, members of the news media also shall be present. The recount shall be conducted according to the following procedure.

- (1) The Secretary shall designate one person to insert the ballots included in the election night recount, one at a time, into the voting device designated for election night recounts.
- (2) After all the ballots included in the election night recount for the precinct have been inserted into the device, the ballots shall be removed from the main compartment of the ballot box and shall be replaced in the ballot transfer case.
- (3) The ballot transfer case shall be resealed and a short turquoise State Election Board seal shall be affixed to the box. [26:7-134.1] The new seal shall be positioned so that it can be distinguished from the broken long white State

Election Board seal signed by the Precinct Officials. The members of the County Election Board and the person who fed the ballots into the voting device all shall sign the short turquoise seal. The Secretary shall check the "Election Night Recount" box on the seal.

(4) Any additional election night recounts shall be conducted on the same voting device.

(5) After all precinct returns are received and canvassed and the Secretary verifies that no additional election night recounts are needed, the polls shall be closed on the election night recount voting device. A Detail Report and a Tally Report shall be printed. The Secretary and the County Election Board Chairman and Vice Chairman shall sign the Tally Report in the spaces provided for Precinct Officials' signatures. An additional number of Tally Reports shall be printed as instructed by the Secretary.

(6) The election results storage device shall be removed from the voting device and shall be given to the tabulation computer operator to be read and tabulated.

(d) **Obtaining cast vote records for ATI ballots.** In the event that all ballots from a precinct must be recounted on election night, and if the ATI device was used by any voter to cast a ballot during the day, the Secretary shall cause the cast vote record for each audio ballot to be retrieved and printed from the precinct MBB. The precinct MBB then shall be set aside to ensure that it is not read and tabulated. The Secretary and the County Election Board Chairman and Vice Chairman shall use the printed cast vote record of the ATI ballot to mark a substitute ballot to be inserted in the voting device during the election night recount. The procedure outlined in 230:30-19-6 shall be observed to mark the substitute ballot.

230:35-3-85.3. Removing election results storage device from voting device

Upon receipt of the voting device from the Inspector, County Election Board personnel immediately shall transfer the voting device to the designated secure work area for removal of the election results storage device. The following procedure shall be observed.

- (1) Unlock and open the voting device case with the square key.
- (2) Verify the seal number on the cover of the compartment containing the storage device against the ~~Voting Device Report~~ Inspector's Notes to Secretary sheet. Cut and remove the seal.
- (3) Unlock and remove the compartment cover with the square key.
- (4) Remove the election results storage device.
- (5) Verify that the correct precinct number is recorded on the storage device label.
- (6) Transfer the election results storage device to the tabulation computer operator to be read and tabulated.

PART 17. DISPOSITION OF MATERIALS

230:35-3-99. Disposing of Precinct Registries

~~Precinct Registries shall be retained for 24 months from the date of the election and shall be subject to public inspection during regular office hours.~~ All Precinct Registries shall be retained for 60 months following the date of the election. [26:7-117] Precinct Registries shall be available for public inspection during the County Election Board's regular office hours. See 230:10-7-45 for additional information about retaining Precinct Registries.

SUBCHAPTER 5. INSTRUCTIONS FOR PRECINCT ELECTION OFFICIALS

PART 1. PRECINCT ELECTION BOARD

230:35-5-1. Purpose

The rules in this Subchapter establish policies and procedures to be observed by Precinct Officials during elections. These rules detail the organization of the Precinct Election Board, preparations for the election, conduct of election day duties and the return of election results and supplies to the County Election Board office. ~~The rules contained in Parts 1 through 17 are published for distribution to County Election Board personnel and Precinct Officials as The Manual for Precinct Election Officials section of the Precinct Official Notebook. The rules contained in Parts 19 through 29 this Subchapter are published for distribution to County Election Board personnel and Precinct Officials as the Precinct Election Day Reference and Problem Solver section of the Precinct Official Notebook. The Manual for Precinct Election Officials and the Precinct Problem Solver are Election Day Reference and Problem Solver is an essential parts part of Oklahoma's uniform statewide election system.~~

230:35-5-2. Publication of ~~The Manual for Precinct Election Officials~~ Election Day Reference and Problem Solver

Prepared by the staff of the State Election Board for use by County Election Board Secretaries, Precinct Officials and other election personnel, ~~The Manual for Precinct Election Officials~~ the Election Day Reference and Problem Solver is published as a section within the Precinct Official Notebook and is intended to complement other publications of the State Election Board. ~~The Manual for Precinct Election Officials Election Day Reference and Problem Solver~~ includes the rules contained in Parts 1 through 17 of this Subchapter.

230:35-5-8. Authority of Inspector

The Inspector is the administrative officer of the Precinct Election Board and is in charge of the operations of the polling place on election day. It is the Inspector's duty to receive election materials from the Secretary of the County Election Board and to ensure that the procedures contained in ~~The Manual for Precinct Election Officials and the Precinct~~ the Election Day Reference and Problem Solver sections ~~section~~ of the Precinct

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Official Notebook are followed correctly on election day. At times, the Inspector also may be responsible for relaying special instructions or new information from the County Election Board Secretary to the Judge and the Clerk.

PART 5. PREPARATIONS FOR ELECTION DAY

230:35-5-32. Preparation of voting device

Before the polls open, the Inspector follows these steps, with the help of the Judge and Clerk as needed, to prepare the voting device.

- (1) Place the ballot box near an electrical outlet.
- (2) Follow the instructions in the ~~voting device instructions~~ Election Day Reference and Problem Solver section of the Precinct Official Notebook to set up the ballot box, to attach the voting device to the ballot box, and to close and lock the emergency compartment of the ballot box.
- (3) Follow the instructions in the ~~voting device instructions~~ Election Day Reference and Problem Solver section of the Precinct Official Notebook to open the voting device case and to attach and plug in the power cord.
- (4) Follow the instructions in the ~~voting device instructions~~ Election Day Reference and Problem Solver section of the Precinct Official Notebook to turn on the voting device, open the polls on the voting device, and to prepare the voting device to accept ballots.
- (5) Check the number printed on the seal on the election results storage device compartment cover and verify that it is the same as the number recorded on the ~~Voting Device Report~~ Inspector's Notes to Secretary sheet.
- (6) Check the precinct number on the luggage tag attached to the voting device and verify that it is the same as the precinct number that printed at the beginning of the Zero Tape. If either of these numbers is not the correct number for this precinct, call the County Election Board office immediately.
- (7) Verify that the voting device console screen displays the Ready to Scan message.

PART 7. GENERAL GUIDELINES

230:35-5-40. Problems

When questions arise during the day, consult ~~The Manual for Precinct Election Officials and the Precinct Election Day Reference and Problem Solver sections~~ section of the Precinct Official Notebook for solutions. If the answer cannot be found in ~~these publications~~ this publication, or if the Precinct Officials are uncertain how to apply the information in these publications to the situation at hand, the Inspector should call the County Election Board office for advice.

PART 15. AFTER THE POLLS CLOSE

230:35-5-70. Closing the polls

At precisely 7 p.m. on election day, the Inspector announces that the polls are closed. Any registered voters who are in line to vote at 7 p.m. must be permitted to vote. [26:7-104] The Inspector must keep lines of voters orderly and secure. The Inspector shall make certain that all voters have finished voting and have fed their ballots into the voting device before ~~obtaining the~~ closing the polls on the voting device and obtaining the required number of Detail Report and the and Tally Report Reports. Follow the ~~instructions in the~~ voting device instructions in the Election Day Reference and Problem Solver section of the Precinct Official Notebook to close the polls on the voting device and to print the required reports.

230:35-5-75.1. Obtaining Detail Report and Tally Report

After all voters who are in line at 7 p.m. have finished voting and have fed their ballots into the voting device, the Inspector unlocks the emergency compartment of the ballot box, takes out any ballots deposited there during the day, and feeds them into the voting device. See 230:35-5-154. The Inspector then follows the ~~steps in the~~ voting device instructions in the Election Day Manual and Problem Solver section of the Precinct Official Notebook to obtain the required number of copies of the ~~Detail Report and Tally Report~~.

- (1) Tear the tape off the voting device when it finishes printing the first Detail and Tally Report.
- (2) The Inspector, Judge, and Clerk sign the first Tally Report in the spaces provided at the end of the tape.
- (3) Print at least ~~three more~~ two more copies of the Detail and Tally Report, ~~for a statewide election and at least two more copies for all other elections. Print additional copies of the Detail Report only if so instructed by the In~~ the event that the Secretary of the County Election Board has instructed the Inspector to print additional copies of the Detail and Tally Report, print the number of additional copies as instructed.
- (4) Tear each additional copy of the Detail and Tally Report off the device as ~~as~~ it finishes printing and sign each copy in the spaces provided at the end of each report tape.

230:35-5-75.2. Securing the voting device

After printing the required number of Detail and Tally Reports, the Inspector follows ~~the instructions in the~~ voting device instructions in the Election Day Reference and Problem Solver section of the Precinct Official Notebook, with the help of the Judge and Clerk as needed, to secure the voting device, to remove all voted ballots from the ballot box, and to secure them in the ballot transfer case for return to the County Election Board office. Prepare the ballot box for transport or for storage on-site at the polling place as instructed by the Secretary. Put the voting device key envelope in the Envelope for Tally Report.

230:35-5-79. Inspector returns to the County Election Board office

(a) **Inspector's items.** After all the work is completed, the Inspector returns to the County Election Board office with the following items.

- (1) Voting device.
- (2) Envelope for Tally Report.
- (3) Election supplies.
- (4) American flag.
- (5) Precinct Registry or Registries.
- (6) Precinct Expense Claim Envelope and any unclaimed vouchers.
- (7) Sealed ballot transfer cases.
- (8) Sealed orange Provisional Ballot Bag.

(b) ~~Green Envelope. If this is a statewide election, the Inspector mails the green envelope to the State Election Board on the way to the County Election Board office.~~

(c) **At the County Election Board office.** At the County Election Board office, the Inspector turns over the voting device, the ballots, and the election supplies and materials to County Election Board personnel. [26:7-133]

[OAR Docket #17-660; filed 7-14-17]

**TITLE 230. STATE ELECTION BOARD
CHAPTER 40. TYPES OF ELECTIONS**

[OAR Docket #17-661]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 5. Municipal Elections
- Part 15. Municipalities in More Than One County
- 230:40-5-65. Municipalities in more than one county [AMENDED]
- Subchapter 7. School Elections
- Part 9. Procedures
- 230:40-7-42. Certification [AMENDED]
- Part 23. Multi-County School Districts
- 230:40-7-107. Reporting results to control (parent) County Election Board [AMENDED]

AUTHORITY:

Title 26 O.S., Section 2-107; Secretary of the State Election Board

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The rules amended and/or revoked in this Chapter concern elections conducted by the County Election Board for municipalities and school districts.

Some amendments are needed to update and clarify the process for affected County Election Boards to make proper notification of final election results to the parent County Election Board. Other amendments eliminate a requirement that an affected county transmit by fax or e-mail a copy of its own signed and sealed Official Certification Report to the parent county before the parent county certifies the full election results. The results are transmitted through MESA. Election certification documents for all elections are retained as permanent records by all County Election Boards.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 5. MUNICIPAL ELECTIONS

PART 15. MUNICIPALITIES IN MORE THAN ONE COUNTY

230:40-5-65. Municipalities in more than one county

(a) **Supervision.** For a municipality that is located in more than one county, the election shall be conducted by the County Election Board wherein the municipality's central offices are located. [26:13-110] This County Election Board hereafter is called the "control (parent) County Election Board." The Election Boards of the other counties in which part of the municipality is located hereafter are called the "affected County Election Boards."

(b) **Filing.** Candidates for municipal office shall file their Declarations of Candidacy with the Secretary of the control (parent) County Election Board.

(c) **Notification required.** The Secretary of the control (parent) County Election Board shall notify the affected County Election Boards when a regular or special election is called by faxing or e-mailing a copy of the resolution and all related documents.

(d) **Ballot printing.** The Secretary of the affected County Election Board shall be responsible for printing ballots for the election for use in the affected county and for submitting the bill for such ballots to the control (parent) County Election Board after the election.

(e) **Receiving supplies, making returns.** Inspectors shall receive their supplies from and return them to the County Election Board of the county wherein their polling places are located. See 230:35-3-68 and 230:35-3-68.1.

(f) **Affected county results.** Affected County Election Boards shall meet on election night to canvass results. The Secretary of an affected County Election Board shall report the number of signatures on the Provisional Ballot Roster in precincts involving the multi-county municipality to the control (parent) county on election night either by e-mail or by

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~~fax. The affected County Election Board shall meet again on Friday following the election to count provisional ballots, if necessary. After counting provisional ballots, the affected County Election Board Secretary shall finalize the election results in the tabulation system. The affected County Election Board in an affected county shall meet after 5 p.m. on Friday following the election to shall certify the its final election results after 5 p.m. The Secretary of the affected County Election Board shall fax a signed and sealed copy of the Official Certification Report to the control (parent) County Election Board as soon as possible after the final results are certified on Friday evening. One original copy of the Official Certification Report signed by a quorum of the affected County Election Board and bearing the County Election Board seal shall be mailed to the parent County Election Board. See 230:35-3-91. The affected County Election Board Secretary shall not be required to provide an original, signed and sealed Official Certification Report to the control (parent) County Election Board unless the entity that called the election requires such original certification documents.~~

(g) **Certification.** The control (parent) County Election Board shall meet on election night to canvass returns from all precincts in the county and results reported through MESA from each affected county. ~~night. The control (parent) county shall meet again on Friday following the election to count provisional ballots, if necessary. After all affected counties have finalized their election results in the tabulation system, the control (parent) County Election Board Secretary may print Official Certification Reports that include all final results. Final, complete~~ election results shall be certified after 5 p.m. on Friday following the election. The affected County Election Boards shall ~~fax a copy of the signed and sealed Official Certification Report to the control (parent) County Election Board. Upon receipt of the faxed copy and upon obtaining from MESA Official Certification Reports that include results from the affected county precincts, the control (parent) County Election Board shall certify the final election results. See 230:35-3-91, not be required to provide the control (parent) County Election Board with original, signed and sealed Official Certification Reports unless such documents are required by the entity that called the election.~~

(h) **Expenses handled through control (parent) board.** The control (parent) County Election Board shall receive claims from all affected counties and shall make all claims to the municipality. The control (parent) County Election Board shall receive payment for election expenses from the municipality and shall pay all expenses incurred in the election, including lump sum payments to affected County Election Boards for expenses incurred in those counties.

(i) **Reimbursement to affected county.** Upon receipt of the payment from the control (parent) County Election Board, the Secretary of the affected County Election Board shall deposit the payment in the Special Depository Account and shall pay expenses incurred in the county.

(j) **Absentee voting.** Voters who vote by absentee ballot in a multi-county municipal election must make application to and receive absentee ballots from the County Election Board of the county in which they are registered.

(k) **Provisional voting.** Voters who may vote by provisional ballot in a multi-county municipal election must cast the provisional ballot in the correct precinct in the county in which they reside.

SUBCHAPTER 7. SCHOOL ELECTIONS

PART 9. PROCEDURES

230:40-7-42. Certification

The County Election Board shall certify the results of the election to the Board of Education of the school district. For all school elections, the County Election Board shall certify only the number of votes cast in the election for each candidate and for each proposition. The County Election Board shall canvass the results of all school and technology center district elections on election night and shall determine the number of signatures on provisional ballot rosters. The final election results for both candidate races and propositions shall be certified after 5 p.m. on Friday following the election. See 230:35-3-91. The control (parent) County Election Board of a multi-county school district may certify the results of the multi-county election after 5 p.m. upon receipt of a faxed copy of the signed and sealed Official Certification Report from determining in MESA that each affected county has finalized election results and upon printing Official Certification Reports from MESA that include results from affected county precincts.

PART 23. MULTI-COUNTY SCHOOL DISTRICTS

230:40-7-107. Reporting results to control (parent) County Election Board

~~The control (parent) County Election Board shall obtain results from the affected County Election Boards in MESA both on election night and on Friday following the election. After 5 p.m. on Friday following the election, each affected County Election Board shall fax a copy of the signed and sealed Official Certification Report for the district's election to the control (parent) County Election Board as soon as possible following certification of the election. Affected County Election Boards shall meet on the night of the election to canvass election results. The affected county's unofficial results are reported to the control (parent) County Election Board through MESA on election night. The affected County Election Board shall meet again on Friday following the election to count provisional ballots, if necessary. The affected county Secretary shall finalize the election results in the tabulation system. The affected County Election Board shall certify the results in its county after 5 p.m. After all affected counties have finalized the election results in the tabulation system, the control (parent) County Election Board Secretary can print Official Certification Reports that include all affected county results. The affected County Election Board Secretary shall not be required to~~

provide an original signed and sealed Official Certification Report to the control (parent) county unless the entity that called the election requires such original reports.

[OAR Docket #17-661; filed 7-14-17]

TITLE 230. STATE ELECTION BOARD
CHAPTER 45. CONTESTS OF ELECTION

[OAR Docket #17-662]

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PERMANENT final adoption

RULES:

- Subchapter 3. Recounts
Part 1. Recounts for County Office
230:45-3-15. Paying the costs [AMENDED]
Part 3. Recounts for District, State Office
230:45-3-22. Recounting responsibility delegated [AMENDED]
Part 5. Recounts for Multi-County Elections
230:45-3-28. Recounting responsibility delegated [AMENDED]
Part 9. Recounts with Electronic Voting Devices
230:45-3-52. Preparation of voting device [AMENDED]
Subchapter 5. Instructions for Counters for Manual Recount
Part 1. General Guidelines
230:45-5-5. County Election Board to make decision [AMENDED]
Part 3. Procedure for Counting
230:45-5-11. Preparing to count [AMENDED]

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These amendments are needed to clarify the disposition, in certain circumstances, of the deposits required from petitioners requesting recounts; to update certain preparations for conducting a recount using voting devices; to update the procedures to prepare for a recount and the instructions for recounting ballots manually; and the requirements for manually recording the count.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 3. RECOUNTS

PART 1. RECOUNTS FOR COUNTY OFFICE

230:45-3-15. Paying the costs

If only one person files a recount petition and he is successful, the county bears the entire expense of the recount. If the petitioner is successful in the case of municipal or school district elections, the municipality or school district bears said cost. If said petitioner is not successful, the expenses of the recount shall be deducted from his deposit, and the remainder returned to him. If two candidates seek recounts in the same race, the expenses are borne by the losing candidate. In the event that the winner of the election requests the recount and the recounted results do not change the outcome of the election, the winner assumes the cost of the recount. If the petitioner was required to post an additional deposit, as required by Title 26, Section 8-111, expenses of the recount may be deducted from the additional deposit if the primary deposit is depleted, but no part of the additional deposit shall be refunded to the petitioner.

PART 3. RECOUNTS FOR DISTRICT, STATE OFFICE

230:45-3-22. Recounting responsibility delegated

In cases of recounts involving state offices, petitions are filed with the Secretary of the State Election Board. A deposit, as outlined in 230: 45-3-1(c), is required for each county in which either regular ballots or absentee ballots are to be recounted. The State Election Board shall delegate the responsibility for actual conduct of the recount to the appropriate County Election Board. Such recounts are held as detailed in 230:45-3-7 through 230:45-3-12.1. A written claim for expenses as outlined in 230:45-3-14 shall be filed by the County Election Board Secretary with the State Election Board as soon as possible after the conclusion of the recount. A Certification Report showing the results of the recount immediately shall be transmitted to the State Election Board upon completion of the recount, along with any deposits that have been filed during the recount.

PART 5. RECOUNTS FOR MULTI-COUNTY ELECTIONS

230:45-3-28. Recounting responsibility delegated

Upon receipt of a recount petition in a multi-county election, the Secretary of the control (parent) County Election Board shall delegate the responsibility for actual conduct of the recount to the appropriate affected County Election Board. Such recounts are held as outlined in 230:45-3-7 through 230:45-3-12.1. A written claim for expenses as outlined in 230:45-3-14 shall be filed immediately with the control (parent) County Election Board. The control (parent) County Election Board shall reimburse the affected County Election

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~~Board for the expenses of the recount from the deposit. An Official Certification Report from MESA showing the results of the recount shall be transmitted immediately to the control (parent) County Election Board, along with any Any deposits that have been filed during the recount as outlined in 230:45-3-12 in the affected county shall be sent to the control (parent) county.~~

PART 9. RECOUNTS WITH ELECTRONIC VOTING DEVICES

230:45-3-52. Preparation of voting device

When it is time to begin the recount, the person designated to operate the voting device shall follow the appropriate instructions to prepare the voting device to accept and count ballots. The following procedure shall be observed. See 230:35-5-32 or the Election Day Reference and Problem Solver section of the Precinct Official Notebook.

- ~~(1) The ballot box or testing stand and the voting device shall be positioned near an electrical outlet.~~
- ~~(2) If a ballot box is being used, the person assigned to operate the voting device shall demonstrate to all assembled witnesses that the ballot box is empty. See 230:35-5-32(3). After this demonstration, the ballot box shall be assembled as outlined in 230:35-5-32(4)-(6), except that the ballot box shall not be locked.~~
- ~~(3) The voting device shall be placed on top of the ballot box or testing stand.~~
- ~~(4) The panel on the back of the voting device shall be unlocked.~~
- ~~(5) The memory pack for the first precinct to be recounted shall be installed.~~
- ~~(6) The voting device shall be plugged into the electrical outlet. The Zero Printout will begin to print immediately. The Zero Printout tape shall not be torn off the voting device.~~
- ~~(7) The person operating the voting device shall verify that the red and green lights on the front panel of the device are both on.~~

SUBCHAPTER 5. INSTRUCTIONS FOR COUNTERS FOR MANUAL RECOUNT

PART 1. GENERAL GUIDELINES

230:45-5-5. County Election Board to make decision

In the event that the Counters cannot agree on how to count a ballot, the Counters shall consult the County Election Board members. The County Election Board members shall make the decision, ~~or if they are. If the Board members also are unable to agree, the ballot shall be invalidated not be counted.~~ The County Election Board alone shall decide how to count any ballot challenged by a Watcher. [26:8-114]

PART 3. PROCEDURE FOR COUNTING

230:45-5-11. Preparing to count

- ~~(a) The Secretary shall break the seal on each ballot transfer box from each requested their first precinct to be recounted. In the event that a ballot transfer box from a precinct contains ballots from more than one entity or more than one party in a primary election, the Secretary shall assign each opened ballot transfer box from that precinct to a County Election Board employee or to a Precinct Official to sort and separate the ballots containing the race or question to be recounted. All other ballots shall be replaced inside the ballot transfer box. or for absentee ballots and (b) The Secretary shall assign the box or boxes ballots from the first precinct to a group team of four Counters. [26:8-114(B)] If only one group team of four Counters is used, the ballot transfer box for only all the ballots for one precinct shall be opened at a time recounted before ballots for the next precinct are assigned to the Counters.~~
- ~~(b) In the event that the ballot transfer box contains ballots for more than one entity, the Counters shall sort and separate the ballots containing the race or question to be recounted. All other ballots shall be replaced in the ballot transfer box.~~
- ~~(c) When absentee ballots are being recounted in a candidate race or for a question, the Secretary shall break the seal on the first box of absentee ballots and assign the box to a County Election Board employee or to a Precinct Official to sort the ballots by precinct and by entity or party, if necessary. Ballots containing the race or question being recounted shall be set aside and all other ballots shall be returned to the same ballot transfer box. Under no circumstance shall mail and nursing home absentee ballots be commingled with in-person absentee ballots. All absentee ballots shall be recounted and recorded by source (mail/nursing home and in-person absentee) and by precinct.~~
- ~~(d) During a recount, the Counters shall record both overvotes and undervotes in the race or question being recounted.~~

[OAR Docket #17-662; filed 7-14-17]

TITLE 240. OKLAHOMA EMPLOYMENT SECURITY COMMISSION CHAPTER 1. GENERAL PROVISIONS

[OAR Docket #17-463]

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RULES:

Subchapter 3. Records and Inspections

240:1-3-9. Release of confidential information to specific government agencies [AMENDED]

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This is a clean-up amendment to accomplish two changes. The first is to remove CompSource Oklahoma from the list of state agencies that can receive information maintained by the Oklahoma Employment Security Commission. CompSource Oklahoma no longer exists as a state agency. The second is to change the reference to the Workforce Investment Act to the current statute known as the Workforce Innovation and Opportunity Act and to correct the cite to the Federal Code for this act.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 3. RECORDS AND INSPECTIONS

240:1-3-9. Release of confidential information to specific government agencies

- (a) Pursuant to 40 O.S. § 4-508(C), the government agencies, public entities and political subdivisions specified in part (b) of this rule may obtain confidential information maintained by the Oklahoma Employment Security Commission after entering into an agreement with the Oklahoma Employment Security Commission that sets out the purpose the information will be used for, how the information will be transmitted, and how the information will be safe guarded. All costs involved in providing information to government agencies, public entities, or political subdivisions will be set out in the agreement. The information shall be held confidential by the receiving government agency, public entity or political subdivision at all times and shall not be disclosed or open to public inspection. It shall be allowable for the receiving government agency, public entity or political subdivision to release aggregated data.
- (b) Government agencies authorized to obtain confidential information from the Oklahoma Employment Security are:
 - (1) The Oklahoma Department of Commerce, to accomplish specific goals, missions or tasks of the agency as determined by the Oklahoma Legislature;
 - (2) The Oklahoma Department of Transportation for use in federally mandated regional transportation planning, which is performed as a part of its official duties;

- (3) The Oklahoma State Treasurer's office to verify or evaluate the effectiveness of the Oklahoma Small Business Linked Deposit Program on job creation;
- (4) The Oklahoma Attorney General for use in investigation of workers' compensation fraud, insurance fraud and health care fraud;
- (5) ~~CompSource Oklahoma for use in investigation of workers' compensation fraud;~~
- ~~(6)~~ The Oklahoma Department of Labor for use in investigation of workers' compensation fraud;
- ~~(7)~~ The Oklahoma Workers' Compensation Commission for use in investigation of workers' compensation fraud;
- ~~(8)~~ The Oklahoma Insurance Department for use in investigation of workers' compensation fraud, insurance fraud and health care fraud;
- ~~(9)~~ The Oklahoma State Bureau of Investigation for use in the investigation of insurance fraud and health care fraud;
- ~~(10)~~ Any Oklahoma state, Oklahoma county or Oklahoma municipal law enforcement agency for use in criminal investigations and the location of missing persons or fugitives from justice;
- ~~(11)~~ The Center of International Trade of Oklahoma State University for the development of international trade for employers doing business in the State of Oklahoma;
- ~~(12)~~ The Oklahoma State Regents for Higher Education for use in the default prevention efforts and/or collection of defaulted student loans guaranteed by the Oklahoma Guaranteed Student Loan Program;
- ~~(13)~~ The Center for Economic and Management Research of the University of Oklahoma to identify economic trends;
- ~~(14)~~ The Center for Economic and Business Development at Southwestern Oklahoma State University to identify economic trends;
- ~~(15)~~ The ~~Oklahoma Office of State Finance~~ Office of Management and Enterprise Services to identify economic trends;
- ~~(16)~~ The Department of Mental Health and Substance Abuse Services to evaluate the effectiveness of mental health and substance abuse treatment and state or local programs utilized to divert persons from inpatient treatment;
- ~~(17)~~ Public housing agencies for purposes of determining eligibility pursuant to 42 U.S.C., Section 503(I);
- ~~(18)~~ An agency of this state or its political subdivisions, ~~or any nonprofit corporation~~ that operates a program or activity designated as a required partner in the Workforce Investment Innovation and Opportunity Act One-Stop delivery system pursuant to 29 U.S.C.A., Section ~~2841~~ 3151(b)(1), based on a showing of need made to the Commission;
- ~~(19)~~ The national Wage Record Interchange System, at the discretion of the Commission;
- ~~(20)~~ The Bureau of the Census of the U.S. Department of Commerce for the purpose of economic and statistical research;

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(~~2120~~) The Oklahoma Health Care Authority for use in determining eligibility for subsidies for health insurance premiums for qualified employers, employees, self-employed persons, and unemployed persons; or

(~~2221~~) The Oklahoma State Department of Rehabilitation Services for use in assessing results and outcomes of clients served.

(~~2322~~) The Office of Juvenile Affairs for use in assessing results and outcomes of clients served as well as the effectiveness of state and local juvenile and justice programs including prevention and treatment programs.

[OAR Docket #17-463; filed 6-19-17]

TITLE 240. OKLAHOMA EMPLOYMENT SECURITY COMMISSION CHAPTER 10. UNEMPLOYMENT INSURANCE PROGRAM

[OAR Docket #17-464]

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RULES:

Subchapter 1. General Provisions
240:10-1-3. Time computation [AMENDED]
Subchapter 3. Benefits
Part 7. Protection of Rights and Benefits
240:10-3-35. Personal identification numbers [AMENDED]
Subchapter 5. ~~Contributions~~ Contributions
Part 1. General Provisions
240:10-5-4. Surety bond for lessor employing units [AMENDED]
Part 3. Rates
240:10-5-10. Payment of contributions [AMENDED]
Part 7. Collection of Contributions
240:10-5-31. Claims for refund - procedure [AMENDED]
Part 8. Waiver of Penalty and Interest
240:10-5-43. Request letter [AMENDED]
240:10-5-45. Appeal of initial determination [AMENDED]
Part 15. Financing Benefits to Employees of the State
240:10-5-71. Group accounts [REVOKED]
Part 17. Financing Benefits to Employees of Nonprofit Organizations
240:10-5-80. Establishment of group accounts for state, local governments and nonprofit organizations [REVOKED]
Subchapter 11. Assessment Board Procedure
Part 1. General Provisions
240:10-11-5. Jurisdiction [AMENDED]
Subchapter 13. Appeal Tribunal Procedure
Part 11. Appeals to Board of Review
240:10-13-80. Appeal rights of interested parties [AMENDED]

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The amendments to these rules will modify the time computation rule to make allowance for federal holidays and days state offices are closed due to Executive Order. The liability of a claimant when a personal identification number is lost is more clearly explained, citations to statutes are corrected, the receipt date of tax payments mailed through the U.S. Postal Service is more clearly delineated, procedures for claiming refunds and interest and penalty waivers are streamlined, group tax accounts are eliminated, obsolete programs are deleted from the Assessment Board jurisdiction, and clarification of the appeal rights rule for benefit claims.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 1. GENERAL PROVISIONS

240:10-1-3. Time computation

(a) In computing any period of time prescribed or allowed by the Employment Security Act of 1980, by these rules, or by order of a hearing officer, the day of the act, event, or default from which the designated period of time begins to run shall not be included. All intervening days falling between the beginning and end of the time period shall be counted, including Saturdays, Sundays, holidays and any day the offices of the Oklahoma Employment Security Commission are closed for part or all of the day. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday as defined by the Oklahoma Statutes, an Executive Order, or the Federal Statutes, or any other day when the offices of the Oklahoma Employment Security Commission do not remain open for public business until 4:00 p.m., in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday as defined by the Oklahoma Statutes, an Executive Order, or the Federal Statutes or any other day when the offices of the Oklahoma Employment Security Commission do not remain open for public business until 4:00 p.m.

(b) This rule shall not apply to the calculation of the time period set out in rule 240:10-3-23.

SUBCHAPTER 3. BENEFITS

PART 7. PROTECTION OF RIGHTS AND BENEFITS

240:10-3-35. Personal identification numbers

At the claimant's option, the weekly filings for a continued unemployment claim can be made by telecommunication through the Commission's automated voice response system or via the Internet. In order to utilize these methods, the claimant will establish a personal identification number (PIN). It is the responsibility of the claimant to keep his or her personal identification number confidential at all times. A third party may not utilize a claimant's personal identification number to file a continued claim on behalf of, or in place of, the claimant. If a third party uses a claimant's personal identification number to obtain benefits, this will be considered unemployment compensation fraud. on the part of the third party and gross negligence on the part of the claimant. The claimant shall be liable to repay to the Commission all benefits obtained by the third party through the use of the claimant's personal identification number. The claimant may file a cause of action against the third party for any amount of money the claimant has become liable to repay to the Commission due to the third party's actions, and the third party shall be liable to the claimant for any funds the third party received through fraud or theft.

**SUBCHAPTER 5.
CONTRIBUTION/CONTRIBUTIONS**

PART 1. GENERAL PROVISIONS

240:10-5-4. Surety bond for lessor employing units

- (a) **Statute.** This Section applies to the application for, and issuance of, the Surety Bond for lessor employing units that is provided for in 40 O.S. ~~1991 §1-209A~~ §1-209.1.
- (b) **Form of bond.** The Surety Bond shall be on a form prescribed by the Oklahoma Employment Security Commission. Forms can be obtained from the Contributions Department of the Oklahoma Employment Security Commission at the following address: Oklahoma Employment Security Commission, Contributions Department, P. O. Box 52003, Oklahoma City, Oklahoma 73152-2003.
- (c) **Corporate surety.** The Surety Bond shall be issued by a corporate surety authorized to do business in this state by the Oklahoma Insurance Department.
- (d) **Bond application.** Any lessor employing unit that desires to purchase a Surety Bond must make its initial application with the Commission each year before March 1. The initial application and renewal application shall be on a form prescribed by the Commission. The application forms can be obtained at the address listed in (b) of this Section. Completed application forms shall be returned to the same address.
- (e) **Client list.** The lessor employing unit wishing to apply for a bond or a bond renewal shall supply with their application a list of Oklahoma clients that will include the client's name, federal identification number, and the number of employees the lessor employing unit is leasing to each client lessee.
- (f) **Term of bond.** The term of the Surety Bond shall be a one year period from April 1 of any given year to March 31 of the succeeding year. Any bond issued on a date other than

April 1 shall extend from the date of issuance until the next March 31st, at which time the bond will expire.

(g) **Amount of bond.** The Surety Bond shall be in an amount equivalent to the contributions for which the lessor employing unit was liable in the last calendar year in which it accrued contributions, or in the sum of one hundred thousand dollars (\$100,000.00), which ever is greater. The exact amount of the bond will be certified by the Oklahoma Employment Security Commission upon receipt of the initial application or renewal application for a bond from the lessor employing unit. The certification shall be mailed to the corporate surety that will be issuing the bond.

PART 3. RATES

240:10-5-10. Payment of contributions

(a) **Date payment due.** Contributions shall become due and be paid on or before the last day of the month following the calendar quarter to which they relate, provided that:

(1) If, under the provisions of 40 O.S. Section 3-306, the Commission shall declare the period for which any contribution may become due to have terminated for an employer, and assesses the contributions for such period, such contributions shall immediately become due and be paid by such employer; and

(2) If an employing unit has not previously qualified as an employer under the Employment Security Act of 1980 and first qualifies as an employer during a calendar year, the employing unit shall pay contributions for all past periods of that year for which said employer is liable for the payment of contributions, on or before the due date for that quarter in which such employing unit becomes an employer subject to the Employment Security Act of 1980.

(b) **Date of receipt defined.**

(1) Payments of contributions received through the mail shall be deemed to have been received as of the date shown by the postmark on the envelope properly addressed to the Commission's office and containing such payment. If there is no proof from the Post Office of the date of mailing, the date of receipt by the Commission shall constitute the date of payment.

(2) Payment of contributions received through an electronic fund transfer system shall be deemed to have been received by the Commission on the date on which the electronic payment was authorized for immediate payment to the Oklahoma Employment Security Commission.

(3) All other payments of contributions shall be deemed to have been received on the date on which payments are received by a representative of the Commission.

PART 7. COLLECTION OF CONTRIBUTIONS

240:10-5-31. Claims for refund - procedure

Each employer who files an application for refund under 40 O.S. Section 3-304 shall be notified of ~~the~~ determination

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~~made on denying~~ the application in writing. Any employer aggrieved by the determination ~~made on denying~~ the application for refund may file a request for review and redetermination pursuant to 40 O.S. Section 3-115.

PART 8. WAIVER OF PENALTY AND INTEREST

240:10-5-43. Request letter

(a) The request letter prepared by the employer must contain the following information:

- (1) Employer's name, address and telephone number
- (2) Employer's Oklahoma account number
- (3) The calendar quarters associated with the penalties and/or interest the employer is requesting to be waived
- (4) A statement of all reasons the employer will rely on to explain why penalty or interest should be waived

(b) The request letter must be signed by the employer, or the employer's agent or representative.

(c) If the employer is represented by an attorney, the name, address, and telephone number ~~and Oklahoma Bar Association number~~ of the attorney must also be included in the request letter.

~~(d) The employer must attach to the request letter a copy of all notices, statements, determinations, correspondence, reports, or any other documents relevant to the request for waiver.~~

240:10-5-45. Appeal of initial determination

(a) If an employer wants to appeal the determination of the Oklahoma Employment Security Commission, the employer must file a letter appealing the determination within 20 days of the date the determination letter was mailed to the employer.

(b) The appeal letter must contain the following:

- (1) The name, address and telephone number of the employer.
- (2) The employer's Oklahoma account number.
- (3) ~~The date of the determination letter issued by the Contributions Department.~~
- (4) Signature and title of person requesting appeal.

(c) The appeal must be filed with the Oklahoma Employment Security Commission by any method set forth in 40 O.S. §1-224 (A). Contact information for filing the appeal will be set forth in the determination letter.

(d) If any employer fails to file his or her appeal letter within the 20 days provided for in subsection (a) of this Section, then the determination of the Oklahoma Employment Security Commission shall be final, and no appeal shall thereafter be allowed.

PART 15. FINANCING BENEFITS TO EMPLOYEES OF THE STATE

240:10-5-71. Group accounts [REVOKED]

~~OAC 240:10-5-80 shall also apply to governmental organizations and their instrumentalities which apply for group accounts.~~

PART 17. FINANCING BENEFITS TO EMPLOYEES OF NONPROFIT ORGANIZATIONS [REVOKED]

240:10-5-80. Establishment of group accounts for state, local governments and nonprofit organizations [REVOKED]

~~(a) **Applying for group accounts.** Title 40 O.S. Section 3-809 provides that two (2) or more approved reimbursing employers may file a joint application for the purpose of establishing a group account to share the cost of benefits paid that are attributable to service in the employ of such employer.~~

~~(1) **Information required.** Application to form such a group must include:~~

~~(A) Identification of the name, address and account number, if any, previously assigned by the Commission to each employer desiring to participate in the group.~~

~~(B) Identification of the group name, mailing address and identity of the individual representative authorized to act as the group representative in all matters before the Commission.~~

~~(C) A certified copy of the group's by laws, rules and regulations adopted by the group, board of directors, trustees or other governing body.~~

~~(i) By laws adopted by the group must include requirements established for membership into and termination from the group.~~

~~(ii) The by laws must include rules and procedural requirements to the effect that the group account is requested and established for the purpose of sharing the cost of benefits paid by the Commission that are attributable to service in the employ of each such reimbursing employer in the group.~~

~~(iii) By laws must include the method agreed upon by group members for prorating full benefit costs, including any interest and penalties as required by the OES Act.~~

~~(2) **Termination of account.** A group account established and approved as such by the Commission may after two (2) or more calendar years make application to terminate the group account by filing a request with the Commission on or before the last day of January immediately following the beginning of the calendar year for which such termination shall first be effective.~~

~~(b) **Reporting requirements for group accounts.**~~

~~(1) Each group account approved by the Commission will be assigned a group number. Each individual employer member of the group will also be assigned a reimbursing account number within the group account.~~

~~(2) Each individual employer member of the group will be responsible for the proper separate reporting of wages paid to employees of his/her organization under the account number assigned by the Commission as a member of such group. Wages will be reported under such assigned account number on a designated form or format authorized~~

by the Commission. Reports so prepared must be submitted to the Commission through the authorized representative of the group.

(3) A quarterly wage report for each employer member of the group must be filed with the Commission on or before the last day of the month following the calendar quarter to be reported. Any such electing employer or group of employers that fails or refuses to file required wage report(s) within fifteen (15) days after written notice has been mailed to such employer or the group representative by the Commission, a penalty of Ten Dollars (\$10.00) for each day with a maximum of One Hundred Dollars (\$100.00) [40:3-806 B] until such report is filed will be imposed against such employer or group and shall be collected as provided by the OES Act.

(4) Any group account that has been in effect for two (2) or more calendar years and is delinquent in filing separate wage reports as required for each member of the group or fails to pay the full reimbursement costs, including any interest and penalties in excess of forty five (45) calendar days after written notice will result in the Commission automatically terminating such group account. The penalty assessed of Ten Dollars \$10.00 per day with a maximum of One Hundred Dollars (\$100.00) [40:3-806 B] will continue to be applied to each former member of the group whose reports remain delinquent.

(5) Any employer or group of employers who are delinquent in filing any quarterly report or payment of reimbursements as herein required as of the last day of a calendar year shall result in the Commission automatically terminating such reimbursing employer's election to "reimburse payments in lieu of contributions."

(6) At the end of each calendar quarter, the Commission shall notify the authorized group representative as to the amount of regular and extended benefits paid by the Commission during such quarter that is attributable to service in the employ of such members of the group account and that is assessed against the group. Said assessment shall be immediately due and payable and shall bear interest after forty five (45) days from date of statement at the rate of one percent (1%) per month until paid. If the group account fails or refuses to pay said assessment after same has become delinquent within forty five (45) days after written notice for payment has been mailed to the group, a penalty of five percent (5%) of the amount due shall be added to the assessment.

(e) ~~Responsibilities of group representative.~~ Responsibilities of the group representative shall include:

(1) Proper and timely filing of the separate employer quarterly wage reports with the Commission.

(2) Receiving quarterly statements of required payments for regular and extended benefits paid by the Commission resulting from any wages reported by a reimbursing employer that is or has been a member of a group.

(3) Making timely payments, including any interest and penalties applicable for any member of the group, in response to statements received from the Commission.

(4) Responsibility for replies to all correspondence from the Commission concerning reports and payments for employer members in the group.

(5) Responsibility for representation for each employer member of the group in all matters before the Commission.

(d) ~~Reimbursement of regular and extended benefits.~~

(1) 40 O.S. Sections 3-701 through 3-706 and Sections 3-801 through 3-810 provide that employers in group accounts are to reimburse the Commission in full for any amount on both regular or extended benefits that are paid and are attributable to service in the employ of such employers. Reimbursement shall be required by the group for payments made for weeks of unemployment which begin during the "effective period" of such election. The "effective period" is hereby defined as beginning with the first day of the calendar quarter or year such employers' election to reimburse is effective that is approved by the Commission. The "effective period" shall continue through each calendar year until such election has been terminated by the Commission and thereafter until such time that any regular or extended benefits could be payable based on wages having been paid and reported to the Commission for any calendar quarters prior to the effective date of termination to reimburse payments in lieu of contributions.

(2) Application to terminate the reimbursement procedure after two (2) calendar years may be made on or before the last day of January immediately following the beginning of the calendar year for which such termination shall first be effective.

(3) Each individual employer member of the group shall be responsible for the full amount of any reimbursement due the Commission applicable to his/her organization when a group account no longer exists, or the group fails to pay such required costs, or the employer is no longer a member of the group.

SUBCHAPTER 11. ASSESSMENT BOARD PROCEDURE

PART 1. GENERAL PROVISIONS

240:10-11-5. Jurisdiction

(a) The Assessment Board shall have jurisdiction to hear the following types of cases:

(1) An appeal to a determination regarding employer liability for unemployment contributions, pursuant to 40 O.S. Sections 1-208 and 1-210.

(2) An appeal to a determination regarding whether a worker is an independent contractor or an employee, pursuant to 40 O.S. Section 1-210(14).

(3) An appeal to a determination made pursuant to any provision contained in Article III of the Employment Security Act of 1980, 40 O.S. Sections 3-101, et seq.

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(4) An appeal to a determination to intercept state tax refunds through the Oklahoma Tax Commission, pursuant to 68 O.S. Section 205.2(B).

~~(5) An appeal filed by a Workforce Investment Act CLEO, local area fiscal agent, Local Board or OESC's sub-recipient, as a result of audit or monitoring findings issued by the Commission pursuant to the Workforce Investment Act, pursuant to 20 C.F.R. Sections 661.120, 667.400, and 667.500.~~

(b) The Commission, or its appointee, may assign other subjects of appeal to the Assessment Board as it deems appropriate.

SUBCHAPTER 13. APPEAL TRIBUNAL PROCEDURE

PART 11. APPEALS TO BOARD OF REVIEW

240:10-13-80. Appeal rights of interested parties

~~In any appeal wherein a decision has been mailed to the interested parties and an appeal has been filed there from to the Board of Review by any interested party within ten (10) days after the certified mailing date of the decision, the Appeal Tribunal is divested of jurisdiction and cannot set any cause for hearing, nor withdraw, modify or reverse any decision. The decisions shall clearly explain the appeal rights and instruct the parties on how to appeal to the Board of Review.~~

(a) All Appeal Tribunal orders that constitute a final disposition of a case on its merits shall clearly set out the appeal rights of the parties to the case and instruct the parties on how to appeal to the Board of Review. Orders that determine pre-hearing issues, post-hearing issues, ancillary issues, or which do not constitute a final disposition of the case shall not contain a statement of appeal rights and instructions to the parties.

(b) When a party has perfected an appeal to the Board of Review pursuant to 40 O.S. §§2-605 and 2-606 and Board of Review Rule 240:15-3-3, the Appeal Tribunal is divested of jurisdiction of the case. Once an appeal is perfected, the Appeal Tribunal shall not set any further hearings in the case, and cannot withdraw, modify, or reverse any decision.

[OAR Docket #17-464; filed 6-19-17]

TITLE 240. OKLAHOMA EMPLOYMENT SECURITY COMMISSION CHAPTER 15. BOARD OF REVIEW PROCEDURES

[OAR Docket #17-465]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 3. Appeals to the Board of Review
240:15-3-6. Certification of fact finding and questions of law from Appeal Tribunal [REVOKED]

AUTHORITY:

Oklahoma Employment Security Commission; 40 O.S. §§2-609, 4-302

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n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

This rule is being revoked due to changes in state law that make it obsolete. Under 40 O.S. §2-609, the Appeal Tribunal of the Oklahoma Employment Security Commission had the authority to certify certain questions of law and fact to the Board of Review for a hearing and determination by the Board. In 2014, an amendment was made to 40 O.S. §2-609 that removed the ability of the Appeal Tribunal to certify questions to the Board of Review. The Board of Review now sits as an appellate body only. Since the statutory authority allowing for the certification of questions has been removed, this rule governing that process must now be revoked.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 3. APPEALS TO THE BOARD OF REVIEW

240:15-3-6. Certification of fact finding and questions of law from Appeal Tribunal [REVOKED]

~~When a Hearing Officer of the Appeal Tribunal has certified findings of fact together with the question of law presented, to the Board of Review, the Board shall give notice of the certification to all interested parties in the proceeding and provide reasonable opportunity for hearing. The Board shall then certify to the Hearing Officer and all interested parties in the proceeding its answer to the question submitted. If the question certified to the Board by the Hearing Officer is in connection with a claim for benefits, the Board may remove the entire proceedings from the Appeal Tribunal and hear the proceedings with notice to all interested parties in accordance with these rules and with respect to proceedings before the Appeal Tribunal. In such case, the Board shall render a Board of~~

Review decision upon the entire claim, subject to appeal rights and judicial review. The record in the case shall include all documents and papers and a transcript of all testimony taken in the matter, together with the Board of Review's decision.

[OAR Docket #17-465; filed 6-19-17]

**TITLE 240. OKLAHOMA EMPLOYMENT SECURITY COMMISSION
CHAPTER 21. WORKFORCE INVESTMENT ACT**

[OAR Docket #17-466]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 1. General Provisions [REVOKED]
 - 240:21-1-1. Purpose and authority [REVOKED]
 - 240:21-1-2. Definitions [REVOKED]
 - 240:21-1-3. Addresses for appeals [REVOKED]
 - 240:21-1-4. Time computation [REVOKED]
- Subchapter 7. Monitoring [REVOKED]
 - 240:21-7-1. Monitoring and exit conference [REVOKED]
 - 240:21-7-2. Monitoring report [REVOKED]
 - 240:21-7-3. Monitoring resolution [REVOKED]
 - 240:21-7-4. Final determination [REVOKED]
 - 240:21-7-5. Appeal [REVOKED]
 - 240:21-7-6. Hearing [REVOKED]
- Subchapter 9. Audits [REVOKED]
 - 240:21-9-1. Audit requirements [REVOKED]
 - 240:21-9-2. Delinquent audit [REVOKED]
 - 240:21-9-3. Audit resolution [REVOKED]
 - 240:21-9-4. Audit review and request for information [REVOKED]
 - 240:21-9-5. Initial determination [REVOKED]
 - 240:21-9-6. Final determination [REVOKED]
 - 240:21-9-7. Appeal [REVOKED]
 - 240:21-9-8. Hearing [REVOKED]
- Subchapter 11. Grievance Procedures [REVOKED]
 - Part 1. General Provisions [REVOKED]
 - 240:21-11-1. Grievances [REVOKED]
 - Part 3. Grievances Filed Directly with the OESC [REVOKED]
 - 240:21-11-10. Filing [REVOKED]
 - 240:21-11-11. Time limit for filing a grievance with OESC [REVOKED]
 - 240:21-11-12. Contents of a grievance [REVOKED]
 - 240:21-11-13. Referral of a grievance giled with OESC [REVOKED]
 - Part 5. Appeals to the OESC from Grievance Decisions of a Local Area [REVOKED]
 - 240:21-11-20. Filing grievance with local area [REVOKED]
 - 240:21-11-21. Appeals with OESC [REVOKED]
 - 240:21-11-22. Time Limit for filing an appeal with OESC [REVOKED]
 - Part 7. Informal and Formal Resolutions of Grievances [REVOKED]
 - 240:21-11-30. Informal resolution [REVOKED]
 - 240:21-11-31. Hearing [REVOKED]
 - 240:21-11-32. Remedies [REVOKED]
 - 240:21-11-33. Appeal to Secretary or investigation by Secretary [REVOKED]
 - 240:21-11-34. Decision of the Secretary [REVOKED]

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n/a

GIST/ANALYSIS:

These rules pertain to the Workforce Investment Act. They were added to the OESC Rules shortly after the Workforce Investment Act was passed in 1998 when the OESC was named as the state agency that would monitor the program. The program has since been moved to other state agencies, and the federal government replaced the Workforce Investment Act programs with the Workforce Innovation and Opportunity Act. These rules are now obsolete and will be removed from the OESC Rulebook.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 1. GENERAL PROVISIONS [REVOKED]

240:21-1-1. Purpose and authority [REVOKED]

~~The Governor of the State of Oklahoma appointed the Governor's Council for Workforce and Economic Development (State Council) in compliance with the Section 111 of the Workforce Investment Act. The State Council assists the Governor in developing the Strategic State Workforce Investment Plan (State Plan) for Title I of the Workforce Investment Act of 1998 (WIA) and the Wagner Peyser Act pursuant to Section 112 of WIA. The Oklahoma Employment Security Commission (OESC), as the direct grant recipient, is responsible for the monitoring and oversight for workforce related grants, programs and activities established and funded by the U.S. Department of Labor. The purpose of these rules is to facilitate the implementation of the WIA, U.S. Department of Labor WIA regulations, State Plan, Title V of the Older Americans Act Amendments of 2006 and workforce related grants as they related to specific OESC funding. The authority for these rules is established by Title 40 O.S. § 4 702.~~

240:21-1-2. Definitions [REVOKED]

~~In addition to definitions found at WIA section 101 and 20 CFR 660.300, the following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:~~

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"Assessment Board" is a hearing Board for the OESC, which is designated to adjudicate certain appeals specified herein.

"Chief Local Elected Official" or **"CLEO"** means (a) the chief elected executive officer of a unit of general local government in a local area; and (b) in a case in which a local area includes more than one unit of general local government, the individuals designated under the agreement described in WIA section 117(e)(1)(B).

"Department" or **"DOL"** means the U.S. Department of Labor, including its agencies and organizational units.

"Division of Internal Audit" means the OESC division responsible for conducting audit resolutions.

"Director" means the person designated by the Executive Director of the OESC to conduct monitoring and accept grievances and appeals allowed by this chapter.

"Fiscal Agent" means an entity chosen by the CLEO to serve as OESC's subrecipient of the local area's workforce related grant funds. Such designation does not relieve the CLEO or the Governor of the liability for any misuse of grant funds.

"Grant" means an award of WIA or workforce related financial assistance by the U.S. Department of Labor to an eligible recipient.

"Grantee" means the direct recipient of grant funds from the Department of Labor. A grantee may be referred to as a recipient.

"Local Area" means a local workforce investment area designated pursuant to WIA section 116.

"Local Board" means a Local Workforce Investment Board established pursuant to WIA section 117, to set policy for the local area workforce investment system.

"Recipient" means an entity to which a WIA or workforce related grant is awarded directly from the Department of Labor to carry out a specific program.

"Secretary" means the Secretary of the U.S. Department of Labor.

"State Council" means the Governor's Council for Workforce and Economic Development established pursuant to WIA section 111.

"Subgrant" means an award of financial assistance made under a grant by a grantee or subrecipient to an eligible subrecipient.

"Subrecipient" means an entity to which a subgrant is awarded and which is accountable to the recipient, or higher tier subrecipient, for the use of the funds provided.

240:21-1-3. Addresses for appeals [REVOKED]

When a rule in this Chapter allows for an appeal, the following addresses are to be used:

- (1) **Secretary**, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.
- (2) **Regional Administrator**, Regional Office, U.S. Department of Labor, 525 S. Griffin Street Dallas, Texas 75202.
- (3) **Director**, Oklahoma Employment Security Commission, P.O. Box 52003, Oklahoma City, OK 73152-2003.

(4) **Division of Internal Audit**, Oklahoma Employment Security Commission, P.O. Box 52003, Oklahoma City, OK 73152.

(5) **Assessment Board**, Oklahoma Employment Security Commission, P.O. Box 52003, Oklahoma City, OK 73152.

240:21-1-4. Time computation [REVOKED]

In computing any period of time prescribed or allowed by the Employment Security Act of 1980, by these rules, or by order of a hearing officer, the day of the act, event, or default from which the designated period of time begins to run shall not be included. All intervening days falling between the beginning and end of the time period shall be counted, including Saturdays, Sundays, holidays and any day the offices of the Oklahoma Employment Security Commission are closed for part or all of the day. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday as defined by the Oklahoma Statutes or any other day when the offices of the Oklahoma Employment Security Commission do not remain open for public business until 4:00 p.m., in which even the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday as defined by the Oklahoma Statutes or any other day when the offices of the Oklahoma Employment Security Commission do not remain open for public business until 4:00 p.m.

SUBCHAPTER 7. MONITORING [REVOKED]

240:21-7-1. Monitoring and exit conference [REVOKED]

- (a) OESC will annually monitor each local area fiscal agent, Local Board, and OESC's subrecipients pursuant to the requirements set forth in WIA section 184 (a)(1-3) and 20 CFR section 667.400 (c) (1) and 20 CFC Section 667.410 (a)(1-3).
- (b) OESC's subrecipients and Local Boards must monitor their subrecipients or service providers.
- (c) An exit conference will be conducted after each OESC monitoring review. Exit notes, which identify issues that may result in findings and/or questioned costs, will be provided to the local area. The local area representatives have fifteen (15) days from date of the exit conference to submit information and/or documentation to OESC to resolve these possible findings and/or questioned costs before they are included in the monitoring report referenced in 240:21-7-2. Additional findings and/or questioned costs may arise after the on-site review and exit conference are conducted.

240:21-7-2. Monitoring report [REVOKED]

- (a) A monitoring report will be issued by the Director to the CLEO, local area fiscal agent, Local Board, or OESC's subrecipients after each monitoring review. A copy of this report will also be addressed to OESC's Director of Internal Audit. If evidence of possible violations is discovered, they will be detailed in the report. The report shall be based, in part, on the requirements of WIA, the regulations promulgated thereunder,

administrative requirements, applicable cost principles, grant agreements, and state and local policies.

(b) Monitoring reports and resolutions generated by an OESC subrecipient or Local Board must be submitted to the Director when issued.

240:21-7-3. Monitoring resolution [REVOKED]

- (a) The Director is responsible for monitoring resolution.
- (b) Resolution of a monitoring finding is required when there are disallowed/questioned costs, administrative findings or deficiencies.
- (c) The CLEO, local area fiscal agent, Local Board or OESC's subrecipient has thirty (30) days from the date of the monitoring report to submit its response to the designated portions of the monitoring report to the Director. The response must contain all additional information, documents, or arguments the CLEO, local area fiscal agent, Local Board or OESC's subrecipient wants the Director to consider in making the final determination. An entity submitting a response to the monitoring report may request in writing an additional thirty (30) day time period. The Director will determine if additional time will be allowed and advise the entity in writing of his or her decision. The Director may request additional information from the entity submitting a response, if clarification is needed. The Director may schedule or the CLEO, local area fiscal agent, Local Board or OESC's subrecipient may request, an informal resolution conference in order to discuss the findings in the monitoring report. The request for the informal resolution conference should be submitted to the Director prior to the first thirty (30) day deadline.
- (d) The Director shall issue a final determination in compliance with 240:21-7-4.
- (e) The Director will maintain a monitoring resolution file documenting the disposition of reported questioned costs and corrective actions taken for all findings.
- (f) After follow up procedures are completed, if the grant recipient is found in non compliance, the Director will send a notice in the form of a certified letter of impending sanctions. The notice will indicate the violation, the corrective action to be taken, the impending sanction, and the process by which the grant recipient may appeal the sanction.

240:21-7-4. Final determination [REVOKED]

- (a) A final determination on the issues raised in the monitoring report will be issued within sixty (60) days from the date the response to the monitoring report is received.
- (b) If all issues have not been resolved, a final determination shall be sent to the local area by certified mail. A final determination will:
 - (1) enumerate the efforts that were made to resolve the issues in the monitoring report;
 - (2) list the issues upon which the parties do not agree;
 - (3) list any changes to the factual findings and conclusions set forth in the monitoring report;
 - (4) establish a debt, if appropriate;
 - (5) require corrective action, when needed;

- (6) determine liability, method of restitution of funds and sanctions; and
- (7) advise recipient of appeal rights.

240:21-7-5. Appeal [REVOKED]

- (a) If the CLEO, local area fiscal agent, Local Board or OESC's subrecipient is not satisfied with the findings issued in the final determination, it has fifteen (15) days from the date of the final determination to file an appeal.
- (b) The appeal must be filed with the Director.
- (c) The Director will then forward a copy of the appeal to the Assessment Board within five (5) days from receipt.

240:21-7-6. Hearing [REVOKED]

- (a) The Assessment Board will conduct a hearing pursuant to the Assessment Board's rules at 240:10-11-20 through 240:10-11-31.
- (b) The decision of the Assessment Board will be final and binding unless an appeal is filed to district court pursuant to Oklahoma's Administrative Procedures Act, 75 Okla. Stat. sections 318, 319, 321, and 322.
- (c) The Assessment Board will provide the administrative record to the district court in the time provided for in 40 Okla. Stat. Section 3-403.
- (d) At the hearing, the appealing party bears the burden of proof to show that the WIA funds granted or paid to the Local Area or OESC's subrecipient were spent in compliance with the statutes, regulations, state policies, uniform administrative requirements, and OMB Circulars that govern these funds and their program. The entities must also prove the WIA costs the entities claim are allowable were determined in accordance with generally accepted accounting principles and adequately documented in compliance with the statutes, regulations, uniform administrative requirements and OMB Circulars that govern these funds and their program.
- (e) Any fee charged to the CLEO, local area fiscal agent, Local Board, or OESC's subrecipient for assistance in resolving the monitoring report or to prepare and present an appeal to the Assessment Board or District Court cannot be charged to grant or contract funds received from OESC. This includes fees charged by an accountant, expert witness, attorney, or other representative.
- (f) Disallowed costs that are not appealed in accordance with these administrative rules are a debt owed to the OESC by the Fiscal Agent and CLEO.
- (g) Disallowed costs cannot be repaid with federal grant funds. A debt can be satisfied by substituting stand in costs that meet the requirements set forth in the One Stop Comprehensive Financial Management Technical Assistance Guide. If stand in costs are not available, the debt may be satisfied by making a lump sum payment to OESC, entering into a payment plan authorized by OESC, or reducing an expenditure in a current grant by the amount of the disallowed costs. The local area must provide documentation that the reduced expenditure was subsequently paid with non federal funds.

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SUBCHAPTER 9. AUDITS [REVOKED]

240:21-9-1. Audit requirements [REVOKED]

(a) A financial and compliance audit by an independent auditor is required annually for each subrecipient.

(1) Each subrecipient is subject to the audit requirements of 29 CFR Part 95, 29 CFR Part 97, or 29 CFR Part 99 (as appropriate) and shall comply with applicable OMB Circulars, including OMB Circular A-133.

(2) The audit shall be performed by a certified public accountant or firm, or by a public accountant or public accounting firm.

(A) Except as provided in subparagraph (B) of this paragraph, no single person or firm shall perform the annual audit for an Oklahoma WIA grant recipient for more than three (3) consecutive years.

(B) The restriction in subparagraph (A) of this paragraph is waived if WIA funds constitute less than fifty percent (50%) of a grant recipient's total budget.

(3) The audit shall be performed in accordance with standards required by the federal government, requirements issued by OESC, and guidelines established by the Generally Accepted Governmental Auditing Standards (GAGAS).

(b) If the subrecipient does not receive a sufficient amount of federal grant money to require a full audit, the OESC may require a limited scope audit in accordance with federal requirements. The OESC will be responsible for arranging and paying for all limited scope audits. The limited scope audit will address one or more of the following types of compliance requirements:

- (1) Activities allowed or disallowed;
- (2) Allowable cost and cost principles;
- (3) Eligibility;
- (4) Matching;
- (5) Level of effort;
- (6) Earmarking;
- (7) Reporting.

(c) The OESC Internal Audit Division is charged with the responsibility of audit resolution.

(d) The subrecipient must notify the Internal Audit Division of the name and address of the person or firm that will be performing the annual audit no later than thirty (30) days after the end of the grant recipient's fiscal year. The audit report is to be filed with the Director of Internal Audit Division within thirty (30) days after the completion of the audit and no later than nine (9) months from the end of the grant recipient's fiscal year. A copy of the audit report shall be delivered to the Director within the same time period. If a management letter is issued to a subrecipient, the subrecipient shall submit the management letter and the responses thereto to the OESC Internal Audit Division within thirty (30) days from the receipt of the management letter.

240:21-9-2. Delinquent audit [REVOKED]

If the audit has not been received within nine (9) months after the end of the grant recipient's fiscal year, the Director

of the Internal Audit Division will send a certified letter to the subrecipient advising it that it has fifteen days to provide its reasons for failing to comply with the requirements set forth in Rule 240:21-5-1. If no response is received within fifteen (15) days, or the response received is not adequate, the Director will send a certified letter to the subrecipient advising it that its current funding and eligibility for future contracts are suspended.

240:21-9-3. Audit resolution [REVOKED]

(a) Resolution of an audit is required when there are disallowed/questioned costs, administrative findings or deficiencies.

(b) All audits must be resolved within six (6) months after receipt of the audit report by the Commission.

(c) The Internal Audit Division shall maintain an audit resolution file documenting the disposition of reported questioned costs and corrective actions taken for all findings.

240:21-9-4. Audit review and request for information [REVOKED]

(a) The Internal Audit Division shall review the audit including all financial statements, schedules, notes, disallowed/questioned costs, administrative findings, and management letters and responses thereto. Financial statements shall be verified by the Internal Audit Division.

(b) If there are no disallowed/questioned costs or administrative findings to be resolved, the audit review is closed and the grant recipient shall be notified of the closure in writing.

(c) If the audit review contains findings, disallowed/questioned costs or discrepancies in the financial schedules, a letter requesting additional information and/or a response shall be sent to the subrecipient by certified mail.

(d) Audit resolution information is due within twenty (20) days from the date the written request is made to the subrecipient.

(e) The Internal Audit Division will review the information submitted by the subrecipient and may ask for additional information. An initial determination will be issued if the audit findings have not been resolved to the satisfaction of the Internal Audit Division.

(f) If the disallowed/questioned costs or administrative findings are resolved, the audit review is closed and the subrecipient shall be notified in writing.

240:21-9-5. Initial determination [REVOKED]

(a) The Internal Audit Division shall issue an initial determination on the audit findings for those portions of the audit where there are agreement and disagreement with the subrecipient's resolution, including the allowability of questioned costs or activities. Such initial determination will be based on the requirements of the WIA, regulations promulgated thereunder, administrative requirements, applicable cost principles, grants, contracts, or other agreements with subrecipient.

(b) The initial determination shall be issued within sixty (60) days from the receipt of the audit.

(c) The subrecipient shall have thirty (30) days from the date of the determination to submit its response to the Internal Audit Division.

(d) The subrecipient may request an informal resolution conference in order to meet with members of the Internal Audit Division staff to discuss the initial determination and the information subsequently submitted by the recipient. This request must be made in writing when the subrecipient submits its response to the initial determination.

(e) The Internal Audit Division shall issue its final determination within thirty (30) days from the receipt of the subrecipient's response to the initial determination. This time may be extended for up to thirty (30) days if an informal resolution conference is requested.

240:21-9-6. Final determination [REVOKED]

If the disallowed/questioned costs, administrative findings or deficiencies are not resolved, the Commission shall provide the subrecipient with a written final determination by certified mail. A final determination under this section shall:

- (1) Indicate the efforts to informally resolve matters contained in the initial determination have been unsuccessful;
- (2) List those matters upon which parties continue to disagree;
- (3) List any modifications to the factual findings and conclusions set forth in the initial determination;
- (4) Establish a debt, if appropriate;
- (5) Require corrective action, when needed;
- (6) Determine liability, method of restitution of funds and sanctions; and
- (7) Advise recipient of appeal rights.

240:21-9-7. Appeal [REVOKED]

(a) If the subrecipient is not satisfied with the findings issued in the final determination, it has fifteen days from the date of the final determination to file an appeal.

(b) The appeal must be filed with the Internal Audit Division.

(c) The Internal Audit Division will then forward a copy of the appeal to the Assessment Board.

240:21-9-8. Hearing [REVOKED]

(a) The Assessment Board will conduct a hearing within thirty (30) days from the receipt of the appeal by the Assessment Board unless the parties and the Assessment Board agree to waive this requirement in order to allow additional time to resolve the matter. The hearing will be conducted pursuant to the Assessment Board's rules at 240:10-11-20 through 240:10-11-23 and 240:10-11-25 through 240:10-11-31.

(b) The Assessment Board will issue a decision within thirty (30) days from the date the hearing record is closed.

(c) The decision of the Assessment Board will be final and binding unless an appeal is filed to district court pursuant to Oklahoma's Administrative Procedures Act, 75 Okla. Stat. section 318.

(d) The Assessment Board will provide the administrative record to the district court in the time provided for in 40 Okla. Stat. Section 3-403.

(e) At the hearing, the CLEO, local area fiscal agent, Local Board, and grant recipient bear the burden of proof to show that the WIA funds granted or paid to the Local Area or grant recipient were spent in compliance with the statutes, regulations, state policies, uniform administrative requirements, and OMB Circulars that govern these funds and their program. The entities must also prove the WIA costs the entities claim are allowable were determined in accordance with generally accepted accounting principles and adequately documented in compliance with the statutes, regulations, uniform administrative requirements and OMB Circulars that govern these funds and their program.

(f) Any fee charged to the CLEO, local area fiscal agent, Local Board, or grant recipient for assistance in resolving the monitoring report or to prepare and present an appeal to the Assessment Board or District Court cannot be charged to grant or contract funds received from OESC. This includes fees charged by an accountant, expert witness, attorney, or other representative.

SUBCHAPTER 11. GRIEVANCE PROCEDURES [REVOKED]

PART 1. GENERAL PROVISIONS [REVOKED]

240:21-11-1. Grievances [REVOKED]

(a) A grievance filed with the Oklahoma Employment Security Commission (OESC) by a participant or affected party alleging a violation(s) of Title I of WIA is governed by the procedure set forth herein.

(b) An appeal to the OESC from a grievance decision issued at the local level regarding alleged violation(s) of Title I of WIA is governed by the procedure set forth herein.

(c) This procedure does not apply to grievances alleging discrimination or Title I of WIA, Subtitle C, Job Corps.

PART 3. GRIEVANCES FILED DIRECTLY WITH THE OESC [REVOKED]

240:21-11-10. Filing [REVOKED]

A participant or affected party may file a grievance with the Director.

240:21-11-11. Time limit for filing a grievance with OESC [REVOKED]

If an individual elects to file his or her grievance with OESC, the grievance must be filed within 20 days from the date of the violation(s) which is the basis of the grievance.

240:21-11-12. Contents of a grievance [REVOKED]

Each grievance shall be in writing and should:

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- (1) Be signed by the grievant or his authorized representative;
- (2) Contain the grievant's name and address (or specify another means of contacting him or her);
- (3) Identify the individual against whom the grievance is filed, if applicable;
- (4) List the date(s) on which the acts which are the basis of the grievance occurred, or if continuing, when such acts began and describe the continuing nature;
- (5) List the names and addresses of persons who may have knowledge of the facts of the grievance;
- (6) Describe the grievant's allegations in sufficient detail to allow the Director to determine whether:
 - (A) The Director has jurisdiction over the grievance;
 - (B) The grievance was timely filed; and
 - (C) The grievance has apparent merit, i.e., whether the allegations if true, would violate any Title I of WIA.

240:21-11-13. Referral of a grievance filed with OESC [REVOKED]

The Director may refer a grievance, originally filed with the OESC, to the local area if there is a likelihood that it could be resolved at that level. If the referred grievance is not resolved within ten (10) days from the date of receipt by the local area, the Director will attempt to resolve the issue informally.

PART 5. APPEALS TO THE OESC FROM GRIEVANCE DECISIONS OF A LOCAL AREA [REVOKED]

240:21-11-20. Filing grievance with local area [REVOKED]

A participant or affected party may file a grievance with the local area. It will be resolved according to the procedures of the local area, established pursuant to 20 C.F.R. §667.600 (e).

240:21-11-21. Appeals with OESC [REVOKED]

An appeal may be filed with the Director from a grievance decision issued at the local area level if:

- (1) No decision is reached within 60 days from the date the grievance is received at the local area level; or
- (2) Either party is dissatisfied with the local area hearing decision.

240:21-11-22. Time limit for filing an appeal with OESC [REVOKED]

- (a) If the local area does not render a decision within sixty (60) days from the date of receipt of the grievance, an appeal must be filed with the Director within 30 days from the expiration of the sixty (60) day time period.
- (b) If the local area renders a decision that a party is dissatisfied with, the appeal must be filed with the Director within 30

days of the date the local area mails the decision to the party by certified mail.

PART 7. INFORMAL AND FORMAL RESOLUTIONS OF GRIEVANCES [REVOKED]

240:21-11-30. Informal resolution [REVOKED]

The Director or his or her designee will attempt to resolve any grievance or appeal informally by meeting with the parties in person or discussing the grievance with the parties by telephone. If the grievance is not resolved informally within fifteen (15) days from the receipt of the grievance or appeal, the Director will forward the grievance or appeal to the Assessment Board.

240:21-11-31. Hearing [REVOKED]

The Assessment Board will conduct the hearing pursuant to its rules at 240:10-11-20 through 240:10-11-31. The hearing process will be completed within sixty (60) days from the date the grievance was received by the Director.

240:21-11-32. Remedies [REVOKED]

The remedies that may be imposed under this grievance procedure are enumerated in WIA section 181(c).

240:21-11-33. Appeal to Secretary or investigation by Secretary [REVOKED]

The Secretary will investigate an allegation of a violation as set forth above if:

- (1) a decision relating to such violation has not been reached within sixty (60) days after the date of filing of the grievance and either party appeals to the Secretary; or
- (2) a decision relating to such violation has been reached within sixty (60) days and the party to which such decision is adverse appeals such decision to the Secretary.

240:21-11-34. Decision of the Secretary [REVOKED]

The Secretary will make a final determination relating to an appeal no later than 120 days after receiving such appeal.

[OAR Docket #17-466; filed 6-19-17]

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

[OAR Docket #17-533]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 7. Environmental Permit Process
Part 1. The Process

252:4-7-5. [AMENDED]
AUTHORITY: Environmental Quality Board; 27A O.S. §2-2-201
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY: December 22, 2016
COMMENT PERIOD: January 17, 2017 through February 16, 2017
PUBLIC HEARING: February 17, 2017, Environmental Quality Board
ADOPTION: February 17, 2017
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE: February 24, 2017
APPROVED BY GOVERNOR'S DECLARATION: Approved by Governor's declaration on June 13, 2017
FINAL ADOPTION: June 13, 2017
EFFECTIVE: September 15, 2017
SUPERSEDED EMERGENCY ACTIONS: n/a
INCORPORATIONS BY REFERENCE: n/a
GIST/ANALYSIS:

The gist of the existing rule and the amendments relate to DEQ permit application fees and fee refunds. The existing rule generally prohibits refund of permit application fees except when DEQ has not met its own permit review deadlines. The amendments would allow a refund when an applicant makes a timely request for the refund of an overpayment and when an applicant demonstrates that its application fees should not be forfeited in the case of a voided application. The amendments would also allow DEQ to retain 15 percent of the amount to be refunded to cover the agency's permit review and refund costs.

CONTACT PERSON: Martha Penisten, (405)702-7184, 707 North Robinson, Oklahoma City, OK 73102. Mailing address is P.O. Box 1677, Oklahoma City, OK 73101-1677. E-mail address is Martha.penisten@deq.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2017:

SUBCHAPTER 7. ENVIRONMENTAL PERMIT PROCESS

PART 1. THE PROCESS

252:4-7-5. Fees and fee refunds

(a) Fees shall be submitted with the application in the appropriate amount and except as herein provided, will not be refunded except in the following situations:

- (1) An applicant has made an overpayment and requests a refund in writing to the relevant DEQ division within thirty (30) days of receiving notice of the close of DEQ's administrative completeness review; or
(2) DEQ has failed to meet a permit review deadline as provided in OAC 252:4-7-12(2), and provided the failure was within DEQ's control; or
(3) DEQ has voided an application as provided in OAC 252:4-7-14(b), and, within thirty (30) days of receiving

notice of the voided application, the applicant is able to demonstrate to the satisfaction of DEQ that the application fee should not be forfeited.

(b) Administrative costs in the amount of fifteen (15) percent of the amount to be refunded will be retained by DEQ except in cases of DEQ error or DEQ failure to meet review deadlines. The amount retained by DEQ in the case of an overpayment shall not exceed \$500, regardless of the amount of the refund.

[OAR Docket #17-533; filed 6-29-17]

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

[OAR Docket #17-534]

RULEMAKING ACTION: PERMANENT final adoption

RULES: Subchapter 7. Environmental Permit Process
Part 1. The Process
252:4-7-13. [AMENDED]

AUTHORITY: Environmental Quality Board; 27A O.S. Sections 2-2-101, 2-2-201, and 2-5-106; Air Quality Advisory Council: 27A O.S. Sections 2-2-201 and 2-5-107; Oklahoma Clean Air Act; 27A O.S. Sections 2-5-101 through -117.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY: November 21, 2016

COMMENT PERIOD: December 15, 2016 through January 18, 2017

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February 17, 2017

ADOPTION: February 17, 2017
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE: February 24, 2017

APPROVED BY GOVERNOR'S DECLARATION: Approved by Governor's declaration on June 13, 2017

FINAL ADOPTION: June 13, 2017

EFFECTIVE: September 15, 2017

SUPERSEDED EMERGENCY ACTIONS: n/a

INCORPORATIONS BY REFERENCE: n/a

GIST/ANALYSIS: The Department is proposing to amend OAC 252:4-7-13, Notices - specifically Subsection (g), Additional notice content requirements for Clean Air Act Permits - to align the Department's notice content requirements for Prevention of Significant Deterioration (PSD) permits with those promulgated by the U.S. Environmental Protection Agency (EPA) in 40 CFR Section 51.166. The gist of the proposed rule and the underlying reason for these revisions is to ensure that the State's rules are not less stringent than the federal rules. This will remove an obstacle in EPA Region 6 staff's review and approval of relevant portions of Oklahoma's State Implementation Plan (SIP), which will help ensure that the Department retains the PSD program. The changes would affect only the process for permits issued under OAC 252:100-8, Part 7 (PSD), and would not affect the process for permits issued under other chapters of DEQ rules.

CONTACT PERSON: Melanie Foster, Department of Environmental Quality, Air Quality Division, 707 North Robinson, P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, (405) 702-4100.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2017:

SUBCHAPTER 7. ENVIRONMENTAL PERMIT PROCESS

PART 1. THE PROCESS

252:4-7-13. Notices

- (a) **Statutory requirements for notice.** The Uniform Environmental Permitting Act requires an applicant to give notice in accordance with 27A O.S. § 2-14-301.
- (b) **Notice to landowner.** Applicants shall certify by affidavit that they own the real property, have a current lease or easement which is given to accomplish the permitted purpose or have provided legal notice to the landowner.
- (c) **Notice content.** The applicant shall provide DEQ with a draft notice for approval prior to publication. All published legal notice(s) shall contain the:
- (1) Name and address of the applicant;
 - (2) Name, address and legal description of the site, facility and/or activity;
 - (3) Purpose of notice;
 - (4) Type of permit or permit action being sought;
 - (5) Description of activities to be regulated;
 - (6) Locations where the application may be reviewed;
 - (7) Names, addresses and telephone numbers of contact persons for the DEQ and for the applicant;
 - (8) Description of public participation opportunities and time period for comment and requests; and
 - (9) Any other information required by DEQ rules.
- (d) **Proof of publication.** Within twenty (20) days after the date of publication, an applicant shall provide the DEQ with a written affidavit of publication for each notice published. In case of a mistake in a published notice, the DEQ shall require a legal notice of correction or republication of the entire notice, whichever is appropriate. Inconsequential errors in spelling, grammar or punctuation shall not be cause for correction or republication.
- (e) **Exception to notice requirement.** Applicants for solid waste transfer station permits may be exempt from public meeting requirements under 27A O.S. § 2-10-307.
- (f) **Additional notice.**
- (1) Applicants for a NPDES, RCRA or UIC permit are subject to additional notice provisions of federal requirements adopted by reference as DEQ rules.
 - (2) Applicants for a proposed wastewater discharge permit that may affect the water quality of a neighboring state must give written notice to the environmental regulatory agency of that state. [27A O.S. § 2-6-203(A)(7)]
 - (3) Applicants for a landfill permit shall provide notice by certified mail, return receipt requested, to owners of mineral interests and to adjacent landowners whose

property may be substantially affected by installation of a landfill site. See *DuLaney v. OSDH*, 868 P.2d 676 (Okla. 1993).

(g) **Additional notice content requirements for Clean Air Act Permits.** In addition to the notice provisions of 27A O.S. §§ 2-14-301 and 2-14-302 and other provisions of this section, the following requirements apply.

(1) Applicants shall give notice by publication in a newspaper of general circulation in the area where the source is located; to persons on a mailing list developed by the DEQ, including those who request in writing to be on the list; and by other means if determined by the Executive Director to be necessary to assure adequate notice to the affected public.

(2) All published notice(s) for permit modification shall identify the emissions change involved in the modification.

(3) An applicant for a Part 70 permit that may affect the air quality of a neighboring state must give written notice to the environmental regulatory agency of that state. [27A O.S. § 2-5-112(E)]

(4) An operating permit may be issued to an applicant for a new Part 70 operating permit without public review if the operating permit is based on a construction permit that meets the requirements of 252:4-7-32(b)(1)(B) and the public notice for the construction permit contains the following language.

(A) This permit is subject to EPA review, EPA objection, and petition to EPA, as provided by 252:100-8-8 and 40 CFR § 70.8.

(B) If the operating permit has conditions which do not differ from the construction permit's operating conditions in any way considered significant under 252:100-8-7.2(b)(2), the operating permit will be issued without public notice and comment; and,

(C) The public will not receive another opportunity to provide comments when the operating permit is issued.

(5) For permits under OAC 252:100-8, Part 7:

(A) all published notice(s) shall identify the degree of increment consumption that is expected from the source or modification.

(B) the mailing list developed by DEQ under paragraph (g)(1) shall include the mailing address and/or email address for those who request in writing to be on the list, as well as the EPA Administrator, and other officials and agencies having cognizance over the location where the proposed construction would occur as follows:

(i) the chief executives of the city and county where the source would be located;

(ii) any comprehensive regional land use planning agency; and

(iii) any State, Federal Land Manager, or Tribal Government whose lands may be affected by emissions from the source or modification.

[OAR Docket #17-534; filed 6-29-17]

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

[OAR Docket #17-535]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 7. Environmental Permit Process
Part 5. Land Protection Division Tiers and Time Lines
252:4-7-58. Solid waste management applications - Tier I [AMENDED]
252:4-7-59. Solid waste management applications - Tier II [AMENDED]

AUTHORITY:

Environmental Quality Board; 27A O.S. §§ 2-2-101, 2-10-201, 2-10-301.2, and 2-14-201; Solid Waste Management Advisory Council, 27A O.S. § 2-2-201.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

November 7, 2016

COMMENT PERIOD:

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February 24, 2017

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Approved by Governor's declaration on June 13, 2017

FINAL ADOPTION:

June 13, 2017

EFFECTIVE:

September 15, 2017

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The Department is proposing amendments to OAC 252:4-7-58 and OAC 252:4-7-59 to modify and clarify the permitting process requirements and associated tiers that apply to solid waste composting facilities. In association with this proposed rulemaking, the Department is proposing to create a new Subchapter, OAC 252:515-43, allowing for a tiered permitting and regulatory structure for different classes of composting facilities. The gist of this proposed rule is to amend the permitting process regulations pertaining to solid waste composting facilities to be consistent with the proposed new Subchapter referenced above, which will allow for a tiered permitting and regulatory structure based on the type and quantity of material to be received and composted at a particular facility.

CONTACT PERSON:

David Cates, Land Protection Division, Solid Waste Permitting Section, P.O. Box 1677, Oklahoma City, OK 73101-1677, e-mail at David.Cates@deq.ok.gov, phone 405-702-5100, or fax 405-702-5101.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2017:

SUBCHAPTER 7. ENVIRONMENTAL PERMIT PROCESS

PART 5. LAND PROTECTION DIVISION TIERS AND TIME LINES

252:4-7-58. Solid waste management applications - Tier I

The following solid waste management authorizations require Tier I applications.

(1) **New permits.**

(A) **Locally approved solid waste transfer stations.** Permit for a solid waste transfer station that, prior to application filing, received county commissioner approval according to 27A O.S. § 2-10-307.

(B) **Biomedical waste transfer stations using only sealed containers.** Biomedical waste transfer station permit when activities are limited to:

- (i) consolidation of sealed containers; and/or
- (ii) transfer of sealed containers from one vehicle or mode of transportation to another.

(C) **Disaster relief.** Emergency authorization for waste disposal resulting from a natural disaster.

(D) **Class I composting facilities.** Permits for Class I composting facilities, as defined in OAC 252:515-43.

(2) **Modifications.**

(A) **All facilities.**

- (i) Modification of a solid waste permit to add methods, units or appurtenances for liquid bulking processes; yard waste composting; recycling operations; waste screening; or baling, chipping, shredding or grinding equipment or operations.
- (ii) Modification to any solid waste permit to make minor changes.
- (iii) Modification of plans for closure and/or post-closure.
- (iv) Administrative modification of all permits and other authorizations.

(B) **On-site and off-site land disposal facilities.** Modification of an existing land disposal permit for a lateral expansion within permitted boundaries.

(C) **Capacity increases of less than 25% with exceptions.** The modification of a solid waste permit, excluding incineration permits, involving a request for less than twenty-five percent (25%) increase in permitted capacity for storage, processing or disposal when the request is for equivalent methods, units or appurtenances as those permitted and which does not involve expansions of permitted boundaries.

(3) **Plans and other authorizations.** The approval of new and when applicable, modified or renewed:

- (A) Plans for ~~composting of yard waste only~~ special events composting.
- (B) Permit transfers.
- (C) Non-hazardous industrial solid waste disposal plans.
- (D) Technical plans.
- (E) County solid waste management plans.
- (F) Individual authorizations under a general permit.

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(G) All other administrative approvals required by solid waste rules.

252:4-7-59. Solid waste management applications - Tier II

The following solid waste management authorizations require Tier II applications.

(1) New permits.

(A) **On-site solid waste processing facilities with exception.** Permit for an on-site solid waste processing facility except ~~yard waste~~ Class I composting facilities as listed under Tier I.

(B) **Solid waste transfer stations with exceptions.** Permit for a solid waste transfer station except:
(i) a transfer station permit with county commissioner approval as listed under Tier I, or
(ii) a biomedical waste transfer station permit listed under Tier I.

(C) **On-Site incinerators with exceptions.** Permit for an on-site incinerator except those exempt under solid waste rules or those that have an approved Air Quality permit or Solid Waste Management Plan.

(D) **On-site land disposal sites.** Permit for an on-site solid waste disposal site.

(E) **Material Recovery Facility (MRF).** Permit for a Material Recovery Facility if waste is not source-separated.

(F) **On-site and Off-site Class II, Class III and Class IV composting facilities.** Permits for Class II, Class III and Class IV composting facilities, as defined in OAC 252:515-43.

(2) Modifications.

(A) **All facilities.** Modification of a permit for a change in waste type.

(B) **On-site facilities.** Any modification of an on-site solid waste permit, except as listed under Tier I.

(C) Off-site facilities.

(i) Modification of any off-site solid waste permit involving a request for more than twenty-five percent (25%) but less than fifty percent (50%) increase in permitted capacity for storage, processing or disposal (excluding incineration) when the request is for equivalent methods, units or appurtenances as those permitted, except those listed under Tier I.

(ii) Modification of any off-site processing facility involving an expansion of permitted boundaries.

(D) Incinerators.

(i) Modification of an on-site incinerator permit for any increase in permitted capacity for storage, processing, or disposal.

(ii) Modification of an off-site incinerator permit involving a request for increases less than fifty percent (50%) in permitted capacity for storage, processing, or disposal when the request is

for equivalent methods, units or appurtenances as those permitted.

(3) **General permit.** New, modified or renewed general permit.

[OAR Docket #17-535; filed 6-29-17]

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

[OAR Docket #17-536]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions

252:100-1-3. [AMENDED]

Subchapter 8. Permits for Part 70 Sources and Major New Source Review (NSR) Sources

Part 5. Permits for Part 70 Sources

252:100-8-2. [AMENDED]

Part 7. Prevention of Significant Deterioration (PSD) Requirements for Attainment Areas

252:100-8-31. [AMENDED]

252:100-8-33. [AMENDED]

252:100-8-35. [AMENDED]

Part 9. Major Sources Affecting Nonattainment Areas

252:100-8-51.1. [AMENDED]

AUTHORITY:

Environmental Quality Board; 27A O.S. Sections 2-2-101, 2-2-201, and 2-5-106; Air Quality Advisory Council; 27A O.S. Sections 2-2-201 and 2-5-107; Oklahoma Clean Air Act; 27A O.S. Sections 2-5-101 through -117.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

August 8, 2016

COMMENT PERIOD:

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November 17, 2016

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 13, 2017

FINAL ADOPTION:

June 13, 2017

EFFECTIVE:

September 15, 2017

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The Department is proposing to amend several provisions in OAC 252:100, Subchapter 1, General Provisions, and Subchapter 8, Permits for Part 70 Sources and Major New Source Review (NSR) Sources, primarily to align the Department's definitions with those promulgated by the U.S. Environmental Protection Agency (EPA). A number of changes would remove and/or update language in response to federal court decisions, EPA rules changes, and deficiencies identified during EPA Region 6's review of SIP submittals. The proposed changes are intended to make certain that the State's rules are not less stringent than the federal rules, and thereby ensure that the Department retains the approval of the PSD and Title V programs.

CONTACT PERSON:

Melanie Foster, Department of Environmental Quality, Air Quality Division, 707 North Robinson, P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, (405) 702-4100.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2017:

SUBCHAPTER 1. GENERAL PROVISIONS

252:100-1-3. Definitions

The following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise or unless defined specifically for a Subchapter, section, or subsection in the Subchapter, section, or subsection.

"**Act**" means the Federal Clean Air Act, as amended, 42 U.S.C. 7401 et seq.

"**Administrator**" means, unless specifically defined otherwise, the Administrator of the United States Environmental Protection Agency (EPA) or the Administrator's designee.

"**Air contaminant source**" means any and all sources of emission of air contaminants (pollutants), whether privately or publicly owned or operated, or person contributing to emission of air contaminants. Without limiting the generality of the foregoing, this term includes all types of business, commercial and industrial plants, works, shops and stores, heating and power plants or stations, buildings and other structures of all types.

"**Air pollution abatement operation**" means any operation which has as its essential purpose a significant reduction in:

- (A) the emission of air contaminants, or
- (B) the effect of such emission.

"**Air pollution episode**" means high levels of air pollution existing for an extended period (24 hours or more) of time which may cause acute harmful health effects during periods of atmospheric stagnation, without vertical or horizontal ventilation. This occurs when there is a high pressure air mass over an area, a low wind speed and there is a temperature inversion. Other factors such as humidity may also affect the episode conditions.

"**Ambient air standards**" or "**Ambient air quality standards**" means levels of air quality as codified in OAC 252:100-3.

"**Atmosphere**" means the air that envelops or surrounds the earth.

"**Best available control technology**" or "**BACT**" means the best control technology that is currently available as determined by the Division Director on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs of alternative control systems.

"**Building, structure, facility, or installation**" means:

(A) all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e., which have the same two-digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement.

(B) notwithstanding the provisions of subparagraph (A), for onshore activities under Standard Industrial Classification (SIC) Major Group 13: Oil and Gas Extraction, all of the pollutant-emitting activities included in Major Group 13 that are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant emitting activities shall be considered adjacent if they are located on the same surface site; or if they are located on surface sites that are located within 1/4 mile of one another (measured from the center of the equipment on the surface site) and they share equipment. Shared equipment includes, but is not limited to, produced fluids storage tanks, phase separators, natural gas dehydrators, or emissions control devices. Surface site, as used in this definition, has the same meaning as in 40 CFR 63.761.

"**Carbon dioxide equivalent emissions**" or "**CO₂e**" means an amount of GHG emitted, and shall be computed by multiplying the mass amount of emissions, for each of the six greenhouse gases in the pollutant GHG, by the gas' associated global warming potential (GWP) published in Table A-1 to subpart A of 40 CFR Part 98 - Global Warming Potentials, and summing the resultant value for each to compute a CO₂e. ~~For purposes of the definitions of "subject to regulation" in OAC 252:100-8-2 and 252:100-8-31, prior to July 21, 2014, the mass of the greenhouse gas carbon dioxide shall not include carbon dioxide emissions resulting from the combustion or decomposition of non fossilized and biodegradable organic material originating from plants, animals, or micro organisms (including products, by products, residues and waste from agriculture, forestry and related industries, as well as the non fossilized and biodegradable organic fractions of industrial and municipal wastes, including gases and liquids recovered from the decomposition of non fossilized and biodegradable organic material).~~

"**Catalytic cracking unit**" means a unit composed of a reactor, regenerator and fractionating towers which is used to convert certain petroleum fractions into more valuable products by passing the material through or commingled with a bed of catalyst in the reactor. Coke deposits produced on the catalyst during cracking are removed by burning off in the regenerator.

"**Combustible materials**" means any substance which will readily burn and shall include those substances which, although generally considered incombustible, are or may be included in the mass of the material burned or to be burned.

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"Commence" means, unless specifically defined otherwise, that the owner or operator of a facility to which neither a NSPS or NESHAP applies has begun the construction or installation of the emitting units on a pad or in the final location at the facility.

"Commencement of operation" or **"commencing operation"** means the owner or operator of the stationary source has begun, or caused to begin, emitting a regulated air pollutant from any activity for which the stationary source is designed and/or permitted.

"Complete" means in reference to an application for a permit, the application contains all the information necessary for processing the application. Designating an application complete for purposes of permit processing does not preclude the Director from requesting or accepting any additional information.

"Construction" means, unless specifically defined otherwise, fabrication, erection, or installation of a source.

"Crude oil" means a naturally occurring hydrocarbon mixture which is a liquid at standard conditions. It may contain sulfur, nitrogen and/or oxygen derivatives of hydrocarbon.

"Direct fired" means that the hot gasses produced by the flame or heat source come into direct contact with the material being processed or heated.

"Division" means Air Quality Division, Oklahoma State Department of Environmental Quality.

"Dust" means solid particulate matter released into or carried in the air by natural forces, by any fuel-burning, combustion, process equipment or device, construction work, mechanical or industrial processes.

"EPA" means the United States Environmental Protection Agency.

"Excess emissions" means the emission of regulated air pollutants in excess of an applicable limitation or requirement as specified in the applicable limiting Subchapter, permit, or order of the DEQ. This term does not include fugitive VOC emissions covered by an existing leak detection and repair program that is required by a federal or state regulation.

"Existing source" means, unless specifically defined otherwise, an air contaminant source which is in being on the effective date of the appropriate Subchapter, section, or paragraph of these rules.

"Facility" means all of the pollutant-emitting activities that meet all the following conditions:

- (A) Are under common control.
- (B) Are located on one or more contiguous or adjacent properties.
- (C) Have the same two-digit primary SIC Code (as described in the Standard Industrial Classification Manual, 1987).

"Federally enforceable" means all limitations and conditions which are enforceable by the Administrator, including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within any applicable State implementation plan, any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Part 51, subpart I, including operating permits issued under an EPA-approved program that is incorporated into the State

implementation plan and expressly requires adherence to any permit issued under such program.

"Fossil fuel" means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material.

"Fuel-burning equipment" means any one or more of boilers, furnaces, gas turbines or other combustion devices and all appurtenances thereto used to convert fuel or waste to usable heat or power.

"Fugitive dust" means solid airborne particulate matter emitted from any source other than a stack or chimney.

"Fugitive emissions" means, unless specifically defined otherwise, those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

"Fume" means minute solid particles generated by the condensation of vapors to solid matter after volatilization from the molten state, or generated by sublimation, distillation, calcination, or chemical reaction when these processes create airborne particles.

"Garbage" means all putrescible animal and vegetable matter resulting from the handling, preparation, cooking and consumption of food.

"Greenhouse gas" or **"GHG"** means the air pollutant defined in 40 CFR § 86.1818-12(a) as the aggregate group of six greenhouse gases: carbon dioxide (CO₂), nitrous oxide (N₂O), methane (CH₄), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF₆).

"Gross particulate matter" or **"GPM"** means particulate matter with an aerodynamic diameter greater than 10 micrometers.

"In being" means as used in the definitions of New Installation and Existing Source that an owner or operator has undertaken a continuous program of construction or modification or the owner or operator has entered into a binding agreement or contractual obligation to undertake and complete within a reasonable time a continuous program of construction or modification prior to the compliance date for installation as specified by the applicable regulation.

"Incinerator" means a combustion device specifically designed for the destruction, by high temperature burning, of solid, semi-solid, liquid, or gaseous combustible wastes and from which the solid residues contain little or no combustible material.

"Indirect fired" means that the hot gasses produced by the flame or heat source do not come into direct contact with the material, excluding air, being processed or heated.

"Installation" means an identifiable piece of process equipment.

"Lowest achievable emissions rate" or **"LAER"** means, for any source, the more stringent rate of emissions based on paragraphs (A) and (B) of this definition. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within a stationary source. In no event shall the application of LAER allow a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under applicable standard of performance for the new source.

(A) LAER means the most stringent emissions limitation which is contained in the implementation plan of any State for such class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that such limitations are not achievable, or

(B) LAER means the most stringent emissions limitation which is achieved in practice by such class or category of stationary sources.

"Major source" means any new or modified stationary source which directly emits or has the capability at maximum design capacity and, if appropriately permitted, authority to emit 100 tons per year or more of a given pollutant. (OAC 252:100-8, Part 3)

"Malfunction" means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused in part by poor maintenance or careless operation are not malfunctions.

"Mist" means a suspension of any finely divided liquid in any gas or atmosphere excepting uncombined water.

"Modification" means any physical change in, or change in the method of operation of, a source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted, except that:

(A) routine maintenance, repair and replacement shall not be considered physical changes; and,

(B) the following shall not be considered a change in the method of operation:

(i) any increase in the production rate, if such increase does not exceed the operating design capacity of the source;

(ii) an increase in hours of operation;

(iii) use of alternative fuel or raw material if, prior to the date any standard under this part becomes applicable to such source the affected facility is designed to accommodate such alternative use.

"National Emission Standards for Hazardous Air Pollutants" or **"NESHAP"** means those standards found in 40 CFR Parts 61 and 63.

"New installation", "New source", or "New equipment" means an air contaminant source which is not in being on the effective date of these regulations and any existing source which is modified, replaced, or reconstructed after the effective date of the regulations such that the amount of air contaminant emissions is increased.

"New Source Performance Standards" or **"NSPS"** means those standards found in 40 CFR Part 60.

"Nonmethane organic compounds" or **"NMOC"** means nonmethane organic compounds, as defined in 40 CFR 60.754.

"Opacity" means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

"Open burning" means the burning of combustible materials in such a manner that the products of combustion are emitted directly to the outside atmosphere.

"Organic compound" means any chemical compound containing the element carbon.

"Owner or operator" means any person who owns, leases, operates, controls or supervises a source.

"Part 70 permit" means (unless the context suggests otherwise) any permit or group of permits covering a Part 70 source that is issued, renewed, amended, or revised pursuant to this Chapter.

"Part 70 program" means a program approved by the Administrator under 40 CFR Part 70.

"Part 70 source" means any source subject to the permitting requirements of Part 5 of Subchapter 8, as provided in OAC 252:100-8-3(a) and (b).

"PM₁₀ emissions" means particulate matter emitted to the ambient air with an aerodynamic diameter of 10 micrometers or less as measured by applicable reference methods, or an equivalent or alternative method.

"PM₁₀" means particulate matter with an aerodynamic diameter of 10 micrometers or less.

"PM_{2.5}" means particulate matter with an aerodynamic diameter of 2.5 micrometers or less.

"Particulate matter" or **"PM"** means any material that exists in a finely divided form as a liquid or a solid.

"Particulate matter emissions" means particulate matter emitted to the ambient air as measured by applicable reference methods, or an equivalent or alternative method.

"Potential to emit" means the maximum capacity of a source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is enforceable. Secondary emissions do not count in determining the potential to emit of a source.

"Prevention of significant deterioration" or **"PSD"** means increments for the protection of attainment areas as codified in OAC 252:100-3.

"Process equipment" means any equipment, device or contrivance for changing any materials or for storage or handling of any materials, the use or existence of which may cause any discharge of air contaminants into the open air, but not including that equipment specifically defined as fuel-burning equipment, or refuse-burning equipment.

"Process weight" means the weight of all materials introduced in a source operation, including solid fuels, but excluding liquids and gases used solely as fuels, and excluding air introduced for the purposes of combustion. Process weight rate means a rate established as follows:

(A) for continuous or long-run, steady-state, operations, the total process weight for the entire period of continuous operation or for a typical portion thereof, divided by the number of hours of such period or portion thereof.

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(B) for cyclical or batch source operations, the total process weight for a period which covers a complete or an integral number of cycles, divided by the hours of actual process operation during such period.

(C) where the nature of any process or operation or the design of any equipment is such as to permit more than one interpretation of this definition, that interpretation which results in the minimum value for allowable emission shall apply.

"Reasonably available control technology" or **"RACT"** means devices, systems, process modifications, or other apparatus or techniques that are reasonably available taking into account:

(A) The necessity of imposing such controls in order to attain and maintain a national ambient air quality standard;

(B) The social, environmental, and economic impact of such controls; and

(C) Alternative means of providing for attainment and maintenance of such standard.

"Reconstruction" means

(A) the replacement of components of an existing source to the extent that will be determined by the Executive Director based on:

(i) the fixed capital cost (the capital needed to provide all the depreciable components of the new components exceeds 50 percent of the fixed capital cost of a comparable entirely new source);

(ii) the estimated life of the source after the replacements is comparable to the life of an entirely new source; and,

(iii) the extent to which the components being replaced cause or contribute to the emissions from the source.

(B) a reconstructed source will be treated as a new source for purposes of OAC 252:100-8, Part 9.

"Refinery" means any facility engaged in producing gasoline, kerosene, fuel oils or other products through distillation of crude oil or through redistillation, cracking, or reforming of unfinished petroleum derivatives.

"Refuse" means, unless specifically defined otherwise, the inclusive term for solid, liquid or gaseous waste products which are composed wholly or partly of such materials as garbage, sweepings, cleanings, trash, rubbish, litter, industrial, commercial and domestic solid, liquid or gaseous waste; trees or shrubs; tree or shrub trimmings; grass clippings; brick, plaster, lumber or other waste resulting from the demolition, alteration or construction of buildings or structures; accumulated waste material, cans, containers, tires, junk or other such substances.

"Refuse-burning equipment" means any equipment, device, or contrivance, and all appurtenances thereto, used for the destruction of combustible refuse or other combustible wastes by burning.

"Regulated air pollutant" means any substance or group of substances listed in Appendix P of this Chapter, or any substance regulated as an air pollutant under any federal regulation for which the Department has been given authority,

or any other substance for which an air emission limitation or equipment standard is set by an enforceable permit.

"Responsible official" means one of the following:

(A) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall production, or operating facilities applying for or subject to a permit and either:

(i) The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars); or

(ii) The delegation of authority to such representatives is approved in advance by the DEQ;

(B) For the partnership or sole proprietorship: a general partner or the proprietor, respectively;

(C) For a municipality, state, federal, or other public agency: Either a principal executive officer or ranking elected official. For purposes of this Chapter, a principal executive officer or installation commander of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a Regional Administrator of EPA); or

(D) For affected sources:

(i) The designated representative insofar as actions, standards, requirements, or prohibitions under Title IV of the Act or the regulations promulgated thereunder are concerned; and

(ii) The designated representative for any other purposes under this Chapter.

"Shutdown" means the cessation of operation of any process, process equipment, or air pollution control equipment.

"Smoke" means small gas-borne or air-borne particles resulting from combustion operations and consisting of carbon, ash, and other matter any or all of which is present in sufficient quantity to be observable.

"Source operation" means the last operation preceding the emission of an air contaminant, which operation:

(A) results in the separation of the air contaminant from the process materials or in the conversion of the process materials into air contaminants, as in the case of combustion of fuel; and,

(B) is not an air pollution abatement operation.

"Stack" means, unless specifically defined otherwise, any chimney, flue, duct, conduit, exhaust, pipe, vent or opening, excluding flares, designed or specifically intended to conduct emissions to the atmosphere.

"Standard conditions" means a gas temperature of 68 degrees Fahrenheit (20° Centigrade) and a gas pressure of 14.7 pounds per square inch absolute.

"Startup" means the setting into operation of any process, process equipment, or air pollution control equipment.

"Stationary source" means, unless specifically defined otherwise, any building, structure, facility, or installation either fixed or portable, whose design and intended use is at a fixed location and emits or may emit an air pollutant subject to OAC 252:100.

"Total Suspended Particulates" or "TSP" means particulate matter as measured by the high-volume method described in Appendix B of 40 CFR Part 50.

"Temperature inversion" means a phenomenon in which the temperature in a layer of air increases with height and the cool heavy air below is trapped by the warmer air above and cannot rise.

"Visible emission" means any air contaminant, vapor or gas stream which contains or may contain an air contaminant which is passed into the atmosphere and which is perceptible to the human eye.

"Volatile organic compound" or "VOC" means any organic compound that participates in atmospheric photochemical reactions resulting in the formation of tropospheric ozone. Carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, ammonium carbonates, tert-butyl acetate and compounds listed in 40 CFR 51.100(s)(1) are presumed to have negligible photochemical reactivity and are not considered to be VOC.

SUBCHAPTER 8. PERMITS FOR PART 70 SOURCES AND MAJOR NEW SOURCE REVIEW (NSR) SOURCES

PART 5. PERMITS FOR PART 70 SOURCES

252:100-8-2. Definitions

The following words and terms, when used in this Part, shall have the following meaning, unless the context clearly indicates otherwise. Except as specifically provided in this Section, terms used in this Part retain the meaning accorded them under the applicable requirements of the Act.

"Administratively complete" means an application that provides:

- (A) All information required under OAC 252:100-8-5(c), (d), or (e);
- (B) A landowner affidavit as required by OAC 252:4-7-13(b);
- (C) The appropriate application fees as required by OAC 252:100-8-1.7; and
- (D) Certification by the responsible official as required by OAC 252:100-8-5(f).

"Affected source" means the same as the meaning given to it in the regulations promulgated under Title IV (acid rain) of the Act.

"Affected states" means:

- (A) all states:
 - (i) That are one of the following contiguous states: Arkansas, Colorado, Kansas, Missouri, New Mexico and Texas, and

- (ii) That in the judgment of the DEQ may be directly affected by emissions from the facility seeking the permit, permit modification, or permit renewal being proposed; or

- (B) all states that are within 50 miles of the permitted source.

"Affected unit" means the same as the meaning given to it in the regulations promulgated under Title IV (acid rain) of the Act.

"Applicable requirement" means all of the following as they apply to emissions units in a Part 70 source subject to this Chapter (including requirements that have been promulgated or approved by EPA through rulemaking at the time of issuance but have future effective compliance dates):

- (A) Any standard or other requirements provided for in the applicable implementation plan approved or promulgated by EPA through rulemaking under Title I of the Act that implements the relevant requirements of the Act, including any revisions to that plan promulgated in 40 CFR Part 52;
- (B) Any term or condition of any preconstruction permits issued pursuant to regulations approved or promulgated through rulemaking under Title I, including parts C or D, of the Act;
- (C) Any standard or other requirement under section 111 of the Act, including section 111(d);
- (D) Any standard or other requirement under section 112 of the Act, including any requirement concerning accident prevention under section 112(r)(7) of the Act, but not including the contents of any risk management plan required under 112(r) of the Act;
- (E) Any standard or other requirement of the acid rain program under Title IV of the Act or the regulations promulgated thereunder;
- (F) Any requirements established pursuant to section 504(b) or section 114(a)(3) of the Act;
- (G) Any standard or other requirement governing solid waste incineration, under section 129 of the Act;
- (H) Any standard or other requirement for consumer and commercial products, under section 183(e) of the Act;
- (I) Any standard or other requirement for tank vessels, under section 183(f) of the Act;
- (J) Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the Act, unless the Administrator has determined that such requirements need not be contained in a Title V permit; and
- (K) Any national ambient air quality standard or increment or visibility requirement under part C of Title I of the Act, but only as it would apply to temporary sources permitted pursuant to section 504(e) of the Act.

"Begin actual construction" means for purposes of this Part, that the owner or operator has begun the construction or installation of the emitting equipment on a pad or in the final location at the facility.

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"Designated representative" means with respect to affected units, a responsible person or official authorized by the owner or operator of a unit to represent the owner or operator in matters pertaining to the holding, transfer, or disposition of allowances allocated to a unit, and the submission of and compliance with permits, permit applications, and compliance plans for the unit.

"Draft permit" means the version of a permit for which the DEQ offers public participation under 27A O.S. §§ 2-14-101 through 2-14-401 and OAC 252:4-7 or affected State review under OAC 252:100-8-8.

"Emergency" means, when used in OAC 252:100-8-6(a)(3)(C)(iii)(I) and (e), any situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the permit, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventive maintenance, careless or improper operation, or operator error.

"Emissions allowable under the permit" means a federally enforceable permit term or condition determined at issuance to be required by an applicable requirement that establishes an emissions limit (including a work practice standard) or a federally enforceable emissions cap that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject.

"Emissions unit" means any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant or any pollutant listed under section 112(b) of the Act. Fugitive emissions from valves, flanges, etc. associated with a specific unit process shall be identified with that specific emission unit. This term is not meant to alter or affect the definition of the term "unit" for purposes of Title IV of the Act.

"Final permit" means the version of a part 70 permit issued by the DEQ that has completed all review procedures required by OAC 252:100-8-7 through 252:100-8-7.5 and OAC 252:100-8-8.

"Fugitive emissions" means those emissions of regulated air pollutants which could not reasonably pass through a stack, chimney, vent, or other functionally-equivalent opening.

"General permit" means a part 70 permit that meets the requirements of OAC 252:100-8-6.1.

"Insignificant activities" means individual emissions units that are either on the list approved by the Administrator and contained in Appendix I, or whose actual calendar year emissions do not exceed any of the limits in (A) and (B) of this definition. Any activity to which a State or federal applicable requirement applies is not insignificant even if it meets the criteria below or is included on the insignificant activities list.

(A) 5 tons per year (TPY) of any one criteria pollutant.

(B) 2 tons per year for any one hazardous air pollutant (HAP) or 5 tons per year for an aggregate of two or more HAPs, or 20 percent of any threshold less

than 10 tons per year for single HAP that the EPA may establish by rule.

"MACT" means maximum achievable control technology.

"Major source" means any stationary source (or any group of stationary sources that are located on one or more contiguous or adjacent properties and are under common control of the same person (or persons under common control)) belonging to a single major industrial grouping and that is described in subparagraph (A), (B), or (C) of this definition. For the purposes of defining "major source," a stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same Major Group (i.e., all have the same two-digit primary SIC code) as described in the Standard Industrial Classification Manual, 1987. For onshore activities belonging to Standard Industrial Classification (SIC) Major Group 13: Oil and Gas Extraction, pollutant emitting activities shall be considered adjacent if they are located on the same surface site; or if they are located on surface sites that are located within 1/4 mile of one another (measured from the center of the equipment on the surface site) and they share equipment. Shared equipment includes, but is not limited to, produced fluids storage tanks, phase separators, natural gas dehydrators, or emissions control devices. Surface site, as used in this definition, has the same meaning as in 40 CFR 63.761.

(A) A major source under section 112 of the Act, which is defined as:

(i) For pollutants other than radionuclides, any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, 10 TPY or more of any hazardous air pollutant which has been listed pursuant to section 112(b) of the Act, 25 TPY or more of any combination of such hazardous air pollutants, or such lesser quantity as the Administrator may establish by rule. Notwithstanding the preceding sentence, emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources; or

(ii) For radionuclides, "major source" shall have the meaning specified by the Administrator by rule.

(B) A major stationary source of air pollutants, as defined in section 302 of the Act, that directly emits or has the potential to emit, 100 TPY or more of any air pollutant (except gross particulate matter) subject to regulation (including any major source of fugitive emissions of any such pollutant, as determined by rule by the Administrator). The fugitive emissions

of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of section 302(j) of the Act, unless the source belongs to one of the following categories of stationary sources:

- (i) Coal cleaning plants (with thermal dryers);
- (ii) Kraft pulp mills;
- (iii) Portland cement plants;
- (iv) Primary zinc smelters;
- (v) Iron and steel mills;
- (vi) Primary aluminum ore reduction plants;
- (vii) Primary copper smelters;
- (viii) Municipal incinerators capable of charging more than 250 tons of refuse per day;
- (ix) Hydrofluoric, sulfuric, or nitric acid plants;
- (x) Petroleum refineries;
- (xi) Lime plants;
- (xii) Phosphate rock processing plants;
- (xiii) Coke oven batteries;
- (xiv) Sulfur recovery plants;
- (xv) Carbon black plants (furnace process);
- (xvi) Primary lead smelters;
- (xvii) Fuel conversion plants;
- (xviii) Sintering plants;
- (xix) Secondary metal production plants;
- (xx) Chemical process plants (not including ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140);
- (xxi) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;
- (xxii) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
- (xxiii) Taconite ore processing plants;
- (xxiv) Glass fiber processing plants;
- (xxv) Charcoal production plants;
- (xxvi) Fossil-fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; or
- (xxvii) All other stationary source categories which, as of August 7, 1980, are being regulated by a standard promulgated under section 111 or 112 of the Act.

(C) A major stationary source as defined in part D of Title I of the Act, including:

- (i) For ozone—~~non attainment~~nonattainment areas, sources with the potential to emit 100 TPY or more of volatile organic compounds or oxides of nitrogen in areas classified or treated as classified as "marginal" or "moderate," "Marginal" or "Moderate," 50 TPY or more in areas classified or treated as classified as "serious," "Serious," 25 TPY or more in areas classified or treated as classified as "severe," "Severe," and 10 TPY or more in areas classified or treated as classified as "extreme" "Extreme"; except that the references

in this paragraph to 100, 50, 25, and 10 TPY of nitrogen oxides shall not apply with respect to any source for which the Administrator has made a finding, under section 182(f)(1) or (2) of the Act, that requirements under section 182(f) of the Act do not apply;

(ii) For ozone transport regions established pursuant to section 184 of the Act, sources with the potential to emit 50 TPY or more of volatile organic compounds;

(iii) For carbon monoxide—~~non attainment~~nonattainment areas:

(I) that are classified or treated as classified as "serious," "Serious"; and

(II) in which stationary sources contribute significantly to carbon monoxide levels as determined under rules issued by the Administrator, sources with the potential to emit 50 TPY or more of carbon monoxide; and

(iv) For particulate matter (PM₁₀)—~~non attainment~~nonattainment areas classified or treated as classified as "serious," "Serious," sources with the potential to emit 70 TPY or more of PM₁₀.

"Maximum capacity" means the quantity of air contaminants that theoretically could be emitted by a stationary source without control devices based on the design capacity or maximum production capacity of the source and 8,760 hours of operation per year. In determining the maximum theoretical emissions of VOCs for a source, the design capacity or maximum production capacity shall include the use of raw materials, coatings and inks with the highest VOC content used in practice by the source.

"Permit" means (unless the context suggests otherwise) any permit or group of permits covering a Part 70 source that is issued, renewed, amended, or revised pursuant to this Chapter.

"Permit modification" means a revision to a Part 70 construction or operating permit that meets the requirements of OAC 252:100-8-7.2(b).

"Permit program costs" means all reasonable (direct and indirect) costs required to develop and administer a permit program, as set forth in OAC 252:100-5-2.2 (whether such costs are incurred by the DEQ or other State or local agencies that do not issue permits directly, but that support permit issuance or administration).

"Permit revision" means any permit modification or administrative permit amendment.

"Potential to emit" means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is enforceable by the Administrator. This term does not alter or affect the use of this term for any other purposes under the Act, or the term "capacity factor" as used in Title IV of the Act or the regulations promulgated thereunder.

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"Proposed permit" means the version of a permit that the DEQ proposes to issue and forwards to the Administrator for review in compliance with OAC 252:100-8-8.

"Regulated air pollutant" means the following:

(A) Nitrogen oxides or any volatile organic compound (VOC), including those substances defined in OAC 252:100-1-3, 252:100-37-2, and 252:100-39-2, except those specifically excluded in the EPA definition of VOC in 40 CFR 51.100(s);

(B) Any pollutant for which a national ambient air quality standard has been promulgated;

(C) Any pollutant that is subject to any standard promulgated under section 111 of the Act;

(D) Any Class I or II ozone-depleting substance subject to a standard promulgated under or established by Title VI of the Act;

(E) Any pollutant subject to a standard promulgated under section 112 or other requirements established under section 112 of the Act (Hazardous Air Pollutants), including sections 112(g) (Modifications), (j) (Equivalent Emission Limitation by Permit), and (r) (Prevention of Accidental Releases), including the following:

(i) any pollutant subject to the requirements under section 112(j) of the Act. If the Administrator fails to promulgate a standard by the date established pursuant to section 112(e) of the Act (Schedule for Standards and Review), any pollutant for which a subject source would be major shall be considered to be regulated as to that source on the date 18 months after the applicable date established pursuant to section 112(e) of the Act; and,

(ii) any pollutant for which the requirements of section 112(g)(2) of the Act have been met, but only with respect to the individual source subject to the section 112(g)(2) requirement; or

(F) Any other substance for which an air emission limitation or equipment standard is set by an existing permit or regulation.

"Renewal" means the process by which a permit is reissued at the end of its term.

"Section 502(b)(10) changes" means changes that contravene an express permit term. Such changes do not include changes that would violate applicable requirements or contravene federally enforceable permit terms and conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements.

"Small unit" means a fossil fuel fired combustion device which serves a generator with a name plate capacity of 25 MWe or less.

"State-only requirement" means any standard or requirement pursuant to Oklahoma Clean Air Act (27A O.S. §§ 2-5-101 through 2-5-118, as amended) that is not contained in the State Implementation Plan (SIP).

"State program" means a program approved by the Administrator under 40 CFR Part 70.

"Stationary source" means any building, structure, facility, or installation that emits or may emit any regulated air pollutant or any pollutant listed under section 112(b) of the Act as it existed on January 2, 2006.

"Subject to regulation" means, for any air pollutant, that the pollutant is subject to either a provision in the federal Clean Air Act, or a nationally-applicable regulation codified by the EPA Administrator in subchapter C of Chapter I of 40 CFR, that requires actual control of the quantity of emissions of that pollutant, and that such a control requirement has taken effect and is operative to control, limit, or restrict the quantity of emissions of that pollutant released from the regulated activity. Except that:

(A) Greenhouse gases (GHG) shall not be subject to regulation unless, as of July 1, 2011, the GHG emissions are at a stationary source emitting or having the potential to emit 100,000 TPY CO₂ equivalent emissions (CO₂e) and are otherwise subject to regulation as previously described in this definition.

(B) The term TPY CO₂ equivalent emissions (CO₂e) shall represent an amount of GHG emitted, and shall be computed by multiplying the mass amount of emissions (TPY), for each of the six greenhouse gases in the pollutant GHG, by the gas' associated global warming potential (GWP) published in Table A-1 to subpart A of 40 CFR Part 98 - Global Warming Potentials, and summing the resultant value for each to compute a TPY CO₂e. ~~For purposes of this definition, prior to July 21, 2014, the mass of the greenhouse gas carbon dioxide shall not include carbon dioxide emissions resulting from the combustion or decomposition of non fossilized and biodegradable organic material originating from plants, animals, or micro organisms (including products, by products, residues and waste from agriculture, forestry and related industries, as well as the non fossilized and biodegradable organic fractions of industrial and municipal wastes, including gases and liquids recovered from the decomposition of non fossilized and biodegradable organic material).~~

(C) If federal legislation or a federal court stays, invalidates, delays the effective date, or otherwise renders unenforceable by the EPA, in whole or in part, the EPA's tailoring rule (75 FR 31514, June 3, 2010), endangerment finding (74 FR 66496, December 15, 2009), or light-duty vehicle greenhouse gas emission standard (75 FR 25686, May 7, 2010), this definition shall be enforceable only to the extent that it is enforceable by the EPA.

"Trivial activities" means any individual or combination of air emissions units that are considered inconsequential and are on a list approved by the Administrator and contained in Appendix J.

"Unit" means, for purposes of Title IV, a fossil fuel-fired combustion device.

PART 7. PREVENTION OF SIGNIFICANT DETERIORATION (PSD) REQUIREMENTS FOR ATTAINMENT AREAS

252:100-8-31. Definitions

The following words and terms when used in this Part shall have the following meaning, unless the context clearly indicates otherwise. All terms used in this Part that are not defined in this Section shall have the meaning given to them in OAC 252:100-1-3, 252:100-8-1.1, or in the Oklahoma Clean Air Act.

"Actual emissions" means the actual rate of emissions of a regulated NSR pollutant from an emissions unit, as determined in accordance with paragraphs (A) through (C) of this definition, except that this definition shall not apply for calculating whether a significant emissions increase has occurred, or for establishing a PAL under OAC 252:100-8-38. Instead, the definitions of "projected actual emissions" and "baseline actual emissions" shall apply for those purposes.

(A) In general, actual emissions as of a particular date shall equal the average rate in TPY at which the unit actually emitted the pollutant during a consecutive 24-month period which precedes the particular date and which is representative of normal source operation. The Director shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(B) The Director may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(C) For any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

"Allowable emissions" means the emission rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

- (A) the applicable standards as set forth in 40 CFR Parts 60 and 61;
- (B) the applicable State rule allowable emissions;
- or,
- (C) the emissions rate specified as an enforceable permit condition.

"Baseline actual emissions" means the rate of emissions, in TPY, of a regulated NSR pollutant, as determined in accordance with paragraphs (A) through (E) of this definition.

(A) The baseline actual emissions shall be based on current emissions data and the unit's utilization during the period chosen. Current emission data means the most current and accurate emission factors available and could include emissions used in the source's latest permit or permit application, the most recent CEM

data, stack test data, manufacturer's data, mass balance, engineering calculations, and other emission factors.

(B) For any existing electric utility steam generating unit (EUSGU), baseline actual emissions means the average rate, in TPY, at which the unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 5-year period immediately preceding the date that a complete permit application is received by the Director for a permit required under OAC 252:100-8. The Director shall allow the use of a different time period upon a determination that it is more representative of normal source operation.

(i) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with start-ups, shutdowns, and malfunctions.

(ii) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive 24-month period.

(iii) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period shall be used to determine the baseline actual emissions for all the emissions units affected by the project. A different consecutive 24-month period can be used for each regulated NSR pollutant.

(iv) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in TPY, and for adjusting this amount if required by (B)(ii) of this definition.

(C) For an existing emissions unit (other than an EUSGU), baseline actual emissions means the average rate in TPY, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 10-year period immediately preceding either the date the owner or operator begins actual construction of the project, or the date a complete permit application is received by the Director for a permit required either under this Part or under a plan approved by the Administrator, whichever is earlier, except that the 10 year period shall not include any period earlier than November 15, 1990.

(i) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(ii) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive 24-month period.

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(iii) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply, had such major stationary source been required to comply with such limitations during the consecutive 24-month period. However, if an emission limitation is part of a MACT standard that the Administrator proposed or promulgated under 40 CFR 63, the baseline actual emissions need only be adjusted if DEQ has taken credit for such emissions reduction in an attainment demonstration or maintenance plan consistent with requirements of 40 CFR 51.165(a)(3)(ii)(G).

(iv) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period can be used for each regulated NSR pollutant.

(v) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in TPY, and for adjusting this amount if required by (C)(ii) and (iii) of this definition.

(D) For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit.

(E) For a PAL for a stationary source, the baseline actual emissions shall be calculated for existing EUSGU in accordance with the procedures contained in paragraph (B) of this definition, for other existing emissions units in accordance with the procedures contained in Paragraph (C) of this definition, and for a new emissions unit in accordance with the procedures contained in paragraph (D) of this definition.

"Baseline area" means any intrastate areas (and every part thereof) designated as attainment or unclassifiable under section 107(d)(1)(A)(ii) or (iii) of the Act in which the major source or major modification establishing the minor source baseline date would construct or would have an air quality impact for the pollutant for which the baseline date is established, as follows: Equal to or greater than $1 \mu\text{g}/\text{m}^3$ (annual average) for SO_2 , NO_2 , or PM_{10} ; or equal or greater than $0.3 \mu\text{g}/\text{m}^3$ (annual average) for $\text{PM}_{2.5}$.

(A) Area redesignations under section 107(d)(1)(A)(ii) or (iii) of the Act cannot intersect or be smaller than the area of impact of any major stationary source or major modification which:

- (i) establishes a minor source baseline date; or
- (ii) is subject to 40 CFR 52.21 or OAC 252:100-8, Part 7, and would be constructed in the same State as the State proposing the redesignation.

(B) Any baseline area established originally for the TSP increments shall remain in effect and shall apply for purposes of determining the amount of available PM_{10} increments, except that such baseline area shall not remain in effect if the Director rescinds the corresponding minor source baseline date in accordance with paragraph (D) of the definition of "baseline date".

"Baseline concentration" means that ambient concentration level that exists in the baseline area at the time of the applicable minor source baseline date.

(A) A baseline concentration is determined for each pollutant for which a minor source baseline date is established and shall include:

- (i) the actual emissions representative of sources in existence on the applicable minor source baseline date, except as provided in (B) of this definition.
- (ii) the allowable emissions of major stationary sources that commenced construction before the major source baseline date, but were not in operation by the applicable minor source baseline date.

(B) The following will not be included in the baseline concentration and will affect the applicable maximum allowable increase(s):

- (i) actual emissions from any major stationary source on which construction commenced after the major source baseline date; and,
- (ii) actual emissions increases and decreases at any stationary source occurring after the minor source baseline date.

"Baseline date" means:

(A) Major source baseline date means:

- (i) in the case of PM_{10} and sulfur dioxide, January 6, 1975;
- (ii) in the case of nitrogen dioxide, February 8, 1988; and
- (iii) in the case of $\text{PM}_{2.5}$, October 20, 2010.

(B) Minor source baseline date means the earliest date after the trigger date on which a major stationary source or major modification (subject to 40 CFR 52.21 or OAC 252:100-8, Part 7) submits a complete application. The trigger date is:

- (i) in the case of PM_{10} and sulfur dioxide, August 7, 1977;
- (ii) in the case of nitrogen dioxide, February 8, 1988; and
- (iii) in the case of $\text{PM}_{2.5}$, October 20, 2011.

(C) The baseline date is established for each pollutant for which increments or other equivalent measures have been established if:

- (i) the area in which the proposed source or modification would construct is designated as attainment or unclassifiable under section 107(d)(1)(A)(ii) or (iii) of the Act for the pollutant on the date of its complete application under 40 CFR 52.21 or under OAC 252:100-8, Part 7; and

(ii) in the case of a major stationary source, the pollutant would be emitted in significant amounts, or, in the case of a major modification, there would be a significant net emissions increase of the pollutant.

(D) Any minor source baseline date established originally for the TSP increments shall remain in effect and shall apply for purposes of determining the amount of available PM₁₀ increments, except that the Director may rescind any such minor source baseline date where it can be shown, to the satisfaction of the Director, that the emissions increase from the major stationary source, or the net emissions increase from the major modification, responsible for triggering that date did not result in a significant amount of PM₁₀ emissions.

"Begin actual construction" means in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature.

(A) Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures.

(B) With respect to a change in method of operation this term refers to those on-site activities, other than preparatory activities, which mark the initiation of the change.

"Best available control technology" or **"BACT"** means an emissions limitation (including a visible emissions standard) based on the maximum degree of reduction for each regulated NSR pollutant which would be emitted from any proposed major stationary source or major modification which the Director, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combination techniques for control of such pollutant. In no event shall application of BACT result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 40 CFR parts 60 and 61. If the Director determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard or combination thereof, may be prescribed instead to satisfy the requirement for the application of BACT. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results.

"Clean coal technology" means any technology, including technologies applied at the precombustion, combustion, or post combustion stage, at a new or existing facility which will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in

the generation of electricity, or process steam which was not in widespread use as of November 15, 1990.

"Clean coal technology demonstration project" means a project using funds appropriated under the heading "Department of Energy-Clean Coal Technology", up to a total amount of \$2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the EPA. The Federal contribution for a qualifying project shall be at least 20% of the total cost of the demonstration project.

"Commence" means, as applied to construction of a major stationary source or major modification, that the owner or operator has all necessary preconstruction approvals or permits and either has:

(A) begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or,

(B) entered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

"Construction" means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) that would result in a change in emissions.

"Continuous emissions monitoring system" or **"CEMS"** means all of the equipment that may be required to meet the data acquisition and availability requirements to sample, condition (if applicable), analyze, and provide a record of emissions on a continuous basis.

"Continuous emissions rate monitoring system" or **"CERMS"** means the total equipment required for the determination and recording of the pollutant mass emissions rate (in terms of mass per unit of time).

"Continuous parameter monitoring system" or **"CPMS"** means all of the equipment necessary to meet the data acquisition and availability requirements to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O₂, or CO₂ concentrations), and to record average operational parameter value(s) on a continuous basis.

"Electric utility steam generating unit" or **"EUSGU"** means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

"Emissions unit" means any part of a stationary source that emits or would have the potential to emit any regulated NSR pollutant and includes an EUSGU. There are two types of emissions units as described in paragraphs (A) and (B) of this definition.

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(A) A new emissions unit is any emissions unit that is (or will be) newly constructed and that has existed for less than 2 years from the date such emissions unit first operated.

(B) An existing emissions unit is any emissions unit that does not meet the requirements in paragraph (A) of this definition. A replacement unit is an existing emissions unit.

"Federal Land Manager" means with respect to any lands in the United States, the Secretary of the department with authority over such lands.

"High terrain" means any area having an elevation 900 feet or more above the base of the stack of a source.

"Innovative control technology" means any system of air pollution control that has not been adequately demonstrated in practice, but would have a substantial likelihood of achieving greater continuous emissions reduction than any control system in current practice or of achieving at least comparable reductions at lower cost in terms of energy, economics, or non-air quality environmental impacts.

"Low terrain" means any area other than high terrain.

"Major modification" means:

(A) Any physical change in or change in the method of operation of a major stationary source that would result in a significant emissions increase of a regulated NSR pollutant and a significant net emissions increase of that pollutant from the major stationary source is a major modification.

(i) Any significant emissions increase from any emissions units or net emissions increase at a major stationary source that is significant for VOC or NO_x shall be considered significant for ozone.

(ii) A physical change or change in the method of operation shall not include:

(I) routine maintenance, repair and replacement;

(II) use of an alternative fuel or raw material by reason of any order under sections 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;

(III) use of an alternative fuel by reason of an order or rule under section 125 of the Act;

(IV) use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(V) use of an alternative fuel or raw material by a stationary source which the source was capable of accommodating before January 6, 1975, (unless such change would be prohibited under any enforceable permit condition which was established after January 6, 1975) or the source is approved to use under any permit issued under 40 CFR 52.21 or OAC 252:100-7 or 252:100-8;

(VI) an increase in the hours of operation or in the production rate, unless such change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975;

(VII) any change in source ownership;

(VIII) the installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided the project complies with OAC 252:100 and other requirements necessary to attain and maintain the NAAQS during the project and after it is terminated;

(IX) the installation or operation of a permanent clean coal technology demonstration project that constitutes repowering, provided that the project does not result in an increase in the potential to emit of any regulated pollutant (on a pollutant-by-pollutant basis) emitted by the unit; or

(X) the reactivation of a very clean coal-fired EUSGU.

(B) This definition shall not apply with respect to a particular regulated NSR pollutant when the major stationary source is complying with the requirements under OAC 252:100-8-38 for a PAL for that pollutant. Instead, the definition of "PAL major modification" at 40 CFR 51.166(w)(2)(viii) shall apply.

"Major stationary source" means

(A) A major stationary source is:

(i) any of the following stationary sources of air pollutants which emits, or has the potential to emit, 100 TPY or more of a regulated NSR pollutant:

(I) carbon black plants (furnace process),

(II) charcoal production plants,

(III) chemical process plants, (not including ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140),

(IV) coal cleaning plants (with thermal dryers),

(V) coke oven batteries,

(VI) fossil-fuel boilers (or combination thereof) totaling more than 250 million BTU per hour heat input,

(VII) fossil fuel-fired steam electric plants of more than 250 million BTU per hour heat input,

(VIII) fuel conversion plants,

(IX) glass fiber processing plants,

(X) hydrofluoric, sulfuric or nitric acid plants,

(XI) iron and steel mill plants,

(XII) kraft pulp mills,

(XIII) lime plants,

(XIV) municipal incinerators capable of charging more than 250 tons of refuse per day,

(XV) petroleum refineries,

- (XVI) petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels,
 - (XVII) phosphate rock processing plants,
 - (XVIII) portland cement plants,
 - (XIX) primary aluminum ore reduction plants,
 - (XX) primary copper smelters,
 - (XXI) primary lead smelters,
 - (XXII) primary zinc smelters,
 - (XXIII) secondary metal production plants,
 - (XXIV) sintering plants,
 - (XXV) sulfur recovery plants, or
 - (XXVI) taconite ore processing plants;
 - (ii) any other stationary source not on the list in (A)(i) of this definition which emits, or has the potential to emit, 250 TPY or more of a regulated NSR pollutant;
 - (iii) any physical change that would occur at a stationary source not otherwise qualifying as a major stationary source under this definition if the change would constitute a major stationary source by itself.
- (B) A major source that is major for VOC or NO_x shall be considered major for ozone.
- (C) The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this Part whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:
- (i) the stationary sources listed in (A)(i) of this definition;
 - (ii) any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the Act.

"Necessary preconstruction approvals or permits" means those permits or approvals required under all applicable air quality control laws and rules.

"Net emissions increase" means:

- (A) with respect to any regulated NSR pollutant emitted by a major stationary source, the amount by which the sum of the following exceeds zero:
 - (i) the increase in emissions from a particular physical change or change in the method of operation at a stationary source as calculated pursuant to OAC 252:100-8-30(b); and,
 - (ii) any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable. Baseline actual emissions for calculating increases and decreases under (A)(ii) of this definition shall be determined as provided in the definition of "baseline actual emissions", except that (B)(iii) and (C)(iv) of that definition shall not apply.
- (B) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs within 3 years before

the date that the increase from the particular change occurs.

- (C) An increase or decrease in actual emissions is creditable only if:
 - (i) it is contemporaneous; and
 - (ii) The Director has not relied on it in issuing a permit for the source under OAC 252:100-8, Part 7, which permit is in effect when the increase in actual emissions from the particular change occurs.
- (D) An increase or decrease in actual emissions of sulfur dioxide, particulate matter, or nitrogen oxides that occurs before the applicable minor source baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available.
- (E) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.
- (F) A decrease in actual emissions is creditable only to the extent that it meets all the conditions in (F)(i) through (iii) of this definition.
 - (i) It is creditable if the old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions.
 - (ii) It is creditable if it is enforceable as a practical matter at and after the time that actual construction on the particular change begins.
 - (iii) It is creditable if it has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.
- (G) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.
- (H) Paragraph (A) of the definition of "actual emissions" shall not apply for determining creditable increases and decreases.

"Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

"Predictive emissions monitoring system" or **"PEMS"** means all of the equipment necessary to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other

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information (for example, gas flow rate, O₂, or CO₂ concentrations), and calculate and record the mass emissions rate (for example, lb/hr) on a continuous basis.

"Prevention of Significant Deterioration (PSD) program" means a major source preconstruction permit program that has been approved by the Administrator and incorporated into the plan to implement the requirements of 40 CFR 51.166, or the program in 40 CFR 52.21. Any permit issued under such a program is a major NSR permit.

"Project" means a physical change in, or change in method of operation of, an existing major stationary source.

"Projected actual emissions" means

(A) Projected actual emissions means the maximum annual rate, in TPY, at which an existing emissions unit is projected to emit a regulated NSR pollutant in any one of the 5 years (12-month period) following the date the unit resumes regular operation after the project, or in any one of the 10 years following that date, if the project involves increasing the emissions unit's design capacity or its potential to emit that regulated NSR pollutant, and full utilization of the unit would result in a significant emissions increase, or a significant net emissions increase at the major stationary source.

(B) In determining the projected actual emissions under paragraph (A) of this definition (before beginning actual construction), the owner or operator of the major stationary source:

(i) shall consider all relevant information, including but not limited to, historical operational data, the company's own representations, the company's expected business activity and the company's highest projections of business activity, the company's filings with the State or Federal regulatory authorities, and compliance plans under the approved plan; and

(ii) shall include fugitive emissions to the extent quantifiable and emissions associated with start-ups, shutdowns, and malfunctions; and

(iii) shall exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive 24-month period used to establish the baseline actual emissions and that are also unrelated to the particular project, including any increased utilization due to product demand growth; or,

(iv) in lieu of using the method set out in (B)(i) through (iii) of this definition, may elect to use the emissions unit's potential to emit, in TPY.

"Reactivation of a very clean coal-fired electric utility steam generating unit" means any physical change or change in the method of operation associated with the commencement of commercial operations by a coal-fired utility unit after a period of discontinued operation where the unit:

(A) has not been in operation for the two-year period prior to the enactment of the Clean Air Act

Amendments of 1990, and the emissions from such unit continue to be carried in the Department's emissions inventory at the time of enactment;

(B) was equipped prior to shutdown with a continuous system of emissions control that achieves a removal efficiency for sulfur dioxide of no less than 85% and a removal efficiency for particulates of no less than 98%;

(C) is equipped with low-NO_x burners prior to the time of commencement of operations following reactivation; and

(D) is otherwise in compliance with the requirements of the Act.

"Regulated NSR pollutant" means the following:

~~(A) A regulated NSR pollutant is:~~

~~(i) any pollutant for which a NAAQS has been promulgated, and any pollutant identified under (A)(i) of this definition as a constituent or precursor to such pollutant. Precursors identified by the Administrator for purposes of NSR are the following~~

This includes but is not limited to the following:

(i) PM_{2.5} emissions and PM₁₀ emissions shall include gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures. Such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for PM_{2.5} and PM₁₀ in PSD permits.

(ii) any pollutant identified as a constituent or precursor to any pollutant identified under subparagraph (A) of this definition. Precursors identified by the EPA Administrator for purposes of NSR are the following:

(I) volatile organic compounds and nitrogen oxides are precursors to ozone in all attainment and unclassifiable areas.

(II) sulfur dioxide is a precursor to PM_{2.5} in all attainment and unclassifiable areas.

(III) nitrogen oxides are presumed to be precursors to PM_{2.5} in all attainment and unclassifiable areas, unless the State demonstrates to the EPA Administrator's satisfaction or EPA demonstrates that emissions of nitrogen oxides from sources in a specific area are not a significant contributor to that area's ambient PM_{2.5} concentrations.

(IV) volatile organic compounds are presumed not to be precursors to PM_{2.5} in any attainment or unclassifiable area, unless the State demonstrates to the EPA Administrator's satisfaction or EPA demonstrates that emissions of volatile organic compounds from sources in a specific area are a significant contributor to that area's ambient PM_{2.5} concentrations.

~~(ii) any pollutant that is subject to any standard promulgated under section 111 of the Act;~~

~~(iii)~~C) any Class I or II substance subject to a standard promulgated under or established by title VI of the Act; or

~~(iv)~~D) any pollutant that otherwise is "subject to regulation" under the Act as defined in the definition of "subject to regulation" in OAC 252:100-8-31;

~~(v) PM emissions, PM_{2.5} emissions, and PM₁₀ emissions shall include gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures. Such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for PM, PM_{2.5}, and PM₁₀ in PSD permits.~~

~~(B) Notwithstanding subparagraphs (B) through (D) of this definition, Regulated regulated NSR pollutant does not include:~~

- (i) any or all HAP either listed in section 112 of the Act or added to the list pursuant to section 112(b)(2) of the Act, which have not been delisted pursuant to section 112(b)(3) of the Act, unless the listed HAP is also regulated as a constituent or precursor of a general pollutant listed under section 108 of the Act; or
- (ii) any pollutant that is regulated under section 112(r) of the Act, provided that such pollutant is not otherwise regulated under the Act.

"Replacement unit" means an emissions unit for which all the criteria listed in paragraphs (A) through (D) of this definition are met. No creditable emission reduction shall be generated from shutting down the existing emissions unit that is replaced.

(A) The emissions unit is a reconstructed unit within the meaning of 40 CFR 60.15(b)(1), or the emissions unit completely takes the place of an existing emissions unit.

(B) The emissions unit is identical to or functionally equivalent to the replaced emissions unit.

(C) The replacement unit does not alter the basic design parameter(s) of the process unit.

(D) The replaced emissions unit is permanently removed from the major stationary source, otherwise permanently disabled, or permanently barred from operating by a permit that is enforceable as a practical matter. If the replaced emissions unit is brought back into operation, it shall constitute a new emissions unit.

"Repowering" means

(A) Repowering shall mean the replacement of an existing coal-fired boiler with one of the following clean coal technologies: atmospheric or pressurized fluidized bed combustion, integrated gasification combined cycle, magnetohydrodynamics, direct and indirect coal-fired turbines, integrated gasification fuel cells, or as determined by the Administrator, in consultation with the Secretary of Energy, a derivative of one or more of these technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved

boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990.

(B) Repowering shall also include any oil and/or gas-fired unit which has been awarded clean coal technology demonstration funding as of January 1, 1991, by the Department of Energy.

(C) The Director shall give expedited consideration to permit applications for any source that satisfies the requirements of this definition and is granted an extension under section 409 of the Act.

"Significant" means:

(A) In reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following significant emission rates:

- (i) carbon monoxide: 100TPY,
- (ii) nitrogen oxides: 40 TPY,
- (iii) sulfur dioxide: 40 TPY,
- (iv) particulate matter: 25 TPY of particulate matter emissions or 15 TPY of PM₁₀ emissions,
- (v) PM_{2.5}: 10 TPY of direct PM_{2.5} emissions; 40 TPY of sulfur dioxide emissions; or 40 TPY of nitrogen oxide emissions unless demonstrated not to be a PM_{2.5} precursor under the definition of "regulated NSR pollutant",
- (vi) ozone: 40 TPY of VOC or NO_x,
- (vii) lead: 0.6 TPY,
- (viii) fluorides: 3 TPY,
- (ix) sulfuric acid mist: 7 TPY,
- (x) hydrogen sulfide (H₂S): 10 TPY,
- (xi) total reduced sulfur (including H₂S): 10 TPY,
- (xii) reduced sulfur compounds (including H₂S): 10 TPY,
- (xiii) municipal waste combustor organics (measured as total tetra-through octa-chlorinated dibenzo-p-dioxins and dibenzofurans): 3.5 x 10⁻⁶ TPY,
- (xiv) municipal waste combustor metals (measured as particulate matter): 15 TPY,
- (xv) municipal waste combustor acid gases (measured as sulfur dioxide and hydrogen chloride): 40 TPY,
- (xvi) municipal solid waste landfill emissions (measured as nonmethane organic compounds): 50 TPY.

(B) In reference to a net emissions increase or the potential of a source to emit a regulated NSR pollutant that subparagraph (A) of this definition does not list, any emission rate.

~~(BC)~~ Any emissions rate or any net emissions increase associated with a major stationary source or major modification which would construct within 6 miles of a Class I area, and have an impact on such area equal to or greater than 1 µg/m³ (24-hour average).

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"**Significant emissions increase**" means, for a regulated NSR pollutant, an increase in emissions that is significant for that pollutant.

"**Significant net emissions increase**" means a significant emissions increase and a net increase.

"**Stationary source**" means any building, structure, facility or installation which emits or may emit a regulated NSR pollutant.

"**Subject to regulation**" means, for any air pollutant, that the pollutant is subject to either a provision in the federal Clean Air Act, or a nationally-applicable regulation codified by the EPA Administrator in subchapter C of Chapter I of 40 CFR, that requires actual control of the quantity of emissions of that pollutant, and that such a control requirement has taken effect and is operative to control, limit, or restrict the quantity of emissions of that pollutant released from the regulated activity. Except that:

(A) Greenhouse gases (GHG) shall not be subject to regulation except as provided in subparagraph (D) through (E) of this definition.

(B) For purposes of subparagraphs (C) through (E) and (D) of this definition, the term TPY CO₂ equivalent emissions (CO₂e) shall represent an amount of GHG emitted, and shall be computed as follows:

(i) Multiplying the mass amount of emissions (in TPY), for each of the six greenhouse gases in the pollutant GHG, by the gas' associated global warming potential (GWP) published in Table A-1 to subpart A of 40 CFR Part 98 - Global Warming Potentials. ~~For purposes of this definition, prior to July 21, 2014, the mass of the greenhouse gas carbon dioxide shall not include carbon dioxide emissions resulting from the combustion or decomposition of non fossilized and biodegradable organic material originating from plants, animals, or micro organisms (including products, by products, residues and waste from agriculture, forestry and related industries, as well as the non fossilized and biodegradable organic fractions of industrial and municipal wastes, including gases and liquids recovered from the decomposition of non fossilized and biodegradable organic material).~~

(ii) Summing the resultant value from (B)(i) of this definition for each gas to compute a TPY CO₂e.

(C) The term emissions increase as used in subparagraph (D) through (E) of this definition shall mean that both a significant emissions increase (as calculated using the procedures in OAC 252:100-8-30(b)(1) through (5)) and a significant net emissions increase (as defined in the definitions of "net emissions increase" and "significant" in 252:100-8-31) occur. For the pollutant GHG, an emissions increase shall be based on TPY CO₂e, and shall be calculated assuming the pollutant GHG is a regulated NSR pollutant, and "significant" is defined as 75,000 TPY CO₂e and the emissions are otherwise

subject to regulation as previously described in this definition.

(D) Beginning January 2, 2011, the pollutant GHG is subject to regulation if it meets the other requirements of this definition and if:

(i) The stationary source is a new major stationary source for a regulated NSR pollutant that is not GHG, and also will emit or will have the potential to emit 75,000 TPY CO₂e or more; or

(ii) The stationary source is an existing major stationary source for a regulated NSR pollutant that is not GHG, and also will have an emissions increase of a regulated NSR pollutant, and an emissions increase of 75,000 TPY CO₂e or more.

~~(E) Beginning July 1, 2011, in addition to the provisions in (D) of this definition, the pollutant GHG shall also be subject to regulation:~~

~~(i) At a new stationary source that will emit or have the potential to emit 100,000 TPY CO₂e; or~~

~~(ii) At an existing stationary source that emits or has the potential to emit 100,000 TPY CO₂e, when such stationary source undertakes a physical change or change in the method of operation that will result in an emissions increase of 75,000 TPY CO₂e or more.~~

~~(F)~~ If federal legislation or a federal court stays, invalidates, delays the effective date, or otherwise renders unenforceable by the EPA, in whole or in part, the EPA's tailoring rule (75 FR 31514, June 3, 2010), endangerment finding (74 FR 66496, December 15, 2009), or light-duty vehicle greenhouse gas emission standard (75 FR 25686, May 7, 2010), this definition shall be enforceable only to the extent that it is enforceable by the EPA.

"**Temporary clean coal technology demonstration project**" means a clean coal technology demonstration project that is operated for a period of 5 years or less, and which complies with the Oklahoma Air Pollution Control Rules in OAC 252:100 and other requirements necessary to attain and/or maintain the NAAQS during and after the project is terminated.

252:100-8-33. Exemptions

(a) **Exemptions from the requirements of OAC 252:100-8-34 through 252:100-8-36.2.**

(1) The requirements of OAC 252:100-8-34 through 252:100-8-36.2 do not apply to a particular major stationary source or major modification if the source or modification is:

(A) a nonprofit health or nonprofit educational institution; or

(B) major only if fugitive emissions, to the extent quantifiable, are included in calculating the potential to emit and such source is not one of the categories listed in paragraph (C) of the definition of "Major stationary source"; or

(C) a portable stationary source which has previously received a permit under the requirements contained in OAC 252:100-8-34 through 252:100-8-36.2

and proposes to relocate to a temporary new location from which its emissions would not impact a Class I area or an area where an applicable increment is known to be violated.

(2) The requirements in OAC 252:100-8-34 through 252:100-8-36.2 do not apply to a major stationary source or major modification with respect to a particular pollutant if the owner or operator demonstrates that the source or modification is located in an area designated as nonattainment for that pollutant under section 107 of the Act. Nonattainment designations for revoked NAAQS, as contained in 40 CFR part 81, shall not be viewed as current designations under section 107 of the Act for purposes of determining the applicability of requirements equivalent to those contained in Sections 252:100-8-34 through 252:100-8-36.2 to a major stationary source or major modification after the revocation of that NAAQS is effective.

(b) Exemption from air quality impact analyses in OAC 252:100-8-35(a) and (c) and 252:100-8-35.2.

(1) The requirements of OAC 252:100-8-35(a) and (c) and 252:100-8-35.2 are not applicable with respect to a particular pollutant, if the allowable emissions of that pollutant from a new source, or the net emissions increase of that pollutant from a modification, would be temporary and impact no Class I area and no area where an applicable increment is known to be violated.

(2) The requirements of OAC 252:100-8-35(a) and (c) and 252:100-8-35.2 as they relate to any PSD increment for a Class II area do not apply to a modification of a major stationary source that was in existence on March 1, 1978, if the net increase in allowable emissions of each regulated NSR pollutant from the modification after the application of BACT, would be less than 50 TPY.

(c) Exemption from air quality analysis requirements in OAC 252:100-8-35(c).

(1) The monitoring requirements of OAC 252:100-8-35(c) regarding air quality analysis are not applicable for a particular pollutant if the emission increase of the pollutant from a proposed major stationary source or the net emissions increase of the pollutant from a major modification would cause, in any area, air quality impacts less than the following ~~significant monitoring concentrations (SMC) amounts:~~

- (A) Carbon monoxide - 575 µg/m³, 8-hour average,
- (B) Nitrogen dioxide - 14 µg/m³, annual average,
- (C) ~~PM_{2.5} - 4 µg/m³, 24-hour average~~ 0 µg/m³, no exemption available.
- (D) PM₁₀ - 10 µg/m³, 24-hour average,
- (E) Sulfur dioxide - 13 µg/m³, 24-hour average,
- (F) Ozone - no de minimis air quality level is provided for ozone, however any net increase of 100 TPY or more of VOC or NO_x subject to PSD would require an ambient impact analysis, including the gathering of ambient air quality data,
- (G) Lead - 0.1 µg/m³, 24-hour 3-month average,
- (H) Fluorides - 0.25 µg/m³, 24-hour average,

- (I) Total reduced sulfur - 10 µg/m³, 1-hour average,
- (J) Hydrogen sulfide - 0.2 µg/m³, 1-hour average, or
- (K) Reduced sulfur compounds - 10 µg/m³, 1-hour average.

(2) The monitoring requirements of OAC 252:100-8-35(c) are not applicable for a particular pollutant if the pollutant is not listed in preceding OAC 252:100-8-33(c)(1).

(d) Exemption from monitoring requirements in OAC 252:100-8-35(c)(1)(B) and (D).

(1) The requirements for air quality monitoring in OAC 252:100-8-35(c)(1)(B) and (D) shall not apply to a particular source or modification that was subject to 40 CFR 52.21 as in effect on June 19, 1978, if a permit application was submitted on or before June 8, 1981, and the Director subsequently determined that the application was complete except for the requirements in OAC 252:100-8-35(c)(1)(B) and (D). Instead, the requirements in 40 CFR 52.21(m)(2) as in effect on June 19, 1978, shall apply to any such source or modification.

(2) The requirements for air quality monitoring in OAC 252:100-8-35(c)(1)(B) and (D) shall not apply to a particular source or modification that was not subject to 40 CFR 52.21 as in effect on June 19, 1978, if a permit application was submitted on or before June 8, 1981, and the Director subsequently determined that the application as submitted was complete, except for the requirements in OAC 252:100-8-35(c)(1)(B) and (D).

(e) Exemption from the preapplication analysis required by OAC 252:100-8-35(c)(1)(A), (B), and (D).

(1) The Director shall determine if the requirements for air quality monitoring of PM₁₀ in OAC 252:100-8-35(c)(1)(A), (B), and (D) may be waived for a particular source or modification when an application for a PSD permit was submitted on or before June 1, 1988, and the Director subsequently determined that the application, except for the requirements for monitoring particulate matter under OAC 252:100-8-35(c)(1)(A), (B), and (D), was complete before that date.

(2) The requirements for air quality monitoring of PM₁₀ in OAC 252:100-8-35(c)(1)(B)(i), 252:100-8-35(c)(1)(D), and 252:100-8-35(c)(3) shall apply to a particular source or modification if an application for a permit was submitted after June 1, 1988, and no later than December 1, 1988. The data shall have been gathered over at least the period from February 1, 1988, to the date the application became otherwise complete in accordance with the provisions of OAC 252:100-8-35(c)(1)(C), except that if the Director determines that a complete and adequate analysis can be accomplished with monitoring data over a shorter period (not to be less than 4 months), the data required by OAC 252:100-8-35(c)(1)(B)(ii) shall have been gathered over that shorter period.

(f) Exemption from BACT requirements and air quality analyses requirements. If a complete permit application for a source or modification was submitted before August 7, 1980

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the requirements for BACT in OAC 252:100-8-34 and the requirements for air quality analyses in OAC 252:100-8-35(c)(1) are not applicable to a particular stationary source or modification that was subject to 40 CFR 52.21 as in effect on June 19, 1978. Instead, the federal requirements at 40 CFR 52.21 (j) and (n) as in effect on June 19, 1978, are applicable to any such source or modification.

(g) **Exemption from OAC 252:100-8-35(a)(1)(B).** The permitting requirements of OAC 252:100-8-35(a)(1)(B) do not apply to a stationary source or modification with respect to any PSD increment for nitrogen oxides if the owner or operator of the source or modification submitted a complete application for a permit before February 8, 1988.

252:100-8-35. Air quality impact evaluation

(a) Source impact analysis (impact on NAAQS and PSD increment).

(1) **Required demonstration.** The owner or operator of the proposed source or modification shall demonstrate that, as of the source's start-up date, allowable emissions increases from that source or modification, in conjunction with all other applicable emissions increases or reductions (including secondary emissions) would not cause or contribute to any increase in ambient concentrations that would exceed:

- (A) any NAAQS in any air quality control region; or
- (B) the remaining available PSD increment for the specified air contaminants in any area as determined by the Director.

(2) ~~**Significant impact levels (SILs).** For purposes of PM_{2.5}, the demonstration required in OAC 252:100-8-35(a)(1) is deemed to have been made if the emissions increase from the new stationary source alone or from the modification alone would cause, in all areas, air quality impacts less than the following significant impact levels (SILs).~~

~~(A) The SILs for PM_{2.5} annual averaging time are 0.06 µg/m³ for a Class I Area, 0.3 µg/m³ for a Class II Area, and 0.3 µg/m³ for a Class III Area.~~

~~(B) The SILs for PM_{2.5} 24 hour averaging time are 0.07 µg/m³ for a Class I Area, 1.2 µg/m³ for a Class II Area, and 1.2 µg/m³ for a Class III Area. [RESERVED]~~

(b) Air quality models.

(1) All estimates of ambient concentrations required under this Part shall be based on the applicable air quality models, data bases, and other requirements specified in appendix W of 40 CFR 51 (Guideline on Air Quality Models) as it existed on January 2, 2006.

(2) Where an air quality model specified in appendix W of 40 CFR 51 (Guideline on Air Quality Models) as it existed on January 2, 2006, is inappropriate, the model may be modified or another model substituted, as approved by the Administrator. Such a modification or substitution of a model may be made on a case-by-case basis or, where appropriate, on a generic basis. Modified or substitute models shall be submitted to the Administrator with written concurrence of the Director. In addition, use of a

modified or substituted model must be subject to notice and opportunity for public comment under procedures set forth in Sec. 51.102 as it existed on January 2, 2006.

(c) Air quality analysis.

(1) Preapplication analysis.

(A) **Ambient air quality analysis.** Any application for a permit under this Part shall contain, as the Director determines appropriate, an analysis of ambient air quality in the area that the major stationary source or major modification would affect for each of the following pollutants:

- (i) for a new source, each regulated pollutant that it would have the potential to emit in a significant amount;
- (ii) for a major modification, each regulated pollutant for which it would result in a significant net emissions increase.

(B) Monitoring requirements.

(i) **Non-NAAQS pollutants.** For any such pollutant for which no NAAQS exists, the analysis shall contain such air quality monitoring data as the Director determines is necessary to assess the ambient air quality for that pollutant in that area.

(ii) **NAAQS pollutants.** For visibility and any pollutant, other than VOC, for which a NAAQS does exist, the analysis shall contain continuous air quality monitoring data gathered to determine if emissions of that pollutant would cause or contribute to a violation of the NAAQS or any PSD increment.

(C) **Monitoring method.** With respect to any requirements for air quality monitoring of PM₁₀ under OAC 252:100-8-33(e)(1) and (2), the owner or operator of the source or modification shall use a monitoring method approved by the Director and shall estimate the ambient concentrations of PM₁₀ using the data collected by such approved monitoring method in accordance with estimating procedures approved by the Director.

(D) **Monitoring period.** In general, the required continuous air monitoring data shall have been gathered over a period of up to one year and shall represent the year preceding submission of the application. Ambient monitoring data gathered over a period shorter than one year (but no less than four months) or for a time period other than immediately preceding the application may be acceptable if such data are determined by the Director to be within the time period that maximum pollutant concentrations would occur, and to be complete and adequate for determining whether the source or modification will cause or contribute to a violation of any applicable NAAQS or consume more than the remaining available PSD increment.

(E) Monitoring period exceptions.

(i) **Exceptions for applications that became effective between June 8, 1981, and February 9, 1982.** For any application which

became complete except for the monitoring requirements of OAC 252:100-8-35(c)(1)(B)(ii) and 252:100-8-35(c)(1)(D), between June 8, 1981, and February 9, 1982, the data that 252:100-8-35(c)(1)(B)(ii) requires shall have been gathered over the period from February 9, 1981, to the date the application became otherwise complete, except that:

(I) If the source or modification would have been major for that pollutant under 40 CFR 52.21 as in effect on June 19, 1978, any monitoring data shall have been gathered over the period required by those regulations.

(II) If the Director determines that a complete and adequate analysis can be accomplished with monitoring data over a shorter period, not to be less than four months, the data that OAC 252:100-8-35(c)(1)(B)(ii) requires shall have been gathered over that shorter period.

(III) If the monitoring data would relate exclusively to ozone and would not have been required under 40 CFR 52.21 as in effect on June 19, 1978, the Director may waive the otherwise applicable requirements of OAC 252:100-8-35(c)(1)(E)(i) to the extent that the applicant shows that the monitoring data would be unrepresentative of air quality over a full year.

(ii) **Monitoring period exception for PM₁₀.** For any application that became complete, except for the requirements of OAC 252:100-8-35(c)(1)(B)(ii) and 252:100-8-35(c)(1)(D) pertaining to monitoring of PM₁₀, after December 1, 1988, and no later than August 1, 1989, the data that 252:100-8-35(c)(1)(B)(ii) requires shall have been gathered over at least the period from August 1, 1988, to the date the application becomes otherwise complete, except that if the Director determines that a complete and adequate analysis can be accomplished with monitoring data over a shorter period (not less than 4 months), the data that 252:100-8-35(c)(1)(B)(ii) requires shall have been gathered over that shorter period.

(F) **Ozone post-approval monitoring.** The owner or operator of a proposed major stationary source or major modification of VOC who satisfies all conditions of OAC 252:100-8-54 and 40 CFR 51, Appendix S, Section IV as it existed on January 16, 1979, may provide post-approval monitoring data for ozone in lieu of providing preconstruction data as required under OAC 252:100-8-35(c)(1).

(2) **Post-construction monitoring.** The owner or operator of a new major stationary source or major modification shall conduct, after construction, such ambient monitoring and visibility monitoring as the Director determines is necessary to determine the effect its emissions may have, or are having, on air quality in any area.

(3) **Operation of monitoring stations.** The operation of monitoring stations for any air quality monitoring required under this Part shall meet the requirements of 40 CFR 58 Appendix B as it existed January 2, 2006.

**PART 9. MAJOR SOURCES AFFECTING
NONATTAINMENT AREAS**

252:100-8-51.1. Emissions reductions and offsets

(a) The requirements in 40 CFR 51.165(a)(3) regarding emissions reductions and offsets are hereby incorporated by reference as they exist on July 2, 2007.

(b) The requirements in subsection 40 CFR 51.165(a) (9) dealing with offset ratios are hereby incorporated by reference as they exist on July 1, 2010.

(c) The requirements in 40 CFR 51.165(a)(11) regarding emission offsets are hereby incorporated by reference as they exist on ~~July 1, 2010~~ April 6, 2015.

[OAR Docket #17-536; filed 6-29-17]

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

[OAR Docket #17-537]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 2. Incorporation by Reference

252:100-2-3. [AMENDED]

Appendix Q. Incorporation by Reference [REVOKED]

Appendix Q. Incorporation by Reference [NEW]

AUTHORITY:

Environmental Quality Board; 27A O.S. Sections 2-2-101 and 2-2-201; and Oklahoma Clean Air Act, 27A O.S. Sections 2-5-101 *et seq.*

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

August 8, 2016

COMMENT PERIOD:

September 1, 2016 through October 12, 2016

PUBLIC HEARING:

October 12, 2016

November 9, 2016

ADOPTION:

November 9, 2016

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

November 17, 2016

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 13, 2017

FINAL ADOPTION:

June 13, 2017

EFFECTIVE:

September 15, 2017

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

Incorporated standards as they existed on September 1, 2016:

40 CFR Part 60 Subpart TTTT – Standards of Performance for Greenhouse Gas Emissions for Electric Generating Units

40 CFR Part 60 Subpart XXX – Standards of Performance for Municipal Solid Waste Landfills That Commenced Construction, Reconstruction, or Modification After July 17, 2014

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40 CFR Part 60 Subpart OOOOa – Standards of Performance for Crude Oil and Natural Gas Facilities for which Construction, Modification or Reconstruction Commenced after September 18, 2015

40 CFR Part 63 Subpart NN – National Emission Standards for Hazardous Air Pollutants for Wool Fiberglass Manufacturing at Area Sources

Incorporating rules.

252:100-2-3

Appendix Q. Incorporation by Reference

Availability:

The standards are on file at the Department of Environmental Quality, 707 North Robinson, Oklahoma City, Oklahoma, 73102, and are available to the public for examination Monday through Friday between the hours of 8:00 a.m. and 4:30 p.m., excluding state holidays.

GIST/ANALYSIS:

The Department is proposing to update OAC 252:100, Appendix Q, Incorporation by Reference, to incorporate the latest changes to U.S. Environmental Protection Agency (EPA) regulations. In addition, the Department is proposing to update language in Subchapter 2, Incorporation by Reference, to reflect the latest date of incorporation of EPA regulations in Appendix Q.

CONTACT PERSON:

Melanie Foster, Department of Environmental Quality, Air Quality Division, 707 North Robinson, P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, (405) 702-4100.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2017:

SUBCHAPTER 2. INCORPORATION BY REFERENCE

252:100-2-3. Incorporation by reference

Except as provided under this section, the provisions of 40 CFR listed in Appendix Q are hereby incorporated by reference as they existed on ~~July 1, 2015~~ September 1, 2016.

(1) Inclusion of 40 CFR citations and definitions.

When a provision of 40 CFR is incorporated by reference, all citations contained therein are also incorporated by reference.

(2) Inconsistencies or duplications of requirements or incorporation dates.

(A) In the event that there are inconsistencies or duplications between the requirements of this Chapter and the requirements of those provisions incorporated by reference in Appendix Q or elsewhere in this Chapter, the more stringent requirements shall apply.

(B) In the event that a specific date of incorporation is indicated in Appendix Q or a subchapter of this Chapter, the specified date of incorporation shall apply.

(3) **Terminology related to 40 CFR.** For purposes of interfacing with 40 CFR and unless the context clearly indicates otherwise, the following terms apply.

(A) "Administrator" is synonymous with "Executive Director."

(B) "U. S. Environmental Protection Agency" or "EPA" is synonymous with "Department of Environmental Quality" or "DEQ".

APPENDIX Q. INCORPORATION BY REFERENCE [REVOKED]

APPENDIX Q. INCORPORATION BY REFERENCE [NEW]

Except as provided under OAC 252:100-2-3, the following provisions of Title 40 of the Code of Federal Regulations are hereby incorporated by reference as they existed on September 1, 2016, unless otherwise noted.

PART	SUBPART	DESCRIPTION
50	n/a	Appendix B to Part 50 - Reference Method for the Determination of Suspended Particulate Matter in the Atmosphere (High-Volume Method)
50	n/a	Appendix J to Part 50 - Reference Method for the Determination of Particulate Matter as PM ₁₀ in the Atmosphere
51	A	Table 1 to Appendix A only of Subpart A—Emission Thresholds by Pollutant for Treatment as Point Source Under 40 CFR 51.30
51	F	Paragraph 51.100(s)(1) only of Subpart F, Procedural Requirements
51	n/a	Appendix P to Part 51 - Minimum Emission Monitoring Requirements
58	n/a	Appendix A to Part 58 - Quality Assurance Requirements for SLAMS, SPMs and PSD Air Monitoring
60	A	General Provisions [Except 60.4, 60.9, 60.10 and 60.16]
60	D	Standards of Performance for Fossil-Fuel-Fired Steam Generators
60	Da	Standards of Performance for Electric Utility Steam Generating Units
60	Db	Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units
60	Dc	Standards of Performance for Small Industrial-Commercial-Institutional Steam Generating Units
60	E	Standards of Performance for Incinerators
60	Ea	Standards of Performance for Municipal Waste Combustors for Which Construction is Commenced After December 20, 1989

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PART	SUBPART	DESCRIPTION
		and on or Before September 20, 1994
60	Eb	Standards of Performance for Large Municipal Waste Combustors for Which Construction is Commenced After September 20, 1994 or for Which Modification or Reconstruction is Commenced After June 19, 1996
60	Ec	Standards of Performance for Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996
60	F	Standards of Performance for Portland Cement Plants
60	G	Standards of Performance for Nitric Acid Plants
60	Ga	Standards of Performance for Nitric Acid Plants for Which Construction, Reconstruction, or Modification Commenced After October 14, 2011
60	H	Standards of Performance for Sulfuric Acid Plants
60	I	Standards of Performance for Hot Mix Asphalt Facilities
60	J	Standards of Performance for Petroleum Refineries
60	Ja	Standards of Performance for Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After May 14, 2007
60	K	Standards of Performance for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978
60	Ka	Standards of Performance for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984
60	Kb	Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984
60	L	Standards of Performance for Secondary Lead Smelters
60	M	Standards of Performance for Secondary Brass and Bronze Production Plants

PART	SUBPART	DESCRIPTION
60	N	Standards of Performance for Primary Emissions from Basic Oxygen Process Furnaces for Which Construction is Commenced After June 11, 1973
60	Na	Standards of Performance for Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced After January 20, 1983
60	O	Standards of Performance for Sewage Treatment Plants
60	P	Standards of Performance for Primary Copper Smelters
60	Q	Standards of Performance for Primary Zinc Smelters
60	R	Standards of Performance for Primary Lead Smelters
60	S	Standards of Performance for Primary Aluminum Reduction Plants
60	T	Standards of Performance for the Phosphate Fertilizer Industry: Wet-Process Phosphoric Acid Plants
60	U	Standards of Performance for the Phosphate Fertilizer Industry: Superphosphoric Acid Plants
60	V	Standards of Performance for the Phosphate Fertilizer Industry: Diammonium Phosphate Plants
60	W	Standards of Performance for the Phosphate Fertilizer Industry: Triple Superphosphate Plants
60	X	Standards of Performance for the Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities
60	Y	Standards of Performance for Coal Preparation and Processing Plants
60	Z	Standards of Performance for Ferroalloy Production Facilities
60	AA	Standards of Performance for Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974, and On or Before August 17, 1983
60	AAa	Standards of Performance for Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 17, 1983
60	BB	Standards of Performance for Kraft Pulp Mills

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PART	SUBPART	DESCRIPTION
60	BBa	Standards of Performance for Kraft Pulp Mill Affected Sources for Which Construction, Reconstruction, or Modification Commenced After May 23, 2013
60	CC	Standards of Performance for Glass Manufacturing Plants
60	DD	Standards of Performance for Grain Elevators
60	EE	Standards of Performance for Surface Coating of Metal Furniture
60	GG	Standards of Performance for Stationary Gas Turbines
60	HH	Standards of Performance for Lime Manufacturing Plants
60	KK	Standards of Performance for Lead-Acid Battery Manufacturing Plants
60	LL	Standards of Performance for Metallic Mineral Processing Plants
60	MM	Standards of Performance for Automobile and Light Duty Truck Surface Coating Operations
60	NN	Standards of Performance for Phosphate Rock Plants
60	PP	Standards of Performance for Ammonium Sulfate Manufacture
60	QQ	Standards of Performance for the Graphic Arts Industry: Publication Rotogravure Printing
60	RR	Standards of Performance for Pressure Sensitive Tape and Label Surface Coating Operations
60	SS	Standards of Performance for Industrial Surface Coating: Large Appliances
60	TT	Standards of Performance for Metal Coil Surface Coating
60	UU	Standards of Performance for Asphalt Processing and Asphalt Roofing Manufacture
60	VV	Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry for which Construction, Reconstruction, or Modification Commenced After January 5, 1981, and on or Before November 7, 2006

PART	SUBPART	DESCRIPTION
60	VVa	Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry for Which Construction, Reconstruction, or Modification Commenced After November 7, 2006
60	WW	Standards of Performance for the Beverage Can Surface Coating Industry
60	XX	Standards of Performance for Bulk Gasoline Terminals
60	BBB	Standards of Performance for the Rubber Tire Manufacturing Industry
60	DDD	Standards of Performance for Volatile Organic Compound (VOC) Emissions from the Polymer Manufacturing Industry
60	FFF	Standards of Performance for Flexible Vinyl and Urethane Coating and Printing
60	GGG	Standards of Performance for Equipment Leaks of VOC in Petroleum Refineries for which Construction, Reconstruction, or Modification Commenced After January 4, 1983, and on or Before November 7, 2006
60	GGGa	Standards of Performance for Equipment Leaks of VOC in Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After November 7, 2006
60	HHH	Standards of Performance for Synthetic Fiber Production Facilities
60	III	Standards of Performance for Volatile Organic Compound (VOC) Emissions From the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes
60	JJJ	Standards of Performance for Petroleum Dry Cleaners
60	KKK	Standards of Performance for Equipment Leaks of VOC From Onshore Natural Gas Processing Plants
60	LLL	Standards of Performance for SO ₂ Emissions From Onshore Natural Gas Processing: SO ₂ Emissions
60	NNN	Standards of Performance for Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations

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PART	SUBPART	DESCRIPTION
60	OOO	Standards of Performance for Nonmetallic Mineral Processing Plants
60	PPP	Standard of Performance for Wool Fiberglass Insulation Manufacturing Plants
60	QQQ	Standards of Performance for VOC Emissions From Petroleum Refinery Wastewater Systems
60	RRR	Standards of Performance for Volatile Organic Compound Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes
60	SSS	Standards of Performance for Magnetic Tape Coating Facilities
60	TTT	Standards of Performance for Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines
60	UUU	Standards of Performance for Calciners and Dryers in Mineral Industries
60	VVV	Standards of Performance for Polymeric Coating of Supporting Substrates Facilities
60	WWW	Standards of Performance for Municipal Solid Waste Landfills
60	XXX	Standards of Performance for Municipal Solid Waste Landfills That Commenced Construction, Reconstruction, or Modification After July 17, 2014
60	AAAA	Standards of Performance for Small Municipal Waste Combustion Units for Which Construction is Commenced After August 30, 1999 or for Which Modification or Reconstruction is Commenced After June 6, 2001
60	CCCC	New Source Performance Standards for Commercial/Industrial Solid Waste Incinerators constructed after November 30, 1999
60	DDDD	Emissions Guidelines and Compliance Times for Commercial and Industrial Solid Waste Incineration Units, Model Rule only, Sections 60.2575 through 60.2875, including Tables 1 through 9
60	EEEE	Standards of Performance for Other Solid Waste Incineration Units for Which Construction Is Commenced After December 9, 2004, or for Which Modification or Reconstruction Is Commenced on or After June 16, 2006
60	IIII	Standards of Performance for Stationary Compression Ignition

PART	SUBPART	DESCRIPTION
		Internal Combustion Engines
60	JJJ	Standards of Performance for Stationary Spark Ignition Internal Combustion Engines
60	KKKK	Standards of Performance for Stationary Combustion Turbines
60	LLLL	Standards of Performance for New Sewage Sludge Incineration Units
60	OOOO	Standards of Performance for Crude Oil and Natural Gas Production, Transmission and Distribution for which Construction, Modification or Reconstruction Commenced after August 23, 2011, and on or before September 18, 2015
60	OOOOa	Standards of Performance for Crude Oil and Natural Gas Facilities for which Construction, Modification or Reconstruction Commenced after September 18, 2015
60	TTTT	Standards of Performance for Greenhouse Gas Emissions for Electric Generating Units
60	n/a	Appendix A to Part 60 - Test Methods
60	n/a	Appendix B to Part 60 - Performance Specifications
61	A	General Provisions
61	C	National Emission Standard for Beryllium
61	D	National Emission Standard for Beryllium Rocket Motor Firing
61	E	National Emission Standard for Mercury
61	F	National Emission Standard for Vinyl Chloride
61	J	National Emission Standard for Equipment Leaks (Fugitive Emission Sources) of Benzene
61	L	National Emission Standard for Benzene Emissions from Coke By-Product Recovery Plants
61	M	National Emission Standard for Asbestos
61	N	National Emission Standard for Inorganic Arsenic Emissions From Glass Manufacturing Plants
61	O	National Emission Standard for Inorganic Arsenic Emissions From Primary Copper Smelters

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PART	SUBPART	DESCRIPTION
61	P	National Emission Standard for Inorganic Arsenic Emissions From Arsenic Trioxide and Metallic Arsenic Production Facilities
61	V	National Emission Standard for Equipment Leaks (Fugitive Emission Sources)
61	Y	National Emission Standard for Benzene Emissions From Benzene Storage Vessels
61	BB	National Emission Standard for Benzene Emissions From Benzene Transfer Operations
61	FF	National Emission Standard for Benzene Waste Operations
63	A	General Provisions
63	B	Sections 63.41, 63.43 and 63.44 only of Subpart B, Requirements for Control Technology Determinations for Major Sources in Accordance With Clean Air Act Sections, Sections 112(g) and 112(j)
63	F	National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry
63	G	National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater
63	H	National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks
63	I	National Emission Standards for Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks
63	J	National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production
63	L	National Emission Standards for Coke Oven Batteries
63	M	National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities
63	N	National Emission Standards for Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium

PART	SUBPART	DESCRIPTION
		Anodizing Tanks
63	O	Ethylene Oxide Emissions Standards for Sterilization Facilities
63	Q	National Emission Standards for Hazardous Air Pollutants for Industrial Process Cooling Towers
63	R	National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations)
63	S	National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry
63	T	National Emission Standards for Halogenated Solvent Cleaning
63	U	National Emission Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins
63	W	National Emission Standards for Hazardous Air Pollutants for Epoxy Resins Production and Non-Nylon Polyamides Production
63	X	National Emission Standards for Hazardous Air Pollutants from Secondary Lead Smelting
63	Y	National Emission Standards for Marine Tank Vessel Loading Operations
63	AA	National Emission Standards for Hazardous Air Pollutants From Phosphoric Acid Manufacturing Plants
63	BB	National Emission Standards for Hazardous Air Pollutants From Phosphate Fertilizers Production Plants
63	CC	National Emission Standards for Hazardous Air Pollutants From Petroleum Refineries
63	DD	National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations
63	EE	National Emission Standards for Magnetic Tape Manufacturing Operations
63	GG	National Emission Standards for Aerospace Manufacturing and Rework Facilities
63	HH	National Emission Standards for Hazardous Air Pollutants From Oil and Natural Gas Production Facilities

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PART	SUBPART	DESCRIPTION
63	II	National Emission Standards for Shipbuilding and Ship Repair (Surface Coating)
63	JJ	National Emission Standards for Wood Furniture Manufacturing Operations
63	KK	National Emission Standards for the Printing and Publishing Industry
63	LL	National Emission Standards for Hazardous Air Pollutants for Primary Aluminum Reduction Plants
63	MM	National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills
63	NN	National Emission Standards for Hazardous Air Pollutants for Wool Fiberglass Manufacturing at Area Sources
63	OO	National Emission Standards for Tanks - Level 1
63	PP	National Emission Standards for Containers
63	QQ	National Emission Standards for Surface Impoundments
63	RR	National Emission Standards for Individual Drain Systems
63	SS	National Emission Standards for Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process
63	TT	National Emission Standards for Equipment Leaks – Control Level 1
63	UU	National Emission Standards for Equipment Leaks - Control Level 2 Standards
63	VV	National Emission Standards for Oil-Water Separators and Organic-Water Separators
63	WW	National Emission Standards for Storage Vessels (Tanks) - Control Level 2
63	XX	National Emission Standards for Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations
63	YY	National Emission Standards for Hazardous Air Pollutants for

PART	SUBPART	DESCRIPTION
		Source Categories: Generic Maximum Achievable Control Technology Standards
63	CCC	National Emission Standards for Hazardous Air Pollutants for Steel Pickling - HCl Process Facilities and Hydrochloric Acid Regeneration Plants
63	DDD	National Emission Standards for Hazardous Air Pollutants for Mineral Wool Production
63	EEE	National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors
63	GGG	National Emission Standards for Pharmaceuticals Production
63	HHH	National Emission Standards for Hazardous Air Pollutants From Natural Gas Transmission and Storage Facilities
63	III	National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production
63	JJJ	National Emission Standards for Hazardous Air Pollutant Emissions: Group IV Polymers and Resins
63	LLL	National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry
63	MMM	National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production
63	NNN	National Emission Standards for Hazardous Air Pollutants for Wool Fiberglass Manufacturing
63	OOO	National Emission Standards for Hazardous Air Pollutant Emissions: Manufacture of Amino/Phenolic Resins
63	PPP	National Emission Standards for Hazardous Air Pollutant Emissions for Polyether Polyols Production
63	QQQ	National Emission Standards for Hazardous Air Pollutants for Primary Copper Smelting
63	RRR	National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production
63	TTT	National Emission Standards for Hazardous Air Pollutants for Primary Lead Smelting

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PART	SUBPART	DESCRIPTION
63	UUU	National Emission Standards for Hazardous Air Pollutants for Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units
63	VVV	National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works
63	XXX	National Emission Standards for Hazardous Air Pollutants for Ferroalloys Production: Ferromanganese and Silicomanganese
63	AAAA	National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste Landfills
63	CCCC	National Emission Standards for Hazardous Air Pollutants: Manufacturing of Nutritional Yeast
63	DDDD	National Emission Standards for Hazardous Air Pollutants: Plywood and Composite Wood Products
63	EEEE	National Emission Standards for Hazardous Air Pollutants: Organic Liquids Distribution (Non-Gasoline)
63	FFFF	National Emission Standards for Hazardous Air Pollutants: Miscellaneous Organic Chemical Manufacturing
63	GGGG	National Emission Standards for Hazardous Air Pollutants: Solvent Extraction for Vegetable Oil Production
63	HHHH	National Emission Standards for Hazardous Air Pollutants for Wet-Formed Fiberglass Mat Production
63	IIII	National Emission Standards for Hazardous Air Pollutants: Surface Coating of Automobiles and Light-Duty Trucks
63	JJJJ	National Emission Standards for Hazardous Air Pollutants: Paper and Other Web Coating
63	KKKK	National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Cans
63	MMMM	National Emission Standards for Hazardous Air Pollutants for Surface Coating of Miscellaneous Metal Parts and Products
63	NNNN	National Emission Standards for Hazardous Air Pollutants: Surface Coating of Large Appliances
63	OOOO	National Emission Standards for Hazardous Air Pollutants: Printing, Coating, and Dyeing of Fabrics and Other Textiles

PART	SUBPART	DESCRIPTION
63	PPPP	National Emission Standards for Hazardous Air Pollutants for Surface Coating of Plastic Parts and Products
63	QQQQ	National Emission Standards for Hazardous Air Pollutants: Surface Coating of Wood Building Products
63	RRRR	National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Furniture
63	SSSS	National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Coil
63	TTTT	National Emission Standards for Hazardous Air Pollutants for Leather Finishing Operations
63	UUUU	National Emission Standards for Hazardous Air Pollutants for Cellulose Products Manufacturing
63	VVVV	National Emission Standards for Hazardous Air Pollutants for Boat Manufacturing
63	WWWW	National Emissions Standards for Hazardous Air Pollutants: Reinforced Plastic Composites Production
63	XXXX	National Emissions Standards for Hazardous Air Pollutants: Rubber Tire Manufacturing
63	YYYY	National Emission Standards for Hazardous Air Pollutants for Stationary Combustion Turbines
63	ZZZZ	National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines
63	AAAAA	National Emission Standards for Hazardous Air Pollutants for Lime Manufacturing Plants
63	BBBBB	National Emission Standards for Hazardous Air Pollutants for Semiconductor Manufacturing
63	CCCCC	National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks
63	DDDDD	National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters
63	EEEEE	National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries

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PART	SUBPART	DESCRIPTION
63	FFFFF	National Emission Standards for Hazardous Air Pollutants for Integrated Iron and Steel Manufacturing Facilities
63	GGGGG	National Emission Standards for Hazardous Air Pollutants: Site Remediation
63	HHHHH	National Emission Standards for Hazardous Air Pollutants: Miscellaneous Coating Manufacturing
63	IIIII	National Emission Standards for Hazardous Air Pollutants: Mercury Emissions From Mercury Cell Chlor-Alkali Plants
63	JJJJJ	National Emission Standards for Hazardous Air Pollutants for Brick and Structural Clay Products Manufacturing
63	KKKKK	National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing
63	LLLLL	National Emission Standards for Hazardous Air Pollutants: Asphalt Processing and Asphalt Roofing Manufacturing
63	MMMMM	National Emission Standards for Hazardous Air Pollutants: Flexible Polyurethane Foam Fabrication Operations
63	NNNNN	National Emission Standards for Hazardous Air Pollutants: Hydrochloric Acid Production
63	PPPPP	National Emission Standards for Hazardous Air Pollutants for Engine Test Cells/Stands
63	QQQQQ	National Emission Standards for Hazardous Air Pollutants for Friction Materials Manufacturing Facilities
63	RRRRR	National Emission Standards for Hazardous Air Pollutants: Taconite Iron Ore Processing
63	SSSSS	National Emission Standards for Hazardous Air Pollutants for Refractory Products Manufacturing
63	TTTTT	National Emission Standards for Hazardous Air Pollutants for Primary Magnesium Refining
63	UUUUU	National Emission Standards for Hazardous Air Pollutants: Coal and Oil-fired Electric Utility Steam Generating Units
63	WWWWW	National Emission Standards for Hospital Ethylene Oxide Sterilizers

PART	SUBPART	DESCRIPTION
63	YYYYY	National Emission Standards for Hazardous Air Pollutants for Area Sources: Electric Arc Furnace Steelmaking Facilities
63	ZZZZZ	National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries Area Sources
63	BBBBBB	National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities
63	CCCCCC	National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Dispensing Facilities
63	DDDDDD	National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production Area Sources
63	EEEEEE	National Emission Standards for Hazardous Air Pollutants for Primary Copper Smelting Area Sources
63	FFFFFF	National Emission Standards for Hazardous Air Pollutants for Secondary Copper Smelting Area Sources
63	GGGGGG	National Emission Standards for Hazardous Air Pollutants for Primary Nonferrous Metals Area Sources - Zinc, Cadmium, and Beryllium
63	HHHHHH	National Emission Standards for Hazardous Air Pollutants: Paint Stripping and Miscellaneous Surface Coating Operations at Area Sources
63	JJJJJ	National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers Area Sources
63	LLLLL	National Emission Standards for Hazardous Air Pollutants for Acrylic and Modacrylic Fibers Production Area Sources
63	MMMMMM	National Emission Standards for Hazardous Air Pollutants for Carbon Black Production Area Sources
63	NNNNNN	National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources: Chromium Compounds
63	OOOOOO	National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production and Fabrication Area Sources
63	PPPPPP	National Emission Standards for Hazardous Air Pollutants for Lead Acid Battery Manufacturing Area Sources

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PART	SUBPART	DESCRIPTION
63	QQQQQQ	National Emission Standards for Hazardous Air Pollutants for Wood Preserving Area Sources
63	RRRRRR	National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing Area Sources
63	SSSSSS	National Emission Standards for Hazardous Air Pollutants for Glass Manufacturing Area Sources
63	TTTTTT	National Emission Standards for Hazardous Air Pollutants for Secondary Nonferrous Metals Processing Area Sources
63	VVVVVV	National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources
63	WWWWWW	National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Plating and Polishing Operations
63	XXXXXX	National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Nine Metal Fabrication and Finishing Source Categories
63	YYYYYY	National Emission Standards for Hazardous Air Pollutants for Area Sources: Ferroalloys Production Facilities
63	ZZZZZZ	National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Aluminum, Copper, and Other Nonferrous Foundries
63	AAAAAAA	National Emission Standards for Hazardous Air Pollutants for Area Sources: Asphalt Processing and Asphalt Roofing Manufacturing
63	BBBBBBB	National Emission Standards for Hazardous Air Pollutants for Area Sources: Chemical Preparations Industry
63	CCCCCC	National Emission Standards for Hazardous Air Pollutants for Area Sources: Paints and Allied Products Manufacturing
63	DDDDDD	National Emission Standards for Hazardous Air Pollutants for Area Sources: Prepared Feeds Manufacturing
63	EEEEEEE	National Emission Standards for Hazardous Air Pollutants: Gold Mine Ore Processing and Production Area Source Category
63	HHHHHHH	National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production
64	n/a (All	Compliance Assurance Monitoring (CAM)

PART	SUBPART	DESCRIPTION
	Sections)	
72	All Subparts	Permits Regulation
98	A	Table A-1 only to Subpart A of Part 98 – Global Warming Potentials
241	n/a	Solid Wastes Used as Fuels or Ingredients in Combustion Units

[OAR Docket #17-537; filed 6-29-17]

Permanent Final Adoptions

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

[OAR Docket #17-538]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 7. Permits for Minor Facilities
Part 9. Permits by Rule
252:100-7-60.5. [AMENDED]

AUTHORITY:

Environmental Quality Board; 27A O.S. Sections 2-2-101, 2-2-201, and 2-5-106; Air Quality Advisory Council; 27A O.S. Sections 2-2-201 and 2-5-107; Oklahoma Clean Air Act; 27A O.S. Sections 2-5-101 through -117.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

November 21, 2016

COMMENT PERIOD:

December 15, 2016 through January 18, 2017

PUBLIC HEARING:

January 18, 2017
February 17, 2017

ADOPTION:

February 17, 2017

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

February 24, 2017

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 13, 2017

FINAL ADOPTION:

June 13, 2017

EFFECTIVE:

September 15, 2017

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The Department is proposing to amend Part 9 of OAC 252:100-7, Permits for Minor Facilities, by adding references to the Environmental Protection Agency's (EPA's) New Source Performance Standard (NSPS), 40 CFR Part 60, Subpart OOOOa. The gist of the proposed amendments is to ensure that the current PBR covers facilities subject to NSPS Subpart OOOOa and the emission calculation methodologies contained therein. The amendments would also clarify that when calculating potential emissions for the purpose of qualifying for the PBR a facility may include enforceable limitations from a federal standard, NSPS or NESHAP (National Emission Standards for Hazardous Air Pollutants), to which they are subject.

CONTACT PERSON:

Melanie Foster, Department of Environmental Quality, Air Quality Division, 707 North Robinson, P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, (405) 702-4100

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2017:

SUBCHAPTER 7. PERMITS FOR MINOR FACILITIES

PART 9. PERMITS BY RULE

252:100-7-60.5. Oil and natural gas sector

(a) **Applicability.** This PBR is issued for minor facilities and area sources in the oil and natural gas (O&NG) sector. This includes but is not limited to facilities subject to federal standards, primarily Subparts IIII, JJJJ, ~~and OOOO~~, and ~~OOOOa~~ of the federal NSPS, 40 CFR Part 60, and Subparts HH and ZZZZ of the federal NESHAP, 40 CFR Part 63, as cited in this PBR and incorporated by reference in OAC 252:100-2 and Appendix Q to Chapter 100. Specifically, this PBR applies to the following:

(1) **Eligible minor facilities and area sources.** New and existing minor facilities and area sources in the O&NG sector are eligible for this PBR, provided they comply with the conditions in (A) through (G) of this paragraph.

(A) The facility has actual emissions of 40 TPY or less of each regulated air pollutant, except HAPs.

(B) The facility has potential emissions of each regulated air pollutant, except HAPs, that are less than the emission levels that require prevention of significant deterioration (PSD), nonattainment new source review (NNSR), and Part 70 permits.

(C) The facility does not emit or have potential emissions of 10 TPY or more of any single HAP or 25 TPY or more of any combination of HAPs.

(D) For the purpose of determining if a facility is eligible for registration under this PBR, the calculation of actual emissions may include emission reductions that will be made enforceable by registration under this PBR.

(E) Only for the purpose of determining if a facility is eligible for registration under this PBR, the calculation of potential emissions shall not include emission reductions resulting from any physical or operational limitation (including capacity limitations, use of air pollution control equipment, and/or restrictions on hours of operation or on the type or amount of material combusted, stored, or processed). Affected sources subject to a federal standard (NSPS or NESHAP) may include enforceable limitations in the calculation of potential emissions.

(F) The facility must meet the criteria in 252:100-7-15(b)(1)(C) through (E).

(G) The facility is not otherwise a Part 70 source.

(2) **Equipment and processes.** This PBR covers equipment and processes located at minor facilities and area sources in the O&NG sector that meet the criteria contained in 252:100-7-60.5(a)(1). Covered equipment and processes under this PBR include, but are not limited to:

(A) The affected facilities listed in 40 CFR Section 60.5365 of NSPS Subpart OOOO and 40 CFR Section 60.5365a of NSPS Subpart OOOOa.

(B) Stationary compression ignition internal combustion engines, as specified in 40 CFR Section 60.4200 of NSPS Subpart IIII, which are located at minor facilities in the O&NG sector.

(C) Stationary spark ignition internal combustion engines, as specified in 40 CFR Section 60.4230 of

NSPS Subpart JJJJ, which are located at minor facilities in the O&NG sector.

(D) The affected sources listed in 40 CFR Section 63.760(a) and (b)(2) of NESHAP Subpart HH, which are located at area sources.

(E) Stationary reciprocating internal combustion engines (RICE), as specified in 40 CFR Section 63.6585 of NESHAP Subpart ZZZZ, which are located at area sources in the O&NG sector.

(b) **Standards and requirements.**

(1) **NSPS and NESHAP requirements.** The owner or operator shall meet the applicable requirements of the following NSPS and NESHAP subparts for equipment and processes located at minor facilities or area sources in the O&NG sector.

(A) **General provisions.** The owner or operator of minor affected facilities covered by the O&NG PBR shall comply with applicable requirements of 40 CFR 60, Subpart A.

(B) **Crude oil and natural gas production, transmission, and distribution.** The owner or operator of each minor affected facility shall comply with the applicable standards and requirements of 40 CFR Part 60, ~~Subpart~~Subparts OOOO and/or OOOOa.

(C) **Stationary compression ignition internal combustion engines.** The owner or operator of a stationary compression ignition internal combustion engine shall comply with the applicable emission, equipment, and work practice standards and testing, reporting monitoring, and recordkeeping requirements of 40 CFR Part 60, Subpart IIII.

(D) **Stationary spark ignition internal combustion engine.** The owner or operator of a stationary spark ignition internal combustion engine shall comply with the applicable emission, equipment, and work practice standards and testing, reporting, monitoring, and recordkeeping requirements of 40 CFR Part 60, Subpart JJJJ.

(E) **General provisions.** The owner or operator of an area source covered by the O&NG PBR shall comply with applicable requirements of 40 CFR Part 63, Subpart A.

(F) **Oil and natural gas production facilities.** The owner or operator of an affected source listed in 40 CFR Section 63.760(a) and (b) and located at an area source shall comply with the applicable emission, equipment, and work practice standards and testing, reporting, monitoring, and recordkeeping requirements of 40 CFR Part 63, Subpart HH.

(G) **Stationary reciprocating internal combustion engines.** The owner or operator of a stationary RICE located at an area source shall comply with the applicable emission, equipment, and work practice standards and testing, reporting, monitoring, and recordkeeping requirements of 40 CFR Part 63, Subpart ZZZZ.

(H) **Equipment subject to any other NSPS or NESHAP.** The owner or operator of the facility shall

comply with the applicable emission, equipment, and work practice standards and testing, reporting, monitoring, and recordkeeping requirements of any other applicable NSPS or NESHAP, including any modification to requirements of an existing applicable NSPS or NESHAP.

(2) **DEQ Air Pollution Control Rules, standards, and requirements.** The owner or operator of an O&NG facility covered by this PBR shall comply with applicable portions of the:

(A) emission inventory requirements and annual fee requirements contained in 252:100-5;

(B) excess emission reporting requirements contained in 252:100-9;

(C) particulate matter emission rates contained in 252:100-19 for fuel-burning equipment;

(D) visible emissions (opacity) limits contained in 252:100-25 for subject emission units;

(E) fugitive dust standards contained in 252:100-29;

(F) standards and requirements for the control of the emission of sulfur compounds contained in 252:100-31 for subject emission units;

(G) standards and requirements for the control of the emission of nitrogen oxides contained in 252:100-33 for subject fuel-burning equipment;

(H) standards and requirements for the control of the emission of VOCs contained in 252:100-37 and 252:100-39 for subject emission units; and

(I) testing, monitoring, and recordkeeping requirements contained in 252:100-43.

(c) **Requested process-specific limitations - storage vessel affected facilities.** An owner or operator shall designate on the PBR registration form(s) that either of the following federally enforceable limits are applicable to a specified storage vessel affected facility. The permittee shall submit a notice of enforceability on forms provided by the DEQ to add or remove the applicability of federally enforceable limits to or from any specific emission unit.

(1) The storage vessel affected facility shall be limited to less than 6 TPY of VOC emissions, 12-month rolling total, unless another time measurement is specified under 40 CFR Part 60, Subpart OOOO or OOOOa. Demonstration of compliance with the VOC emission limit shall be based on records of VOC stored and monthly throughputs. Emissions shall be calculated using current EPA AP-42 methodology for working and breathing emissions or other methodology acceptable to the DEQ, and using available AQD guidance for flash emissions.

(A) In the demonstration of compliance with the VOC emission limit, a properly installed and operated vapor recovery unit (VRU) is considered to recover 100% of the VOC during the time the VRU is in use.

(B) The permittee shall maintain, for a period of five (5) years, records of VOC stored, monthly throughputs, and emissions calculations used to demonstrate compliance, including records of all periods of uncontrolled venting.

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(2) The VOC storage vessel shall be limited to less than 6 TPY of VOC emissions, 12-month rolling total, unless another time measurement is specified under 40 CFR Part 60, Subpart OOOO or OOOOa. For any VOCs not routed through a VRU, the storage vessel affected facility shall be controlled utilizing a flare or enclosed combustion device.

(A) For each flare or enclosed combustion device, the presence of a pilot flame shall be monitored using a thermocouple or any other equivalent device, and records of pilot flame(s) outages and/or flare down-time shall be maintained.

(B) The flare or enclosed combustion device shall be operated according to the manufacturer's specifications.

(C) Demonstration of compliance with the VOC emission limit shall be based on emissions calculated from records of VOC stored and monthly throughputs using current EPA AP-42 methodology for working and breathing emissions or other methodology acceptable to the DEQ, AQD guidance for flash emissions, and a VOC control efficiency as specified.

(i) During periods when records document that the flare or enclosed combustion device was operational, the VOC emissions estimates may be calculated using a VOC destruction efficiency of 95%.

(ii) If the manufacturer of the flare or enclosed combustion device guarantees a VOC destruction efficiency greater than 95%, the VOC emissions estimates may be calculated using the VOC destruction efficiency guaranteed by the manufacturer, up to but not to exceed 99.5% during periods when records document that the control device was operational.

(iii) A properly installed and operated VRU is considered to recover 100% of the VOC during the time the VRU is in use.

(iv) The permittee shall maintain, for a period of five (5) years, records of VOC stored, monthly throughputs, and emissions calculations used to demonstrate compliance, including records of all periods of uncontrolled venting.

[OAR Docket #17-538; filed 6-29-17]

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

[OAR Docket #17-539]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 3. Incorporation by Reference
252:205-3-2. [AMENDED]

AUTHORITY:

Environmental Quality Board; 27A O.S. §§ 2-2-101, 2-2-201, 2-2-104, 2-7-105 and 2-7-106

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

August 8, 2016

COMMENT PERIOD:

September 12 through October 13, 2016

PUBLIC HEARING:

October 13, 2016 and November 9, 2016

ADOPTION:

November 9, 2016

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND LEGISLATURE:

November 17, 2016

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 13, 2017

FINAL ADOPTION:

June 13, 2017

EFFECTIVE DATE:

September 15, 2017

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

Incorporated standards:

Date of 40 CFR provisions incorporated by reference in these rules is changed to "as amended through July 1, 2016".

Incorporating rules:

252:205-3-1 and 3-2

Availability:

From the contact person listed below

GIST/ANALYSIS:

The purpose of the proposed amendments is to incorporate by reference the federal hazardous waste regulations found in 40 CFR Parts 124 and 260-279 revised as of July 1, 2016.

CONTACT PERSON:

Mike Edwards (405) 702-5226, 707 North Robinson, Oklahoma City, Oklahoma 73102. Mailing address is P.O. Box 1677, Oklahoma City, OK 73101-1677. E-mail address is mike.edwards@deq.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2017:

SUBCHAPTER 3. INCORPORATION BY REFERENCE

252:205-3-2. Incorporation by reference

(a) **Part 124.** Procedures for Decision Making, those sections required by 40 CFR 271.14, with the following additions:

(1) § 124.19(a) through (c) and (e);

(2) §§ 124.31, 124.32, & 124.33, substituting DEQ for EPA, and deleting the following sentence from paragraph (a) of each section: "For the purposes of this section only, hazardous waste management units over which EPA has permit issuance authority' refers to hazardous waste management units for which the State where the units are located has not been authorized to issue RCRA permits pursuant to 40 CFR Part 271"; and

(3) Subpart G.

(b) **Part 260.** Hazardous Waste Management System: General, except 260.21.

- (1) In 260.20, "Federal Register" is synonymous with "The Oklahoma Register."
- (2) In 260.20(e), strike the words "or a denial."
- (3) In 260.22, references to the lists in Subpart D of Part 261 and the reference to § 261.3(a)(2)(ii) or (c) shall mean the lists in Subpart D of Part 261 and §261.3(a)(2)(ii) or (c) as adopted by reference and applicable in Oklahoma.
- (4) In the 260.10 definitions of "new tank system" and "existing tank system", the reference to "July 14, 1986" for commencement of tank installation applies only to tank regulations promulgated pursuant to the federal Hazardous and Solid Waste Amendment ("HSWA") requirements. The following categories outline HSWA requirements:
- (A) interim status and permitting requirements applicable to tank systems owned and operated by small quantity generators [3001(d)];
 - (B) leak detection requirements for all new underground tank systems [3004(o)(4)]; and
 - (C) permitting standards for underground tanks that cannot be entered for inspection [3004(w)]. For tank regulations promulgated pursuant to statutory authority other than HSWA, the date relative to the commencement of installation is November 2, 1987.
- (c) **Part 261.** Identification and Listing of Hazardous Waste except ~~261.4(b)(18)~~ and 261.150.
- (1) In 261.4(e)(3)(iii) delete "in the Region where the sample is collected".
 - (2) In 261.5(f)(3)(iv), and (v), and in 261.5(g)(3)(iv), and (v) add "other than Oklahoma" after the word "State".
 - (3) In 261.31(a), the listing for F019, add at the end: "Zinc phosphate sludges meeting exemption conditions remain subject to regulation as hazardous waste if the waste exhibits a hazardous waste characteristic."
- (d) **Part 262.** Standards Applicable to Generators of Hazardous Waste except Subpart E and Subpart H. In 262.42(a)(2) and 262.42(b) delete "for the Region in which the generator is located".
- (e) **Part 263.** Standards Applicable to Transporters of Hazardous Waste.
- (f) **Part 264.** Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities. The following sections and subsections are not adopted by reference: 264.1(f), 264.1(g)(12), 264.149, 264.150, 264.301(l), 264.1030(d), 264.1050(g), 264.1080(e), 264.1080(f), and 264.1080(g).
- (1) In 264.191(a), the compliance date of January 12, 1988 applies only for HSWA tanks. For non-HSWA tanks the compliance date is November 2, 1988.
 - (2) In 264.191(c), the reference to July 14, 1986 applies only to HSWA tanks. For non-HSWA tanks the applicable date is November 2, 1987.
 - (3) In 264.193, the Federal effective dates apply to HSWA tanks only. For non-HSWA tanks January 12, 1987 is replaced with November 2, 1987.
 - (4) In 264.570(a) the dates December 6, 1990 and December 24, 1992 apply only to drip pads where F032 waste is handled. The dates June 22, 1992 and August 15, 1994 respectively, replace the dates December 6, 1990 and December 24, 1992 for drip pads where F034 or F035 wastes are handled.
- (g) **Part 265.** Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities except 265.1(c)(4), 265.1(g)(12), 265.149, 265.150, 265.1030(c), 265.1050(f), 265.1080(e), 265.1080(f), and 265.1080(g).
- (1) In 265.191(a), the compliance date of January 12, 1988 applies only for HSWA tanks. For non-HSWA tanks the compliance date is November 2, 1988.
 - (2) In 265.191(c), the reference to July 14, 1986 applies only to HSWA tanks. For non-HSWA tanks the applicable date is November 2, 1987.
 - (3) In 265.193, the Federal effective dates apply to HSWA tanks only. For non-HSWA tanks January 12, 1987 is replaced with November 2, 1987.
 - (4) In 265.440(a) the dates December 6, 1990 and December 24, 1992 apply only to drip pads where F032 waste is handled. The dates June 22, 1992 and August 15, 1994 respectively, replace the dates December 6, 1990 and December 24, 1992 for drip pads where F034 or F035 wastes are handled.
- (h) **Part 266.** Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities. Due to an early incorporation by reference, for purposes of Part 266 only, HSWA and non-HSWA dates are the same. In 266.325, the reference to 10 CFR 1.5 is changed to 10 CFR 71.5.
- (i) **Part 267.** Standards for Owners and Operators of Hazardous Waste Facilities Operating Under a Standardized Permit. This permit option shall only be available to:
- (1) those persons who generate hazardous waste on-site through, or as a result of, industrial production processes;
 - (2) wholly owned subsidiaries, owners, or sister companies of those persons specified in paragraph (1); and
 - (3) agencies, departments, or units of the federal government or the State of Oklahoma.
- (j) **Part 268.** Land Disposal Restrictions, except 268.5, 268.6, 268.13, 268.42(b) and 268.44(a) through (g). In 268.7 (a)(9)(iii) exclude D009 from the list of alternative treatment standards for lab packs.
- (k) **Part 270.** The Hazardous Waste Permit Program, except 270.1(c)(2)(ix), and 270.14(b)(18).
- (l) **Part 273.** Standards for Universal Waste Management.
- (m) **Part 279.** Standards for the Management of Used Oil, except that 279.82 is revised to read in its entirety, "The use of used oil as a dust suppressant is prohibited."
- (n) **Excepted CFR Regulations.** Authority for carrying out excepted CFR regulations remains with EPA.

[OAR Docket #17-539; filed 6-29-17]

Permanent Final Adoptions

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

[OAR Docket #17-540]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions
252:410-1-7 [AMENDED]
Subchapter 10. Radioactive Materials Program
Part 1. General Provisions
252:410-10-1 [AMENDED]
Part 37. Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material
252:410-10-37 [AMENDED]
Part 71. Packaging and Transporting Radioactive Material
252:410-10-71 [AMENDED]

AUTHORITY:

Environmental Quality Board and Radiation Management Advisory Council powers and duties; 27A O.S. §§2-2-101, 2-2-104, 2-2-201, and 2-9-104

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

July 25, 2016

COMMENT PERIOD:

August 15, 2016, through September 28, 2016

PUBLIC HEARING:

September 29, 2016, Radiation Management Advisory Council
November 9, 2016, Environmental Quality Board

ADOPTION:

November 9, 2016

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

November 17, 2016

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 13, 2017

FINAL ADOPTION:

June 13, 2017

EFFECTIVE:

September 15, 2017

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

Incorporated standards:

Title 10 of the Code of Federal Regulations, Parts 20, 30, 31, 32, 34, 36, 37, 39, 40, 70, and 71 as amended through January 1, 2016.

Incorporating rules:

252:410-1-7, 252:410-10-1, 252:410-10-37, and 252:410-10-71.

Availability:

From the contact person listed below.

GIST/ANALYSIS:

The proposed rulemaking adopts recent revisions to NRC regulations by updating the date for incorporation of federal regulations by reference to January 1, 2016. Requirements on reporting and on protecting Safeguards information are moved from 10 CFR Parts 30 and 73 to 10 CFR Part 37 to consolidate Safeguards requirements in a single Part. Part 37 is also updated to give relief from fingerprinting and background checks to certain commercial vehicle drivers. Shipping requirements for radioactive material in 10 CFR Part 71 are revised to harmonize with International Atomic Energy Agency transportation requirements, and definitions are added or revised to conform with the updated shipping requirements. The recent revisions to NRC regulations that are adopted also include a number of miscellaneous corrections, including correction of typographical errors in 10 CFR Part 37 and Part 40, changing titles of various NRC officials, updating a web site address, and capitalizing the term "Tribe" in numerous locations, including 10 CFR Parts 19, 20, 30, 32, 37, 40, 61, 70, 71, and 150. The gist of the rule and the underlying reason for the rule is that adoption of these changes is required for the Oklahoma Radiation Management program to remain compatible with federal rules, and is required under the terms of the transfer of authority in the

Agreement between the federal Nuclear Regulatory Commission and the State of Oklahoma.

CONTACT PERSON:

The contact person is Mike Broderick. He can be reached at mike.broderick@deq.ok.gov (e-mail), (405) 702-5100 (phone) or (405) 702-5101 (fax). The DEQ is located at 707 N. Robinson, Oklahoma City, Oklahoma 73102. The mailing address is P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2017:

SUBCHAPTER 1. GENERAL PROVISIONS

252:410-1-7. Incorporation of federal regulations by reference

(a) **10 CFR.** References in this Chapter to Title 10 of the Code of Federal Regulations (10 CFR) mean the ~~January 1, 2015~~ January 1, 2016 publication of 10 CFR.

(b) **40 CFR.** References in this Chapter to Title 40 of the Code of Federal Regulations (40 CFR) mean the July 1, 1998 publication of 40 CFR and 64 Fed. Reg. 5574 (February 3, 1999).

(c) **Citations incorporated.** When a provision of the Code of Federal Regulations is incorporated by reference, all citations contained therein are also incorporated by reference.

SUBCHAPTER 10. RADIOACTIVE MATERIALS PROGRAM

PART 1. GENERAL PROVISIONS

252:410-10-1. Radioactive Materials Program

(a) Scope.

(1) The rules in this Subchapter establish license requirements for the following categories of radioactive materials: byproduct material, source material and special nuclear material.

(2) License requirements incorporated by reference from 10 CFR are applicable requirements for all categories of radioactive materials within the scope of this Subchapter.

(b) **Exclusions.** Responsibility for the following regulatory requirements remains with the NRC:

(1) **In 10 CFR 20.** Exemptions to labeling requirements, § 20.1905(g); Reports of exposures, radiation levels, and concentrations of radioactive material exceeding the constraints or limits at nuclear power plants, § 20.2203(c); Reports of individual monitoring, § 20.2206(a)(1), (a)(3), (a)(4) and (a)(5);

(2) **In 10 CFR 30.** Activities requiring license, § 30.3(b); Definitions, § 30.4 "Commencement of construction" paragraph (2), ~~and~~ "Construction" paragraph (9)(ii),

and "Quantities of concern"; Application for specific licenses, § 30.32(k); Terms and conditions of licenses, § 30.34 (d), (e)(1), and (e)(3), and (l); Transfer of byproduct material, § 30.41 (b)(6); Tritium reports, § 30.55;

(3) **In 10 CFR 32.** Purpose and scope, § 32.1(c)(1); Subpart A, Exempt concentrations and items, §§ 32.11, 32.12, 32.14, 32.15, 32.16, 32.18 through 32.23, and 32.25 through 32.29; Subpart D, Specifically licensed items, § 32.210;

(4) **In 10 CFR 35.** License required, § 35.11(c)(1); License amendments, § 35.13(a)(1);

(5) **In 10 CFR 36.** Definitions, § 36.2 "Commencement of construction" paragraph 2 and "Construction" paragraph 9(ii);

(6) **In 10 CFR 37.** General security program requirements, § 37.43(d)(9); ~~Advance notification of shipment of category 1 quantities of radioactive material, § 37.77(f);~~

(7) **In 10 CFR 40.** General Provisions, §§ 40.2a and 40.3; Definitions, § 40.4 "Commencement of construction" paragraph (2) and "Construction" paragraph (9)(ii); Exemptions, §§ 40.11, 40.12 and 40.13 (a), (b), (c)(1) through (5), (c)(7) through (9), 40.14; General Licenses, §§ 40.20 through 40.24; 40.26 through 40.28; License Applications, §§ 40.31 (f) through (l), §§ 40.32 (d) through (g), §§ 40.33 through 40.35, § 40.37, and § 40.38; Licenses, §§ 40.41 (d), (e)(1) and (3), (f) and (g), § 40.42 and § 40.46; Transfer of Source Material, § 40.51 (b)(6); Records, Reports, and Inspections, § 40.60 (c)(3), §§ 40.64 through 40.67; Appendix A;

(8) **In 10 CFR 61.** Other information, § 61.16; Standards for issuance of a license, § 61.23 (i) and (j) regarding physical security information and criticality safety procedures for special nuclear material possessed prior to disposal;

(9) **In 10 CFR 70.** Regulation of special nuclear material for spent fuel, high level radioactive waste and uranium enrichment facilities, §§ 70.1(c),(d) and (e); Definitions, § 70.4 "Commencement of construction" paragraph (2) and "Construction" paragraph (9)(ii); Department of Defense, § 70.13; Foreign military aircraft, § 70.14; General license to possess special nuclear material for transport, § 70.20a; General license for carriers of transient shipments of formula quantities of strategic special nuclear material of moderate strategic significance, special nuclear material of low strategic significance, and irradiated reactor fuel regulated under 10 CFR 73, § 70.20b; Subpart D - License Applications, § 70.21(a)(1), (c), (f), (g) and (h); § 70.22 (b), (c) and (f) through (n), § 70.23 (a)(6) through (12) and (b), § 70.23a, and § 70.24; Subpart E - Licenses, § 70.31 (c), (d), and (e), § 70.32 (a)(1), (a)(4) through (7), (b)(1), (b)(3), (b)(4), (c) through (k), and § 70.37; § 70.40; Subpart F - Acquisition, Use and Transfer of Special Nuclear Material, Creditor's Rights, § 70.42(b)(6), and § 70.44; Subpart G - Special Nuclear Material Control, Records, Reports and Inspections, § 70.51(c),(d) and (e), § 70.52 through § 70.54, § 70.55(c), § 70.56, and § 70.59; Subpart H - Additional Requirements for Certain Licensees Authorized to Possess a Critical

Mass of Special Nuclear Material, § 70.60 through 70.76; Subpart I - Modification and Revocation of Licenses, § 70.81 and § 70.82; Subpart J - Enforcement, §§ 70.91 and 70.92, and Appendix A to Part 70;

(10) **In 10 CFR 71.** Subpart A - General Provisions, § 71.10; Subpart B - Exemptions, § 71.14(b); Subpart C - General licenses, § 71.19; Subpart D - Application for Package Approval, §§ 71.31 through 71.39; Subpart E - Package Approval Standards, §§ 71.41 through 71.45 and §§ 71.51 through 71.65; Subpart F - Package, Special Form, and LSA-III Tests, §§ 71.74 through 71.77; Subpart G - Operating Controls and Procedures, § 71.85(a), (b), and (c) and § 71.91(b); Subpart H - Quality Assurance, § 71.101(c)(2), (d), and (e) and §§ 71.107 through 71.125;

(11) **In 10 CFR 150.** Persons in offshore waters not exempt, § 150.7; Persons in agreement states exempt, § 150.10; Commission regulatory authority for physical protection in agreement states, § 150.14; Persons not exempt, § 150.15(a)(9); Continued Commission authority pertaining to byproduct material, § 150.15a(b)(6); Persons in agreement states not exempt, Continued Commission authority pertaining to byproduct material in agreement states, § 150.17; Compliance with requirements of US/IAEA safeguards agreement for source material under state agreement license; Submission to Commission of reports for tritium in agreement states, § 150.19; Transportation by aircraft of special nuclear material by agreement state licensee, § 150.21; Violations, § 150.30; Requirements for Agreement State regulation of byproduct material, § 150.31; Funds for reclamation or maintenance of byproduct material, § 150.32; and Criminal penalties, § 150.33.

(c) **Effective date.** The requirements of this Subchapter became effective September 29, 2000, the date upon which jurisdiction over all unrevoked and unexpired NRC licenses and plan approvals was transferred to DEQ.

PART 37. PHYSICAL PROTECTION OF CATEGORY 1 AND CATEGORY 2 QUANTITIES OF RADIOACTIVE MATERIAL

252:410-10-37. 10 CFR 37 Incorporations by reference

Incorporations by reference. The following provisions are hereby incorporated by reference from 10 CFR 37, Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material:

(1) **Subpart A; General Provisions.**

- (A) 37.1 - Purpose
- (B) 37.3 - Scope
- (C) 37.5 - Definitions
- (D) 37.7 - Communications
- (E) 37.9 - Interpretations
- (F) 37.11 - Specific exemptions
- (G) 37.13 - Information collection requirements: OMB approval

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(2) Subpart B; Background Investigations and Access Control Program.

- (A) 37.21 - Personnel access authorization requirements for category 1 or category 2 quantities of radioactive material
- (B) 37.23 - Access authorization program requirements
- (C) 37.25 - Background investigations
- (D) 37.27 - Requirements for criminal history records checks of individuals granted unescorted access to category 1 or category 2 quantities of radioactive material
- (E) 37.29 - Relief from fingerprinting identification, and criminal history records checks and other elements of background investigations for designated categories of individuals permitted unescorted access to certain radioactive materials
- (F) 37.31 - Protection of information
- (G) 37.33 - Access authorization program review

(3) Subpart C; Physical Protection Requirements During Use.

- (A) 37.41 - Security program
- (B) 37.43 - General security program requirements, except (d)(9)
- (C) 37.45 - LLEA coordination
- (D) 37.47 - Security zones
- (E) 37.49 - Monitoring, detection, and assessment
- (F) 37.51 - Maintenance and testing
- (G) 37.53 - Requirements for mobile devices
- (H) 37.55 - Security program review
- (I) 37.57 - Reporting of events

(4) Subpart D; Physical Protection in Transit.

- (A) 37.71 - Additional requirements for transfer of category 1 and category 2 quantities of radioactive material
- (B) 37.73 - Applicability of physical protection of category 1 and category 2 quantities of radioactive material during transit
- (C) 37.75 - Preplanning and coordination of shipment of category 1 or category 2 quantities of radioactive material
- (D) 37.77 - Advance notification of shipment of category 1 quantities of radioactive material, ~~except (f)~~
- (E) 37.79 - Requirements for physical protection of category 1 and category 2 quantities of radioactive material during shipment
- (F) 37.81 - Reporting of events

(5) Subpart E; Reserved.

(6) Subpart F; Records.

- (A) 37.101 - Form of records
- (B) 37.103 - Record retention

(7) Appendix A to Part 37. Category 1 and Category 2 Radioactive Materials

252:410-10-71. 10 CFR 71 incorporations by reference

The following provisions are hereby incorporated by reference from 10 CFR 71, Packaging and Transportation of Radioactive Material:

(1) Subpart A; General provisions.

- (A) 71.0 - Purpose and scope
- (B) 71.1(b) - Communications and records
- (C) 71.3 - Requirement for license
- (D) 71.4 - Definitions
- (E) 71.5 - Transportation of licensed material
- (F) 71.7 - Completeness and accuracy of information
- (G) 71.8 - Deliberate misconduct
- (H) 71.9 - Employee protection

(2) Subpart B; Exemptions.

- (A) 71.12 - Specific exemptions
- (B) 71.13 - Exemptions of physicians
- (C) 71.14(a) - Exemption for low-level materials
- ~~(D)~~ 71.15 - Exemption from classification as fissile material

(3) Subpart C; General licenses.

- (A) 71.17 - General license: NRC-approved package
- (B) 71.20 - General license: DOT specification container
- (C) 71.21 - General license: Use of foreign approved package
- (D) 71.22 - General license: Fissile material
- (E) 71.23 - General license: Plutonium-beryllium special form material

(4) Subpart E; Package Approval Standards. 71.47 - External radiation standards for all packages

(5) Subpart G; Operating controls and procedures.

- (A) 71.81 - Applicability of operating controls and procedures
- (B) 71.83 - Assumptions as to unknown properties
- (C) 71.85(d) - Preliminary determinations
- (D) 71.87 - Routine determinations
- (E) 71.88 - Air transport of plutonium
- (F) 71.89 - Opening instructions
- (G) 71.91(a), (c), and (d) - Records
- (H) 71.93 - Inspection and tests
- (I) 71.95 - Reports
- (J) 71.97 - Advance notice of shipment of irradiated reactor fuel and nuclear waste

(6) Subpart H; Quality assurance.

- (A) 71.101(a), (b), (c)(1), (f), and (g) - Quality assurance requirements
- (B) 71.103 - Quality assurance organization
- (C) 71.105 - Quality assurance program
- (D) 71.106 - Changes to quality assurance program
- ~~(E)~~ 71.127 - Handling, storage and shipping control
- ~~(F)~~ 71.129 - Inspection, test and operating status
- ~~(G)~~ 71.131 - Nonconforming materials, parts or components
- ~~(H)~~ 71.133 - Corrective action
- ~~(I)~~ 71.135 - Quality assurance records

PART 71. PACKAGING AND TRANSPORTING RADIOACTIVE MATERIAL

- (H) 71.137 - Audits
- (7) Appendix A to Part 71--Determination of A₁ and A₂.

[OAR Docket #17-540; filed 6-29-17]

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY
CHAPTER 515. MANAGEMENT OF SOLID WASTE**

[OAR Docket #17-541]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 1. General Provisions
 - 252:515-1-2. Definitions [AMENDED]
 - 252:515-1-8. Special considerations [AMENDED]
- Subchapter 3. Permit Provisions and Applications
 - Part 1. General Provisions
 - 252:515-3-1. Permit required [AMENDED]
 - 252:515-3-2. Permit not required [AMENDED]
- Subchapter 11. Liner Design
 - Part 1. General Provisions
 - 252:515-11-1. Applicability [AMENDED]
- Subchapter 13. Leachate Collection and Management
 - Part 1. General Provisions
 - 252:515-13-1. Applicability, with exceptions [AMENDED]
- Subchapter 19. Operational Requirements
 - Part 1. General Provisions
 - 252:515-19-1. Applicability [AMENDED]
 - Part 11. Additional operating requirements for solid waste composting facilities [REVOKED]
 - 252:515-19-111. Acceptable composting materials [REVOKED]
 - 252:515-19-112. Receiving area [REVOKED]
 - 252:515-19-113. Debagging required [REVOKED]
 - 252:515-19-114. Processing area [REVOKED]
 - 252:515-19-115. Processing time [REVOKED]
 - 252:515-19-116. Composting area [REVOKED]
 - 252:515-19-117. Windrow construction [REVOKED]
 - 252:515-19-118. Windrow turning [REVOKED]
 - 252:515-19-119. In-vessel composting [REVOKED]
 - 252:515-19-120. Temperature monitoring [REVOKED]
 - 252:515-19-121. Completed process [REVOKED]
 - 252:515-19-122. Curing area and time [REVOKED]
 - 252:515-19-123. Biosolids [REVOKED]
 - 252:515-19-124. Odor control [REVOKED]
 - 252:515-19-125. Other wastes [REVOKED]
 - 252:515-19-126. Recordkeeping [REVOKED]
- Subchapter 25. Closure and Post-Closure Care
 - Part 3. Closure
 - 252:515-25-32. Contents of closure plan [AMENDED]
- Subchapter 27. Cost Estimates and Financial Assurance
 - Part 1. General Provisions
 - 252:515-27-1. Applicability [AMENDED]
- Subchapter 29. Exclusion of Prohibited Wastes
 - 252:515-29-1. Applicability [AMENDED]
- Subchapter 43. Composting Facilities [NEW]
 - Part 1. General Provisions [NEW]
 - 252:515-43-1. Applicability [NEW]
 - 252:515-43-2. Definitions [NEW]
 - 252:515-43-3. Feedstock types for composting facilities [NEW]
 - 252:515-43-4. Composting facility classes [NEW]
 - Part 3. Plans and Permits [NEW]
 - 252:515-43-31. Exempt [NEW]
 - 252:515-43-32. Plan requirements [NEW]
 - 252:515-43-33. Permit requirements [NEW]
 - 252:515-43-34. Reporting requirements [NEW]
 - 252:515-43-35. Financial assurance [NEW]

- Part 5. Operational Standards [NEW]
 - 252:515-43-51. Applicability [NEW]
 - 252:515-43-52. Acceptable composting materials [NEW]
 - 252:515-43-53. Prohibited materials [NEW]
 - 252:515-43-54. Non-compostable and other waste [NEW]
 - 252:515-43-55. Biosolids [NEW]
 - 252:515-43-56. Bulking [NEW]
 - 252:515-43-57. Operations plan [NEW]
 - 252:515-43-58. Operating requirements [NEW]
 - 252:515-43-59. Processing time [NEW]
 - 252:515-43-60. Composting time [NEW]
 - 252:515-43-61. Windrow turning [NEW]
 - 252:515-43-62. Temperature and moisture monitoring [NEW]
 - 252:515-43-63. Completed process [NEW]
 - 252:515-43-64. Odor control [NEW]
 - 252:515-43-65. In-vessel composting [NEW]
 - 252:515-43-66. Recordkeeping and reporting [NEW]
- Part 7. Design Standards [NEW]
 - 252:515-43-71. Class I and Class II design standards [NEW]
 - 252:515-43-72. Class III design standards [NEW]
 - 252:515-43-73. Class IV design standards [NEW]
- Part 9. Groundwater Monitoring [NEW]
 - 252:515-43-91. Groundwater monitoring [NEW]
- Part 11. Compost Testing Standards [NEW]
 - 252:515-43-111. Compost testing standards [NEW]

AUTHORITY:

Environmental Quality Board; 27A O.S. §§ 2-2-101, 2-10-201, and 2-10-301.2; Solid Waste Management Advisory Council, 27A O.S. § 2-2-201.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

November 7, 2016

COMMENT PERIOD:

December 1, 2016 through January 11, 2017.

PUBLIC HEARING:

January 12, 2017 and February 17, 2017

ADOPTION:

February 17, 2017

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

February 24, 2017

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 13, 2017

FINAL ADOPTION:

June 13, 2017

EFFECTIVE:

September 15, 2017

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The Department is proposing to amend OAC 252:515 and to create a new Subchapter, OAC 252:515-43, to allow for a tiered permitting and regulatory structure for different classes of solid waste composting facilities. The classes of facilities are based on the type and quantity of material to be received and composted at a particular facility. All proposed amendments to OAC 252:515 are associated with the creation of the new Subchapter and are necessary to ensure consistency with the new Subchapter. The gist of the rule is to replace the current regulations pertaining to solid waste composting facilities to allow for a tiered permitting and regulatory structure based on the type and quantity of material to be composted.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2017:

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SUBCHAPTER 1. GENERAL PROVISIONS

252:515-1-2. Definitions

The following words or terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise. Any term not defined in this Chapter shall be defined as set forth in OAC 252:515-1-3.

"Active" means, when used to describe a solid waste disposal facility or a portion thereof (e.g., active MSWLF or active cell), any solid waste disposal facility, or portion thereof, accepting solid waste as of the effective date of this Chapter, regardless of whether such facility has obtained a solid waste permit from DEQ.

"Active life" means the period of operation beginning with the initial receipt of solid waste and ending at completion of closure activities.

"Active portion" means:

- (A) that part of a land disposal facility that has or is receiving waste and that has not received either intermediate or final cover; or
- (B) solid waste process and storage areas at non-land disposal facilities.

"Airport" means a public-use airport open to the public without prior permission, and without restrictions within the physical capacities of available facilities.

"Applicant" means any person who applies for a new permit or a modification to an existing permit for a solid waste disposal facility identified in OAC 252:515-3-1(a) and(b).

"Aquifer" means a geological formation, group of formations, or portion of a formation capable of yielding significant quantities of groundwater to wells or springs.

"Areas susceptible to mass movement" means those areas of influence (i.e., areas characterized as having an active or substantial possibility of mass movement) where the movement of earth material at, beneath, or adjacent to the land disposal facility, because of natural or man-induced events, results in the downslope transport of soil and rock material by means of gravitational influence. Such areas include, but are not limited to, landslides, avalanches, debris slides and flows, soil fluxion, block sliding, and rock fall.

"ASTM" means the American Society for Testing and Materials.

"Bird hazard" means an increase in the likelihood of bird/aircraft collisions that may cause damage to the aircraft or injury to its occupants.

"Buffer zone" means a designated waste-free area within the permit boundary of a disposal facility, to separate waste handling, processing, and/or disposal activities from adjacent areas.

"Citizen collection station" means a designated location that is established or sponsored by a governmental entity and equipped with waste receptacles for exclusive, non-commercial use by individual residents to deposit their own household waste for collection and transportation to a permitted disposal site.

"CLIMOCS" means the following publication of the Oklahoma Climatological Survey: Shafer, Mark A., CLIMOCS: A Climatological Summary of 168 Oklahoma Cooperative

Stations, Oklahoma Climatological Survey, February 1993, 184 pp.

"Composite liner" means a system installed at a land disposal facility composed of a recompacted clay liner overlain with a flexible membrane liner.

"C&D landfill" means a construction/demolition landfill.

"Composting facility" means a facility in which material is converted, under thermophilic conditions, to a product with a high humus content for use as a soil amendment or to prevent or remediate pollutants in soil, air, and stormwater run-off.

"Construction/demolition waste" means waste composed of the following:

- (A) asbestos-free waste from construction and/or demolition projects that may include such materials as metal, concrete, brick, asphalt, glass, roofing materials, limited amounts of packing materials, sheetrock, or lumber;
- (B) wood waste that may include such materials as yard waste, lumber, woodchips, wood shavings, sawdust, plywood, tree limbs, or tree stumps;
- (C) yard waste that may include such materials as grass clippings, tree limbs, tree stumps, shrubbery, flowers, or other vegetative matter resulting from land clearing or landscaping operations; or
- (D) residential lead-based paint waste.

"Contaminated stormwater" means:

- (A) water such as leachate and gas collection condensate, or stormwater that has come into direct contact with solid waste or waste handling and/or treatment areas;
- (B) stormwater discharged from areas of a land disposal facility with less than six inches of waste-free, compacted earthen material; or
- (C) wastewater resulting from washing vehicles or areas that are or have been in direct contact with solid waste.

"DEQ" means the Oklahoma Department of Environmental Quality.

"Disease vector" means rodents, flies, mosquitoes, or other animals, including insects, capable of transmitting disease to humans.

"Displacement" means the relative movement of any two sides of a fault measured in any direction.

"Disposal" means the final disposition of waste and shall be taken to include any discharge, deposit, injection, dumping, spilling, leaking, or placing of waste into or on the land or water so that the waste or any constituent thereof may enter the environment, including the air and any surface waters or ground waters.

"Disposal area" means that part of a land disposal facility where waste is disposed.

"Disposal facility" means disposal site as defined at 27A O.S. § 2-10-103.

"Engineer" means a licensed, professional engineer.

"EPA" means the United States Environmental Protection Agency.

"Existing" means, when used to describe a solid waste disposal facility or portion thereof (e.g. existing MSWLF

or existing cell), any solid waste disposal facility, or portion thereof, that had a solid waste permit as of the effective date of this Chapter.

"Facility" means all contiguous land and structures, other appurtenances, and improvements on the land used for the handling, processing, storage, and/or disposal of solid waste.

"Fault" means a fracture or a zone of fractures in any material along which strata on one side have been displaced with respect to that on the other side.

"Final closure" means a disposal facility has permanently ceased to accept solid waste for disposal and all required closure activities have been completed for the entire facility in accordance with the approved closure plan. Final closure is not synonymous with phased closure.

"Flood" means the general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of a lake, stream, river or other body of surface water, or the unusual and rapid accumulation or runoff of surface waters from any source.

"Flood, One hundred year (100 year)" means a flood that has a one percent or greater chance of occurrence in any given one year period, or of a magnitude equaled or exceeded once in 100 years on the average over a significantly long period.

"Flood plain" means the lowland and relatively flat areas adjoining inland waters that are inundated by the 100-year flood.

"Gas condensate" means the liquid generated as a result of gas recovery processes.

"Generator" means, in the context of NHIW, any person, by site, whose act or process produces NHIW, or whose act first causes an NHIW to become subject to regulation.

"Groundwater" means water below the land surface in a zone of saturation.

"Hazardous waste" means those wastes subject to regulation under OAC 252:205.

"HBV" means hepatitis B virus.

"HIV" means human immunodeficiency virus.

"Holocene" means the most recent epoch of the Quaternary period, extending from the end of the Pleistocene Epoch to the present.

"Household hazardous waste" means household waste that is corrosive, toxic, ignitable, or reactive, including, but not limited to: freon-containing appliances or tanks; non-empty propane tanks; oil, antifreeze, and other motor vehicle fluids; gasoline, kerosene, or diesel fuel; liquid paints; solvents; pesticides, herbicides, fungicides, or rodenticides; caustic cleaners; lead-acid batteries; swimming pool chemicals; unused firearm rounds; and acids and bases.

"Household waste" means any solid waste (including garbage, trash, and sanitary waste in septic tanks) derived from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas).

"Injection well" means a facility subject to regulation by OAC 252:652, Underground Injection Control.

"Karst terrains" means areas where karst topography, with its characteristic surface and subterranean features, is

developed as the result of dissolution of limestone, dolomite, or other soluble rock. Characteristic features of karst terrains include, but are not limited to, sinkholes, sinking streams, caves, large springs, and blind valleys.

"Land disposal facility" means a landfill, or any other discrete area of land or land excavation, where solid waste is placed for treatment, processing, and/or disposal. Land disposal facility does not include:

(A) land application where solid waste is placed onto, or incorporated into, the soil as a soil amendment, fertilizer, or other legitimate agricultural purpose;

(B) a surface impoundment that is either permitted by DEQ's Water Quality Division or is a part of an approved liquid waste management system at a permitted solid waste disposal facility;

(C) ~~a yard waste composting facility~~ facilities;

(D) an injection well;

(E) a solid waste transfer station;

(F) a Used Tire Recycling Facility; or

(G) a Roofing Material Recycling Facility

"Landfill" means a discrete area of land or a land excavation in which solid waste is placed for permanent disposal.

"Large NHIW generator" means any business, by site, that generates over 10,000 tons of NHIW in Oklahoma during a calendar year. This definition does not include facilities that are permitted to receive and process solid waste generated by others.

"Leachate" means liquid that has passed through or emerged from solid waste and contains soluble, suspended, or miscible materials removed from such waste. This includes:

(A) fluid collected in a leachate collection system, including its sumps, surface impoundments, tanks, or other similar locations;

(B) fluid collected on top of the bottom liner of a disposal cell that has received solid waste; and

(C) leachate seeps from disposal cells that have received solid waste.

"Liquid waste" means any waste that is determined to contain "free liquids" as defined by the PFLT.

"Lithified earth material" means all rock, including all naturally occurring and naturally formed aggregates or masses of minerals or small particles of older rock that formed by crystallization of magma or by induration of loose sediments. This term does not include man-made materials, such as fill, concrete, and asphalt, or unconsolidated earth materials, soil, or regolith lying at or near the earth surface.

"Litter fence" means an easily portable fence to be located adjacent to the working face to assist with control of blowing material.

"Lower explosive limit" means the lowest percent by volume of a mixture of explosive gases that will propagate flame in air at 25°C and atmospheric pressure.

"Maximum horizontal acceleration" means the maximum expected horizontal acceleration of lithified earth material, depicted on a seismic hazard map, with a 90 percent or greater probability that the acceleration will not be exceeded

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in 250 years, or the maximum expected horizontal acceleration based on a site-specific seismic risk assessment.

"MSWLF" means Municipal Solid Waste Landfill; a publicly or privately owned landfill that is or has received household waste. A MSWLF may also receive other types of non-hazardous solid wastes, such as nonhazardous sludge, NHIW, special waste, and construction/demolition waste.

"Natural disaster" means a natural occurrence or event (such as a tornado, flood, or forest or prairie fire) of such magnitude that the resultant damage and destruction produce quantities of wastes that overtax available solid waste management systems.

"NHIW" means non-hazardous industrial solid waste, as defined at 27A O.S. § 2-10-103. Examples of NHIW are listed in Appendix F of this Chapter.

"Non-contaminated stormwater" means:

- (A) stormwater that has not come into direct contact with solid waste, waste handling and/or treatment areas;
- (B) stormwater discharging from areas of a land disposal facility that has at least six inches of waste-free, compacted earthen material; and
- (C) wastewater resulting from washing vehicles or areas that have not been in direct contact with solid waste.

"Oklahoma Uniform Environmental Permitting Act" means 27A O.S. § 2-14-101 *et seq.* and the rules adopted thereunder at OAC 252:4 Rules of Practice and Procedure.

"Open burning" means the combustion of solid waste without:

- (A) control of combustion air to maintain adequate temperature for efficient combustion;
- (B) containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and
- (C) control of the emission of the combustion products.

"Operating record" means all of the collective records of the facility relating to the site. Such records include, but are not limited to: the permit, modifications, and approvals; records concerning waste received; any sampling or analyses performed by the facility; closure, post-closure and corrective action plans; financial assurance records; inspection and compliance evaluation correspondence; reports; and scale tickets and related fee payment documentation.

"Owner/operator" means the person who owns a solid waste disposal facility and/or is responsible for the overall operation of a facility or part of a facility.

"OWRB" means the Oklahoma Water Resources Board.

"Permit boundary" means the outermost edge of the area described by legal description in the owner/operator's permit. The permitted boundary includes the area in the buffer zone.

"PFLT" means Paint Filter Liquids Test, EPA Method 9095.

"Phased closure" means the closing of individual disposal cells at a land disposal facility as they become full. Phased closure is not synonymous with final closure.

"Piezometer" means a small-diameter well used to make groundwater elevation measurements.

"Point source discharge" means any discharge of water that, when leaving the permit boundary of a facility, has been channeled or altered by man's activity in working that site.

"Poor foundation conditions" means those areas where features exist which indicate that a natural or man-induced event may result in inadequate foundation support for the structural components of a land disposal facility.

"POTW" means Publicly Owned Treatment Works; a wastewater treatment system, as defined at 27A O.S. § 2-6-101(9), that is owned by a State or municipality for the treatment of municipal or industrial wastewaters.

"Qualified groundwater scientist" means a scientist or engineer who has received a baccalaureate or post-graduate degree in the natural sciences or engineering and has sufficient training and experience in groundwater hydrology and related fields as maybe demonstrated by State registration, professional Certifications, or completion of accredited university programs that enable that individual to make sound professional judgments regarding groundwater monitoring, contaminant fate and transport, and corrective action.

"Recharge area" means an area where water is absorbed and added to the zone of saturation.

"Regulated medical waste" means a waste or reusable material that contains an etiologic agent and is generated in the diagnosis, treatment or immunization of human beings or animals; research pertaining to the diagnosis, treatment or immunization of human beings or animals; or the production or testing of biological products. Such waste includes, but is not limited to:

- (A) cultures and stocks of etiologic agents or live vaccines, and culture dishes, devices, paper, and cloth that has come into contact with such cultures, stocks or live vaccines;
- (B) human blood, blood products, and human body fluids, except urine or feces;
- (C) pathological wastes consisting of human tissues, organs, and body parts removed during surgery, autopsy, biopsy and other medical procedures;
- (D) untreated sharps;
- (E) used blood collection bags, tubes, and vials;
- (F) contaminated carcasses, body parts and bedding of animals intentionally exposed to pathogens in research, in the production of biologicals or the "in vivo" testing of pharmaceuticals;
- (G) items contaminated with blood or other human body fluids which drip freely or would release such materials in a liquid or semi-liquid state if compressed or are caked with dried blood or body fluids and are capable of releasing these materials;
- (H) isolation wastes unless determined to be non-infectious by the infection control committee at the health care facility;
- (I) HIV-containing cell or tissue cultures, organ cultures, and HIV- or HBV-containing culture medium or other solutions; and blood, organs, or

other tissues from experimental animals infected with HIV or HBV;

(J) all disposable materials that have come in contact with cytotoxic or antineoplastic agents during the preparation, handling, and administration of such agents. Such wastes include, but are not limited to, masks, gloves, gowns, empty IV tubing and bags, vials, and other contaminated materials; and

(K) any other material or equipment which, in the determination of the health care facility staff, infection control committee or other responsible party, presents a significant danger of infection because it is contaminated with, or may reasonably be expected to be contaminated with, etiologic agents.

"Residential lead-based paint waste" means lead-based paint debris, chips, dust, sludges, and other similar wastes generated as a result of abatement, rehabilitation, renovation, or remodeling activities in individual residences.

"Run-off" means any rainwater, leachate, or other liquid that drains over land from any part of a facility.

"Run-on" means any rainwater, leachate, or other liquid that drains over land onto any part of a facility.

"Saturated zone" means that part of the earth's crust in which all voids are filled with water.

"Scavenging" means the uncontrolled, unorganized sorting, collecting, or removing of solid waste at the disposal site.

"Seismic impact zone" means an area with a ten percent or greater probability that the maximum horizontal acceleration in lithified earth material, expressed as a percentage of the earth's gravitational pull (g), will exceed 0.10g in two hundred fifty (250) years;

"Sludge" means the definition found at 27A O.S. § 2-10-401.

"Solid waste" means the definition found at 27A O.S. § 2-10-103.

"Special waste" means those wastes that are not hazardous wastes but because of their nature or volume, require special or additional handling aside from that given to routine household refuse. This includes but is not limited to: sludge, septic tank pumpings, grease trap wastes, dead animals, packing house offal and tankage, waste fats and oils, hatchery wastes, cannery wastes, NHIW, tires, and asbestos wastes.

"Structural components" mean liners, leachate collection systems, final covers, run-on/run-off systems, and any other component used in the construction and operation of a land disposal facility that is necessary for protection of human health and the environment.

"Surface impoundment" means a natural topographic depression, human-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials), that is designed to hold an accumulation of liquid wastes or wastes containing free liquids and that is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

"Surface water" means water that stands on the surface of the land in reservoirs, lakes, ponds, sloughs, or swamps, or that flows across the land in rivers, creeks, or streams.

"SW-846" means EPA Publication SW-846, Test Methods for the Evaluation of Solid Waste Physical/Chemical Characteristics.

"Tremie pipe" means a device, usually a small-diameter flexible or rigid pipe, that carries filter pack or bentonite cement from the bottom to the top of a borehole or annular space without forming void spaces. In some cases, a well casing or hollow stem auger can be considered a tremie pipe.

"Unstable area" means a location that is susceptible to natural or human-induced events or forces capable of impairing the integrity of some or all of the structural components responsible for preventing releases from a land disposal facility. Unstable areas can include poor foundation conditions, areas susceptible to mass movements, and Karst terrains.

"Uppermost aquifer" means the geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.

"Used Tire" means an unprocessed whole tire or tire part that can no longer be used for its original intended purpose, but can be beneficially reused as approved by the Department.

"Used Tire Recycling Facility" means the definition found at 27A O.S. § 2-11-401.1(15).

"Waste pile" means any non-containerized accumulation of solid, non-flowing waste.

"Waters of the state" means the definition found at 27A O.S. § 1-1-201(20).

"Wetlands" mean those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands include, but are not limited to, swamps, marshes, bogs, and similar areas.

"Working face" means the place within a land disposal facility where waste has been deposited and has not been covered with at least intermediate cover.

"Yard waste composting facility" means a composting facility that only accepts yard waste.

"Zone of aeration" means a subsurface zone containing water under a pressure lower than that of the atmosphere, including water held by capillarity; and containing air or gases generally under atmospheric pressure. This zone is bounded above by the land surface and below by the water table; and is synonymous with vadose zone and unsaturated zone.

"Zone of saturation" means a subsurface zone in which essentially all the interstices are filled with water under pressure greater than that of the atmosphere. Although the zone may contain interstices filled with gas or liquids other than water, it is still considered saturated. This zone is separated from the zone of aeration by the water table and is synonymous with phreatic zone.

252:515-1-8. Special considerations

(a) **Existing permits.** Permits for active solid waste disposal facilities issued under previous rules, and those in the post-closure monitoring period on the effective date of this Chapter, remain in effect.

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(b) **Permit upgrades.** Within 180 days of the effective date of this Chapter, the owner/operator of the following solid waste disposal facilities shall submit a permit modification application to the DEQ to ensure compliance with certain requirements of this Chapter.

(1) **MSWLFs and C&D landfills.** Permit modifications for MSWLFs and C&D landfills shall include:

(A) a legal description, by metes and bounds; section, township, and range, or parts thereof; or book and page number of plat records for platted property, of both on- and off-site soil borrow areas, if applicable;

(B) a temporary easement in accordance with OAC 252:515-3-34(c);

(C) a stormwater management plan to demonstrate how compliance with the requirements of Subchapter 17 of this Chapter will be achieved and maintained;

(D) a disposal plan in accordance with OAC 252:515-19-34(c) through (f) for out-of-state waste, if applicable;

(E) a vegetative cover plan to ensure compliance with the requirements of OAC 252:515-19-54, if applicable;

(F) revised closure plans to ensure closure of on- and off-site soil borrow areas in accordance with OAC 252:515-25-32(b)(3)(A), if applicable;

(G) life of site calculations in accordance with OAC 252:515-27-8(c), except for those facilities owned by units of the federal government;

(H) revised closure, post-closure, and/or corrective action cost estimates calculated in accordance with Part 5 of Subchapter 27 of this Chapter, except for those facilities owned by units of the federal government;

(I) a new or revised waste exclusion plan meeting the requirements of Subchapter 29 of this Chapter; and

(J) sampling ports for gas monitoring probes to meet the requirement of OAC 252:515-15-4(a)(2).

(2) **NHIW landfills.** Permit modification applications for generator-owned and operated NHIW landfills shall include those items identified in (1)(A), (1)(B), (1)(C), (1)(F), (1)(G) and (1)(H) of this Subsection, as well as a revision to the groundwater monitoring program to ensure compliance with OAC 252:515-9-31(d)(3).

(3) **Regulated medical waste processing facilities.** Permit modification applications for regulated medical waste processing facilities shall include the information identified in (1)(B) and (1)(H) of this Subsection.

(4) **Transfer stations.** Permit modification applications for transfer stations shall include the information in (1)(I) of this Subsection.

(5) **Yard waste composting facilities.** Permit applications for yard waste composting facilities operating under an approved plan shall be submitted for purposes of upgrading the plan to a permit and to ensure compliance with Subchapter 43 of this Chapter.

(c) **Compliance required.**

(1) Except as provided in (2) of this Subsection, permit upgrades identified by (b) of this Section shall be implemented within one year of the effective date of this Chapter. Extensions may be granted by the DEQ for good cause shown.

(2) All solid waste disposal facilities required to establish and maintain financial assurance shall ensure financial assurance mechanisms are funded in the appropriate amount based on approved cost estimates.

(d) **MSWLFs prior to October 9, 1991.** MSWLFs that stopped receiving waste prior to October 9, 1991 are subject to the final cover and post-closure monitoring requirements of the permit and the rules in effect at the time of closure.

(e) **MSWLFs on or after October 9, 1991.** MSWLFs receiving waste on or after October 9, 1991 are subject to this Subsection.

(1) **Less than 100 tons per day of waste.** No later than October 9, 1994, MSWLFs that received less than an average of 100 tons per day of solid waste after October 9, 1991 and stopped receiving waste before April 9, 1994 shall install final cover meeting the requirements of OAC 252:515-19-53.

(A) **Post-closure monitoring requirements.** MSWLFs shall be subject to the post-closure monitoring requirements of the permit and rules in effect at the time of closure.

(B) **Failure to stop accepting waste or to apply final cover.** MSWLFs that accepted waste on or after April 9, 1994, or failed to install the final cover by October 9, 1994 shall be subject to all applicable requirements of this Chapter.

(2) **100 tons or more per day of waste.** No later than October 9, 1994, MSWLFs that received an average of 100 tons or more per day of solid waste after October 9, 1991 and stopped receiving waste before October 9, 1993 shall install final cover meeting the requirements of OAC 252:515-19-53.

(A) **Post-closure monitoring requirements.** MSWLFs shall be subject to the post-closure monitoring requirements of the permit and the rules in effect at the time of closure.

(B) **Failure to stop accepting waste or to apply final cover.** MSWLFs that accepted waste on or after October 9, 1993 or failed to install the final cover by October 9, 1994 shall be subject to all applicable requirements of this Chapter.

(f) **Other disposal facilities.** Other solid waste disposal facilities that stopped receiving waste prior to the effective date of this Chapter shall close, and perform any applicable post-closure monitoring, in accordance with the permit and the rules in effect at the time of closure.

(g) **Corrective action.** The DEQ may require corrective action any time an inspection of a solid waste disposal facility or review of testing data indicates the actual release of contaminants into the environment. Such corrective action shall be performed in accordance with the requirements of this Chapter.

SUBCHAPTER 3. PERMIT PROVISIONS AND APPLICATIONS

PART 1. GENERAL PROVISIONS

252:515-3-1. Permit required

(a) **Solid waste disposal facilities.** The following solid waste disposal facilities are subject to the requirements of this Subchapter and require a solid waste permit from DEQ prior to construction and/or operation:

- (1) land disposal facilities;
- (2) solid waste processing facilities, including:
 - (A) transfer stations;
 - (B) solid waste incinerators receiving waste from off-site sources;
 - (C) regulated medical waste processing facilities receiving waste from off-site sources, and that are not shared service facilities;
 - (D) used tire facilities;
 - (E) composting facilities, except special events yard waste composting facilities and other facilities exempted by OAC 252:515-43-31;
 - (F) permanently established household hazardous waste collection facilities; and
 - (G) any other type of facility that processes solid waste;
- (3) facilities used for the storage of solid waste for longer than 10 days; and
- (4) facilities used for the storage of more than 50 used tires, except as authorized by 27A O.S. § 2-11-401.7.

(b) **Sludge.** Solid waste disposal facilities used for the beneficial use, transport, disposal, or storage of sludge that is not subject to the direct jurisdiction of any other environmental regulatory agency of the State of Oklahoma shall obtain a permit in accordance with OAC 252:515-3-41.

252:515-3-2. Permit not required

(a) The following do not require a solid waste permit and are not subject to the requirements of this Subchapter, but may be subject to other DEQ permits or requirements:

- (1) rock and dirt fills that receive only uncontaminated rock, dirt, concrete, bricks or solidified asphalt;
- (2) disposal sites used by a person for disposal of solid waste from his or her household, provided:
 - (A) the disposal site is on land owned by that person;
 - (B) the solid waste does not originate from business or commercial activities; and
 - (C) such disposal does not violate any local government ordinance or create a nuisance or hazard to public health or the environment;
- (3) emergency disposal sites approved by DEQ when a natural disaster creates a need for additional public solid waste disposal sites in the disaster area;
- (4) on-site incinerators meeting the exemption requirements of 27A O.S. § 2-10-501(K);

(5) on-site regulated medical waste treatment activities by hospitals, clinics, or laboratories, or other similar facilities for treatment of regulated medical wastes generated on-site;

(6) facilities that accept only source-separated recyclable materials for recycling;

(7) persons under a DEQ order to remediate an abandoned or inactive waste site in accordance with 27A O.S. § 2-10-301(H);

(8) facilities used as:

- (A) a citizen collection station;
- (B) a collection and processing point for source-separated, non-putrescible, recyclable wastes;
- (C) a collection point for parking lot or street sweepings; or
- (D) a collection point for wastes collected and received in sealed bags from such activities as periodic cleanup campaigns for cities, rights-of-way, or roadside parks;

(9) projects approved by DEQ and a local conservation district in accordance with 27A O.S. § 2-10-301(J).

(b) ~~Yard waste composting facilities that receive only yard waste from off-site sources and are~~ Special events composting facilities operated in accordance with a plan approved by DEQ are not subject to this Subchapter. The plan shall include, at a minimum:

- (1) the permit application information identified in OAC 252:515-3-36(a)(1) through (a)(8);
- (2) a demonstration of compliance with the location restrictions of Subchapter 5 of this Chapter; and
- (3) a demonstration of how the facility will comply with applicable regulations of other state agencies or parts thereof, including the Water Quality Division of DEQ.

(c) Units of local or county government wishing to use baled used tires in engineering projects are not subject to this Subchapter but must have a plan meeting the requirements of OAC 252:515-21- 111 approved by DEQ prior to beginning the project.

SUBCHAPTER 11. LINER DESIGN

PART 1. GENERAL PROVISIONS

252:515-11-1. Applicability

This Subchapter applies to all land disposal facilities, ~~except yard waste composting facilities.~~

SUBCHAPTER 13. LEACHATE COLLECTION AND MANAGEMENT

PART 1. GENERAL PROVISIONS

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252:515-13-1. Applicability, with exceptions

- (a) **Existing facilities.** Existing facilities with a leachate collection system are subject to 252:515- 13-2, 13-34 and Part 5 of this Subchapter.
- (b) **New facilities and expansions.** Except as provided in (c) and (d) of this Section, this Subchapter applies to all new land disposal facilities and expansions of waste disposal boundaries of existing land disposal facilities constructed after the effective date of this Chapter.
- (c) **All disposal facilities.** All solid waste disposal facilities shall manage leachate in accordance with the requirements of Part 5 of this Subchapter.
- (d) **Exceptions.** C&D landfills and yard waste composting facilities are not subject to the requirements of this Subchapter, except for (c) of this Section.

SUBCHAPTER 19. OPERATIONAL REQUIREMENTS

PART 1. GENERAL PROVISIONS

252:515-19-1. Applicability

- (a) **Active land disposal facilities.** Parts 3, 5 and 13 of this Subchapter apply to all active land disposal facilities.
- (b) **Active MSWLFs.** Parts 3, 5, and 7 of this Subchapter apply to all active MSWLFs.
- (c) **Active solid waste processing facilities.** Parts 3 and 9 of this Subchapter apply to all active solid waste transfer stations and processing facilities, except used tire facilities, regulated medical waste processing facilities, and solid waste composting facilities.
 - (1) **Used Tire facilities.** Used Tire facilities are subject to the requirements of Part 3 of this Subchapter, except OAC 252:515-19-33, as well as Parts 3 and 5 of OAC 252:515-21.
 - (2) **Regulated medical waste processing facilities.** Regulated medical waste processing facilities are subject to the requirements of Part 3 of this Subchapter as well as Parts 3 and 5 of OAC 252:515-23, as applicable.
 - (3) **Solid waste composting facilities.** ~~Parts 3 and 4~~ of this Subchapter ~~apply~~ applies to all active solid waste composting facilities, including composting facilities at land disposal facilities, except those exempted by OAC 252:515-43-31.
- (d) **Borrow areas.** Off-site soil borrow areas of land disposal facilities are only subject to the operational requirements of OAC 252:515-19-32, 35, 36, and 55.

PART 11. ADDITIONAL OPERATIONAL REQUIREMENTS FOR SOLID WASTE COMPOSTING FACILITIES [REVOKED]

252:515-19-111. Acceptable composting materials [REVOKED]

- ~~(a) **Source separated.** Unless otherwise allowed by the permit or other authorization, composting materials received at the composting facility must be source separated.~~
- ~~(b) **Prohibited materials.** In addition to the materials identified in OAC 252:515-19-31(a) through (c), composting facilities shall not accept putrescible wastes (except food wastes if authorized by the permit or other authorization), liquid waste, municipal solid waste, special waste, or any waste not specifically identified in the permit or other authorization.~~
- ~~(c) **Acceptable composting materials.** Materials to be composted shall be specified in the permit or other authorization. Acceptable composting materials may include: grass clippings, garden debris, leaves, tree branches, shrubbery, wood chips, hay, cotton gin waste, sawdust, newsprint paper, cardboard, computer paper, white paper, manure and food wastes.~~

252:515-19-112. Receiving area [REVOKED]

~~Unloading of material shall be restricted to a specific area and controlled to minimize traffic congestion, facilitate the handling of materials and minimize danger to facility employees and other personnel.~~

252:515-19-113. Debaggging required [REVOKED]

~~All material received in plastic bags shall be debaggged before processing, unless other means or methods are approved by the DEQ and identified in the permit or other authorization.~~

252:515-19-114. Processing area [REVOKED]

~~A designated processing area shall be maintained, except facilities using windrow turners that may process the material in the composting area.~~

252:515-19-115. Processing time [REVOKED]

~~All material received for composting shall be processed within 48 hours of receipt.~~

252:515-19-116. Composting area [REVOKED]

~~The composting area shall be constructed of or covered with material which will allow operation during all types of weather.~~

252:515-19-117. Windrow construction [REVOKED]

~~All windrows shall be constructed perpendicular to slopes and not along slopes.~~

252:515-19-118. Windrow turning [REVOKED]

~~Windrows shall be turned on a routine basis to maintain aerobic conditions.~~

252:515-19-119. In vessel composting [REVOKED]

~~Construction and management requirements for an in vessel composting operation shall be determined on a case by case basis.~~

252:515-19-120. Temperature monitoring [REVOKED]

- ~~(a) **Internal temperature recording.** Internal temperature readings shall be recorded prior to the turning of each windrow.~~
- ~~(b) **Internal temperature depths.** Temperature measurements shall be taken every 17 feet at a depth of 20 inches and recorded in a systematic fashion.~~

252:515-19-121. Completed process [REVOKED]

~~After sustaining thermophilic temperatures, the composting process shall be considered complete when the internal temperatures remain below 70 F after three consecutive turnings, at which time the compost can be removed to the curing area.~~

252:515-19-122. Curing area and time [REVOKED]

~~An area for curing of finished compost shall be maintained. Finished compost shall be allowed to cure for a minimum of two weeks before distribution and use.~~

252:515-19-123. Biosolids [REVOKED]

~~Owners/operators of facilities incorporating biosolids shall:~~

- ~~(1) maintain internal windrow temperatures between 131 F and 140 F for a minimum of fifteen days;~~
- ~~(2) conduct a minimum of five turnings of the co composting windrow, where the temperature pre and post turning exceeds 131 F; and~~
- ~~(3) comply with all applicable provisions of OAC 252:606-8-6, "Land Application of Biosolids."~~

252:515-19-124. Odor control [REVOKED]

~~Suitable control measures, including increasing aeration, shall be taken whenever odors become a problem.~~

252:515-19-125. Other wastes [REVOKED]

~~A receptacle shall be maintained for disposal of both refuse generated and unacceptable waste received at the site.~~

252:515-19-126. Recordkeeping [REVOKED]

- ~~(a) **Daily log.** A log of daily operations shall be maintained at the facility that includes, at a minimum:
 - ~~(1) amount of waste received, processed and distributed at the facility;~~
 - ~~(2) windrow internal temperatures; and~~
 - ~~(3) a record of which windrows were turned.~~~~
- ~~(b) **Available to DEQ.** This information shall be maintained at the site and made available for inspection upon request of the DEQ.~~

SUBCHAPTER 25. CLOSURE AND POST-CLOSURE CARE

PART 3. CLOSURE

252:515-25-32. Contents of closure plan

- ~~(a) **All disposal facilities.** The closure plan for all disposal facilities shall include the following as a minimum:
 - (1) identification of site-specific closure activities, a description of how each is expected to be performed, and a schedule for completing all activities;
 - (2) calculation of closure cost estimates in accordance with Subchapter 27 of this Chapter; ~~unless the facility is a transfer station, processing facility or composting facility that principally manages municipal solid waste, or is a yard waste composting facility;~~
 - (3) an estimate of the maximum inventory of waste ever on-site over the active life of the facility;
 - (4) detailed plans for:
 - (A) identifying and removing from the site, all equipment, temporary buildings and other improvements not designated as permanent in the permit application;
 - (B) reworking or replacing defective groundwater monitor wells, gas wells, and other defective monitoring equipment, if any;
 - (C) monitoring ground and surface water, if required;
 - (D) collecting and analyzing soil and water samples;
 - (E) disposing of final wastes and affected soils;
 - (F) decontamination of facility structures, if necessary;
 - (G) maintaining site security and access control, if post-closure monitoring is required;
 - (H) redesigning final closure in accordance with existing site conditions and applicable rules;
 - (I) preparing final closure certification and other required documents and notices; and
 - (J) performing any other tasks necessary to achieve final closure of the site.~~
- ~~(b) **Additional information for land disposal facilities.** The closure plan for land disposal facilities shall include the following additional information:
 - (1) an estimate of the largest area of the disposal facility ever requiring final cover during the active life;
 - (2) a detailed description of the final cap design and construction, including:
 - (A) a calculation of the amount of material needed for each phase of closure;
 - (B) identification of the soil type to be used for the final cover, to include:
 - (i) the location at which it will be obtained;
 - (ii) an analysis of the proposed cover material's permeability;
 - (iii) mass balance calculations to demonstrate sufficient soil is available;~~

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- (C) provisions for obtaining, hauling, and placing the soil for final cover;
 - (D) a description of the design and construction of final cover to meet the requirements of 252:515-19-53;
 - (E) a description of the design and construction of gas vents or collection pipes to be incorporated in the cap design, if such structures are required;
 - (F) the QA/QC methods to be used in cap construction and to document the final cover is built to specification; and
 - (G) the schedule and method of placement of all components of the final cap;
- (3) plans for:
- (A) grading, planting, fertilizing and establishing vegetation for all disturbed areas, including reshaping and revegetation of both on-site and off-site soil borrow areas to blend with surrounding terrain, or another approved reclamation plan;
 - (B) constructing surface drainage and erosion control measures or reworking existing measures as necessary;
 - (C) installation of final cover;
 - (D) fitting existing leachate collection systems with a method for automatic and continuous removal of leachate not requiring owner/operator intervention;
 - (E) remedying all former improper closure or waste placement at the site; and
 - (F) conducting the final closure survey and preparing the closure certification; and
- (4) a constructed map showing what the contours of the site will be at final closure.
- (c) **Phased closure authorized.** Individual disposal areas of a land disposal facility may be closed in phases.
- (1) **Closure plan.** A plan for phased closure shall be included as part of the closure plan.
 - (2) **Financial assurance reduction.** To reduce financial assurance for each disposal area closed in a phased closure scenario, a certification prepared and sealed by an independent professional engineer licensed in the State of Oklahoma if the facility was permitted to serve a population of greater than 5,000, shall be provided to the DEQ. Such certification shall:
 - (A) certify that the area was closed according to the approved closure plan, the permit, and applicable rules; and
 - (B) contain a closure report with related drawings, plans or specifications describing how closure was performed.
 - (3) **DEQ approval.** The DEQ must approve closure of the disposal area before financial assurance may be reduced.

SUBCHAPTER 27. COST ESTIMATES AND FINANCIAL ASSURANCE

PART 1. GENERAL PROVISIONS

252:515-27-1. Applicability

- (a) All solid waste disposal facilities are subject to the requirements of this Subchapter except:
 - (1) transfer stations, processing facilities, or composting facilities, other than commercial composting facilities, that principally manage municipal solid waste;
 - (2) yard waste composting facilities;
 - (3) land disposal facilities in post-closure as of the effective date of this Chapter that were not required to have financial assurance at the time of closure; and
 - (4) units of State or Federal governments whose debts and liabilities are the debts and liabilities of a State or the United States.
- (b) A facility identified in (a)(1), (a)(2), or (a)(3) of this Section required to undertake a corrective action program may be required to establish and maintain financial assurance in accordance with this Subchapter.

SUBCHAPTER 29. EXCLUSION OF PROHIBITED WASTES

252:515-29-1. Applicability

- (a) **Land disposal facilities and transfer stations, with exceptions.** This Subchapter applies to all land disposal facilities and transfer stations except generator owned and operated NHIW landfills, ~~and yard waste composting facilities.~~
- (b) ~~Processing All other processing facilities.~~ Except as otherwise set out in this Section, any type of solid waste processing facility is subject to the requirements of OAC 252:515-29-3(e).
- (c) **Class III and Class IV composting facilities.** This Subchapter applies to Class III and Class IV composting facilities.

SUBCHAPTER 43. COMPOSTING FACILITIES

PART 1. GENERAL PROVISIONS

252:515-43-1. Applicability

The rules in this Subchapter apply to all composting facilities using feedstock that is more than 50% non-agricultural in origin. The rules in this Subchapter do not apply to facilities that employ grinding or chipping methods to physically change the size of yard waste or wood debris into products such as mulch, without converting the material, under thermophilic conditions, into a product with a high humus content. The rules in this Subchapter do not apply to the composting of biosolids regulated exclusively under Oklahoma Administrative Code (OAC) 252:606-8 administered by the Water Quality Division of DEQ.

252:515-43-2. Definitions

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

"Additives" means any material that is mixed with or added to feedstocks and bulking agents to create a favorable condition for the composting process and includes urea, crushed egg shells, earthworms, and bacterial or fungal inoculum.

"Aerated static pile composting" means a process in which decomposing organic material is placed in piles over an air supply system that can be used to supply oxygen and control temperature for the purpose of producing compost.

"Agricultural residuals" means materials generated by the customary and generally accepted activities, practices, and procedures that farmers engage in during:

(A) the production and preparation for market of poultry, livestock and associated farm products;

(B) the production and harvesting of agricultural crops which include agronomic, horticultural, and silvicultural crops; and

(C) the production and cultivation of freshwater and saltwater populations in the aquacultural industry. Agricultural residuals do not include manures managed as part of a Concentrated Animal Feeding Operation (CAFO) license

"Biofilter" means a material consisting of bulking agents, shredded yard waste, or compost that is applied over the composting mixture to control odors, dust, or vectors.

"Biosolids" means primarily organically treated wastewater materials from municipal wastewater treatment plants that are suitable for recycling as amendments. This term is within the meaning "sludge" referenced in 27A O.S. § 2-6-101(7). Biosolids are divided into the following classes:

(A) Class A Biosolid meets the pathogen reduction requirements of 40 CFR § 503.32(a);

(B) Class B Biosolid meets the pathogen reduction requirements of 40 CFR § 503.32(b).

"Bulking agents" means a material added to the composting process to provide structural support, improve aeration, or absorb moisture and includes wood chips, straw, clean untreated wood, shredded newspaper, shredded cardboard, sawdust, shredded brush, and compostable containers.

"Commercial composting facility" means the definition found at 27A O.S. § 2-10-103.

"Composting pad" means the ground on which composting activities take place. This may be subdivided by function, such as "mixing pad", "composting pad", "curing pad" or "storage pad". An "all weather composting pad" is one of sufficient construction, firmness and grading so that composting equipment can manage the process during normal inclement weather, including expected rain, snow and freezing temperatures.

"Contact water" means water that has come in contact with raw feedstocks or active composting piles. It does not include water from curing piles, finished compost, or product storage piles.

"Curing" means a continuation of the composting process after the high heat stage during which stability and maturity continues to increase. Compost enters the curing stage after completing the high heat stage to further reduce pathogens and the requirements for vector attraction reduction.

"Feedstock" means material to be converted under thermophilic conditions to a product with a high humus content classified into different types for purposes of regulation under this Subchapter.

"Food processing residuals" means organic materials generated as a by-product of the industrial food processing sector that are non-toxic, non-hazardous, and contain no sanitary wastewater. The term does not include fats, oil, grease and Dissolved Air Flotation (DAF) skimmings.

"Food residuals" means pre- and post-consumer food discards from households and the commercial/institutional sector including but not limited to vegetables, fruits, grains, dairy products, meats, and compostable foodservice ware/packaging that may be comingled.

"Household or backyard composting" means any person composting household waste that is located and utilized exclusively on the owner's property.

"Industrial by-product" means organic materials generated by manufacturing or industrial processes that are non-toxic, non-hazardous, contain no domestic wastewater, and pass the PFLT.

"In-vessel composting" means process in which decomposing organic material is enclosed in a drum, silo, bin, tunnel, or other container for the purpose of producing compost; and in which temperature, moisture and air-borne emissions are controlled, vectors are excluded and nuisance and odor generation minimized.

"Neighborhood composting" means any person, group of persons or geographically localized community within a town, city or incorporated area composting feedstock that is composted and utilized exclusively on property owned by the neighborhood or members of the neighborhood.

"Nurseries, greenhouses, and garden stores composting" means any private or commercial nursery, greenhouse, or garden store composting feedstock that is located and utilized exclusively on property owned by the facility.

"Source separated organics" means organic material that has been separated from non-compostable material at the point of generation, including but not limited to yard trimmings, food residuals, vegetative materials, woody materials, and compostable products.

"Vermicomposting" means the controlled and managed process by which live worms convert organic materials into dark, fertile, granular excrement or casting.

"Windrow composting" means the processes in which decomposing organic materials are placed in long piles for the purpose of producing compost. The piles are periodically turned or agitated to assure all parts of the decomposing material reach the desired stability.

"Woody materials" means the residuals and by-products of cutting trees, including but not limited to tree stumps, sawdust, pallets, and dimensional lumber that has not been treated chemically or with adhesives and coatings such as paint, glue, or any other visible contaminant.

"Yard trimmings" means leaves, grass clippings, brush, garden materials, tree trunks, tree stumps, holiday trees, and

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cuttings from trees or shrubs. Can also include vegetative materials resulting from the use of commercial products, including but not limited to discarded flowers, potted flowers, or grave blankets that do not include plastic, metal, polystyrene foam, or other non-biodegradable materials.

252:515-43-3. Feedstock types for composting facilities

Feedstock material is divided into the following four (4) types based on increasing level of potential risk to human health and the environment from physical contaminants and human pathogens:

- (1) **Type 1.** Composed of yard trimmings, wood chips, woody materials, crop residues, hay, cotton-gin waste, additives, biofilters, and other materials approved by DEQ.
- (2) **Type 2.** Composed of source-separated organics, shredded paper, cardboard, computer paper, white paper, newspapers, napkins, other paper products and bulking agents, and other materials approved by DEQ.
- (3) **Type 3.** Composed of biosolids, food processing residuals, cooking oils, fats and greases, and other materials approved by DEQ.
- (4) **Type 4.** Composed of mixed (non-source separated) organics, commercial waste, and other materials approved by DEQ.

252:515-43-4. Composting facility classes

- (a) **Class I.** Facilities that compost Type 1 feedstock, including yard waste composting facilities.
- (b) **Class II.** Facilities that compost Type 2 feedstock and may include Type 1 feedstock. These facilities receive less than one hundred (100) tons, or two hundred (200) cubic yards, of material per year.
- (c) **Class III.** Facilities that compost Type 3 feedstock and facilities that receive greater than or equal to one hundred (100) tons, or two hundred (200) cubic yards, of Type 1 and Type 2 feedstock per year.
- (d) **Class IV.** Facilities that compost Type 4 feedstock and may include Type 1, Type 2 and Type 3 feedstock.
- (e) **Special events composting.** A composting facility may be approved to compost a variety of feedstock types from special community collection events for a limited period of time under an approved plan or permit.

PART 3. PLANS AND PERMITS

252:515-43-31. Exempt

Non-commercial composting facilities that receive less than fifty (50) tons or one hundred (100) cubic yards of Type 1 and/or Type 2 feedstock per year, generated on-site, are considered exempt from the permitting and plan requirements of OAC 252:515-3-1, but may be subject to other DEQ permits or requirements. Examples of these types of facilities include, but are not limited to household or backyard composting, neighborhood composting, nurseries, greenhouses, and garden stores composting.

252:515-43-32. Plan requirements

Special events composting requires a plan approved by DEQ prior to construction and operation. The plan shall include, at a minimum, the information in OAC 252:515-3-2(b) and a demonstration of compliance with the operational standards in Part 5 of this Subchapter.

252:515-43-33. Permit requirements

Class I, II, III and IV composting facilities require a solid waste permit from DEQ prior to construction and operation subject to the permit provisions of Subchapter 3 and requirements of Part 5, 7, 9 and 11, of this Subchapter.

252:515-43-34. Reporting requirements

Class III and IV composting facilities are required to submit monthly reports. Facilities meeting the definition of commercial composting facilities must also submit fees.

- (1) **Monthly report.** No later than the 15th of each month, each facility shall submit a report to DEQ that includes the following information for the previous month:
 - (A) amount of total feedstock material received;
 - (B) amount of non-compostable material shipped for disposal;
 - (C) name and location of the permitted solid waste disposal site receiving the non-compostable material; and
 - (D) amount of composting material located on site.
- (2) **Quarterly report and fees.** Fees for commercial composting facilities shall be collected and remitted to DEQ in accordance with 27A O.S. § 2-10-802(B). Fees shall be reported in a format prescribed by DEQ.

252:515-43-35. Financial assurance

- (a) **Applicability.** All commercial composting facilities and other composting facilities shall establish financial assurance in accordance with the requirements of Subchapter 27, as applicable.
- (b) **Amount.** Unless a lesser amount is approved by DEQ, financial assurance will be established based upon the cost for removal and disposal, by a third party not affiliated with the owner/operator, of the maximum amount of feedstock and product material that the site is capable of storing at any time, in addition to removal of equipment, temporary buildings, and establishing permanent vegetation at the facility.

PART 5. OPERATIONAL STANDARDS

252:515-43-51. Applicability

Unless otherwise specifically stated, all classes of compost facilities are subject to this Part.

252:515-43-52. Acceptable composting materials

Materials to be composted shall be specified in the permit or other authorization and shall be classified as Type 1, 2, 3, or 4 feedstock. All feedstock material received shall be measured,

either by weight or by volume (cubic yards), and recorded in the operating record, and made available to DEQ upon request.

252:515-43-53. Prohibited materials

Materials as specified in OAC 252:515-19-31(a) through (c), and any other wastes not allowed by the permit or plan are prohibited for receipt at all composting facilities. Class III and IV composting facilities shall implement a Waste Exclusion Plan (WEP) meeting the requirements of Subchapter 29 and approved by DEQ.

252:515-43-54. Non-compostable and other waste

A receptacle shall be maintained for disposal of both refuse generated, and unacceptable waste received at the site. Non-compostable and other waste shall be removed, stored in a waste container or containment area, and removed for proper disposal on a regular basis.

252:515-43-55. Biosolids

(a) Class A. Facilities may accept Class A biosolids if authorized by their permit. Facilities shall be prohibited from accepting Class B biosolids, except as specifically authorized by this Section.

(b) Class B. Facilities that intend to compost Class B biosolids shall comply with all applicable state and federal regulations regarding sludge management at OAC 252:606-8, and shall have all necessary permits and approvals from the Water Quality Division of DEQ prior to being considered authorized to accept Class B biosolids.

252:515-43-56. Bulking

Feedstock with free liquid shall be mixed with drier feedstocks, bulking material or compost so that the liquid is promptly absorbed and not allowed to flow as free liquid from the compost piles or windrows.

252:515-43-57. Operations plan

All applications for a composting facility shall include an Operations Plan that describes how compliance with operating criteria will be met. The Operations Plan shall include measures to control nuisance odors, vectors, fires, contact water and stormwater according to the operational standards within this Part, as well as provisions for prompt equipment repair or replacement when needed. The Operations Plan must be reviewed by facility owner/operators annually to ensure it continues to reflect current procedures, equipment and feedstock and shall be updated to reflect any changes.

252:515-43-58. Operating requirements

(a) Access control. Artificial and/or natural barriers shall be used to discourage unauthorized traffic and uncontrolled dumping. Composting facilities shall comply with all relevant local rules, regulations, and ordinances.

(b) Signage. The facility shall maintain a sign at the entrance of the facility that lists the following: name of facility;

permit number; facility class; hours of operation; and emergency contact information.

(c) Buffer zones. Unless otherwise specified in this Subsection, all composting facilities shall be designed and maintained with a waste-free buffer zone at least 50 feet in width between all feedstock storage, processing, composting and/or handling areas and adjacent property. The buffer zone shall be contained within the permit boundary described in the permit or plan application. DEQ may approve smaller buffer zones for good cause shown.

(d) Receiving area. Unloading of material shall be restricted to a specific area and controlled to minimize traffic congestion, facilitate the handling of materials, and minimize danger to facility employees and other personnel. All material received in plastic bags shall be debagged before processing, unless other means or methods are approved by DEQ and identified in the permit or plan. Composting facilities that conduct salvage and/or recycling operations shall comply with OAC 252:515-19-39.

(e) Processing area. A designated processing area shall be maintained, except facilities using windrow turners that may process the material in the composting area. Contact water shall be directed to a containment, recycling, and/or treatment system sized to handle a minimum 24 hour, 25 year storm event. For Class I - Class IV composting facilities, stormwater shall be managed in compliance with Subchapter 17.

(f) Storage. Storage of finished compost on site is limited to 12 months of production, unless otherwise approved by DEQ.

(g) Composting area. The composting area shall be maintained and repaired, as needed.

(h) Curing area and time. An area for curing of finished compost shall be maintained. Finished compost shall cure for a minimum of two weeks before distribution and use. Composting facilities that recirculate contact water shall comply with OAC 252:515-13-53.

(i) Composting surfaces. Tipping, grinding, shredding, mixing, active composting, curing, screening, and finished compost storage areas must take place on an all-weather pad that meets the design criteria specified in Part 7.

252:515-43-59. Processing time

Facilities must manage feedstock in a timeframe that minimizes odors, release of feedstock liquids, fire, and scavenging by vectors. All feedstock received for composting shall be processed within 48 hours of receipt. By the end of each operating day, all incoming Type 2, 3, and 4 feedstock must be processed into the active composting unit, transferred to leak-proof containment or mixed with bulking material and covered in a manner that minimizes nuisance odors and scavenging by vectors.

252:515-43-60. Composting time

Composting time and temperatures shall meet the following requirements:

(1) Windrow composting. The compost material must be maintained at a minimum average temperature of 55°C (131° F) or higher for 15 days or longer. The 15

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or more days at or above 55°C (131° F) do not have to be continuous.

(2) **Aerated static pile or in-vessel composting process.** Material maintained at a minimum average temperature of 55°C (131° F) or higher for three continuous days, followed by at least 14 days with a minimum of 45°C (113° F).

(3) **Passive pile.** Material maintained below 75°C (170° F) for the active composting period. Finished compost must meet standards as specified in the permit or plan.

(4) **Hybrid composting.** Material maintained as specified in the permit or plan.

252:515-43-61. Windrow turning

Windrows shall be turned a minimum of 5 turnings in 15 days or more frequently as needed to maintain aerobic conditions or temperatures set forth in OAC 252:515-43-60(1).

252:515-43-62. Temperature and moisture monitoring

A procedure for monitoring the temperature and moisture during composting shall be provided in the Operations Plan. The temperature and moisture ranges for the composting cycle shall be specified. The plan shall include contingencies for not meeting the specified ranges for the composting process.

(1) **Internal temperature recording.** Internal temperature and moisture readings shall be recorded prior to the turning of each windrow.

(2) **Internal temperature depths.** Temperature and moisture measurements shall be taken every 17 feet at a depth of 20 inches and recorded in a systematic fashion.

252:515-43-63. Completed process

After sustaining thermophilic temperatures, the composting process shall be considered complete when the internal temperatures remain below 70° F, or other temperature specified by permit or plan, at which time the compost can be removed to the curing area.

252:515-43-64. Odor control

Suitable control measures, including increasing aeration, shall be taken whenever odors are detectable outside the composting facility.

252:515-43-65. In-vessel composting

Operations of an in-vessel aerated static pile, static pile, and hybrid composting facility shall be defined in the Operations Plan.

252:515-43-66. Recordkeeping and reporting

(a) **Daily log.** Records shall be maintained that identify the weight or volume of incoming feedstocks and outgoing finished compost, as well as a summary of analytical tests and process results on the product and site monitoring results, if

required. A log of daily operations shall be maintained at the facility that includes, at a minimum:

(1) amount of waste received, processed and distributed at the facility;

(2) windrow internal temperatures; and

(3) a record of which windrows were turned.

(b) **Operating record.** Composting facilities shall comply with recordkeeping requirements of OAC 252:515-19-40.

PART 7. DESIGN STANDARDS

252:515-43-71. Class I and Class II design standards

Class I and Class II composting facilities shall meet the following design:

(1) **Location restrictions.** Facilities shall meet all location restrictions listed in Subchapter 5, Part 3 of this Chapter.

(2) **Contact water control.** Contact water must be segregated and directed to containment, recycling, and/or treatment systems.

(3) **Stormwater run-on / run-off control.** The composting area shall be designed, constructed and maintained to prevent the run-on / run-off of stormwater and be in compliance with Subchapter 17 including OPDES permitting, if required by OAC 252:606.

(4) **All-weather pad.** Composting areas shall be constructed of, or covered with, material which will allow operation during all types of weather. Composting operations shall take place on an all-weather composting pad. The all-weather pad must be designed, constructed, and maintained to:

(A) prevent ponding and impede vertical movement of potential contaminants from contact water;

(B) reliably transmit any free liquid present during the storage, treatment, and processing of materials laterally to a containment, recycling, and/or treatment unit sized to handle a minimum 24 hour, 25 year storm event to prevent liquids from entering surface water or groundwater; and

(C) prevent conditions that could contribute to, or cause a release to the environment.

252:515-43-72. Class III design standards

In addition to meeting Class I and II design standards, Class III facilities shall comply with the following standards and submit design plans for approval with the facility application:

(1) **All-weather pad.** Tipping, grinding, shredding, mixing, active composting, curing, screening, and finished compost storage areas must take place on an all-weather pad that meets the following criteria:

(A) five feet or more separation from the top of groundwater;

(B) soils within the 5 feet separation distance are composed of any combination of the following types:

clay loam, silty clay loam, clay, and silty clay; exhibiting hydraulic conductivity of 1×10^{-2} cm/second, or less;

(C) if either less than 5 feet separation distance from the top of groundwater or more permeable soils than those listed in (2) above, a constructed surface is required for tipping, grinding, shredding, mixing and active composting areas; while an all-weather pad is allowed for curing and finished product storage. The constructed surface can be: concrete, asphalt, stabilized subgrade, stabilized aggregate or other approved methods; and

(D) an all-weather pad shall be of sufficient slope (1 to 6 percent as determined by site conditions) to direct contact water to the appropriate collection, storage and treatment system.

(2) **Windrow construction.** All windrows shall be constructed perpendicular to slopes and not along slopes. The maximum composting process windrow or pile size and minimum composting process windrow or pile spacing shall match the capability and requirements of the equipment used at the facility. As pile height increases, windrows or piles should be monitored to minimize compaction.

(3) **All-weather access.** The composting facility shall have all-weather access roads. The facility shall be designed such that access to the composting facility shall be limited to authorized entrances, which shall be secured from public access when the facility is not in operation.

252:515-43-73. Class IV design standards

Class IV composting facilities must meet the design standards of Class III facilities, with the addition of the following design standards. The owner or operator must submit an engineering design for approval with the facility permit application.

(1) **Location restrictions.** Facilities shall meet the location restriction outlined in OAC 252:515-5-52(e) Airports.

(2) **Working surfaces.** The working surfaces for all receiving, mixing, active composting, and storage areas must be designed, constructed, and maintained to prevent conditions of contamination, pollution, and nuisance. All working surfaces must exhibit a hydraulic conductivity of 1×10^{-2} cm/second, or less and meet one of the following construction and material specifications:

(A) impermeable material such as concrete, asphalt, or similar approved impervious material designed to prevent the infiltration of contact water into the groundwater;

(B) compacted clay, with a minimum thickness of two feet and protected from desiccation and installed in a manner such that the integrity will not be impaired by the operation of heavy equipment used at the composting and storage area; or

(C) an equivalent engineered alternative approved by DEQ.

PART 9. GROUNDWATER MONITORING

252:515-43-91. Groundwater monitoring

(a) Class III and IV facilities shall submit a groundwater monitoring program for DEQ review and approval consistent with requirements in OAC 252:515 Subchapter 9, as applicable. The groundwater monitoring program shall include:

- (1) submission of a sampling and analysis plan,
- (2) establishment of background water quality,
- (3) performance of detection monitoring,
- (4) reporting and evaluation of the monitoring results,
- (5) performance of assessment monitoring (if a trend analysis demonstrates a significant increase over background for one or more of the constituents analyzed in the detection monitoring program), and
- (6) conducting corrective action, if required.

(b) At a minimum, monitoring shall include the following groundwater quality constituents: pH, chemical oxygen demand, specific conductivity, chloride, sulfate, calcium, magnesium, nitrates, sodium, carbonates, and potassium. Other parameters specified in the permit may be required based on the types of feedstock utilized.

PART 11. COMPOST TESTING STANDARDS

252:515-43-111. Compost testing standards

Class III and IV facilities must include in their permit application a testing protocol for the finished compost material to ensure protection of human health and the environmental.

[OAR Docket #17-541; filed 6-29-17]

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY
CHAPTER 517. DISPOSAL OF COAL COMBUSTION RESIDUALS FROM ELECTRIC UTILITIES**

[OAR Docket #17-542]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 9. Groundwater Monitoring/Corrective Action 252:517-9-1. General provisions [AMENDED]
- Subchapter 15. Closure and Post-Closure Care 252:517-15-5. Inactive CCR surface impoundments [AMENDED]
- 252:517-15-7. Criteria for conducting the closure or retrofit of CCR units [AMENDED]
- 252:517-15-9. Post-closure care requirements [AMENDED]

AUTHORITY:

Environmental Quality Board; 27A O.S. §§ 2-2-101 and 2-10-201; Solid Waste Management Advisory Council, 27A O.S. § 2-2-201.

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n/a

GIST/ANALYSIS:

The Department is proposing to amend OAC 252:517 in response to the United States Environmental Protection Agency (EPA) amendments to 40 CFR Part 257, Subpart D (Federal CCR Rule). Notably, DEQ incorporated the requirements of the Federal CCR Rule in its entirety to ensure the state and federal regulations pertaining to coal combustion residuals (CCR) disposal were uniform.

On October 4, 2016, EPA amended certain provisions of the Federal CCR Rule in response to an Order issued by the D.C. Circuit Court of Appeals on June 14, 2016 that vacated part of the Rule allowing for early closure of inactive CCR surface impoundments. The amendments to the Federal CCR Rule, as well as the proposed amendments to OAC 252:517, extend certain deadlines for owners/operators of the impoundments that had previously been eligible for "early closure" and are now subject to the requirements for existing surface impoundments. The gist of the rule is to amend OAC 252:517 to remove the early closure provisions for CCR surface impoundments, and references thereto, and extend certain timeframes, all for purposes of ensuring the state CCR rules are consistent with the Federal CCR Rule.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2017:

SUBCHAPTER 9. GROUNDWATER MONITORING/CORRECTIVE ACTION

252:517-9-1. General provisions

(a) **Applicability.** ~~Except as provided for in OAC 252:517-15-5 for inactive CCR surface impoundments,~~ ~~a~~ All CCR landfills, CCR surface impoundments, and lateral expansions of CCR units are subject to the groundwater monitoring and corrective action requirements under OAC 252:517-9-1 through OAC 252:517-9-9.

(b) Initial timeframes.

(1) **Existing CCR landfills and existing CCR surface impoundments.** No later than October 17, 2017, the owner or operator of the CCR unit must be in compliance with the following groundwater monitoring requirements:

(A) Install the groundwater monitoring system as required by OAC 252-517-9-2;

(B) Develop the groundwater sampling and analysis program to include selection of the statistical

procedures to be used for evaluating groundwater monitoring data as required by OAC 252:517-9-4;

(C) Initiate the detection monitoring program to include obtaining a minimum of eight independent samples for each background and downgradient well as required by OAC 252:517-9-5(b); and

(D) Begin evaluating the groundwater monitoring data for statistically significant increases over background levels for the constituents listed in Appendix A of this Chapter as required by OAC 252:517-9-5.

(2) **New CCR landfills, new CCR surface impoundments, and all lateral expansions of CCR units.** Prior to initial receipt of CCR by the CCR unit, the owner or operator must be in compliance with the groundwater monitoring requirements specified in paragraph (b)(1)(A) and (B) of this Section. In addition, the owner or operator of the CCR unit must initiate the detection monitoring program to include obtaining a minimum of eight independent samples for each background well as required by OAC 252:517-9-5(b).

(c) **Groundwater monitoring and corrective action.** Once a groundwater monitoring system and groundwater monitoring program has been established at the CCR unit as required by this Chapter, the owner or operator must conduct groundwater monitoring and, if necessary, corrective action throughout the active life and post-closure care period of the CCR unit.

(d) **Control releases.** In the event of a release from a CCR unit, the owner or operator must immediately take all necessary measures to control the source(s) of releases so as to reduce or eliminate, to the maximum extent feasible, further releases of contaminants into the environment. The owner or operator of the CCR unit must comply with all applicable requirements in OAC 252:517-9-7, OAC 252:517-9-8, and OAC 252:517-9-9.

(e) **Annual groundwater monitoring and corrective action report.** For existing CCR landfills and existing CCR surface impoundments, no later than January 31, 2018, and annually thereafter, the owner or operator must prepare an annual groundwater monitoring and corrective action report. For new CCR landfills, new CCR surface impoundments, and all lateral expansions of CCR units, the owner or operator must prepare the initial annual groundwater monitoring and corrective action report no later than January 31 of the year following the calendar year a groundwater monitoring system has been established for such CCR unit as required by this Chapter, and annually thereafter. For the preceding calendar year, the annual report must document the status of the groundwater monitoring and corrective action program for the CCR unit, summarize key actions completed, describe any problems encountered, discuss actions to resolve the problems, and project key activities for the upcoming year. For purposes of this Section, the owner or operator has prepared the annual report when the report is placed in the facility's operating record as required by OAC 252:517-19-1(h)(1). At a minimum, the annual groundwater monitoring and corrective action report must contain the following information, to the extent available:

(1) A map, aerial image, or diagram showing the CCR unit and all background (or upgradient) and downgradient

monitoring wells, to include the well identification numbers, that are part of the groundwater monitoring program for the CCR unit;

(2) Identification of any monitoring wells that were installed or decommissioned during the preceding year, along with a narrative description of why those actions were taken;

(3) In addition to all the monitoring data obtained under OAC 252:517-9-1 through OAC 252:517-9-9, a summary including the number of groundwater samples that were collected for analysis for each background and downgradient well, the dates the samples were collected, and whether the sample was required by the detection monitoring or assessment monitoring programs;

(4) A narrative discussion of any transition between monitoring programs (e.g., the date and circumstances for transitioning from detection monitoring to assessment monitoring in addition to identifying the constituent(s) detected at a statistically significant increase over background levels); and

(5) Other information required to be included in the annual report as specified in OAC 252:517-9-1 through OAC 252:517-9-9.

(f) **Recordkeeping.** The owner or operator of the CCR unit must comply with the recordkeeping requirements specified in OAC 252:517-19-1(h), the notification requirements specified in OAC 252:517-19-2(h), and the internet requirements specified in OAC 252:517-19-3(h).

(g) **DEQ approval required.** The annual groundwater monitoring and corrective action report shall be submitted to the DEQ for approval.

SUBCHAPTER 15. CLOSURE AND POST-CLOSURE CARE

252:517-15-5. Inactive CCR surface impoundments

(a) **Applicability.** ~~Except as provided by paragraph (b) of this Section, I~~Inactive CCR surface impoundments are subject to all of the requirements of this Chapter applicable to existing CCR surface impoundments.

(b) ~~Inactive CCR surface impoundment exemption.~~ **[RESERVED]**~~An owner or operator of an inactive CCR surface impoundment that completes closure of such CCR unit, and meets all of the requirements of either paragraphs (b)(1) through (4) of this Section or paragraph (b)(5) of this Section no later than April 17, 2018, is exempt from all other requirements of this Chapter.~~

(1) **Closure by leaving CCR in place.** If the owner or operator of the inactive CCR surface impoundment elects to close the CCR surface impoundment by leaving CCR in place, the owner or operator must ensure that, at a minimum, the CCR unit is closed in a manner that will:

(A) Control, minimize or eliminate, to the maximum extent feasible, post closure infiltration of liquids into the waste and releases of CCR, leachate, or contaminated run-off to the ground or surface waters or to the atmosphere;

(B) Preclude the probability of future impoundment of water, sediment, or slurry;

(C) Include measures that provide for major slope stability to prevent the sloughing or movement of the final cover system; and

(D) Minimize the need for further maintenance of the CCR unit.

(2) **Free liquids; stabilization.** ~~The owner or operator of the inactive CCR surface impoundment must meet the requirements of paragraphs (b)(2)(A) and (B) of this Section prior to installing the final cover system required under paragraph (b)(3) of this Section.~~

(A) Free liquids must be eliminated by removing liquid wastes or solidifying the remaining wastes and waste residues.

(B) Remaining wastes must be stabilized sufficient to support the final cover system.

(3) **Final cover system design.** ~~The owner or operator must install a final cover system that is designed to minimize infiltration and erosion, and at a minimum, meets the requirements of paragraph (b)(3)(A) of this Section, or the requirements of an alternative final cover system specified in paragraph (b)(3)(B) of this Section.~~

(A) ~~The final cover system must be designed and constructed to meet the criteria specified in paragraphs (b)(3)(A)(i) through (iv) of this Section.~~

(i) ~~The permeability of the final cover system must be less than or equal to the permeability of any bottom liner system or natural subsoils present, or a permeability no greater than 1×10^{-5} centimeters/second, whichever is less.~~

(ii) ~~The infiltration of liquids through the CCR unit must be minimized by the use of an infiltration layer that contains a minimum of 18 inches of earthen material.~~

(iii) ~~The erosion of the final cover system must be minimized by the use of an erosion layer that contains a minimum of six inches of earthen material that is capable of sustaining native plant growth.~~

(iv) ~~The disruption of the integrity of the final cover system must be minimized through a design that accommodates settling and subsidence.~~

(B) ~~The owner or operator may select an alternative final cover system design, provided the alternative final cover system is designed and constructed to meet the criteria in paragraphs (b)(3)(B)(i) through (iii) of this Section.~~

(i) ~~The design of the final cover system must include an infiltration layer that achieves an equivalent reduction in infiltration as the infiltration layer specified in paragraphs (b)(3)(A)(i) and (ii) of this Section.~~

(ii) ~~The design of the final cover system must include an erosion layer that provides equivalent protection from wind or water erosion as the erosion layer specified in paragraph (b)(3)(A)(iii) of this Section.~~

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- (iii) The disruption of the integrity of the final cover system must be minimized through a design that accommodates settling and subsidence.
- (4) **PE certification of final cover.** The owner or operator of the CCR surface impoundment must obtain a written certification from a qualified professional engineer stating that the design of the final cover system meets either the requirements paragraphs (b)(3)(A) or (B) of this Section.
- (5) **Closure through removal of CCR.** The owner or operator may alternatively elect to close an inactive CCR surface impoundment by removing and decontaminating all areas affected by releases from the CCR surface impoundment. CCR removal and decontamination of the CCR surface impoundment are complete when all CCR in the inactive CCR surface impoundment is removed, including the bottom liner of the CCR unit.
- (6) **PE certification of timeline.** The owner or operator of the CCR surface impoundment must obtain a written certification from a qualified professional engineer that closure of the CCR surface impoundment under either paragraphs (b)(1) through (4) or (b)(5) of this Section is technically feasible within the timeframe in paragraph (b) of this Section.
- (7) **Failure to complete closure.** If the owner or operator of the CCR surface impoundment fails to complete closure of the inactive CCR surface impoundment within the timeframe in paragraph (b) of this Section, the CCR unit must comply with all of the requirements applicable to existing CCR surface impoundments under this Chapter.
- (c) **Required notices and progress reports.** [RESERVED] An owner or operator of an inactive CCR surface impoundment that closes in accordance with paragraph (b) of this Section must complete the notices and progress reports specified in paragraphs (e)(1) through (3) of this Section.
- (1) The owner or operator must prepare and place in the facility's operating record a notification of intent to initiate closure of the CCR surface impoundment. The notification must state that the CCR surface impoundment is an inactive CCR surface impoundment closing under the requirements of paragraph (b) of this Section. The notification must also include a narrative description of how the CCR surface impoundment will be closed, a schedule for completing closure activities, and the required certifications under paragraphs (b)(4) and (6) of this Section, if applicable.
- (2) The owner or operator must prepare periodic progress reports summarizing the progress of closure implementation, including a description of the actions completed to date, any problems encountered and a description of the actions taken to resolve the problems, and projected closure activities for the upcoming year. The annual progress reports must be completed according to the following schedule and submitted to the DEQ:
- (A) The first annual progress report must be prepared no later than 13 months after completing the

notification of intent to initiate closure required by paragraph (e)(1) of this Section.

(B) The second annual progress report must be prepared no later than 12 months after completing the first progress report required by paragraph (e)(2)(A) of this Section.

(C) The owner or operator has completed the progress reports specified in paragraph (e)(2) of this Section when the reports are placed in the facility's operating record as required by OAC 252:517-19-1(i)(2).

(3) The owner or operator must prepare and place in the facility's operating record a notification of completion of closure of the CCR surface impoundment. The notification must be submitted within 60 days of completing closure of the CCR surface impoundment and must include a written certification from a qualified professional engineer stating that the CCR surface impoundment was closed in accordance with the requirements of either paragraph (b)(1) through (4) or (b)(5) of this Section.

(d) **Recordkeeping.** [RESERVED] The owner or operator of the CCR unit must comply with the recordkeeping requirements specified in OAC 252:517-19-1(i), the notification requirements specified in OAC 252:517-19-2(i), and the internet requirements specified in OAC 252:517-19-3(i).

(e) **Timeframes for certain inactive CCR surface impoundments.**

(1) **Alternative timeframes.** An inactive CCR surface impoundment for which the owner or operator has completed the actions by the deadlines specified in paragraphs (e)(1)(A) through (C) of this Section is eligible for the alternative timeframes specified in paragraphs (e)(2) through (6) of this Section. The owner or operator of the CCR unit must comply with the applicable recordkeeping, notification, and internet requirements associated with these provisions. For the inactive CCR surface impoundment:

(A) The owner or operator must have prepared and placed in the facility's operating record by December 17, 2015, a notification of intent to initiate closure of the inactive CCR surface impoundment pursuant to OAC 252:517-19-1(i)(1);

(B) The owner or operator must have provided notification to the State Director and/or appropriate Tribal authority by January 19, 2016, of the intent to initiate closure of the inactive CCR surface impoundment pursuant to OAC 252:517-19-2(h)(1); and

(C) The owner or operator must have placed on its CCR Web site by January 19, 2016, the notification of intent to initiate closure of the inactive CCR surface impoundment pursuant to OAC 252:517-19-3(i)(1).

(2) **Location restrictions.**

(A) No later than April 16, 2020, the owner or operator of the inactive CCR surface impoundment must:

(i) Complete the demonstration for placement above the uppermost aquifer as set forth by OAC 252:517-5-1(a), (b), and (c)(3);

- (ii) Complete the demonstration for wetlands as set forth by OAC 252:517-5-2(a), (b), and (c)(3);
 - (iii) Complete the demonstration for fault areas as set forth by OAC 252:517-5-3(a), (b), and (c)(3);
 - (iv) Complete the demonstration for seismic impact zones as set forth by OAC 252:517-5-4(a), (b), and (c)(3); and
 - (v) Complete the demonstration for unstable areas as set forth by OAC 252:517-5-5(a), (b), (c), and (d)(3).
- (B) An owner or operator of an inactive CCR surface impoundment who fails to demonstrate compliance with the requirements of paragraph (e)(2)(A) of this section is subject to the closure requirements of OAC 252:517-15-6(b)(1).
- (3) **Design criteria.** The owner or operator of the inactive CCR surface impoundment must:
- (A) No later than April 17, 2018, complete the documentation of liner type as set forth by OAC 252:517-11-2(a) and (b).
 - (B) No later than June 16, 2017, place on or immediately adjacent to the CCR unit the permanent identification marker as set forth by OAC 252:517-11-4(a)(1).
 - (C) No later than October 16, 2018, prepare and maintain an Emergency Action Plan as set forth by OAC 252:517-11-4(a)(3).
 - (D) No later than April 17, 2018, compile a history of construction as set forth by OAC 252:517-11-4(b) and (c).
 - (E) No later than April 17, 2018, complete the initial hazard potential classification, structural stability, and safety factor assessments as set forth by OAC 252:517-11-4(a)(2), (b), (d), (e), and (f).
- (4) **Operating criteria.** The owner or operator of the inactive CCR surface impoundment must:
- (A) No later than April 18, 2017, prepare the initial CCR fugitive dust control plan as set forth in OAC 252:517-13-1(b).
 - (B) No later than April 17, 2018, prepare the initial inflow design flood control system plan as set forth in OAC 252:517-13-3(c).
 - (C) No later than April 18, 2017, initiate the inspections by a qualified person as set forth by OAC 252:517-13-4(a).
 - (D) No later than July 19, 2017, complete the initial annual inspection by a qualified professional engineer as set forth by OAC 252:517-13-4(b).
- (5) **Groundwater monitoring and corrective action.** The owner or operator of the inactive CCR surface impoundment must:
- (A) No later than April 17, 2019, comply with groundwater monitoring requirements set forth in OAC 252:517-9-1(b) and 252:517-9-5(b); and
 - (B) No later than August 1, 2019, prepare the initial groundwater monitoring and corrective action report as set forth in OAC 252:517-9-1(e).
- (6) **Closure and post-closure care.** The owner or operator of the inactive CCR surface impoundment must:
- (A) No later than April 17, 2018, prepare an initial written closure plan as set forth in OAC 252:517-15-7(b); and
 - (B) No later than April 17, 2018, prepare an initial written post-closure care plan as set forth in OAC 252:517-15-9(d).
- 252:517-15-7. Criteria for conducting the closure or retrofit of CCR units**
- (a) **Closure of CCR unit; retrofit of CCR surface impoundment.** Closure of a CCR landfill, CCR surface impoundment, or any lateral expansion of a CCR unit must be completed either by leaving the CCR in place and installing a final cover system or through removal of the CCR and decontamination of the CCR unit, as described in paragraphs (b) through (j) of this Section. Retrofit of a CCR surface impoundment must be completed in accordance with the requirements in paragraph (k) of this Section.
- (b) **Written closure plan.**
- (1) **Content of the plan.** The owner or operator of a CCR unit must prepare a written closure plan that describes the steps necessary to close the CCR unit at any point during the active life of the CCR unit consistent with recognized and generally accepted good engineering practices. The written closure plan must include, at a minimum, the information specified in paragraphs (b)(1)(A) through (F) of this Section.
 - (A) A narrative description of how the CCR unit will be closed in accordance with this Section.
 - (B) If closure of the CCR unit will be accomplished through removal of CCR from the CCR unit, a description of the procedures to remove the CCR and decontaminate the CCR unit in accordance with paragraph (c) of this Section.
 - (C) If closure of the CCR unit will be accomplished by leaving CCR in place, a description of the final cover system, designed in accordance with paragraph (d) of this Section, and the methods and procedures to be used to install the final cover. The closure plan must also discuss how the final cover system will achieve the performance standards specified in paragraph (d) of this Section.
 - (D) An estimate of the maximum inventory of CCR ever on-site over the active life of the CCR unit.
 - (E) An estimate of the largest area of the CCR unit ever requiring a final cover as required by paragraph (d) of this Section at any time during the CCR unit's active life.
 - (F) A schedule for completing all activities necessary to satisfy the closure criteria in this Section, including an estimate of the year in which all closure activities for the CCR unit will be completed. The schedule should provide sufficient information to

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describe the sequential steps that will be taken to close the CCR unit, including identification of major milestones such as coordinating with and obtaining necessary approvals and permits from other agencies, the dewatering and stabilization phases of CCR surface impoundment closure, or installation of the final cover system, and the estimated timeframes to complete each step or phase of CCR unit closure. When preparing the written closure plan, if the owner or operator of a CCR unit estimates that the time required to complete closure will exceed the timeframes specified in paragraph (f)(1) of this Section, the written closure plan must include the site-specific information, factors and considerations that would support any time extension sought under paragraph (f)(2) of this Section.

(2) **Timeframes for preparing the initial written closure plan.**

(A) Existing CCR landfills and existing CCR surface impoundments. No later than October 17, 2016, the owner or operator of the CCR unit must prepare an initial written closure plan consistent with the requirements specified in paragraph (b)(1) of this Section.

(B) New CCR landfills and new CCR surface impoundments, and any lateral expansion of a CCR unit. No later than the date of the initial receipt of CCR in the CCR unit, the owner or operator must prepare an initial written closure plan consistent with the requirements specified in paragraph (b)(1) of this Section.

(C) The owner or operator has completed the written closure plan when the plan, including the certification required by paragraph (b)(4) of this Section, has been placed in the facility's operating record as required by OAC 252:517-19-1(i)(4).

(3) **Amendment of a written closure plan.**

(A) The owner or operator may amend the initial or any subsequent written closure plan developed pursuant to paragraph (b)(1) of this Section at any time.

(B) The owner or operator must amend the written closure plan whenever:

(i) There is a change in the operation of the CCR unit that would substantially affect the written closure plan in effect; or

(ii) Before or after closure activities have commenced, unanticipated events necessitate a revision of the written closure plan;

(C) The owner or operator must amend the closure plan at least 60 days prior to a planned change in the operation of the facility or CCR unit, or no later than 60 days after an unanticipated event requires the need to revise an existing written closure plan. If a written closure plan is revised after closure activities have commenced for a CCR unit, the owner or operator must amend the current closure plan no later than 30 days following the triggering event.

(4) **PE certification.** The owner or operator of the CCR unit must obtain a written certification from a qualified professional engineer that the initial and any

amendment of the written closure plan meets the requirements of this Section.

(5) **DEQ approval required.** The owner or operator of the CCR unit must submit the initial closure plan and any amendment of the closure plan to the DEQ for approval.

(c) **Closure by removal of CCR.** An owner or operator may elect to close a CCR unit by removing and decontaminating all areas affected by releases from the CCR unit. CCR removal and decontamination of the CCR unit are complete when constituent concentrations throughout the CCR unit and any areas affected by releases from the CCR unit have been removed and groundwater monitoring concentrations do not exceed the groundwater protection standard established pursuant to OAC 252:517-9-6(h) for constituents listed in Appendix B to this Chapter.

(d) **Closure performance standard when leaving CCR in place.**

(1) **Closure standards.** The owner or operator of a CCR unit must ensure that, at a minimum, the CCR unit is closed in a manner that will:

(A) Control, minimize or eliminate, to the maximum extent feasible, post-closure infiltration of liquids into the waste and releases of CCR, leachate, or contaminated run-off to the ground or surface waters or to the atmosphere;

(B) Preclude the probability of future impoundment of water, sediment, or slurry;

(C) Include measures that provide for major slope stability to prevent the sloughing or movement of the final cover system during the closure and post-closure care period;

(D) Minimize the need for further maintenance of the CCR unit; and

(E) Be completed in the shortest amount of time consistent with recognized and generally accepted good engineering practices.

(2) **Drainage and stabilization of CCR surface impoundments.** The owner or operator of a CCR surface impoundment or any lateral expansion of a CCR surface impoundment must meet the requirements of paragraphs (d)(2)(A) and (B) of this Section prior to installing the final cover system required under paragraph (d)(3) of this Section.

(A) Free liquids must be eliminated by removing liquid wastes or solidifying the remaining wastes and waste residues.

(B) Remaining wastes must be stabilized sufficient to support the final cover system.

(3) **Final cover system.** If a CCR unit is closed by leaving CCR in place, the owner or operator must install a final cover system that is designed to minimize infiltration and erosion, and at a minimum, meets the requirements of paragraph (d)(3)(A) of this Section, or the requirements of the alternative final cover system specified in paragraph (d)(3)(B) of this Section.

(A) The final cover system must be designed and constructed to meet the criteria in paragraphs

(d)(3)(A)(i) through (iv) of this Section. The design of the final cover system must be included in the written closure plan required by paragraph (b) of this Section.

(i) The permeability of the final cover system must be less than or equal to the permeability of any bottom liner system or natural subsoils present, or a permeability no greater than 1×10^{-5} cm/sec, whichever is less.

(ii) The infiltration of liquids through the closed CCR unit must be minimized by the use of an infiltration layer that contains a minimum of 18 inches of earthen material.

(iii) The erosion of the final cover system must be minimized by the use of an erosion layer that contains a minimum of six inches of earthen material that is capable of sustaining native plant growth.

(iv) The disruption of the integrity of the final cover system must be minimized through a design that accommodates settling and subsidence.

(B) The owner or operator may select an alternative final cover system design, provided the alternative final cover system is designed and constructed to meet the criteria in paragraphs (f)(3)(B)(i) through (iv) of this Section. The design of the final cover system must be included in the written closure plan required by paragraph (b) of this Section.

(i) The design of the final cover system must include an infiltration layer that achieves an equivalent reduction in infiltration as the infiltration layer specified in paragraphs (d)(3)(A)(i) and (ii) of this Section.

(ii) The design of the final cover system must include an erosion layer that provides equivalent protection from wind or water erosion as the erosion layer specified in paragraph (d)(3)(A)(iii) of this Section.

(iii) The disruption of the integrity of the final cover system must be minimized through a design that accommodates settling and subsidence.

(C) The owner or operator of the CCR unit must obtain a written certification from a qualified professional engineer that the design of the final cover system meets the requirements of this Section.

(e) **Initiation of closure activities.** Except as provided for in paragraph (e)(4) of this Section and OAC 252:517-15-8, the owner or operator of a CCR unit must commence closure of the CCR unit no later than the applicable timeframes specified in either paragraph (e)(1) or (2) of this Section.

(1) **Commencing closure.** The owner or operator must commence closure of the CCR unit no later than 30 days after the date on which the CCR unit either:

(A) Receives the known final receipt of waste, either CCR or any non-CCR waste stream; or

(B) Removes the known final volume of CCR from the CCR unit for the purpose of beneficial use of CCR.

(2) **Conditions.**

(A) Except as provided by paragraph (e)(2)(B) of this Section, the owner or operator must commence closure of a CCR unit that has not received CCR or any non-CCR waste stream or is no longer removing CCR for the purpose of beneficial use within two years of the last receipt of waste or within two years of the last removal of CCR material for the purpose of beneficial use.

(B) Notwithstanding paragraph (e)(2)(A) of this Section, the owner or operator of the CCR unit may secure an additional two years to initiate closure of the idle unit provided the owner or operator provides written documentation that the CCR unit will continue to accept wastes or will start removing CCR for the purpose of beneficial use. The documentation must be supported by, at a minimum, the information specified in paragraphs (e)(2)(B)(i) and (ii) of this Section. The owner or operator may obtain two-year extensions provided the owner or operator continues to be able to demonstrate that there is reasonable likelihood that the CCR unit will accept wastes in the foreseeable future or will remove CCR from the unit for the purpose of beneficial use. The owner or operator must place each completed demonstration, if more than one time extension is sought, in the facility's operating record as required by OAC 252:517-19-1(i)(5) prior to the end of any two-year period.

(i) Information documenting that the CCR unit has remaining storage or disposal capacity or that the CCR unit can have CCR removed for the purpose of beneficial use; and

(ii) Information demonstrating that there is a reasonable likelihood that the CCR unit will resume receiving CCR or non-CCR waste streams in the foreseeable future or that CCR can be removed for the purpose of beneficial use. The narrative must include a best estimate as to when the CCR unit will resume receiving CCR or non-CCR waste streams. The situations listed in paragraphs (e)(2)(B)(ii)(I) through (IV) of this Section are examples of situations that would support a determination that the CCR unit will resume receiving CCR or non-CCR waste streams in the foreseeable future.

(I) Normal plant operations include periods during which the CCR unit does not receive CCR or non-CCR waste streams, such as the alternating use of two or more CCR units whereby at any point in time one CCR unit is receiving CCR while CCR is being removed from a second CCR unit after its dewatering.

(II) The CCR unit is dedicated to a coal-fired boiler unit that is temporarily idled (e.g., CCR is not being generated) and there is a reasonable likelihood that the coal-fired boiler will resume operations in the future.

(III) The CCR unit is dedicated to an operating coal-fired boiler (i.e., CCR is being

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generated); however, no CCR are being placed in the CCR unit because the CCR are being entirely diverted to beneficial uses, but there is a reasonable likelihood that the CCR unit will again be used in the foreseeable future.

(IV) The CCR unit currently receives only non-CCR waste streams and those non-CCR waste streams are not generated for an extended period of time, but there is a reasonable likelihood that the CCR unit will again receive non-CCR waste streams in the future.

(C) In order to obtain additional time extension(s) to initiate closure of a CCR unit beyond the two years provided by paragraph (e)(2)(A) of this Section, the owner or operator of the CCR unit must include with the demonstration required by paragraph (e)(2)(B) of this Section the following statement signed by the owner or operator or an authorized representative: I certify under penalty of law that I have personally examined and am familiar with the information submitted in this demonstration and all attached documents, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

(3) **Commencement activities.** For purposes of this Chapter, closure of the CCR unit has commenced if the owner or operator has ceased placing waste and completes any of the following actions or activities:

(A) Taken any steps necessary to implement the written closure plan required by paragraph (b) of this Section; or

(B) Taken any steps necessary to comply with any standards that are a prerequisite, or are otherwise applicable, to initiating or completing the closure of a CCR unit.

(4) **Timeline exceptions.** The timeframes specified in paragraphs (e)(1) and (2) of this Section do not apply to any of the following owners or operators:

~~(A) An owner or operator of an inactive CCR surface impoundment closing the CCR unit as required by OAC 252:517-15-5(b);~~

~~(B)~~ (A) An owner or operator of an existing unlined CCR surface impoundment closing the CCR unit as required by OAC 252:517-15-6(a);

~~(C)~~ (B) An owner or operator of an existing CCR surface impoundment closing the CCR unit as required by OAC 252:517-15-6(b);

~~(D)~~ (C) An owner or operator of a new CCR surface impoundment closing the CCR unit as required by OAC 252:517-15-6(c); or

~~(E)~~ (D) An owner or operator of an existing CCR landfill closing the CCR unit as required by OAC 252:517-15-6(d).

(f) **Completion of closure activities.**

(1) **Closure timeframes.** Except as provided for in paragraph (f)(2) of this Section, the owner or operator must complete closure of the CCR unit:

(A) For existing and new CCR landfills and any lateral expansion of a CCR landfill, within six months of commencing closure activities.

(B) For existing and new CCR surface impoundments and any lateral expansion of a CCR surface impoundment, within five years of commencing closure activities.

(2) **Extensions of closure timeframes.**

(A) **Applicability.** The timeframes for completing closure of a CCR unit specified under paragraphs (f)(1) of this Section may be extended if the owner or operator can demonstrate that it was not feasible to complete closure of the CCR unit within the required timeframes due to factors beyond the facility's control. If the owner or operator is seeking a time extension beyond the time specified in the written closure plan as required by paragraph (b)(1) of this Section, the demonstration must include a narrative discussion providing the basis for additional time beyond that specified in the closure plan. The owner or operator must place each completed demonstration, if more than one time extension is sought, in the facility's operating record as required by OAC 252:517-19-1(i)(6) prior to the end of any two-year period. Factors that may support such a demonstration include:

(i) Complications stemming from the climate and weather, such as unusual amounts of precipitation or a significantly shortened construction season;

(ii) Time required to dewater a surface impoundment due to the volume of CCR contained in the CCR unit or the characteristics of the CCR in the unit;

(iii) The geology and terrain surrounding the CCR unit will affect the amount of material needed to close the CCR unit; or

(iv) Time required or delays caused by the need to coordinate with and obtain necessary approvals and permits from a state or other agency.

(B) **Maximum time extensions.**

(i) CCR surface impoundments of 40 acres or smaller may extend the time to complete closure by no longer than two years.

(ii) CCR surface impoundments larger than 40 acres may extend the timeframe to complete closure of the CCR unit multiple times, in two-year increments. For each two-year extension sought, the owner or operator must substantiate the factual circumstances demonstrating the need for the extension. No more than a total of five two-year extensions may be obtained for any CCR surface impoundment.

(iii) CCR landfills may extend the timeframe to complete closure of the CCR unit multiple

times, in one-year increments. For each one-year extension sought, the owner or operator must substantiate the factual circumstances demonstrating the need for the extension. No more than a total of two one-year extensions may be obtained for any CCR landfill.

(C) **Certification statement.** In order to obtain additional time extension(s) to complete closure of a CCR unit beyond the times provided by paragraph (f)(1) of this Section, the owner or operator of the CCR unit must include with the demonstration required by paragraph (f)(2)(A) of this Section the following statement signed by the owner or operator or an authorized representative: I certify under penalty of law that I have personally examined and am familiar with the information submitted in this demonstration and all attached documents, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

(3) **PE certification.** Upon completion, the owner or operator of the CCR unit must obtain a certification from a qualified professional engineer verifying that closure has been completed in accordance with the closure plan specified in paragraph (b) of this Section and the requirements of this Section.

(g) **Notification of intent to close.** No later than the date the owner or operator initiates closure of a CCR unit, the owner or operator must prepare a notification of intent to close a CCR unit. The notification must include the certification by a qualified professional engineer for the design of the final cover system as required by OAC 252:517-15-7(d)(3)(iii), if applicable. The owner or operator has completed the notification when it has been placed in the facility's operating record as required by OAC 252:517-19-1(i)(7).

(h) **Notification of closure.** Within 30 days of completion of closure of the CCR unit, the owner or operator must prepare a notification of closure of a CCR unit. The notification must include the certification by a qualified professional engineer as required by OAC 252:517-15-7(f)(3). The owner or operator has completed the notification when it has been placed in the facility's operating record as required by OAC 252:517-19-1(i)(8).

(i) **Deed notations.**

(1) Except as provided by paragraph (i)(4) of this Section, following closure of a CCR unit, the owner or operator must record a notation on the deed to the property, or some other instrument that is normally examined during title search.

(2) The notation on the deed must in perpetuity notify any potential purchaser of the property that:

- (A) The land has been used as a CCR unit; and
- (B) Its use is restricted under the post-closure care requirements as provided by OAC 252:517-15-9(d)(1)(iii).

(3) Within 30 days of recording a notation on the deed to the property, the owner or operator must prepare a notification stating that the notation has been recorded. The owner or operator has completed the notification when it has been placed in the facility's operating record as required by OAC 252:517-19-1(i)(9).

(4) An owner or operator that closes a CCR unit in accordance with paragraph (c) of this Section is not subject to the requirements of paragraphs (i)(1) through (3) of this Section.

(j) **Recordkeeping.** The owner or operator of the CCR unit must comply with the closure recordkeeping requirements specified in OAC 252:517-19-1(i), the closure notification requirements specified in OAC 252:517-19-2(i), and the closure Internet requirements specified in OAC 252:517-19-3(i).

(k) **Criteria to retrofit existing CCR surface impoundment.**

(1) **Retrofit existing CCR surface impoundment.** To retrofit an existing CCR surface impoundment, the owner or operator must:

- (A) First remove all CCR, including any contaminated soils and sediments from the CCR unit; and
- (B) Comply with the requirements in OAC 252:517-11-3.
- (C) A CCR surface impoundment undergoing a retrofit remains subject to all other requirements of this Chapter, including the requirement to conduct any necessary corrective action.

(2) **Written retrofit plan.**

(A) **Content of the plan.** The owner or operator must prepare a written retrofit plan that describes the steps necessary to retrofit the CCR unit consistent with recognized and generally accepted good engineering practices. The written retrofit plan must include, at a minimum, all of the following information:

- (i) A narrative description of the specific measures that will be taken to retrofit the CCR unit in accordance with this Section.
- (ii) A description of the procedures to remove all CCR and contaminated soils and sediments from the CCR unit.
- (iii) An estimate of the maximum amount of CCR that will be removed as part of the retrofit operation.
- (iv) An estimate of the largest area of the CCR unit that will be affected by the retrofit operation.
- (v) A schedule for completing all activities necessary to satisfy the retrofit criteria in this Section, including an estimate of the year in which retrofit activities of the CCR unit will be completed.

(B) **Timeframes for preparing the initial written retrofit plan.**

(i) No later than 60 days prior to date of initiating retrofit activities, the owner or operator must prepare an initial written retrofit plan consistent with the requirements specified in paragraph (k)(2)

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of this Section. For purposes of this Chapter, initiation of retrofit activities has commenced if the owner or operator has ceased placing waste in the unit and completes any of the following actions or activities:

- (I) Taken any steps necessary to implement the written retrofit plan;
- (II) Submitted a completed application for any required state or agency permit or permit modification; or
- (III) Taken any steps necessary to comply with any state or other agency standards that are a prerequisite, or are otherwise applicable, to initiating or completing the retrofit of a CCR unit.

(ii) The owner or operator has completed the written retrofit plan when the plan, including the certification required by paragraph (k)(2)(D) of this Section, has been placed in the facility's operating record as required by OAC 252:517-19-1(j)(1).

(C) **Amendment of a written retrofit plan.**

(i) The owner or operator may amend the initial or any subsequent written retrofit plan at any time.

(ii) The owner or operator must amend the written retrofit plan whenever:

- (I) There is a change in the operation of the CCR unit that would substantially affect the written retrofit plan in effect; or
- (II) Before or after retrofit activities have commenced, unanticipated events necessitate a revision of the written retrofit plan.

(iii) The owner or operator must amend the retrofit plan at least 60 days prior to a planned change in the operation of the facility or CCR unit, or no later than 60 days after an unanticipated event requires the revision of an existing written retrofit plan. If a written retrofit plan is revised after retrofit activities have commenced for a CCR unit, the owner or operator must amend the current retrofit plan no later than 30 days following the triggering event.

(D) **PE certification.** The owner or operator of the CCR unit must obtain a written certification from a qualified professional engineer that the activities outlined in the written retrofit plan, including any amendment of the plan, meet the requirements of this Section.

(E) **DEQ approval required.** The owner or operator of the CCR unit must submit the written retrofit plan, and any amendment of the plan, to the DEQ for approval.

(3) **Deadline for completion.** Deadline for completion of activities related to the retrofit of a CCR unit. Any CCR surface impoundment that is being retrofitted must complete all retrofit activities within the same time frames and procedures specified for the closure of a CCR surface

impoundment in OAC 252:517-15-7(f) or, where applicable, OAC 252:517-15-8.

(4) **PE certification; DEQ approval required.** Upon completion, the owner or operator must obtain a certification from a qualified professional engineer verifying that the retrofit activities have been completed in accordance with the retrofit plan specified in paragraph (k)(2) of this Section and the requirements of this Section. The certified report shall be submitted to DEQ for approval.

(5) **Notification of intent.** No later than the date the owner or operator initiates the retrofit of a CCR unit, the owner or operator must prepare a notification of intent to retrofit a CCR unit. The owner or operator has completed the notification when it has been placed in the facility's operating record as required by OAC 252:517-19-1(j)(5).

(6) **Notification of completion.** Within 30 days of completing the retrofit activities specified in paragraph (k)(1) of this Section, the owner or operator must prepare a notification of completion of retrofit activities. The notification must include the certification by a qualified professional engineer as required by paragraph (k)(4) of this Section. The owner or operator has completed the notification when it has been placed in the facility's operating record as required by OAC 252:517-19-1(j)(6).

(7) **Retrofit cessation.** At any time after the initiation of a CCR unit retrofit, the owner or operator may cease the retrofit and initiate closure of the CCR unit in accordance with the requirements of OAC 252:517-15-7.

(8) **Recordkeeping.** The owner or operator of the CCR unit must comply with the retrofit recordkeeping requirements specified in OAC 252:517-19-1(j), the retrofit notification requirements specified in OAC 252:517-19-2(j), and the retrofit Internet requirements specified in OAC 252:517-19-3(j).

252:517-15-9. Post-closure care requirements

(a) **Applicability.**

(1) Except as provided by either paragraph (a)(2) ~~or (3)~~ of this Section, OAC 252:517-15-9 applies to the owners or operators of CCR landfills, CCR surface impoundments, and all lateral expansions of CCR units that are subject to the closure criteria under OAC 252:517-15-7.

(2) An owner or operator of a CCR unit that elects to close a CCR unit by removing CCR as provided by OAC 252:517-15-7(c) is not subject to the post-closure care criteria under this Section.

~~(3) An owner or operator of an inactive CCR surface impoundment that elects to close a CCR unit pursuant to the requirements under OAC 252:517-15-5(b) is not subject to the post-closure care criteria under this Section.~~

(b) **Post-closure care maintenance requirements.** Following closure of the CCR unit, the owner or operator must conduct post-closure care for the CCR unit, which must consist of at least the following:

(1) Maintaining the integrity and effectiveness of the final cover system, including making repairs to the final cover as necessary to correct the effects of settlement, subsidence, erosion, or other events, and preventing run-on

and run-off from eroding or otherwise damaging the final cover;

(2) If the CCR unit is subject to the design criteria under OAC 252:517-11-1, maintaining the integrity and effectiveness of the leachate collection and removal system and operating the leachate collection and removal system in accordance with the requirements of OAC 252:517-11-1; and

(3) Maintaining the groundwater monitoring system and monitoring the groundwater in accordance with the requirements of OAC 252:517-9-1 through OAC 252:517-9-9.

(c) **Post-closure care period.**

(1) Except as provided by paragraph (c)(2) and (3) of this Section, the owner or operator of the CCR unit must conduct post-closure care for 30 years.

(2) If at the end of the post-closure care period the owner or operator of the CCR unit is operating under assessment monitoring in accordance with OAC 252:517-9-6, the owner or operator must continue to conduct post-closure care until the owner or operator returns to detection monitoring in accordance with OAC 252:517-9-6.

(3) The DEQ may extend the post-closure monitoring and care period if:

- (A) sampling shows the presence of elevated levels of any constituent;
- (B) evidence of contamination resulting from site operations is found to exist;
- (C) prior maintenance or monitoring of the site is found to be inadequate;
- (D) the site is producing leachate that must be treated prior to discharge; or
- (E) if other conditions are present that indicate a need for additional post-closure monitoring and care.

(4) When the post-closure period is extended, the DEQ may require the maintenance of existing financial assurance, the posting of additional assurance, and/or may require corrective action.

(d) **Written post-closure plan.**

(1) **Content of the plan.** The owner or operator of a CCR unit must prepare a written post-closure plan that includes, at a minimum, the information specified in paragraphs (d)(1)(A) through (C) of this Section.

- (A) A description of the monitoring and maintenance activities required in paragraph (b) of this Section for the CCR unit, and the frequency at which these activities will be performed;
- (B) the name, address, telephone number, and email address of the person or office to contact about the facility during the post-closure care period; and
- (C) A description of the planned uses of the property during the post-closure period. Post-closure use of the property shall not disturb the integrity of the final cover, liner(s), or any other component of the containment system, or the function of the monitoring systems unless necessary to comply with the requirements in this Chapter. Any other disturbance

is allowed if the owner or operator of the CCR unit demonstrates that disturbance of the final cover, liner, or other component of the containment system, including any removal of CCR, will not increase the potential threat to human health or the environment. The demonstration must be certified by a qualified professional engineer, and notification shall be provided to the State Director that the demonstration has been placed in the operating record and on the owners or operator's publicly accessible Internet site.

(2) **Deadline to prepare the initial written post-closure plan.**

(A) **Existing CCR landfills and existing CCR surface impoundments.** No later than October 17, 2016, the owner or operator of the CCR unit must prepare an initial written post-closure plan consistent with the requirements specified in paragraph (d)(1) of this Section.

(B) **New CCR landfills, new CCR surface impoundments, and any lateral expansion of a CCR unit.** No later than the date of the initial receipt of CCR in the CCR unit, the owner or operator must prepare an initial written post-closure plan consistent with the requirements specified in paragraph (d)(1) of this Section.

(C) **Completion.** The owner or operator has completed the written post-closure plan when the plan, including the certification required by paragraph (d)(4) of this Section, has been placed in the facility's operating record as required by OAC 252:517-19-1(i)(4).

(3) **Amendment of a written post-closure plan.**

(A) The owner or operator may amend the initial or any subsequent written post-closure plan developed pursuant to paragraph (d)(1) of this Section at any time.

(B) The owner or operator must amend the written closure plan whenever:

- (i) There is a change in the operation of the CCR unit that would substantially affect the written post-closure plan in effect; or
- (ii) After post-closure activities have commenced, unanticipated events necessitate a revision of the written post-closure plan.

(C) The owner or operator must amend the written post-closure plan at least 60 days prior to a planned change in the operation of the facility or CCR unit, or no later than 60 days after an unanticipated event requires the need to revise an existing written post-closure plan. If a written post-closure plan is revised after post-closure activities have commenced for a CCR unit, the owner or operator must amend the written post-closure plan no later than 30 days following the triggering event.

(4) **PE certification.** The owner or operator of the CCR unit must obtain a written certification from a qualified professional engineer that the initial and any amendment of the written post-closure plan meets the requirements of this Section.

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(5) **DEQ approval required.** The owner or operator of the CCR unit must submit the initial post-closure plan and any amendment of the post-closure plan to the DEQ for approval.

(e) **Notification of completion of post-closure care period.** No later than 60 days following the completion of the post-closure care period, the owner or operator of the CCR unit must prepare a notification verifying that post-closure care has been completed and submit it to the DEQ. The notification must include the certification by a qualified professional engineer verifying that post-closure care has been completed in accordance with the closure plan specified in paragraph (d) of this Section and the requirements of this Section. The owner or operator has completed the notification when it has been placed in the facility's operating record as required by OAC 252:517-19-1(i)(13).

(f) **Recordkeeping.** The owner or operator of the CCR unit must comply with the recordkeeping requirements specified in OAC 252:517-19-1(i), the notification requirements specified in OAC 252:517-19-2(i), and the Internet requirements specified in OAC 252:517-19-3(i).

[OAR Docket #17-542; filed 6-29-17]

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

[OAR Docket #17-543]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 1. Introduction
252:606-1-4. Date of federal regulations incorporated [AMENDED]

AUTHORITY:
Environmental Quality Board; 27A O.S. § 2-2-101; Water Quality Management Advisory Council, 27A O.S. § 2-2-201; and 27A O.S. §§ 1-3-101, 2-3-202, 2-3-402, 2-3-501, 2-6-103, 2-6-203, 2-6-402 and 2-6-501.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

August 8, 2016

COMMENT PERIOD:
September 3, 2016, to October 3, 2016

PUBLIC HEARING:
Before the Council on October 4, 2016, and before the Environmental Quality Board on November 9, 2016.

ADOPTION:
November 9, 2016

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
November 17, 2016

APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 13, 2017

FINAL ADOPTION:
June 13, 2017

EFFECTIVE:
September 15, 2017

SUPERSEDED EMERGENCY ACTIONS:
n/a

INCORPORATIONS BY REFERENCE:

Incorporated standards:

Date of CFR provisions incorporated by reference in these rules is changed to "as published on July 1, 2016."

Incorporating rules:

OAC 252:606-1-4

Availability:

The standards are on file at the Department of Environmental Quality, 707 North Robinson, Oklahoma City, Oklahoma, 73102, and are available to the public for examination Monday through Friday between the hours of 8:00 a.m. and 4:30 p.m.

GIST/ANALYSIS:

The gist of this rule and the underlying reason for the rulemaking is to ensure the Oklahoma Pollutant Discharge Elimination System (OPDES) is in compliance with the Department's delegation agreement with the Environmental Protection Agency (EPA) and to ensure Oklahoma retains responsibility for administering the National Pollutant Discharge Elimination System (NPDES) Program in Oklahoma. The Department proposes to update its rules concerning the date of the incorporation by reference for the Code of Federal Regulations from July 1, 2015, to July 1, 2016. The most significant federal regulation updates being incorporated are an update regarding electronic reporting for NPDES; an update to the effluent limitations guidelines and standards (ELGs) for the steam electric power generating industry; and an update that establishes pretreatment standards that prevent the discharge of pollutants in wastewater from onshore unconventional oil and gas (UOG) extraction facilities to publicly owned treatment works (POTWs). The electronic reporting update will modernize the reporting of NPDES discharge program information from paper-based reporting to electronic reporting. The ELGs update establishes nationally applicable limits on the amount of toxic metals and other harmful pollutants that coal-fired steam electric power plants are allowed to discharge. The pretreatment standards for the discharge of pollutants in wastewater from onshore UOG extraction facilities to POTWs will help protect the operational integrity of POTWs.

CONTACT PERSON:

The contact person is Mark Hildebrand (Procedural, legal and technical questions). Mark may be contacted at: Mark.Hildebrand@deq.ok.gov (e-mail), (405) 702-8100 (phone) or (405) 702-8101 (fax). The DEQ is located at 707 N. Robinson, Oklahoma City, Oklahoma 73102. The DEQ's mailing address is P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2017:

SUBCHAPTER 1. INTRODUCTION

252:606-1-4. Date of federal regulations incorporated

When reference is made to 40 CFR it means, unless otherwise specified, the volume of 40 CFR as published on July 1, ~~2015~~2016.

[OAR Docket #17-543; filed 6-29-17]

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

[OAR Docket #17-544]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:

- Subchapter 1. General Provisions
 - 252:624-1-2 [AMENDED]
 - 252:624-1-3 [AMENDED]
 - 252:624-1-4 [AMENDED]
 - 252:624-1-5 [NEW]
- Subchapter 3. Design and Construction Standards
 - 252:624-3-1 [AMENDED]
 - 252:624-3-2 [AMENDED]
- Subchapter 5. Pre-Operational Disinfection and Testing
 - 252:624-5-1 [AMENDED]
 - 252:624-5-2 [AMENDED]
- Subchapter 7. Operation and Maintenance
 - 252:624-7-1 [AMENDED]
 - 252:624-7-2 [AMENDED]
- Subchapter 9. Closure
 - 252:624-9-1 [AMENDED]
- Appendix A. Generic Plans for Minor Public Water Supply System [REVOKED]
- Appendix A. Generic Plans for Minor Public Water Supply System [NEW]

AUTHORITY:

Environmental Quality Board; 27A O.S. §2-2-101; Water Quality Management Advisory Council, 27A O. S. § 2-2-201; and 27A O.S. §§ 2-6-303 and 2-6-304.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

November 7, 2016

COMMENT PERIOD:

December 1, 2016 through December 31, 2016

PUBLIC HEARING(S):

January 10, 2017 and February 17, 2017

ADOPTION:

February 17, 2017

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

February 24, 2017

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 13, 2017

FINAL ADOPTION:

June 13, 2017

EFFECTIVE:

September 15, 2017

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The gist of the rule that the Department is proposing is to: (1) clarify the definition of a "Minor Public Water Supply System"; (2) add the definitions for "Annular Space," "Human Consumption," "Individual Water System," "Multi-Family Dwelling," "PAS," and "WSC"; (3) add language to the minor public water supply rules that incorporates the existing Permit to Supply law as outlined in §27A-2-6-304; (4) create a "Certification of Exemption" for facilities that use the water solely for hand washing or toilet flushing; (5) grant authority for DEQ to approve requested variances; (6) add language creating separation distances from wastewater lagoons to be consistent with Water Resources Board regulations; (7) clarify language regarding separation distances from on-site sewage systems; (8) remove the requirement of a surface casing; (9) add language allowing bentonite clay as an acceptable grouting material; (10) add language to allow for the use of pitless well adapters; (11) amend the appendix to show the changes to the rule and update drawings; and (12) make other minor clarifications and corrections.

CONTACT PERSON:

The contact person is George Russell. George may be contacted at: george.g.russell@deq.ok.gov (e-mail) or (405) 702-6100 (phone). The DEQ is located at 707 N. Robinson, Oklahoma City, Oklahoma 73102. The DEQ's mailing address is P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S.,

SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2017:

SUBCHAPTER 1. GENERAL PROVISIONS

252:624-1-2. Definitions

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

"Annular space" means the opening between the surface or production casing and the side of the bore hole.

"ANSI" means the American National Standards Institute.

"API" means the American Petroleum Institute.

"ASTM" means the American Society for Testing and Materials.

"AWWA" means the American Water Works Association.

"DEQ" means the Department of Environmental Quality.

"Disinfection" means a process that inactivates pathogenic organisms in water using chlorination.

"Drinking water standards" means the list of maximum contaminant levels for drinking water for public water systems as determined by EPA.

"EPA" means the Environmental Protection Agency.

"Human consumption" means drinking, bathing, showering, food preparation, dishwashing, eye washing, or maintaining oral hygiene. For the purposes of this Chapter hand-washing is not considered consumption.

"Individual water system" means a water system serving only one single-family residence.

"Licensed well driller" means and refers to the individual owner-proprietor or partnership, firm or corporation licensed by the OWRB to engage in the business of the commercial drilling, plugging, reconstruction and/or test drilling of water wells in the State of Oklahoma.

"Minor public water supply system" means a system, ~~whether publicly or privately owned, that supplies water under pressure to the public (for compensation or not) through pipes or other constructed conveyances and is not classified as a community system, non community system, or non transient non community system in OAC 252:626. Excluded from this definition are water supply systems that of one or more water wells or surface water treatment plants that provides water to the public for human consumption:~~

- ~~(A) are constructed, inspected, and maintained under the Construction Industries Board plumbing code;~~
- ~~(B) purchase water from a permitted water system;~~
- ~~(C) do not provide treatment; and~~
- ~~(D) do not resell water.~~
- (A) through pipes or other constructed conveyances
- (B) for compensation or not,
- (C) has fewer than 15 connections,
- (D) serves fewer than 25 people, and
- (E) is not an individual water system. A water system is not an individual water system if it serves:

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- (i) a single-family residence housing a commercial business that serves water to the public, or
- (ii) more than one dwelling, or
- (iii) one or more multi-family dwellings.
- (iv) Excluded from this definition are water systems that
 - (I) purchase water from a permitted water system, or
 - (II) only provide water to family members, or
 - (III) have a well for each single-family residence or each unit of a multi-family dwelling, or
 - (IV) qualify as a public water supply system in accordance with OAC 252:626.

"Multi-family dwelling" means a single structure designed and suitable for use of two or more families.

"NSF" means the National Sanitation Foundation.

"NTU" means Nephelometric Turbidity Unit.

"OWRB" means the Oklahoma Water Resources Board.

"PAS" means Pitless Adapter Standard.

"PPM" means parts per million.

"PSI" means pounds per square inch.

"PVC" means polyvinylchloride.

"Service line" means the water supply line that runs between the water main and a residential structure, commercial structure or a water hydrant.

"Slow sand filtration" means a process involving passage of raw water through a bed of sand at low velocity (generally less than 50 gallons/ft²/day) resulting in substantial particulate removal by physical and biological mechanisms.

"Turbidity" means the amount of suspended material in water measured using a nephelometer and expressed in NTU's.

"UL" means Underwriter Laboratories.

"VOC" means volatile organic compound.

"Water main" means a public water supply line that carries potable water to more than one service line.

"Water source" means any lake, stream, spring or groundwater supply that is used as treated or untreated water for a minor public water supply system.

"WSC" means Water Systems Council.

252:624-1-3. Authorizations and permits

(a) **Requirement for authorizations and permits.** This Chapter implements the Uniform Permitting Act, 27A O.S. § 2-14-101 *et seq.* and the rules promulgated thereunder. No one may construct a new minor public water supply system, ~~modify~~amend an existing minor public water supply system or put an existing water well into use as a minor public water supply system until the requirements of 252:624-1-4 have been met and DEQ has issued to the owner of a minor public water supply system either:

- (1) an authorization to construct or ~~modify~~—amend a minor public water supply system under the general permit, the terms of which are the rules of this Chapter including a system for which a variance has been granted in accordance with 252:624-1-5; or

(2) ~~an individual permit~~ a permit to construct from DEQ's Water Quality Division issued pursuant to OAC 252:626. An individual permit A permit to construct will be required when the proposed minor public water supply system cannot be constructed or modified according to the design standards in this Chapter; or

(3) a permit to supply water which is subject to the following:

(A) Only minor public water supply systems constructed without an authorization to construct and were being used to serve water to the public prior to June 1, 2011 qualify for a permit to supply water.

(B) The minor public water supply system must meet drinking water standards.

(C) The minor public water supply system may be subject to additional monitoring requirements as determined by DEQ and may include other permit conditions necessary to assure compliance with drinking water standards.

(b) **Applying for authorizations.** An applicant seeking an authorization to construct ~~a new or modify~~ amend a minor public water supply system or obtain a permit to supply shall submit the following to DEQ:

(1) **Application form.** A completed and signed DEQ Form 624-001, "Application for ~~Authorization to Construct or Modify~~ a Minor Public Water Supply System."

(2) **Site drawing.** A site drawing that includes:

(A) ~~the~~ property lines;

(B) ~~the~~ location of the proposed or existing well;

(C) ~~the~~ location of any one-hundred-year flood plain within one quarter (1/4) of a mile of the proposed or existing water well; and

(D) all potential sources of pollution within three hundred feet (300') of the proposed or existing water well.

(3) **Affidavit.** A completed and signed affidavit certifying that:

(A) the minor water system will be constructed or modified in accordance with the generic plans set ~~for~~ forth in Appendix A; and

(B) the applicant:

(i) owns the property where the minor public water supply system will be located; or

(ii) has a current lease or easement for the purpose of constructing and operating the minor public water supply system.

(4) **Wellhead protection checklist.** A completed and signed DEQ Form 624-002, "Wellhead Protection Checklist."

(5) **Authorization fee.** The required authorization fee. [See 252:624-11 (relating to fees)].

(6) **Pre-existing systems.** If a pre-existing system is reclassified or newly discovered as a minor public water supply system they must also include with the application:

(A) any previous sample results,

(B) the OWRB Multi-purpose Well Completion & Plugging Report, and

(C) any other information as requested by DEQ.

(c) **Certification of Exemption.** Facilities that fall under the definition of a minor public water supply system, but do not provide water for human consumption shall submit a completed and signed DEQ form 624-013, "Certification of Exemption."

(1) In order to be approved for this exemption, facilities must not allow water from the source to be used for the following:

- (A) drinking;
- (B) showering or bathing;
- (C) eye washing;
- (D) food or beverage preparation;
- (E) dishwashing; or
- (F) oral hygiene.

(2) Facilities shall post signs at all sinks and faucets that state "NOT FOR CONSUMPTION".

252:624-1-4. General requirements

(a) **Ownership.** Minor public water supply systems shall be located only where one of the following can be met:

(1) All parts of the minor public water supply system, including the wellhead, water mains and service lines, are or will be located on property that is:

- (A) owned by the owner(s) of the minor public water supply system; and/or
- (B) dedicated in a recorded easement (for the installation and operation of the minor public water supply system) to the owner of the minor public water supply system;

(2) All of the users of the minor public water supply system:

- (A) own the property where the wellhead is or will be located; and
- (B) own or have a dedicated recorded easement to the property where the mains are or will be located; or

(3) The wellhead and water mains are or will be located on property that is owned by or dedicated to a home owners association:

- (A) for which all of the users are members;
- (B) that was established under the laws of the State of Oklahoma;
- (C) that has the legal authority to own, maintain, repair and operate the minor public water supply system;
- (D) that has by-laws providing that dissolution of the association cannot occur until the system is either abandoned or transferred to another viable operating entity; and
- (E) that has the instrument creating the association on file in the office of the county clerk where the property is located; or

(4) All components of the minor public water supply system, excluding service lines, are or will be located on property that is:

- (A) owned by a municipality, rural water district, rural sewer district or federally recognized tribe; and/or

(B) dedicated to a municipality, rural water district, rural sewer district or federally recognized tribe in a recorded easement.

(b) **Flood plain restrictions.** ~~Wellheads~~ The top of the well casing shall be located above the 100-year flood plain, unless other protective measures are provided.

(c) **Laboratory.** All analyses required to be completed by a laboratory in this Chapter shall be performed by a laboratory accredited and certified by DEQ or EPA for the particular analyte.

(d) **Testing water source.** Water sources for proposed new minor public water supply systems shall be tested for applicable contaminants before ~~completing construction of the minor public water supply system as follows~~ supplying water to the public for the following:

(1) **Nitrates.** A representative sample of the water from all proposed water source shall be tested by a laboratory for nitrates. Water sources containing nitrates higher than ten (10) ppm shall not be used as a water source for minor public water supply systems.

(2) ~~Wells near gasoline underground storage tanks~~ **VOCs.** Proposed minor public water supply system wells located within three-hundred feet (300') of a ~~gasoline petroleum~~ underground storage tank shall have water samples analyzed for ~~VOC's~~ VOCs by a laboratory once a year. A water source containing ~~VOC's~~ VOCs higher than the applicable drinking water standards shall not be used as a water source for a minor public water supply system.

(3) **Other contaminants.** Based on the location of the water source, DEQ shall have the authority to request testing for other contaminants.

(e) **Construction.** All minor public water supply systems shall be constructed to meet or exceed the standards in accordance with the rules in this Chapter or the terms of their individual permit.

(f) **Disinfection prior to final inspection.** All parts of a minor public water supply system that will come in contact with potable water shall be disinfected prior to requesting a final inspection as required in 252:624-5-1.

(g) **Bacteriological testing prior to final inspection.** The applicant shall have test results from a laboratory that are negative for total coliform bacteria on two (2) consecutive days before requesting a final inspection. [See 252:624-5-2 (relating to pre-operational disinfection and testing of finished water).]

(h) **Final inspection and approval required.** Water from a minor public water supply system shall not be offered to the public for consumption until DEQ conducts a final inspection and approves the construction. The applicant shall request a final inspection by submitting to DEQ the following:

- (1) a completed and signed DEQ Form 624-003, "Request for Final Inspection of Minor Public Water Supply System;";
- (2) test results from a laboratory showing the results of nitrate analysis and any other analyses performed;
- (3) test results from a laboratory showing two consecutive days of safe bacteriological testing following initial disinfection of a new well;

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- (4) ~~a copy of the well driller's log; and~~
(~~5~~) a completed and signed copy of the ~~Groundwater—Multi-Purpose Well Completion & Plugging Report~~ (OWRB form).
- (i) **Operational standards.** All minor public water supply systems shall be operated in compliance with the operational standards in this Chapter.
- (j) **Closure.** All abandoned minor public water supply systems shall be properly closed according to the standards in this Chapter.

252:624-1-5. Variances

A variance may be requested when construction of the well does not meet the standards set forth in this Chapter. Variance requests shall include DEQ form 624-012 (Application for a Variance) and any other information as requested by DEQ. Upon review, DEQ may approve alternative processes, equipment, separation distances, and other construction standards not specified in this Chapter. Any variance granted shall be at least as protective of human health and the environment as the standards set forth in this Chapter, and show that the intent of the rules of this Chapter are being met.

SUBCHAPTER 3. DESIGN AND CONSTRUCTION STANDARDS

252:624-3-1. Design and construction of minor public water supply system wells

- (a) **Licensed well driller.** Minor public water supply system wells shall be drilled and completed:
- (1) by a licensed well driller; and
 - (2) in compliance with OWRB rules.
- (b) **Well design.** Minor public water supply system wells shall be designed and constructed in accordance with the generic plans for minor public water supply systems located in Appendix A.
- (c) **System capacity.** The daily production capacity of the minor public water supply system shall be designed to equal or exceed the maximum daily demand.
- (d) **Separation distances.** Minor public water supply system wells shall be located a sufficient distance from potential sources of pollution to assure that contaminants cannot reach the well. ~~The meet the following are the mandatory—~~minimum separation distances:
- (1) Fifty feet (50') from existing septic tanks and subsurface on-site sewage treatment systems. This separation distance shall be increased to one hundred feet (100') if the septic tank and/or subsurface on-site sewage treatment system is located in soil identified as:
 - (A) ~~being a group 1 soil in the separation range as described in OAC 252:641-3 coarse sand; or~~
 - (B) ~~having a percolation rate of less than five (5) minutes per inch as described in OAC 252:641-3 loamy coarse sand; or~~

- (C) soils with a rock fragment content greater than thirty-five percent (35%) by volume having continuous voids greater than one millimeter.
- (2) Fifty feet (50') from:
 - (A) buildings that have been treated for termites;
 - (B) property lines; and
 - (C) sewer lines. If the sewer line is Schedule 40 PVC, then the separation distance from the sewer line may be decreased to ten feet (10'); and
- (3) One hundred feet (100') from ~~gasoline—~~petroleum underground storage tanks and all other pollution sources.
- (4) Three hundred feet (300') from the outside perimeter of an existing or proposed wastewater lagoon.
- (e) **Approved materials.** All materials that will come in contact with potable water must be approved by the NSF, UL, WSC or AWWA for use in public drinking water supplies and made of material that will not impart taste, odor, toxic substances or bacterial contamination to the water.
- (~~f~~) **Well surface casing.** ~~Every minor public water supply well must have a watertight surface casing extending at least twenty feet (20") below the surface. DEQ may require a greater depth when necessary to eliminate contamination from the surface or upper formations. The pipe used as surface casing must:~~
 - (1) ~~meet ASTM, NSF or API specifications for water well construction; and~~
 - (2) ~~be clean and sanitized.~~
- (~~g~~f) **Gravel pack.** If gravel pack is used, the gravel shall be disinfected by being immersed in a chlorine solution containing not less than two hundred (200) ppm of available chlorine.
- (~~h~~g) **Grouting requirements.** Minor public water supply system wells shall be made watertight around the outside of the ~~surface casing by grouting to a depth necessary to exclude pollution. But in—~~In no case shall the depth of the grouting be less than twenty (20) continuous feet. ~~The grout shall be made of cement that conforms to ASTM Standard C150 mixed with no more than six (6) gallons of water per ninety four pound (94 lb.) sack of cement. When the opening between the surface casing and the side of the bore hole (annular opening) is:—~~The grout may be a bentonite grout, cement grout or a combination of the two. Grout must be installed so that bridging will not occur in the annular space.
 - (1) The cement grout shall conform to ASTM Standard C150, mixed with no more than six (6) gallons of water per ninety-four pound (94 lb.) sack of cement. When the annular space is:
 - (1~~A~~) one and one-half inches (12")—(1.5") thick, then additives may not be used to increase the cement's fluidity without prior approval by DEQ.
 - (2~~B~~) greater than one and one-half inches (12")(1.5"), then sand may be added to the grout mix with a ratio of no more than one part sand to one part cement.
 - (3~~C~~) greater than four inches (4"), then one-half inch (2")(1.5") gravel or smaller may be added to the cement grout mix.

(2) The bentonite grout shall consist of chip, chunk or pelletized bentonite varieties that are hydrated to manufacturer's specifications. If bentonite grout is used the annular space shall be a minimum of two inches (2").

(3) Where a pitless adapter or unit is being installed, the grouting shall start below the junction of the pitless well adapter or unit where it attaches to the well casing and shall continue to at least twenty feet (20') below this junction.

(ih) **Well screens.** When well screens are used:

(1) the screens shall be constructed of materials resistant to damage by ground water or cleaning operations; and

(2) ~~the openings shall be sized based on a sieve analysis of the surrounding formation and the gravel pack materials to permit the maximum flow of water without allowing the infiltration of clogging material. the slot size shall be selected to prevent or minimize infiltration of the filter pack through the well screen.~~

(ji) **Slab around well casing.** The slab around the well casing shall:

(1) be constructed with reinforced concrete not less than three and one-half inches (~~3-2")~~(3.5") thick;

(2) extend at least twelve inches (12") from the well casing in all directions;

(3) extend at least three inches (3") above the surrounding ground; and

(4) slope at least one-eighth of an inch (1/8") per foot away from the well casing.

(kj) ~~Pitless well adapters and units. Pitless well adapters are prohibited from use in minor public water supply systems. A pitless well unit or pitless adapter may be used if it meets the standards of the most recent PAS-97 CC(04) in a listing maintained by the WSC, as developed by the Water Systems Council and installation is performed in a manner meeting or exceeding manufacturer's installation requirements.:~~

(1) ~~is shop fabricated from the point of connection to the well casing to the unit cap or cover;~~

(2) ~~is threaded or welded to the well casing;~~

(3) ~~is made of materials equivalent in composition and weight to the well casing;~~

(4) ~~connects to the lateral discharge with a threaded, flanged or mechanical joint connection; and~~

(5) ~~is designed to provide access to disinfect the well.~~

(hk) **Wellhead.** The wellhead shall be constructed as follows:

(1) The well casing shall extend at least:

(A) twelve inches (12") above the ~~final ground surface~~ concrete slab; and

(B) two feet (2') above the 100-year flood plain or the highest known flood elevation, whichever is higher.

(2) The top of the casing shall be sealed with a well seal or a cap. The well seal or cap shall ~~include a rubber gasket seal and be designed to exclude foreign matter~~ be WSC approved.

(3) The discharge piping shall:

(A) be equipped with a:

(i) check valve;

(ii) shutoff valve;

(iii) pressure gauge; and

(iv) sampling tap located between the wellhead and the shutoff valve.

(B) have all exposed piping, valves and appurtenances protected against physical damage and freezing.

(C) be properly anchored to prevent movement.

(D) be protected against surge or water hammer.

(E) not be connected to any source of contamination or be configured to allow back siphonage from any source of pollution.

(4) There shall be access to disinfect the well.

(5) There shall be a properly constructed well casing vent that:

(A) vents to the atmosphere and prevents a vacuum in the well casing, unless designed for vacuum operation.

(B) is fitted into the well cap or pump base so as to form a water-tight connection.

(C) terminates in a full one hundred eighty degree (180°) bend above the top of the well casing.

(D) has a corrosion resistant screen covering the vent opening. The openings in the screen must not be larger than 24-mesh.

(ml) **Full-time disinfection.** When disinfection is required [see 252:624-5-2 and 7-1(c) (relating to sampling and testing)], either a positive displacement hypochlorite chlorinator or an NSF approved tablet chlorinator shall be provided prior to distribution. The water supply piping for the chlorinator shall be designed to prevent back-siphonage or cross connections with non-potable water.

(nm) **Electrical controls.** All electrical controls shall be protected from flooding.

(on) **Well security.** Minor public water supply systems shall be protected from vandalism, trespass and sabotage by either having:

(1) the wellhead located in a locked well house; or

(2) a locked cap on the wellhead.

252:624-3-2. Design and construction of distribution systems

(a) **Minimum pressure of 25 psi.** The distribution system shall be designed and constructed to maintain a minimum pressure of twenty-five (25) psi throughout the distribution system under normal operating conditions including peak demand.

(b) **Material specifications.** All materials used in the construction of the distribution system, including piping, fittings, valves, gaskets, packing and other joint materials, shall meet the latest specifications issued by AWWA, ASTM, NSF, or ANSI for use in public drinking water supply systems. When distribution lines are installed in soil or groundwater that is contaminated by organic compounds, the pipe and joint materials shall be made of materials that are not subject to permeation by organic compounds.

(c) **Sizing of water lines.** Water lines shall be sized to furnish water at the volume and pressure required by the ~~applicable plumbing code~~ most current International Plumbing

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~~Code. Water mains shall be a minimum of two inches (2") in diameter.~~

(d) **Separation of water lines from potential sources of pollution.** The following are the required horizontal and vertical separation distances between water lines and potential sources of pollution.

(1) **Horizontal separations.** Water lines shall be located a minimum of:

(A) five feet (5') from any existing or proposed storm sewers, septic tanks, aerobic treatment units, trash tanks, sewage pump tanks, raw water lines, petroleum product lines, natural gas lines and other buried utility lines.

(B) ten feet (10') from any existing or proposed sewer line.

(C) fifteen feet (15') from any on-site sewage dispersal field.

(D) ten feet (10') from any ~~gasoline—petroleum~~ underground storage tank and/or line, when the water lines are made of cast iron.

(E) fifty feet (50') from any ~~gasoline—petroleum~~ underground storage tank and/or line, when the water lines are made of PVC.

(2) **Vertical separations.** When a water line crosses a sewer line, there shall be a minimum vertical separation distance of twenty-four inches (24") between the water line and the sewer line. The piping shall be arranged so that the joints in the water line do not cross within ten feet (10') of any joints in the sewer line.

(3) **Special conditions.** When it is impossible to obtain the horizontal and vertical separation distances listed in this Subsection, the sewer shall be constructed equal to water line specifications.

(e) **Depth of water mains.** Water mains shall be installed at least thirty inches (30") deep or have sufficient insulation to prevent freezing.

(f) **Bedding for water lines.** Water lines shall be bedded in rock-free material to a depth of at least six inches (6") below the bottom of the pipe. The bedding material shall be tamped in layers around the pipe and to a sufficient height above the pipe to adequately support and protect the pipe.

(g) **Blocking.** Reaction blocking, tie rods, or joints shall be provided to prevent movement of the water line at all tees, bends, plugs and hydrants.

(h) **Dead ends in water main.** An approved flushing hydrant or blow-off valve shall be installed at each dead end in the water main. Flushing devices shall not be connected directly to any sewer.

SUBCHAPTER 5. PRE-OPERATIONAL DISINFECTION AND TESTING

252:624-5-1. Disinfection and flushing required prior to placing minor public water supply systems into operation

(a) **Disinfection.** All parts of a minor public water supply system that may come in contact with potable water shall be

disinfected prior to offering water from the system to the public for consumption.

(1) **Completed wells.** Completed wells shall be disinfected by mixing enough chlorine in the well water to maintain a chlorine residual of fifty (50) ppm for at least twelve (12) hours.

(2) **Clear wells.** Clear wells shall be disinfected by filling the clear well with water and enough chlorine to maintain a chlorine residual of fifty (50) ppm for at least twelve (12) hours.

(3) **Piping, pumps and fixtures.** All piping, pumps and fixtures in the minor public water supply system shall be disinfected by:

(A) drawing the 50 ppm chlorine solution from the well or clear well through all of the water mains, distribution lines and plumbing fixtures until a chlorine odor is detected; and

(B) allowing the chlorinated water to sit in the lines and fixtures for twelve (12) hours.

(b) **Flushing.** Once the disinfection procedure outlined in (a) of this Section has been completed, the system shall be flushed until a chlorine odor cannot be detected at any point in the system.

252:624-5-2. Testing prior to placing minor public water supply systems into operation

(a) **Water samples.** Following the disinfection and flushing procedure outlined in OAC 252:624-5-1, water samples shall be collected from the distribution system at the tap located the farthest distance from the wellhead on two (2) consecutive days and submitted to a laboratory for bacteriological analysis.

(b) **Testing results.**

(1) **Total coliform positive test results.** If either of the sample results required in (a) of this Section come back positive for coliform bacteria, then the disinfection and flushing procedure outlined in OAC 252:624-5-1 shall be repeated. When two (2) consecutive days of coliform negative samples cannot be obtained despite repeated disinfection efforts, then full-time disinfection will be mandatory.

(2) **Fecal coliform positive.** If any of the sample results required in (a) of this Section come back positive for fecal coliform, then a retake sample must be submitted for analysis at a laboratory. If the results of a retake sample come back positive for fecal coliform, then ~~full-time disinfection will be mandatory—the source water cannot be used for a minor public water supply well.~~ If additional cleaning and disinfection of the well results in safe bacteriological samples, DEQ may evaluate the sampling history to determine if the well is approvable as a minor public water supply well.

(3) **Total coliform negative test results.** If the sample results required in (a) of this Section come back negative for coliform bacteria for two (2) consecutive days, then the minor public water supply system may be put into operation after receiving approval from DEQ following the required final inspection [see OAC 252:624-1-4(h) (relating to final inspections)].

SUBCHAPTER 7. OPERATION AND MAINTENANCE

252:624-7-1. General operation and maintenance provisions

- (a) **Owner responsibilities.** The owner of a minor public water supply system shall be responsible for:
 - (1) operating and maintaining the minor public water supply system in accordance with the terms of the authorization or permit;
 - (2) operating and maintaining the minor public water supply system in compliance with this Chapter;
 - (3) repairing or replacing any broken or malfunctioning components of the minor public water supply system as soon as practicable;
 - (4) immediately notifying all consumers of the need to heat the water to a full rolling boil for one minute before consumption or to discontinue the use of the water when repeat water samples test positive for total or fecal coliform;
 - (5) immediately submitting to DEQ copies of any laboratory analysis results that exceed any drinking water standard(s); and
 - (6) immediately notifying all customers of the result of any analysis that exceeds drinking water standards and any precautionary measures necessary to protect the public health.
- (b) **Minimum pressure.** The minor public water supply system shall be operated to maintain a minimum pressure of twenty-five (25) psi throughout the distribution system under normal operating conditions including peak demand periods.
- (c) **Sampling.** The water from minor public water supply systems shall be sampled and analyzed by a laboratory once a year for coliform bacteria. ~~Minor public water supply systems that operate intermittently or on a seasonal basis shall, after periods of non use, be flushed, disinfected and flushed according to OAC 252:624-5-1, and sampled for bacteriological analysis by a laboratory prior to placing the system into operation.~~ If the sample results come back:
 - (1) positive for coliform bacteria, then the disinfection procedure outlined in OAC 252:624-5-1 shall be repeated and a follow-up sample shall be collected for laboratory analysis.
 - (A) If the follow-up bacteriological analysis comes back negative, then the bacteriological sampling shall be done on a monthly basis until a sample comes back coliform negative without disinfection.
 - (B) When a coliform negative sample cannot be obtained after three disinfection attempts, then full-time disinfection will be required.
 - (2) positive for fecal coliform, then a retake must be submitted for analysis at a laboratory. If the results of the retake sample come back positive for fecal coliform, then full-time disinfection will be mandatory.
 - (3) negative for coliform bacteria, then the minor public water supply system may continue or begin to serve water to the public.

- (d) **Chlorine monitoring.** When disinfection is mandatory, a free chlorine residual of at least 0.2 ppm shall be maintained at the farthest point in the distribution system. The free chlorine residual at the farthest point in the distribution system shall be monitored daily. The free chlorine residual shall be analyzed in accordance with the latest edition of "Standard Methods for the Examination of Water and Wastewater."
- (e) ~~Wells near gasoline underground storage tanks~~ **VOCs.** Minor public water supply system wells located within three hundred feet (300') of ~~gasoline-petroleum~~ underground storage tanks shall have water samples analyzed for ~~VOC's~~ **VOCs** by a laboratory once a year. A water source containing ~~VOC's~~ **VOCs** higher than the applicable drinking water standards shall not be used as a water source for minor public water supply system.
- (f) **Additional testing.** Systems that treat for the removal of regulated contaminants shall have samples analyzed for those contaminants by a laboratory at a frequency specified by DEQ.
- (g) **Records.** Records of all control tests and the results of all laboratory analyses shall be maintained at the facility for a period of ten (10) years.
- (h) **Security.** All security measures, including locks on well houses and wellheads, shall be maintained to prevent vandalism, trespass, and sabotage.
- (i) **Seasonal Systems.** Systems, which operate on an intermittent or seasonal basis, shall submit bacteriological samples on two (2) consecutive days prior to placing the system into operation. The system can be placed into operation only after the samples are shown to be safe.

252:624-7-2. Additional maintenance requirements for slow sand filtration systems

- (a) **Source water turbidity.** Slow sand ~~filtration~~ **filtration** systems shall not receive source water with a turbidity of more than thirty (30) NTU.
- (b) **Finished water turbidity.** The finished water turbidity of slow sand filtration systems shall be measured once per day while the minor public water supply system is in operation. The finished water turbidity must be below one (1.0) NTU.
- (c) **Filter sand depth and specifications.** The depth of the filter sand in a slow sand filtration system shall be maintained at a depth of at least twenty-four inches (24"). Replacement filter media shall consist of clean silica with an effective size between 0.30 to 0.65 mm and a uniformity coefficient lower than 3.0.
- (d) **Maximum filtration rate.** Slow sand filtration systems shall be operated so that the rate of filtration does not exceed fifty (50) gal/ft² of filter area per day.
- (e) **Backwash.** Slow sand filtration shall not be back-washed.

SUBCHAPTER 9. CLOSURE

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252:624-9-1. Minor public water supply system well abandonment

Any minor public water supply system well that is permanently removed from service shall be permanently plugged in accordance with OWRB rules. If the well was constructed

to prevent undesirable exchange of water from one aquifer to another, the well may be sealed with a locked sanitary well seal instead of being plugged. A copy of the Multi-Purpose Well Completion & Plugging Report shall be submitted to DEQ.

APPENDIX A. GENERIC PLANS FOR MINOR PUBLIC WATER SUPPLY SYSTEM [REVOKED]

APPENDIX A. GENERIC PLANS FOR MINOR PUBLIC WATER SUPPLY SYSTEM [NEW]

Figure 1. Wellhead and slab (Overhead View)

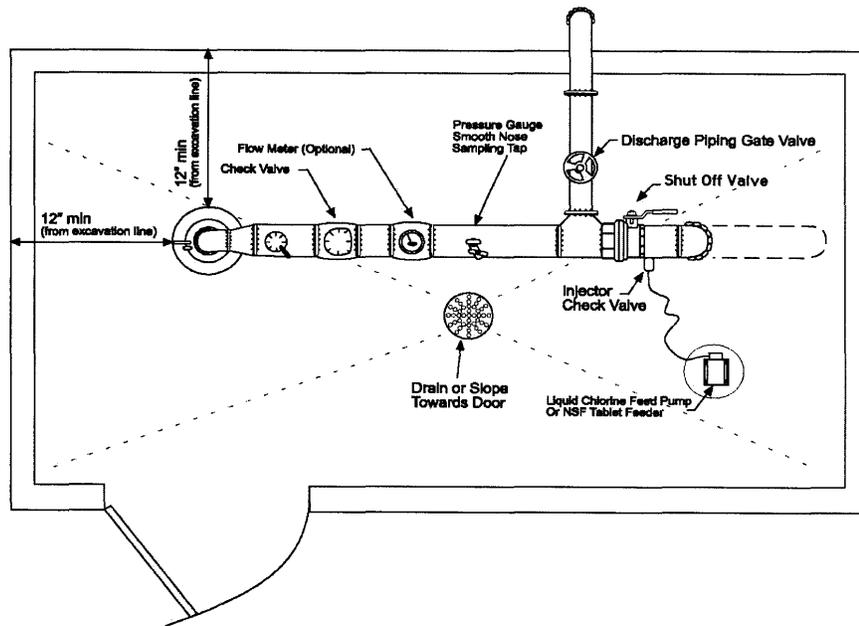


Figure 2. Wellhead and slab (Side View)

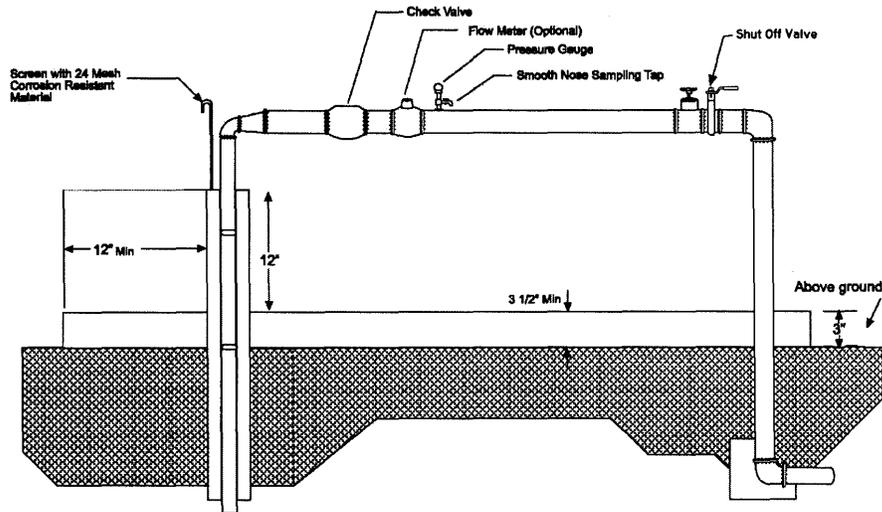


Figure 3. Well

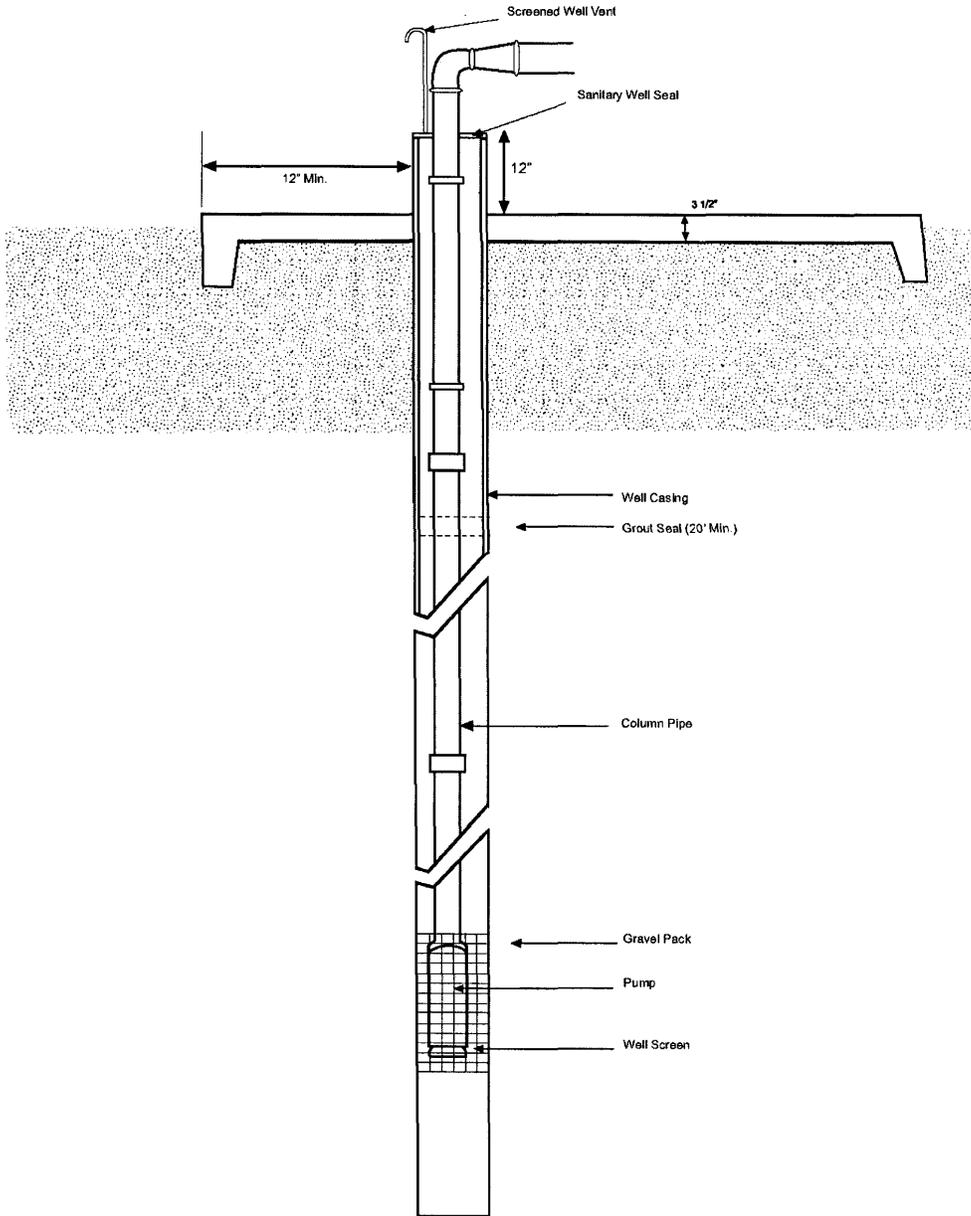
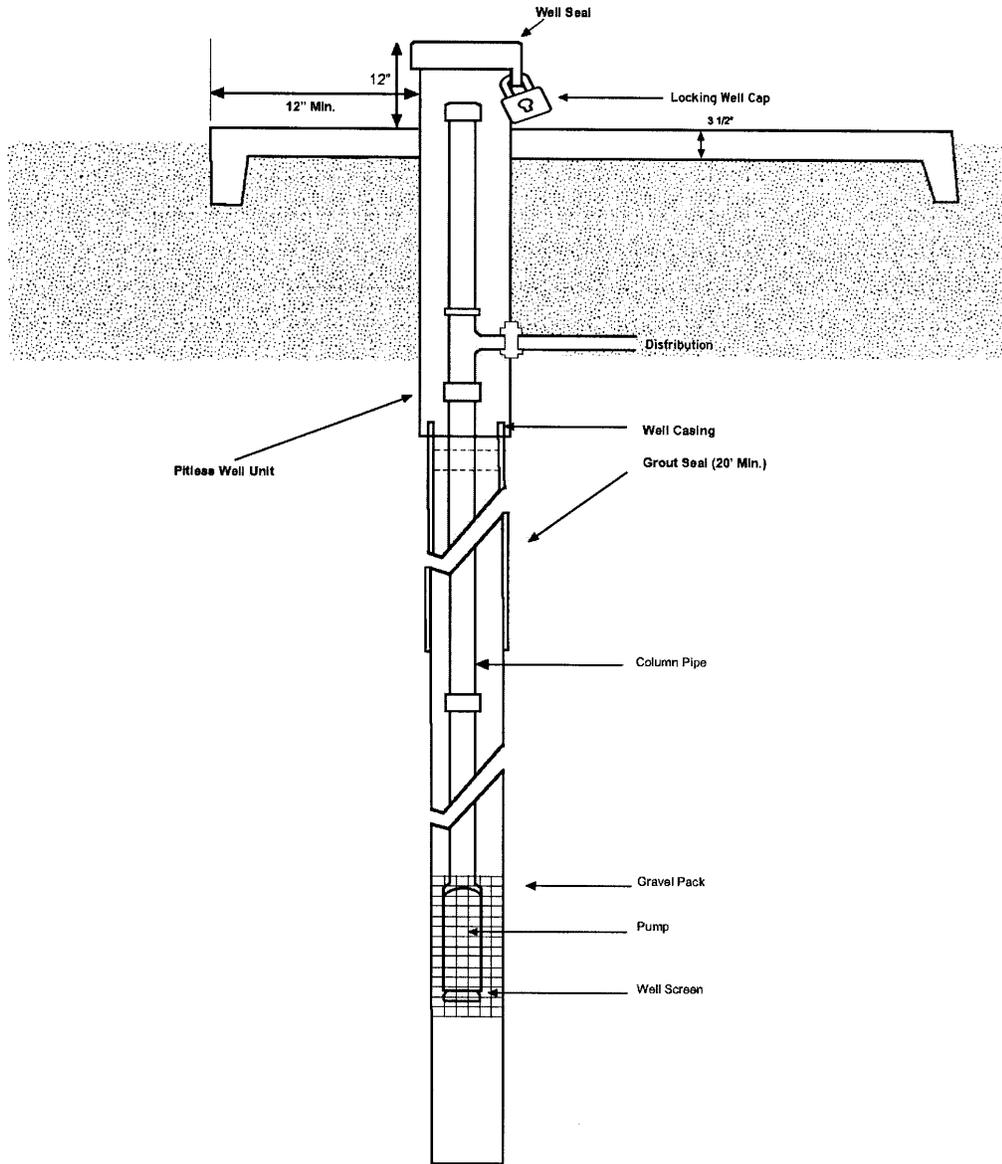


Figure 4. Pitless Well Unit or Adapter



[OAR Docket #17-544; filed 6-29-17]

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

[OAR Docket #17-545]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. Introduction
252:690-1-4 [AMENDED]
252:690-1-4.1 [NEW]

AUTHORITY:

Environmental Quality Board; 27A O.S. § 2-2-101; Water Quality Management Advisory Council, 27A O.S. § 2-2-201; and 27A O.S. §§ 1-3-101, 2-3-202, 2-3-402, 2-3-501, 2-6-103, 2-6-203, 2-6-402 and 2-6-501.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

August 8, 2016

COMMENT PERIOD:

September 1, 2016, through October 3, 2016

PUBLIC HEARING:

Before the Council on October 4, 2016, and before the Environmental Quality Board on November 9, 2016.

ADOPTION:

November 9, 2016

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

November 17, 2016

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 13, 2017

FINAL ADOPTION:

June 13, 2017

EFFECTIVE:

September 15, 2017

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

Incorporated standards:

Date of CFR provisions incorporated by reference in these rules is changed to "as published on July 1, 2016."

Incorporating rules:

OAC 252:690-1-4

Availability:

The standards are on file at the Department of Environmental Quality, 707 North Robinson, Oklahoma City, Oklahoma, 73102, and are available to the public for examination Monday through Friday between the hours of 8:00 a.m. and 4:30 p.m.

GIST/ANALYSIS:

The gist of this rule and the underlying reason for the rulemaking is to ensure the Oklahoma Pollutant Discharge Elimination System (OPDES) is in compliance with the Department's delegation agreement with the Environmental Protection Agency (EPA) and to ensure Oklahoma retains responsibility for administering the National Pollutant Discharge Elimination System (NPDES) Program in Oklahoma. The Department proposes to update its rules concerning the date of the incorporation by reference for the Code of Federal Regulations from July 1, 2015, to July 1, 2016. Additionally, the Department is separating into two sections the date of incorporation by reference and the list of rules incorporated. This change is consistent with other rules and will ease future rulemaking since the date of incorporation, not the list of rules, must be updated regularly.

CONTACT PERSON:

The contact person is Mark Hildebrand (Procedural, legal and technical questions). Mark may be contacted at: Mark.Hildebrand@deq.ok.gov (e-mail), (405) 702-8100 (phone) or (405) 702-8101 (fax). The DEQ is located at 707 N. Robinson, Oklahoma City, Oklahoma 73102. The DEQ's mailing address is P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677.

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

FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2017:

SUBCHAPTER 1. INTRODUCTION

252:690-1-4. Incorporation of EPA regulations by reference

The following federal regulations at 40 CFR, ~~as published on July 1, 2015~~ are incorporated by reference and applicable to this Chapter:

(1) **OAC 252:205 (Hazardous Waste Management)**. 124.31, 124.32, & 124.33, substituting DEQ for EPA, and deleting the following sentence from each section: For the purposes of this section only, "Hazardous waste management units over which EPA has permit issuance authority" refers to hazardous waste management units for which the State where the units are located has not been authorized to issue RCRA permits pursuant to 40 CFR part 271.

(A) **Part 260**. Hazardous Waste Management System: General, except 260.21.

(i) In 260.20, "Federal Register" is synonymous with "The Oklahoma Register."

(ii) In 260.20(e), strike the words "or a denial."

(iii) In 260.22, references to the lists in Subpart D of Part 261 and the reference to § 261.3(a)(2)(ii) or C shall mean the lists in Subpart D of Part 261 and § 261.3(a)(2)(ii) or C as adopted by reference and applicable in Oklahoma.

(iv) In the 260.10 definitions of "new tank system" and "existing tank system", the reference to "July 14, 1986" for commencement of tank installation applies only to tank regulations promulgated pursuant to the federal Hazardous and Solid Waste Amendment ("HSWA") requirements. The following categories outline HSWA requirements:

(I) interim status and permitting requirements applicable to tank systems owned and operated by small quantity generators [3001(d)];

(II) leak detection requirements for all new underground tank systems [3004(o)(4)]; and

(III) permitting standards for underground tanks that cannot be entered for inspection [3004(w)]. For tank regulations promulgated pursuant to statutory authority other than HSWA, the date relative to the commencement of installation is November 2, 1987.

(B) **Part 261**. Identification and Listing of Hazardous Waste except 261.4(b)(18) that pertains to Utah only, thus should be excluded.

(i) In 261.4(e)(3)(iii) delete "in the Region where the sample is collected".

(ii) In 261.5(f)(3)(iv), and (v), and in 261.5(g)(3)(iv), and (v) add "other than Oklahoma" after the word "State".

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- (iii) In 261.31(a), the listing for F019, add at the end: "Zinc phosphate sludges meeting exemption conditions remain subject to regulation as hazardous waste if the waste exhibits a hazardous waste characteristic."
- (C) **Part 262.** Standards Applicable to Generators of Hazardous Waste except Subpart E and Subpart H. In 262.42(a)(2) and 262.42(b) delete "for the Region in which the generator is located".
- (D) **Part 263.** Standards Applicable to Transporters of Hazardous Waste.
- (E) **Part 264.** Standards for Owners and Operators of Hazardous Waste Treatment Storage, and Disposal Facilities. The following sections and subsections are not adopted by reference: 264.1(f), 264.1(g)(12), 264.149, 264.150, 264.301(l), 264.1030(d), 264.1050(g), 264.1080(e), 264.1080(f), and 264.1080(g).
- (i) In 264.191(a), the compliance date of January 12, 1988 applies only for HSWA tanks. For non-HSWA tanks the compliance date is November 2, 1988.
- (ii) In 264.191(c), the reference to July 14, 1986 applies only to HSWA tanks. For non-HSWA tanks the applicable date is November 2, 1987.
- (iii) In 264.193, the Federal effective dates apply to HSWA tanks only. For non-HSWA tanks January 12, 1987 is replaced with November 2, 1987.
- (iv) In 264.570(a) the dates December 6, 1990 and December 24, 1992 apply only to drip pads where F032 waste is handled. The dates June 22, 1992 and August 15, 1994 respectively, replace the dates December 6, 1990 and December 24, 1992 for drip pads where F034 or F035 wastes are handled.
- (F) **Part 265.** Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities except 265.1(c)(4), 265.1(g)(12), 265.149, 265.150, 265.1030(c), 265.1050(f), 265.1080(e), 265.1080(f), and 265.1080(g).
- (i) In 265.191(a), the compliance date of January 12, 1988 applies only for HSWA tanks. For non-HSWA tanks the compliance date is November 2, 1988.
- (ii) In 265.191(c), the reference to July 14, 1986 applies only to HSWA tanks. For non-HSWA tanks the applicable date is November 2, 1987.
- (iii) In 265.193, the Federal effective dates apply to HSWA tanks only. For non-HSWA tanks January 12, 1987 is replaced with November 2, 1987.
- (iv) In 265.440(a) the dates December 6, 1990 and December 24, 1992 apply only to drip pads where F032 waste is handled. The dates June 22, 1992 and August 15, 1994 respectively, replace the dates December 6, 1990 and December 24,

1992 for drip pads where F034 or F035 wastes are handled.

- (G) **Part 266.** Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities. Due to an early incorporation by reference, for purposes of Part 266 only, HSWA and non-HSWA dates are the same. In 266.325, the reference to 10 CFR 1.5 is changed to 10 CFR 71.5.
- (H) **Part 267.** Standards for Owners and Operators of Hazardous Waste Facilities Operating Under a Standardized Permit. This permit option shall only be available to:
- (i) those persons who generate hazardous waste on-site through, or as a result of, industrial production processes;
- (ii) wholly owned subsidiaries, owners, or sister companies of those persons specified in paragraph (1); and
- (iii) agencies, departments, or units of the federal government or the State of Oklahoma.
- (I) **Part 268.** Land Disposal Restrictions, except 268.5, 268.6, 268.13, 268.42(b) and 268.44(a) through (g). In 268.7 (a)(9)(iii) exclude D009 from the list of alternative treatment standards for lab packs.
- (J) **Part 270.** The Hazardous Waste Permit Program, except 270.1(c)(2)(ix), and 270.14(b)(18).
- (K) **Part 273.** Standards for Universal Waste Management.
- (L) **Part 279.** Standards for the Management of Used Oil, except that 279.82 is revised to read in its entirety, "The use of used oil as a dust suppressant is prohibited."
- (2) **OAC 252:606 (Discharge Standards).**
- (A) Part 116 (Hazardous Substances List)
- (B) Part 117 (Reportable Quantities for Hazardous Substances)
- (C) The following from PART 122 (NPDES PERMIT REGULATIONS):
- (i) 122.2 - (definitions)
- (ii) 122.24 - (concentrated aquatic animal production facilities)
- (iii) 122.25 - (aquaculture projects)
- (iv) 122.26 - (stormwater discharges)
- (v) 122.27 - (silviculture)
- (vi) 122.28(a) and (b) - (general permits)
- (vii) 122.29 - (new sources and new dischargers)
- (viii) 122.32 - As an operator of a small MS4, am I regulated under the NPDES storm water program?
- (ix) 122.34 - As an operator of a regulated small MS4, what will my NPDES MS4 storm water permit require?
- (x) 122.35 - As an operator of a regulated small MS4, may I share the responsibility to implement the minimum control measures with other entities?

- (xi) 122.41 - (permit conditions)
 - (xii) 122.42 - (conditions for specified categories of permits)
 - (xiii) 122.43 - (establishing permit conditions)
 - (xiv) 122.44 - (establishing permit limitations, standards and other conditions)
 - (xv) 122.45 - (calculating permit conditions)
 - (xvi) 122.46 - (permit duration)
 - (xvii) 122.47(a) - (schedules of compliance)
 - (xviii) 122.48 - (monitoring requirements)
 - (xix) 122.50 - (disposal into wells)
 - (xx) 122.61 - (permit transfer)
 - (xxi) 122.62 - (permit modification)
 - (xxii) 122.63 - (minor modifications of permits)
 - (xxiii) 122.64 - (permit termination)
 - (xxiv) Appendices A through J
 - (D) The following from PART 125 (criteria and standards for NPDES):
 - (i) Subpart A (technology-based treatment),
 - (ii) Subpart B (criteria for aquaculture projects),
 - (iii) Subpart D (fundamentally different factors),
 - (iv) Subpart H (alternative effluent limitations),
 - (v) Subpart I (new cooling water intakes),
 - (vi) Subpart J (existing cooling water intakes), and
 - (vii) Subpart L (disposal of sewage sludge under CWA 405)
 - (E) Part 129 (Toxic Pollutant Effluent Standards)
 - (F) Part 136 (testing and laboratory)
 - (G) Sections 401-471 (Effluent Guidelines 7 and Standards)
 - (H) Section 110.6 (notice of oil discharge)
 - (I) Part 302 (CERCLA exemption from NPDES permits)
 - (J) The following Sections from Part 503, Subpart A (General Provisions):
 - (i) 503.1 (Purpose and applicability)
 - (ii) 503.2 (Compliance period)
 - (iii) 503.3 (Permits and direct enforceability)
 - (iv) 503.4 (Relationship to other regulations)
 - (v) 503.5 (Additional or more stringent requirements)
 - (vi) 503.6(a)-(e),(g)-(j) (Exclusions)
 - (vii) 503.7 (Requirement for a person who prepares biosolids)
 - (viii) 503.8 (Sampling and analysis)
 - (ix) 503.9 (General definitions)
 - (K) The following Sections from Part 503, Subpart B (Land Application):
 - (i) 503.10(a),(b)(1)&(2),(e),(f),(g) (Applicability)
 - (ii) 503.11 (Special definitions)
 - (iii) 503.12 (General requirements)
 - (iv) 503.13 (Pollutant limits)
 - (v) 503.14 (Management practices)
 - (vi) 503.15 (Operational standards - pathogens and vector attraction reduction)
 - (vii) 503.16(a) (Frequency of monitoring)
 - (viii) 503.17(a) (Recordkeeping)
 - (ix) 503.18 (Reporting)
 - (L) The following Sections from Part 503, Subpart D (Pathogens and Vector Attraction Reduction):
 - (i) 503.30 (Scope)
 - (ii) 503.31 (Special definitions)
 - (iii) 503.32(a), (b) (Pathogens)
 - (iv) 503.33(a), (b)(1)-(11) (Vector attraction reduction)
 - (M) The following Sections from Part 503 Subpart E (Incineration)
 - (i) 503.40 (Applicability)
 - (ii) 503.41 (Special definitions)
 - (iii) 503.42 (General requirements)
 - (iv) 503.43 (Pollutant (Metal) limits)
 - (v) 503.44 (Operational standard - total hydrocarbons)
 - (vi) 503.45 (Management practices)
 - (vii) 503.46 (Frequency of monitoring)
 - (viii) 503.47 (Recordkeeping)
 - (ix) 503.48 (Reporting)
 - (N) The following Appendices from Part 503:
 - (i) Appendix A (Procedure to determine the annual whole sludge application rate for a sludge)
 - (ii) Appendix B (Pathogen treatment processes)
 - (O) Provisions of 40 CFR relating to CAFOs are excluded because they are beyond the jurisdiction of this Chapter.
 - (3) **OAC 252:611 (General Water Quality)** Part 130 (Water Quality Planning and Management)
 - (4) **OAC 252:652 (Underground Injection Control)**. The following apply in their entirety as they apply to the underground injection control program:
 - (A) Part 144 (Underground Injection Control Program)
 - (B) Part 145 (State UIC Program Requirements)
 - (C) Part 146 (Underground Injection Control Program: Criteria and Standards)
 - (D) Part 147 (State Underground Injection Control Programs)
 - (E) Part 148 (Hazardous Waste Injection Restrictions)
 - (5) In all cases where these rules conflict with or are less stringent than federal regulations, the federal regulations apply.
- 252:690-1-4.1. Date of federal regulations incorporated**
When reference is made to 40 CFR it means, unless otherwise specified, the volume of 40 CFR as published on July 1, 2016.
- [OAR Docket #17-545; filed 6-29-17]

TITLE 260. OFFICE OF MANAGEMENT AND ENTERPRISE SERVICES CHAPTER 25. MERIT SYSTEM OF PERSONNEL ADMINISTRATION RULES

[OAR Docket #17-547]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 5. Position Allocation and Employee Classification System
Part 5. Audit of Positions
260:25-5-51. Classification disputes [AMENDED]
260:25-5-56. Conduct of positions audits [AMENDED]
Subchapter 7. Salary and Payroll
Part 1. Salary and Rate of Pay
260:25-7-6. Sign-on pay incentive [AMENDED]
260:25-7-13. Adjustments in rates of pay when pay bands are changed [AMENDED]
260:25-7-14. Rate of pay upon reclassification, promotion, career progression, demotion and transfer [AMENDED]
Subchapter 9. Recruitment and Selection
Part 9. Classified Appointments
260:25-9-102. Reinstatement to the classified service [AMENDED]
Subchapter 11. Employee Actions
Part 3. Probationary Employees
260:25-11-36. Leave of absence for probationary employees; Adjustment of probationary period [AMENDED]
Part 5. Promotions
260:25-11-51. Promotional posting [AMENDED]
260:25-11-53. Promotional posting for continuous multiple vacancies [AMENDED]
260:25-11-55. Trial period and probationary period for promoted employees [AMENDED]
Part 7. Transfers and Voluntary Demotions
260:25-11-71. Intra-agency transfer [AMENDED]
Part 11. Other Transactions
260:25-11-110. Detail to special duty [AMENDED]
Subchapter 15. Time and Leave
Part 5. Miscellaneous Types of Leave
260:25-15-45. Family and medical leave [AMENDED]
Subchapter 17. Performance Evaluation and Career Enhancement Programs
Part 7. Carl Albert Public Internship Program
260:25-17-74. Undergraduate internship program [AMENDED]
Part 15. Workforce Education Program [NEW]
260:25-17-140. Purpose [NEW]
260:25-17-141. Eligibility [NEW]
260:25-17-142. Qualifications and application procedures [NEW]
260:25-17-143. Benefits [NEW]
260:25-17-144. Conditions for receipt of benefits [NEW]
260:25-17-145. Standards [NEW]
260:25-17-146. Eligible Institutions [NEW]
Subchapter 25. Oklahoma State Employees' Direct Deposit Rules
Part 1. General Provisions
260:25-25-2. Definitions [AMENDED]
260:25-25-6. Responsibility of employers [AMENDED]
260:25-25-14. Forms and instructions [AMENDED]
260:25-25-16. Procedures for direct deposit enrollment and changes [AMENDED]

AUTHORITY:

Office of Management and Enterprise Services Human Capital Management Division; 74 O.S. Section 840-1.6A; 74 O.S. Section 840-2.17; 74 O.S. Section 840-2.9; 74 O.S. Section 840-2.20; 74 O.S. Section 840-3.2; 74 O.S. Section 840-3.5; 74 O.S. 840-4.3; 74 O.S. Section 840-4.6; 74 O.S. Section 840-4.12; 74 O.S. Section 840-4.13; 74 O.S. Section 840-4.17; The Director of the Office of Management and Enterprise Services; 62 O.S. §34.28; 62 O.S. §34.3.1; 62 O.S. §34.6(8).

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

November 21, 2016

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March 17, 2017

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

March 17, 2017

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 13, 2017

FINAL ADOPTION:

June 13, 2017

EFFECTIVE DATE:

September 11, 2017

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The proposed amendments to 260:25-5-51 and 260:25-5-56 removes unnecessary references to agency form numbers; the proposed amendments to 260:25-7-6 and 260:25-7-13, 260:25-11-51, 260:25-11-53, and 260:25-11-110 corrects grammatical errors; the proposed amendment to 260:25-7-14 creates and exception to the base rate of pay requirement upon demotion for agencies who have adopted an approved Salary Administration Plan, which will eliminate an unnecessary interagency transaction; the proposed amendments to 260:25-9-102 and 260:25-11-36 clarifies that probationary periods are adjusted to reflect extended absences, rather than simply extended; the proposed amendments to 260:25-11-55 and 260:25-11-71 both make clear that trial periods after intra-agency and interagency transfers are adjusted to reflect absences, rather than simply extended; the proposed amendments to 260:25-15-45 modify language in the FMLA rules so that there is no question of the rules conflicting with Oklahoma law; the proposed amendments to 260:25-17-74 clarifies that an undergraduate intern shall not work more than 999 hours per year; the proposed new rules of 260:25-17-140 through 260:25-17-146 establish the requirements and procedures for the Workforce Education Program, pursuant to Title 74 O.S. § 840-3.1A; the proposed amendment to 260:25-25-2 updates the definitions of the Direct Deposit rules by replacing "automatic deposit transmittal " with "direct deposit authorization " and clarifying that "EFT " refers to "electronic funds transfer "; the proposed amendments to 260:25-25-6 and 260:25-25-14 revises language to reflect the amendments to 260:25-25-2 and replaces "advice of deposit " and "pay stubs " with "earning statement "; and the proposed amendment to 260:25-25-16 removes reference to an "instruction manual " that will be provided upon request, due to the fact that the instructions for the direct deposit program are printed on the back of the direct deposit form.

CONTACT PERSON:

Matt Stewart, Deputy General Counsel, (405) 522-0663

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 5. POSITION ALLOCATION AND EMPLOYEE CLASSIFICATION SYSTEM

PART 5. AUDIT OF POSITIONS

260:25-5-51. Classification Disputes

(a) An employee has the right and responsibility to file a classification grievance, as provided by law and rule, when duties performed on a regular and consistent basis do not conform to the job family descriptor [74:840-4.3]. The Human Capital Management Division shall not accept classification grievances directly from employees. A formal classification

grievance shall be filed with the employing agency according to the rules for filing classification grievances promulgated by the Merit Protection Commission (OAC 455:10-19-1 et seq.). An internal classification grievance must be concluded within the agency before an employee may file a Classification Dispute Review Request form with the Human Capital Management Division. If the resolution decision by the Appointing Authority is to advise the employee to complete an Human Capital Management Division Classification Dispute Review Request form ~~(HCM 70)~~, as provided in OAC 455:10-19-35, the form will be submitted through appropriate supervisory channels to the agency office responsible for human resources functions.

(b) Upon receipt of a Classification Dispute Review Request form submitted through appropriate supervisory channels, the agency office responsible for human resources functions will review it along with any other appropriate records, including the internal grievance file, to determine the nature and scope of the grievance. If the grievance concerns only the job family level to which the position is assigned, a position audit will be conducted by a designated agency representative who has been assigned the responsibility to complete positions audits, to determine the proper job family level. If an Appointing Authority has been delegated position allocation authority in accordance with OAC 260:25-1-30, designated agency representatives will also be responsible for conducting classification grievance audits to determine both the appropriate job family and job family level. In conducting these audits, consideration shall be given to all relevant information concerning the position according to OAC 260:25-5-34.

(c) If the review of the Classification Dispute Review Request and other related information indicates that the grievance includes the job family to which the position is allocated, and the agency has not been delegated position allocation authority, the form will be forwarded within 20 days to the Human Capital Management Division requesting that a position audit be completed. The Human Capital Management Division will then be responsible for completing the audit and determining an appropriate job family for the position. Upon receipt of the allocation decision made by the Human Capital Management Division, a designated agency representative will be responsible for determining the proper job family level for the position.

(d) If an incumbent employee does not agree with the job family level assigned to a position by the Appointing Authority after completion of a grievance audit, the employee may request a review by the Human Capital Management Division. The employee shall submit the request to the agency office responsible for the agency's human resources management functions within 20 calendar days of the date of the notice of the final decision by the agency. Within 7 calendar days of receipt, the agency shall attach all documents considered by the agency in determining the job family level to the request for review and submit it to the Human Capital Management Division. Within 14 calendar days of receipt, the Human Capital Management Division will review the information submitted and make a final decision concerning the proper level of assignment. Such decision shall be based solely on a review of the written documentation submitted.

(e) An employee may request a Human Capital Management Division review of the job family to which a position has been allocated by an agency which has delegated position allocation authority. The request for review must be received in the agency office responsible for the agency's human resource management functions no later than 20 calendar days after the date of the final notice of the decision by the agency.

(f) An employee is entitled to the compensation assigned to the job family level for which duties were performed on a regular and consistent basis [74:840-4.3].

(g) If a classification grievance or a classification dispute review indicates an employee has not received the compensation assigned to the job family level for which duties were performed on a regular and consistent basis, the Appointing Authority shall compensate an employee for the difference between the employee's actual rate of pay and the rate of pay the employee would have received on promotion to the job family level that was consistent with the duties and responsibilities of the employee. Back pay shall be limited to the date the employee filed the classification grievance pursuant to Section 840-6.2 of the Oklahoma Personnel Act.

260:25-5-56. Conduct of position audits

(a) The conduct of an audit of a position begins when a properly completed Position Description Questionnaire ~~(HCM 39)~~ or a Classification Dispute Review Request form ~~(HCM 70)~~ is received in the Human Capital Management Division. The Human Capital Management Division reserves the right to refuse to accept incomplete or improperly completed forms.

(b) The Human Capital Management Division shall send a written notice of the allocation of the position and its effective date to the Appointing Authority and the employee if the position is occupied. If the Human Capital Management Division finds that an allocation shall not be made within 30 calendar days after the receipt of a properly completed form according to (a) of this Section, both the Appointing Authority and the employee shall be sent written notice of the expected date of allocation. If the audit is conducted at the request of the Executive Director of the Merit Protection Commission, a notice shall be sent to the Executive Director.

(c) After an allocation has been made by the Human Capital Management Division, the Appointing Authority shall assign an appropriate level to the position based on the duties and responsibilities assigned. If the position is occupied, the Appointing Authority shall send a written notice of the level assignment and its effective date to the employee within 20 calendar days of receipt of the Human Capital Management Division allocation.

(d) Position audits by an agency, either to determine the proper job family level or to determine an appropriate allocation under a position allocation delegation agreement, shall begin upon receipt of a properly completed Position Description Questionnaire ~~(HCM 39)~~, Classification Dispute Review Request ~~(HCM 70)~~, Supplemental Position Description Questionnaire ~~(HCM 39A)~~, or other information prescribed by the agency. These audits shall be completed within 30 calendar days after the receipt of required information, or the requesting

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official and the incumbent employee shall be provided written notice of the expected date of completion.

SUBCHAPTER 7. SALARY AND PAYROLL

PART 1. SALARY AND RATE OF PAY

260:25-7-6. Sign-on pay incentive

(a) Appointing Authorities may implement a pay incentive for the following individuals who are appointed to positions in job families for which there are critical recruitment and retention problems as identified by the Appointing Authority [74:840-1.6A(11)]:

- (1) individuals not currently employed in state government;
- (2) Carl Albert Executive Fellows and other professional trainees and students employed pursuant to paragraphs 10 and 11(a) and (b) of Section 840-5.5(A) of Title 74 of the Oklahoma Statutes; ~~and~~ or
- (3) individuals employed pursuant to the Cooperative Engineering Trainee Program.

(b) Appointing Authorities who choose to implement the pay incentive shall file a plan with the Office of Management and Enterprise Services which contains information related to the implementation of the pay incentive within the agency. The plan shall provide documentation of the critical recruitment and retention problems and shall include a project description, specific prerequisites that each employee shall meet in order to receive the pay incentive, and information concerning the funding of the incentive from the agency's existing budget. The plan shall be signed by the Appointing Authority, and this signature requirement may not be delegated. No payment shall be made under this Section until the plan has been reviewed and accepted by the Administrator.

(c) The pay incentive shall not exceed \$5,000.00 and is payable to eligible individuals as a lump sum payment or in two equal payments during the first six months of state employment. Former state employees may be eligible for the pay incentive following a break-in-service of at least 180 days.

(d) To receive the pay incentive, an eligible individual shall be required to sign an agreement form acknowledging that the individual is obligated to repay the entire incentive, including tax withholdings on the incentive, if the individual leaves state employment or accepts employment with another state agency within 1 year after he or she receives the pay incentive. Appointing Authorities may use the agreement form developed by the Administrator or any other agreement form which is consistent with the provisions of this Section.

(e) An individual may receive only one sign-on pay incentive during his or her state employment.

260:25-7-13. Adjustments in rates of pay when pay bands are changed

When a pay band is changed for a job family level, all employees in that classification, including persons whose base rate of pay exceeds the maximum of the old pay band, shall

receive an adjustment to the new pay band. No person's base salary may be reduced as a result of such a change. All employees of an agency in that job shall be given uniform treatment using one of the following methods: providing adjustment to the minimum of the new pay band; providing a percent increase given to each employee, which shall not exceed the percent of difference between the minimum of the old pay band and the minimum of the new pay band; or any other uniform method of adjustment approved by the Administrator. At the discretion of the Appointing Authority, no change in employee base salary need occur provided that all affected salaries fall within the new pay band. OAC 260:25-7-10 does not apply to adjustments made in accordance with this Section.

260:25-7-14. Rate of pay upon reclassification, promotion, career progression, demotion and transfer

(a) **Rate of pay when incumbent is reclassified directly.** When an employee is reclassified directly under 260:25-5-90, the base rate of pay shall be fixed in accordance with 260:25-7-13.

(b) **Rate of pay upon promotion or career progression.**

(1) An Appointing Authority shall adopt objective written criteria for the amount of salary advancements on promotion or career progression. These criteria shall be a part of the agency salary administration plan established under 260:25-7-1.1 and shall be consistent with state and federal statutes prohibiting discrimination.

(2) The Appointing Authority shall set an employee's base salary on promotion or career progression at no less than 5% and no more than the maximum of the assigned pay band.

(3) The Appointing Authority shall not lower the base salary of an employee on promotion or career progression. If the employee's base salary before promotion or career progression exceeds the maximum of the new pay band, the employee's base salary shall remain the same.

(c) **Rate of pay when demoted.** The base rate of pay of an employee who is demoted shall be set by the Appointing Authority at any rate of pay within the pay band for the job to which demoted, which does not exceed that employee's last base rate of pay; however, in the event an approved Salary Administration Plan is in effect, the Appointing Authority may increase the base rate of pay for the job to which the employee is demoted into which is consistent with the hiring range established for the job, salaries paid to other individuals performing similar work, or other relevant factors. An Appointing Authority may delay setting the base rate of pay upon demotion for up to 1 year when the demotion is due to an agency reorganization. For the purposes of this subsection, "agency reorganization" means the reclassification of employees in lieu of reduction-in-force.

(d) **Rate of pay upon intra-agency lateral transfer.** An Appointing Authority may provide up to a 5% increase in base rate of pay, not to exceed the maximum rate of pay for the pay band, for an employee upon intra-agency lateral transfer to a position in the same job family and level or another job family

and level with the same pay band assignment, based on the needs of the agency. [74:840-2.17]

(e) **Rate of pay upon interagency lateral transfer.** An Appointing Authority may set the base rate of pay for an employee on an interagency lateral transfer at any rate of pay within the pay band for the job to which the person is transferred which is consistent with the hiring range established for the job, salaries paid to other individuals performing similar work, or other relevant factors.

SUBCHAPTER 9. RECRUITMENT AND SELECTION

PART 9. CLASSIFIED APPOINTMENTS

260:25-9-102. Reinstatement to the classified service

(a) A permanent employee who leaves the classified service is eligible for reinstatement.

(b) If an Appointing Authority elects to appoint a person who is eligible for reinstatement, the person shall be certified according to 260:25-9-10. A test may be required under 260:25-9-35 before his or her reinstatement.

(c) The Appointing Authority may place the person in probationary status with the agency for the maximum period required for original appointments or for a shorter period. The Appointing Authority may not extend the probationary period, but may adjust the probationary period due to an extended absence as provided for in 260:25-11-36(b). If the Appointing Authority requires a probationary period, the Appointing Authority shall notify the reinstated employee and the Human Capital Management Division in writing of the length of the probationary period before the employee's entry on duty. The Appointing Authority may cancel the probationary period at any time and grant permanent status to the employee.

SUBCHAPTER 11. EMPLOYEE ACTIONS

PART 3. PROBATIONARY EMPLOYEES

260:25-11-36. Leave of absence for probationary employees; Adjustment of probationary period

(a) Upon written request, a probationary employee may be granted leave of absence without pay from the agency in accordance with 260:25-15-47, Leave of absence without pay, or 260:25-15-49, Leave because of absence due to job related illness or injury.

(b) If a probationary employee is absent from work in excess of 30 continuous calendar days, the probationary period shall be adjusted by the number of calendar days the probationary employee was absent. The employee shall be notified at the earliest date that the probationary period is to be ~~extended~~ adjusted. Upon the employee's return to work,

notification of such adjustment shall be provided to the employee and the Human Capital Management Division and shall include the adjusted date of the final working day of the probationary period.

PART 5. PROMOTIONS

260:25-11-51. Promotional posting

(a) The appointing authority shall post announcements of a vacancy or vacancies in accordance with a promotional plan filed by the agency with the Office of Management and Enterprise Services. [A copy of this plan shall be posted throughout the agency.] Promotional posting shall be required for initial entry into a job family at any level. Promotional posting shall also be required for entry into any supervisory position or level. Each agency's promotional posting plan shall describe the method by which all agency employees will be notified of vacancy announcements. [74:840-4.15] The Appointing Authority shall post all promotional opportunities to vacant positions. Promotional posting is not required for career progression or for reallocation of occupied positions.

(b) The posting shall include:

- (1) Identification of the job family level of the vacancy or vacancies;
- (2) A listing of job title, major work duties and minimum qualifications;
- (3) The pay band and range;
- (4) The anticipated number of vacancies;
- (5) The specific location of work;
- (6) The time limits and procedure for filing an application with the appointing authority; and
- (7) Any additional factors which the appointing authority will consider in filling the vacancy. [74:840- 4.15]

260:25-11-53. Promotional posting for continuous multiple vacancies

The appointing authority may elect to post general promotional opportunities ~~—~~ in cases where there are usually continuous multiple vacant positions within a given job family; provided the appointing authority maintains a promotional applicant list for each job family which is posted on the basis of general promotional opportunities. In such cases, the posting must include the length of time and conditions under which the promotional application of the candidate will remain available for active consideration by the appointing authority [74:840-4.15] as well as the information required by 260:25-11-51.

260:25-11-55. Trial period and probationary period for promoted employees

(a) **Trial period after intra-agency promotions.**

- (1) When a classified employee is promoted intra-agency, the employee shall serve a 6 month trial period in the job to which the employee has been promoted unless the Appointing Authority waives the trial period according

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to the provisions of this Section. The Appointing Authority may waive the trial period at any time by giving the employee written notice of the cancellation. Waiver of the trial period makes the promotion final.

(2) If an employee does not prove to be satisfactory in the new job during the trial period, the employee shall be reinstated to the former position or another in the same job family level, at the salary the employee would have received if the promotion had not taken place. However, the reasons for denying the employee permanent status in the promotional position shall be submitted in writing to the individual before the end of the trial period and a copy filed with the Human Capital Management Division. ~~The~~The employee shall not have the right to appeal [74:840-4.12].

(3) The promotion shall automatically become permanent at the end of the final working day of the trial period.

(4) The Appointing Authority may establish a written policy describing any agency standard for waiving the trial period and the reasons for the standard.

(b) **Trial period after interagency promotion.**

(1) An employee who is promoted interagency may, at the discretion of the receiving Appointing Authority, be required to serve a 6 month trial period in the new job only if the receiving agency has the job family from which the employee was promoted in its classification plan.

(2) The trial period may be canceled at any time, making the promotion final. Before the effective date of the promotion, the employee shall be informed in writing by the Appointing Authority whether the employee will be required to serve a trial period before such promotion becomes final. The promotion shall be permanent if the Appointing Authority fails to notify the employee in writing before the effective date of the promotion that a trial period is required under this paragraph. If an employee does not prove to be satisfactory in the new job during the trial period, the employee shall be reinstated to a position in the former job family in the same pay band for which the employee is qualified with the receiving agency, at the salary the employee would have received if the promotion had not taken place. However, the reasons for denying the employee permanent status in the promotional position shall be submitted in writing to the individual before the end of the trial period and a copy filed with the Human Capital Management Division. The promotion shall automatically become permanent at the end of the final working day of the trial period.

(c) If an employee on a trial period is absent from work in excess of 30 continuous calendar days the trial period shall be adjusted by the number of calendar days the employee was absent. The employee shall be notified at the earliest date that the trial period is to be ~~extended~~adjusted. Upon the employee's return to work notification of such adjustment shall be provided to the employee and the Human Capital Management Division and shall include the adjusted date of the final working day of the trial period.

(d) **Statutory probationary period after intra-agency promotion.** An employee who is promoted to a job for which

a probationary period is either permitted or required by Oklahoma Statutes shall be notified by the Appointing Authority of the probationary period before the effective date of the promotion. An employee shall not be required to serve a trial period after the promotion if a statutory probationary period is required.

PART 7. TRANSFERS AND VOLUNTARY DEMOTIONS

260:25-11-71. Intra-agency transfer

(a) The intra-agency transfer of a permanent employee from one position to another position in the same job family or another job in the same pay band, for which the employee has currently qualified, may be made at any time by the Appointing Authority.

(b) Upon intra-agency lateral transfer, an employee shall serve a six-month trial period in the job level to which the employee is transferred, unless the trial period is waived in writing by the Appointing Authority. [74:840-4.12] The trial period may be adjusted pursuant to 260:25-11-55(c). If an employee does not prove to be satisfactory in the new job during the trial period, the employee may be reinstated to the former position or another in the same job family level, at the salary the employee would have received if the transfer had not taken place. The employee shall be informed in writing of any action taken pursuant to this provision.

(c) A state agency shall have sole and final authority to designate the place or places where its employees shall perform their duties. The Oklahoma Merit Protection Commission shall not have jurisdiction to entertain an appeal of an employee from action of the employing agency transferring the employee from one county or locality to another, changing the assigned duties of the employee, or relieving the employee from performance of duty at a particular place and reassigning to the employee duties to be performed at another place, unless:

- (1) the action results in a change in job classification or reduction of base salary; or
- (2) an investigation by the Commission indicates that a violation of the provisions of Section 840-2.5 or 840-2.9 of . . . [the Oklahoma Personnel Act] may have occurred; or
- (3) it is established that the action was clearly taken for disciplinary reasons and to deny the employee the right of appeal. [74:840-4.19]

PART 11. OTHER TRANSACTIONS

260:25-11-110. Detail to special duty

(a) When the services of a permanent classified employee are temporarily needed in a job family or level other than the one to which the incumbent is regularly assigned the employee may be detailed to special duty, at the discretion of the Appointing Authority, to perform the duties of the job to which temporarily assigned.

(b) A detail to special duty in no way shall affect the status, title or job family held before the detail.

- (c) An employee shall not be placed on detail to special duty more than 12 months in any 36 month period.
- (d) Pay upon detail to special duty is covered in 260:25-7-17.
- (e) Detail to special duty is not required when an employee is temporarily assigned duties of another job for a period of less than 60 days in any 12-month period, or when an employee is temporarily performing such duties as part of a return to work program as a result of a work-related illness or injury, regardless of whether that period exceeds 60 days in any 12-month period. Such temporary placement shall not exceed ~~6 months~~months.

SUBCHAPTER 15. TIME AND LEAVE

PART 5. MISCELLANEOUS TYPES OF LEAVE

260:25-15-45. Family and medical leave

- (a) The federal Family and Medical Leave Act of 1993 entitles eligible employees to family and medical leave. This section is not a comprehensive listing of the provisions of the federal Family and Medical Leave Act of 1993 (29 U.S.C. 2601 et seq.) and regulations promulgated thereunder, and is not intended to conflict with either the Act or the regulations. To be eligible, an employee shall have been employed by the state at least 12 months and have worked at least 1,250 hours during the preceding 12-month period.
- (b) An eligible employee is entitled to family and medical leave for up to a total of 12 weeks during any 12-month period, for the following reasons:
 - (1) the birth of the employee's son or daughter, and to care for the newborn child;
 - (2) the placement with the employee of a son or daughter for adoption or foster care;
 - (3) to care for the employee's spouse, son, daughter, or parent with a serious health condition. As used in this subsection, "son" or "daughter" means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is either under age 18, or age 18 or older and incapable of self-care because of a mental or physical disability;
 - (4) a serious health condition that makes the employee unable to perform the functions of the employee's job; or
 - (5) any qualifying exigency (as defined by U.S. Department of Labor Regulations) arising out of the fact that the spouse, son, daughter, or parent of the employee is on active duty or has been notified of an impending call or order to active duty in the Armed Forces in support of a contingency operation.
- (c) An eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered service member shall be entitled to a total of 26 weeks of leave during a 12-month period to care for the service member. The leave described in this paragraph shall only be available during a single 12-month period. During the single 12-month period described in this paragraph, an eligible employee shall be entitled to combined total of 26 weeks of leave under paragraph (b) and (c). Nothing

- in this paragraph shall be construed to limit the availability of leave under paragraph (b) during any other 12-month period.
- (d) An Appointing Authority may require that an employee's request for family and medical leave to care for the employee's seriously-ill spouse, son, daughter, or parent, or due to the employee's own serious health condition that makes the employee unable to perform one or more of the essential functions of the employee's position, be supported by a certification issued by the health care provider of the employee or the employee's ill family member. An Appointing Authority may require a certification issued by the health care provider of a covered service member being cared for by an employee.
- (e) The entitlement to family and medical leave resulting from (b)(1) and (b)(2) of this Section expires at the end of the 12-month period beginning on the date of the birth or placement.
- (f) When family and medical leave is taken to care for a sick family member as defined in (b)(3) of this Section, a covered service member as referenced in (c) of this Section, or for an employee's own serious health condition, leave may be taken intermittently or on a reduced leave schedule when it is medically necessary. When family and medical leave is taken for a qualifying exigency as referenced in (b)(5) of this Section, leave may be taken intermittently or on a reduced leave schedule. An Appointing Authority may adopt a policy allowing family and medical leave to be taken intermittently to care for a newborn child or newly placed adopted or foster child.
- (g) Whenever it is possible, an employee shall schedule family and medical leave to accommodate the operations of the employee's agency. An employee shall give the Appointing Authority notice and a leave request at least 30 days before leave is to begin if the need for family and medical leave is expected. In any case in which the necessity for leave under (b)(5) of this Section is foreseeable, the employee shall provide such notice to the employer as is reasonable and practicable. When the need for family and medical leave is unexpected, an employee shall give the Appointing Authority notice and a leave request as soon as possible. The notice and request shall:
 - (1) be in writing;
 - (2) describe the reason for the family and medical leave;
 - (3) specify the type of leave the employee is requesting to account for the time off; and
 - (4) include any information or documentation required for the type of leave requested.
- (h) The Appointing Authority has the responsibility to review requests for sick leave and leave without pay for designation as family and medical leave. The Appointing Authority has the right to designate leave taken for an FMLA-qualifying event as FMLA leave, regardless of whether the employee has requested FMLA leave. The Appointing Authority's designation decision shall be based only on information provided by the employee or the employee's spokesperson. In accordance with the federal Family and Medical Leave Act, the Appointing Authority shall not designate leave as family and medical leave retroactively, unless the Appointing Authority does not have sufficient information concerning the employee's reason for taking the leave until after the leave period has begun.

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(i) Family and medical leave is not a separate type of leave, and it is not accrued or accumulated. An Appointing Authority ~~shall give~~may require employees to use all available the following options paid leave prior to recording the absence as leave ~~without pay in accordance with 260:25-15-47~~ to account for time lost because of leave under the federal Family and Medical Leave Act of 1993.

- (1) Charge to accumulated annual leave [74:840-2.22];
- (2) Charge to accumulated sick leave [74:840-2.22];
- (3) Charge to leave donated by other state employees under Section 840-2.23 of Title 74 of the Oklahoma Statutes, which is also known as "shared leave";
- (4) Charge to accumulated compensatory time.; or
- (5) Record as leave without pay in accordance with 260:25-15-47.

(j) The agency shall continue paying the employee's insurance coverage while the employee is on family and medical leave.

(k) Upon return from family and medical leave, an employee shall have the right to be restored to the same or equivalent position and benefits, except for extension of his or her anniversary date for longevity pay, leave accrual, and calculation of retention points, he or she would have had if the employee had been continuously employed in pay status during the leave period.

(l) An employee shall not be required to take more leave than necessary to resolve the circumstance that precipitated the need for leave.

SUBCHAPTER 17. PERFORMANCE EVALUATION AND CAREER ENHANCEMENT PROGRAMS

PART 7. CARL ALBERT PUBLIC INTERNSHIP PROGRAM

260:25-17-74. Undergraduate internship program

(a) Eligibility. The undergraduate internship program consists of temporary positions for students enrolled in institutions of higher education and working toward an undergraduate degree which shall include associate's degrees or certifications by the Oklahoma Department of Career and Technology Education; [74:840-3.4(A)(1)]. To be considered for eligibility determination, applicants shall have at least a 2.5 cumulative grade point average on a 4.0 scale. Applicants shall follow the procedures in 260:25-17-77 for eligibility determination.

(b) Conditions of employment. Participants in the Undergraduate Internship Program who receive internship appointments shall:

- (1) be employed in accordance with paragraph 8 of Section 840-5.5 of Title 74 of the Oklahoma Statutes, for not more than 2 semesters or 999 hours per year,
- (2) continue making progress toward an undergraduate degree,
- (3) maintain the grade point average set out in (a) of this Section, and

(4) complete the training requirements described in (d) (3) of this Section.

(c) Benefits. Undergraduate interns shall not be eligible for paid leave, or health and retirement benefits.

(d) Responsibilities of appointing authorities.

(1) The Appointing Authority or designee shall ensure that the intern provides verification to the Human Capital Management Division that the intern is:

- (A) continuing to make progress toward an undergraduate degree during each semester employed, and
- (B) maintaining the grade point average set out in (a) of this Section.

(2) If this information is not transmitted to the Human Capital Management Division within 30 days after the end of the previous semester, the Administrator shall notify and the Appointing Authority of the termination of the internship agreement in accordance with Section 260:25-17-82(a).

(3) Each Appointing Authority shall provide a minimum of 4 clock hours of job-related training for undergraduate interns during the internship.

PART 15. WORKFORCE EDUCATION PROGRAM

260:25-17-140. Purpose

The rules in this part implement Section 840-3.1A of Title 74, which authorizes agencies in the executive branch of state government to establish education and training programs for positions critical to the missions of those agencies. The rules in this Part apply to both Merit System and non-Merit System agencies, and to both classified and unclassified executive branch state employees.

260:25-17-141. Eligibility

An executive branch State employee shall be eligible for the Workforce Education Program if the employee meets the following eligibility criteria:

- (1) Must be a current, full-time state employee with at least 12 months continuous employment with the agency;
- (2) If the employee has received a performance evaluation, he or she must have achieved an overall rating of "meets" or "exceeds" standards on his or her most recent performance evaluation; however, if the employee has not received an employee evaluation the employee may become eligible with a letter of recommendation from their current supervisor;
- (3) Meets the standards of the program as defined within this section;
- (4) Have no pending or formal disciplinary actions in his or her permanent personnel file within the last year from date of application to the program; and
- (5) Have been accepted to an educational or certification program that directly benefits the agency, its mission, or directives set forth by the agency.

260:25-17-142. Qualification and application procedures

Applicants qualifying under the Act shall provide the following information to their respective state agency for review and determination of eligibility:

- (1) A completed application form as prescribed by their respective agency;
- (2) The application must be received and approved prior to the start of the program; and
- (3) The employee must provide documentation from the educational or certifying institution for the course(s) or program in which the employee is enrolled.

260:25-17-143. Benefits

- (a) Funds of the agency may be used to pay salaries, tuition, subsistence and fees for qualified employees accepted in the program.
- (b) Employees may be in a work status while attending these training and education programs.

260:25-17-144. Conditions for receipt of benefits

- (a) The employee receiving benefits under this Subchapter shall execute a promissory note with their respective agency (who completes the promissory note and tracks it) to repay the amount of tuition and/or fees paid by said agency.
- (b) If the employee participated in the education and training program during working hours, the cost of any compensation paid to the employee while attending the course will be included in the total amount of the promissory note.
- (c) The amount of the promissory note with the agency shall be reduced at a rate of \$13.00 per calendar day beginning the first day following completion or graduation from the education or training program.
- (d) Should the employee leave the agency for any reason, except for employees who have volunteered or have been drafted into active military service, the obligation to the agency becomes due and payable immediately.
- (e) Any violation of the terms of the promissory note shall give rise to a cause of action and suit may be commenced by the agency for and on behalf of the State of Oklahoma for restitution of any and all sums plus interest at the statutory rate, costs, and reasonable attorney fees.

260:25-17-145. Standards

- The agency shall verify the employee:
- (1) Makes satisfactory progress towards the program completion; and
 - (2) Completes the program successfully as defined by the institution providing the education or training.

260:25-17-146. Eligible Institutions

- (a) The agency will only contract with institutions located in Oklahoma that are accredited by a national accrediting agency recognized by the U.S. Department of Education.
- (b) The agency may pay licensure and certification fees, regardless of the licensing or certifying entities location, for

those employees whose current or future positions with the agency require such a license or certification.

SUBCHAPTER 25. OKLAHOMA STATE EMPLOYEES' DIRECT DEPOSIT RULES

PART 1. GENERAL PROVISIONS

260:25-25-2. Definitions

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

"Act" means the Oklahoma State Employees' Direct Deposit Act, Section 292.10 et seq. of Title 74 of the Oklahoma Statutes.

"Administrator" means the Administrator of the Human Capital Management Division of the Office of Management and Enterprise Services.

"Automatic Deposit Transmittal Direct Deposit Authorization form" means a form voluntarily completed by a state employee to provide enrollment or termination information for the direct deposit system and to authorize the use of electronic funds transfer for payroll warrants.

"Banking day" means a day on which a bank is open to the public for carrying on substantially all of its banking functions [12A:4-104].

"Day" means a calendar day.

"Direct deposit system" shall mean a method of electronically transferring a payroll [warrant] for an eligible employee whereby the employee agrees to an electronic transfer of any payroll [warrant] to a financial institution [74:292.11(1)].

"Electronic funds transfer" and "EFT" means transferring an employee's net pay directly into the employee's financial institution account electronically rather than issuing pay warrants.

"Employee" means any person in the classified, unclassified or exempt service of any employer [74:292.11(2)].

"Employer" means any state agency, board, commission, department, institution, authority, officer, bureau, council, office, the Oklahoma State Regents for Higher Education or any institution under the authority of the State Regents for Higher Education, or other entity created by the Oklahoma Constitution. "Employer" shall not include any school district or political subdivision of this state [74:292.11(3)].

"Participant" means a person who is participating in the direct deposit system.

260:25-25-6. Responsibility of employers

- (a) All employers shall ~~begin~~ offering direct deposit to any eligible employees ~~not later than January 1, 1992~~ [74:292.12(C)].
- (b) All employers shall distribute and make available to employees information about the direct deposit system and ~~automatic deposit transmittal~~ direct deposit authorization forms.

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(c) Employers receiving individual "~~advice of deposit~~ earnings statements" forms and pay stubs showing a record of earnings shall provide them to employees in the direct deposit system instead of payroll warrants.

(d) Employers that do not use the ~~OSFOMES~~ payroll accounting system shall provide a direct deposit service for their employees. The service shall agree with the Act and this Subchapter. It shall include the use of an ~~automatic deposit transmittal~~ direct deposit authorization form like the form described in Section 260:25-~~425~~-14 and approved by HCM. The rules in this Chapter do not require revision of any direct deposit authorization form in effect before January 1, 1992, that substantially agrees with 260:25-~~425~~-14.

260:25-25-14. Forms and Instructions

(a) The ~~automatic deposit transmittal~~ direct deposit authorization shall be used by the employee to authorize:

- (1) deposit of his or her payroll warrant in a specified checking or savings account in the financial institution of his or her choice through electronic funds transfer;
- (2) the specified financial institution to make a credit entry to the specified account;
- (3) the state of Oklahoma to direct the financial institution to return any moneys that are deposited in the employee's account to which the employee is not entitled;
- (4) changes in his or her enrollment information;
- (5) termination of the direct deposit of his or her payroll warrant; and

(b) The ~~automatic deposit transmittal~~ direct deposit authorization form contains spaces for the employee to:

- (1) provide personal data to facilitate his or her personal banking needs;
- (2) sign and date the agreement.

260:25-25-16. Procedures for direct deposit enrollment and changes

(a) Procedures for employees under the Office of Management and Enterprise Services payroll accounting system. To authorize direct deposit, employees under the Office of Management and Enterprise Services payroll accounting system, or its successor, shall file a properly completed automatic deposit transmittal form. An employee shall file this form 30 days before the desired effective date of the first electronic funds transfer, change or termination. The employee shall attach the form to an official document from the financial institution. (For example, an employee may attach a blank check with the word "VOID" printed across it.) The official document shall show the financial institution's FedACH routing number and employee's deposit account number.

(b) Procedures for employees not under the Office of Management and Enterprise Services payroll accounting system. Employees of agencies not under the Office of Management and Enterprise Services payroll accounting system shall complete and submit automatic deposit transmittal forms according to the instructions of their employers.

(e) ~~An instruction manual may be obtained from the Human Capital Management Division.~~

[OAR Docket #17-547; filed 6-29-17]

TITLE 260. OFFICE OF MANAGEMENT AND ENTERPRISE SERVICES CHAPTER 45. EMPLOYEES GROUP INSURANCE DEPARTMENT - ADMINISTRATIVE AND GENERAL PROVISIONS

[OAR Docket #17-548]

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Subchapter 5. Grievance Panel ~~Authority and Hearing~~ Procedures

260:45-5-1. ~~Access to Grievance Panel; request~~ Request for hearing [AMENDED]

260:45-5-2. Notice of hearing [AMENDED]

260:45-5-3. Prehearing conference [AMENDED]

260:45-5-4. ~~The grievance hearing~~ Grievance hearings conducted by the three [3] member Grievance Panel [AMENDED]

260:45-5-5. Continuance; disposition; Attorney representation [AMENDED]

260:45-5-6. Certificate of mailing [AMENDED]

260:45-5-7. Final order; appeals [AMENDED]

260:45-5-8. Scheduling of hearings [AMENDED]

AUTHORITY:

The Director of the Office of Management and Enterprise Services; 62 O.S. §34.28; 62 O.S. §34.3.1

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Clarify language, eliminate obsolete language, correct omissions and streamline to promote and enhance operations, through removal of inaccurate or redundant verbiage, and to simplify language.

CONTACT PERSON:

Scott D. Boughton, Deputy General Counsel, (405) 717-8957

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF JANUARY 1, 2018:

**SUBCHAPTER 5. GRIEVANCE PANEL
AUTHORITY AND HEARING PROCEDURES**

**260:45-5-1. Access to Grievance Panel;
requestRequest for hearing**

(a) ~~Grievance Panel Authority~~**Grievances.** EGID has established a grievance procedure procedures by which: ~~an independently appointed three [3] member Grievance/review Panel shall act as an appeals body and the exclusive remedy:~~

(1) ~~For complaints by insured employees regarding the allowance and payment of claims, eligibility, benefits, provision of services, or other matters:~~Independent Review Organizations shall act as an appeals body for complaints by insured members regarding adverse benefit determinations based on medical necessity, appropriateness, health care setting, level of care, or effectiveness of a covered benefit,

(2) ~~To conduct independent external reviews of all adverse determinations rendered by or on behalf of the Board or its designee utilization review organization.~~A three [3] member Grievance Panel shall act as an appeals body for complaints by insured members regarding all other issues.

(b) **Court Administrator Appointees.** The Court Administrator shall designate Grievance Panel members as shall be necessary. The members of the Grievance Panel shall consist of two [2] ~~retired active Judges~~Attorneys licensed to practice law in this state and one [1] state licensed health care professional or health care administrator who has at least three [3] years practical experience, has had or has admitting privileges to a State of Oklahoma hospital, has a working knowledge of prescription medication, or has worked in an administrative capacity at some point in their career.

(c) **Governor Appointees.** The state health care professional shall be appointed by the Governor. At the Governor's discretion, one or more qualified individuals may also be appointed as an alternate to serve on the Grievance Panel in the event the Governor's primary appointee becomes unable to serve.

(d) **Right to a Hearing.** ~~Except for grievances settled to the satisfaction of both parties prior to a hearing, any aggrieved~~Any covered member who requests in writing a hearing before the Grievance Panel pursuant to 260:45-5-1(a)(2) shall receive a hearing in person or through licensed counsel before the panel.

(e) ~~Exclusive remedy~~**Remedy.** ~~The grievance procedure provided by this Part shall be the exclusive remedy available to insured employees having complaints against the insurer. Such grievance procedure~~Grievance procedures conducted by the three [3] member Grievance Panel shall be subject to the Oklahoma Administrative Procedures Act, including provisions thereof for review of agency decisions by the district court.

(f) **Failure to timely submit hearing request.** ~~Any covered member aggrieved regarding the allowance and payment or denial of claims, eligibility, benefits and provision of services, adverse determinations, or other matters may request a hearing before the Grievance Panel [hereinafter referred to as Panel] to determine the validity of the grievance. All~~

~~requests for hearings~~All grievance requests must be filed within one [1] year from the date the member is notified of a denial of the claim, benefit or coverage. After more than one [1] year from the date the member was first notified of an allowance, payment, or denial of a claim, benefit, coverage, or other matter, the matter shall be deemed finally resolved.

(g) **Aggrieved member covered by an HMO.** Any member covered by an HMO is entitled to a hearing before the Panel in the same manner as all other covered members. The member must exhaust the HMO's internal grievance procedure, except for an emergency or if the HMO fails to timely respond, before requesting a ~~grievance panel~~Grievance Panel hearing. The member must file, along with his request for hearing, a written certification from the HMO that the member has exhausted said procedure, or a detailed explanation of the emergency or of the HMO's failure to respond.

(h) **Submission of Grievance request.**~~Request for Hearing.~~Request for Hearing shall be in writing on a form provided by EGID for such purpose or in writing by the employee if in substantial compliance with the form and shall contain the following information:

- (1) Name of employee, Social Security Number and address;
- (2) Name of dependent for whom claim was submitted, if not the covered employee;
- (3) Name of employee's employing entity, location, and identifying number;
- (4) Nature of claim: Health, Dental, Life, Eligibility, Disability, HIPAA or HMO;
- (5) Date claim submitted for payment, claim number;
- (6) The reason given, if any, by the claims administration contractor for denying the claim in whole or in part; and
- (7) A short statement as to the nature of the illness or injury giving rise to the claim.

(i) **Mailing address for submission of Request for Hearing.** The Request for Hearing shall be mailed or delivered to EGID to the attention of Attorney - Grievance Procedures, at 3545 N. W. 58th Street, Suite 110, Oklahoma City, Oklahoma 73112.

260:45-5-2. Notice of hearing

Upon receipt of ~~a Grievance request,~~a Request for Hearing form, a hearing number shall be assigned in grievances involving the three [3] member Grievance Panel, ~~there to~~ and notice shall be forwarded to the claims administration contractor by mail at its closest office. The employee shall be notified of the hearing date by mail with delivery confirmation. A copy of all rules pertinent to the hearing shall be forwarded with the Notice, along with a statement of claimant's rights.

260:45-5-3. Prehearing conference

For grievance hearings conducted by the three [3] member Grievance Panel ~~the~~ The Attorney representing EGID, the claimant, or the claimant's attorney may request a pre-hearing conference to determine legal or factual issues. The Attorney representing EGID may conduct such a conference.

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260:45-5-4. ~~The grievance hearing~~**Grievance hearings conducted by the three [3] member Grievance Panel**

(a) **Witness list.** Each party must submit, in writing, at least forty-eight [48] hours prior to the date of a grievance hearing a complete list of witnesses he or she intends to call, along with a brief comment as to the nature of the testimony. Witnesses shall not be called to testify at the hearing unless notice has been given to the opposing parties.

(b) **Assignment of Panel and Chairman.** All hearings shall be held before a three-member Grievance Panel, as assigned by the Office of the Administrative Director of the Courts. All hearings shall be conducted in accordance with and be governed by the provisions of the Oklahoma Administrative Procedures Act, 75 O.S. §301-326. At each convening of the Panel, one member shall be designated to act as the Chairman.

(c) **Admissibility of evidence.** Rulings on admissibility of evidence shall be made by the Panel Chairman; provided, however, that the remaining members of the Panel may, by affirmative vote, overrule the Chairman's decision, on their own motion or upon motion of any party to the hearing.

(d) **Oaths and subpoena.** The Chairman of the Panel shall have the authority to administer oaths for obtaining testimony for the hearing; and any member of the Panel or the Attorney representing EGID shall have the authority to issue subpoenas for witnesses or subpoenas duces tecum to compel the production of books, records, papers and other objects for the hearing. Said subpoenas may be served by any duly qualified officer of the law, or any employee of EGID in any manner prescribed for the service of a subpoena in a civil action.

(e) **Court reporter.** The Attorney representing EGID shall cause a recording of the proceedings to be made by a certified court reporter at EGID's expense. If transcribed, such written transcript shall become a part of the official record of the hearing, and a copy shall be furnished to any other party having a direct interest therein at the request and expense of such party. The cost of preparing the written transcript of the hearing and providing a copy of the transcript to the other party shall be paid by the party on whose behalf the written transcript is requested.

(f) **Procedure.** In all hearings, opportunity shall be afforded the party or parties requesting same to respond and present evidence and argument on all issues involved. The hearing shall be conducted in an orderly manner. The party or parties requesting the hearing shall appear in person or through licensed counsel and be heard first; those, if any, who oppose the relief sought by the requesting party shall next be heard. Each party shall have the opportunity to present closing arguments.

260:45-5-5. **Continuance; disposition; Attorney representation**

Any request for continuance of a hearing conducted by the three [3] member Grievance Panel may be granted by the Attorney representing EGID or the Panel if requested for any of the following reasons: illness or unavailability of the party requesting the hearing, unavailability or illness of a material witness, unavoidable conflict of schedule, unavailability of

relevant documents, or other good cause. All parties to the hearing shall be notified of the continuance as soon as possible.

(1) Unless precluded by law, informal disposition may be made of any individual proceedings by stipulation, agreed settlement, consent order, or default.

(2) Any party shall at all times have the right to be represented by counsel at their own expense, provided such counsel is licensed to practice law by the Supreme Court of Oklahoma.

260:45-5-6. **Certificate of mailing**

All filings, including Orders, Notices and Briefs, considered or issued by the three [3] member Grievance Panel shall include a Certificate of Mailing showing the names and mailing addresses of adverse parties or their attorneys of record.

260:45-5-7. **Final order; appeals**

(a) **Final Order.** The Grievance Panel shall enter a Final Order within no more than forty-five [45] days after the date of the hearing in all cases in which evidence and testimony has been offered and admitted. The Final Order shall separately state all Findings of Fact, Conclusions of Law and an Order approving or denying the claim.

(b) **District Court appeals.** The Grievance Panel's Final Order shall be considered a final decision of EGID for purposes of appeal. Any party to the hearing has the right to appeal to District Court from Final Orders entered by the Panel. This appeal shall be governed by the Administrative Procedures Act, 75 O.S. §301, et seq., and by other pertinent statutes such as 74 O.S. §1301, et seq.

260:45-5-8. **Scheduling of hearings**

All requests for hearings assigned to the three [3] member Grievance Panel ~~regarding the allowance and payment or denial of claims, eligibility, benefits, provision of services, adverse determinations, or other matters~~ shall be presented to, and heard by the Grievance Panel in open court within sixty [60] days of receipt of the properly submitted written request, unless the matter is: settled to the satisfaction of both parties; continued by agreement of the parties; or the Panel orders a continuance for good cause shown.

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TITLE 260. OFFICE OF MANAGEMENT AND ENTERPRISE SERVICES CHAPTER 50. EMPLOYEES GROUP INSURANCE DEPARTMENT - HEALTH, DENTAL, VISION AND LIFE PLANS

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260:50-1-2. Definitions [AMENDED]

Subchapter 3. Administration of Plans
260:50-3-8. Refunds for overpayment [AMENDED]
260:50-3-15. Effective dates of coverage for current employees [AMENDED]
260:50-3-18. Eligibility criteria for disabled dependent children over the age of twenty-six [26] [AMENDED]
260:50-3-20. Withdrawal from plan; termination or loss of coverage [AMENDED]
Subchapter 5. Coverage and Limitations
Part 3. The Plans
260:50-5-10. Plan limits [AMENDED]
Part 13. Coordination of Health and Dental Benefits
260:50-5-45. Definitions [AMENDED]
Subchapter 9. COBRA Health Insurance Continuation
260:50-9-1. Procedures and implementation [AMENDED]

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CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF JANUARY 1, 2018:

SUBCHAPTER 1. PURPOSE AND DEFINITIONS

260:50-1-2. Definitions

The following words and terms as defined by EGID, when used in this chapter, shall have the following meaning, unless the content clearly indicates otherwise:

"Administrative error" occurs when the coverage elections the member makes are not the same as those entered into payroll for deduction from the member's paycheck. This does not include untimely member coverage elections or member misrepresentation. When such an administrative error results in underpaid premiums, full payment to EGID shall be required before coverage elected by the member can be made effective.

If overpayment occurs, EGID shall refund overpaid funds to the appropriate party.

"Administrator" means the Administrator of the Employees Group Insurance Department or a designee.

"Allowable fee" means the maximum allowed amount based on the HealthChoice Network Provider Contracts payable to a provider by EGID and the member for covered services.

"Attorney representing EGID" means any attorney designated by the Administrator to appear on behalf of EGID.

"The Board" means the seven [7] Oklahoma Employees Insurance and Benefits Board members designated by statute [74 O.S. §1303(1)].

"Business Associate" shall have the meaning given to "Business Associate" under the Health Insurance Portability and Accountability Act of 1996, Privacy Rule, including, but not limited to, 45 CFR §160.103.

"Carrier" means the State of Oklahoma.

"Comprehensive benefits" means benefits which reimburse the expense of facility room and board, other hospital services, certain out-patient expenses, maternity benefits, surgical expense, including obstetrical care, in-hospital medical care expense, diagnostic radiological and laboratory benefits, providers' services provided by house and office calls, treatments administered in providers' office, prescription drugs, psychiatric services, Christian Science practitioners' services, Christian Science nurses' services, optometric medical services for injury or illness of the eye, home health care, home nursing service, hospice care and such other benefits as may be determined by EGID. Such benefits shall be provided on a co-payment or coinsurance basis, the insured to pay a proportion of the cost of such benefits, and may be subject to a deductible that applies to all or part of the benefits as determined by EGID. [74 O.S. §1303 (14)]

"Cosmetic procedure" means a procedure that primarily serves to improve appearance.

"Current employee" means an employee in the service of a participating entity who receives compensation for services actually rendered and is listed on the payrolls and personnel records of said employer, as a current and present employee, including employees who are otherwise eligible who are on approved leave without pay, not to exceed twenty-four [24] months. An education employee absent from employment, not to exceed eight [8] years, because of election or appointment as local, state, or national education association officer who is otherwise eligible prior to taking approved leave without pay will be considered an eligible, current employee. A person elected by popular vote will be considered an eligible employee during his tenure of office. Eligible employees are defined by statute. [74 O.S. §1303 and §1315]

"Custodial care" means treatment or services regardless of who recommends them or where they are provided, that could be given safely and reasonably by a person not medically skilled. These services are designed mainly to help the patient with daily living activities. These activities include but are not limited to: personal care as in walking, getting in and out of bed, bathing, eating by spoon, tube or gastrostomy, exercising, dressing, using toilet, preparing meals or special diets, moving

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the patient, acting as companion or sitter, and supervising medication which can usually be self-administered.

"Dependent" means the primary member's spouse (if not legally separated by court order), including common-law. Dependents also include a member's daughter, son, stepdaughter, stepson, eligible foster child, adopted child, child for whom the member has been granted legal guardianship or child legally placed with the primary member for adoption up to the child's twenty-sixth [26th] birthday. In addition other unmarried children up to age twenty-six [26] may be considered dependents if the child lives with the member and the member is primarily responsible for the child's support. A child may also be covered regardless of age if the child is incapable of self-support because of mental or physical incapacity that existed prior to reaching age twenty-six [26]. Coverage is not automatic and must be approved with a review of medical information. A disabled dependent deemed disabled by Social Security does not automatically mean that this disabled dependent will meet the Plan requirements. [74 O.S. §1303(13)]. See additional eligibility criteria for disabled dependents over the age of twenty-six [26] at 260:50-3-18.

"Durable medical equipment" means medically necessary equipment, prescribed by a provider, which serves a therapeutic purpose in the treatment of an illness or an injury. Durable medical equipment is for the exclusive use of the afflicted member and is designed for prolonged use. Specific criteria and limitations apply.

"Emergency" ~~means a sudden and unexpected symptom that a prudent lay person, who possesses an average knowledge of health and medicine, could reasonably expect that the absence of immediate medical attention would result in placing the health of the individual or others in serious jeopardy.~~ means a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) so that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in a condition described in clause (i), (ii), or (iii) of section 1867(e)(1)(A) of the Social Security Act (42 U.S.C. 1395dd (e)(1)(A)). (In that provision of the Social Security Act, clause (i) refers to placing the health of the individual (or, with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy; clause (ii) refers to serious impairment to bodily functions; and clause (iii) refers to serious dysfunction of any bodily organ or part.)

"Enrollment period" means the time period in which an individual may make an election of coverage or changes to coverage in effect.

"Excepted Benefits" means the four categories of benefits as established in section 2791 of the PHS Act, section 733 of ERISA and section 9832 of the Internal Revenue Code, as summarized in IRS Bulletin 2015-14 and subsequent regulatory guidance. These Excepted Benefits include but are not limited to vision coverage, dental coverage, long-term care insurance, Medicare supplement coverage, automobile liability insurance, workers compensation, accidental death and dismemberment insurance and specific disease coverage (such as cancer).

"Facility" means any hospital, rehabilitation facility, skilled nursing facility, midwifery center, ambulatory surgical center, home health agency, infusion therapy entity, hospice program, durable medical equipment vendor, radiology facility, dialysis facility, or laboratory which is duly licensed under the laws of the state of operation, Medicare certified as applicable, and accredited by a nationally recognized accreditation organization that is approved by state or federal guidelines, for example, The Joint Commission (formerly JCAHO) or The Commission on Accreditation of Rehabilitation Facilities (CARF).

"Fee schedule" means a listing of one or more allowable fees.

"Former participating employees and dependents" means eligible former employees who have elected benefits within thirty [30] days of termination of service and includes those who have retired, or vested through an eligible State of Oklahoma retirement system, or who have completed the statutory required years of service, or who have other coverage rights through Consolidated Omnibus Budget Reconciliation Act (COBRA) or the Oklahoma Personnel Act. An eligible dependent is covered through the participating former employee or the dependent is eligible as a survivor or has coverage rights through COBRA.

"Health information" means any information, whether oral or recorded in any form or medium: (1) that relates to the past, present or future physical or mental condition of a member; the provision of health care to a member; or the past, present or future payment for the provision of health care to a member; and (2) that identifies the member or with respect to which there is a reasonable basis to believe the information can be used to identify the member.

"Home health care" means a plan of continued care of an insured person who is under the care of a provider who certifies that without the Home health care, confinement in a hospital or skilled nursing facility would be required. Specific criteria and limitations apply.

"Hospice care" means a concept of supportive care for terminally ill patients. Treatment focuses on the relief of pain and suffering associated with a terminal illness. Specific criteria and limitations apply.

"Inaccurate or erroneous information" means materially erroneous, false, inaccurate, or misleading information that was intentionally submitted in order to obtain a specific coverage.

"Initial enrollment period" means the first thirty [30] days following the employee's entry-on-duty date. A group initial enrollment period is defined as the thirty [30] days following the enrollment date of the participating entity.

"Insurance Coordinator" means Insurance/Benefits Coordinator for Education, Local Government, and State Employees.

"Maintenance care" means there is no measurable progress of goals achieved, no skilled care required, no measurable improvement in daily function or self-care, or no change in basic treatment or outcome.

"Medically necessary" means services or supplies which are provided for the diagnosis and treatment of the medical

and/or mental health/substance abuse condition and complies with criteria adopted by EGID. Direct care and treatment are within standards of good medical practice within the community, and are appropriate and necessary for the symptoms, diagnosis or treatment of the condition. The services or supplies must be the most appropriate supply or level of service, which can safely be provided. For hospital stays, this means that inpatient acute care is necessary due to the intensity of services the member is receiving or the severity of the member's condition, and that safe and adequate care cannot be received as an outpatient or in a less intensified medical setting. The services or supplies cannot be primarily for the convenience of the member, caregiver, or provider. The fact that services or supplies are medically necessary does not, in itself, assure that the services or supplies are covered by the Plan.

"Members" means all persons covered by one or more of the group insurance plans offered by EGID including eligible current and qualified former employees of participating entities and their eligible covered dependents.

"Mental health and substance abuse" means conditions including a mental or emotional disorder of any kind, organic or inorganic, and/or alcoholism and drug dependency.

"Network provider" means a practitioner who or facility that is duly licensed under the laws of the state in which the "Network provider" operates and/or is accredited by a nationally recognized accrediting organization such as The Joint Commission (formerly JCAHO) or The Commission on Accreditation of Rehabilitation Facilities (CARF) approved by state or federal guidelines, and has entered into a contract with EGID to accept scheduled reimbursement for covered health care services and supplies provided to members.

"Non-Network out-of-pocket" means the member's expenses include the total of the member's deductibles and co-insurance costs plus all amounts that continue to be charged by the non-Network provider after the HealthChoice allowable fees have been paid.

"OEIBB" means Oklahoma Employees Insurance and Benefits Board.

"Open enrollment period" means a limited period of time as approved by either EGID or the Legislature in which a specified group of individuals are permitted to enroll.

"Option period" means the time set aside at least annually by EGID in which enrolled plan members may make changes to their enrollments. Eligible but not enrolled employees may also make application for enrollment during this time. Enrollment is subject to approval by EGID.

"Orthodontic limitation" means an individual who enrolls in the Dental Plan will not be eligible for any orthodontic benefits for services occurring within the first twelve [12] months after the effective date of coverage. Continuing orthodontic services for newly hired employees who had previous group dental coverage will be paid by prorating or according to plan benefits.

"Other hospital services and supplies" means services and supplies rendered by the hospital that are required for treatment, but not including room and board nor the professional services of any provider, nor any private duty, special or intensive nursing services, by whatever name called, regardless

of whatever such services are rendered under the direction of the hospital or otherwise.

"Participating entity" means any employer or organization whose employees or members are eligible to be participants in any plan authorized by or through the Oklahoma Employees Insurance and Benefits' Act.

"The Plan or Plans" means the self-insured Plans by the State of Oklahoma for the purpose of providing health benefits to eligible members and may include such other benefits as may be determined by EGID. Such benefits shall be provided on a coinsurance basis and the insured pays a proportion of the cost of such benefits.

"Primary insured" means the member who first became eligible for the insurance coverage creating eligibility rights for dependents.

"Prosthetic appliance" means an artificial appliance that replaces body parts that may be missing or defective as a result of surgical intervention, trauma, disease, or developmental anomaly. Said appliance must be medically necessary.

"Provider" means a physician or other practitioner who is duly licensed or certified under the laws of the state in which the Provider practices and is recognized by this Plan, to render health and dental care services and/or supplies.

"Schedule of benefits" means the EGID plan description of one or more covered services.

"Skilled care" means treatment or services provided by licensed medical personnel as prescribed by a provider. Treatment or services that could not be given safely or reasonably by a person who is not medically skilled and would need continuous supervision of the effectiveness of the treatment and progress of the condition. Specific criteria and limitations are applied.

SUBCHAPTER 3. ADMINISTRATION OF PLANS

260:50-3-8. Refunds for overpayment

(a) **Refunds.** Any refund of payment for any premium overpayment shall be made only when EGID is notified in writing no later than sixty [60] days after the actual date of the overpayment, unless lack of notification is beyond control as determined by EGID.

(b+) **Administrative Error.** Refunds for overpayment due to administrative error, as limited and defined in the rules in this title, of the Insurance/Benefits Coordinator or the payroll clerk for EGID, shall be made at one hundred percent [100%].

(c2) **Refunds on behalf of employees.** Refunds on behalf of employees shall be paid to the entity. In order appropriate party. For an entity to receive a refund ~~entity~~. the entity must have a credit balance.

(d) **Inaccurate or erroneous information.** If EGID finds that materially erroneous, false, inaccurate, or misleading information was intentionally submitted in order to obtain a specific coverage, then:

(1) For optional or supplemental life insurance coverage in excess of any guaranteed amounts of coverage, EGID shall extinguish its liability by tendering a refund of premiums paid to the insured or the beneficiary;

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(2) Health or dental coverage would be canceled retroactive to the effective date of the coverage obtained by the misrepresentation. Refunded premiums would be reduced by any claims paid by HealthChoice.

(e) Medicare eligibility. There shall be no refund of premiums for prior months during which the member was eligible for Medicare, and written notice was not provided to EGID. An exception shall be made for individuals who are retroactively awarded Medicare coverage by the Social Security Administration, when written notice of the retroactive award is provided to EGID within thirty [30] days after the member's notification of the Social Security Administration award. A member's sixty-fifth [65th] birthday is considered automatic notification of Medicare eligibility.

260:50-3-15. Effective dates of coverage for current employees

An employee other than an education employee is eligible to participate if not classified as seasonal or temporary and whose actual performance of duties normally requires one thousand [1,000] hours per year or more. An education employee who is a member of or eligible to participate in the Oklahoma Teacher's Retirement System and working a minimum of four [4] hours per day or twenty [20] hours per week may participate in the Plan. Part-time education employees are those who meet the requirements of a half-time employee as defined by the Oklahoma Teachers Retirement System. Eligible employees shall be covered on the first [1st] day of the month following the month in which the employee is in an eligible status.

(1) If an employee is absent due to accident or illness on the date the employee coverage would normally become effective, benefits shall not be payable until the employee returns to the job. If the employee is absent from work because of a holiday, vacation or nonscheduled working day and the employee was on the job on a scheduled working day immediately preceding the effective date, this effective date will not be changed. An employee coming to work during the latter part of a payroll period who is not able to complete an insurance change form should be placed on the appropriate plans on the first [1st] day of the following month with employee only coverage, so that the employee life, dental and health will be in effect. Members may add optional coverages within the member's initial thirty [30] day enrollment period to be effective the first [1st] day of the month following the date the member enrolled for optional coverages.

(2) Participating entities shall forward members' enrollment information and any changes to enrollment information during the initial enrollment period to the Administrator within ten [10] days after the last day a member may enroll.

(3) If an employee leaves a participating entity and is hired by another participating entity within the following thirty [30] day period, premiums must be forwarded to EGID to avoid a break in coverage.

(4) An enrolled member who terminates employment or is in leave without pay status and whose spouse is

also an enrolled employee may transfer coverage to their spouse to be insured as a dependent. The health, dental, vision and basic life may be transferred. The employee's basic life amount will transfer to a dependent spouse amount. If there are dependent children, they must also be insured unless they have other ~~verifiable group coverage~~ group or qualified individual health insurance.

(5) An employee that terminates from a participating employer and is hired by another participating employer shall be entitled to be treated as a new employee with new health, dental, vision and life benefit options available. A rehired employee returning to a former employer has new health, dental and vision benefit options only after a thirty [30] day break in coverage and may be subject to orthodontic limitations.

(6) Except as provided by statute, an individual employee may choose not to be enrolled in the health or dental plans or may disenroll from these plans because of other health or group dental coverage or by reason of eligibility for military or Indian health services within thirty [30] days after the date the employee becomes eligible for the other health or group dental coverage. Such employees who subsequently lose the other coverage or eligibility for military or Indian health services may enroll in the corresponding health or dental plans offered through EGID if the election is made no later than thirty [30] days after the date of loss of the other coverage. At the insured's option, in order to avoid a break in coverage and the application of the dental limitation, coverage under this Plan shall become effective on the first [1st] day of the month during which the insured actually lost the previous coverage, provided the insured pays the full premium for that month. Otherwise, coverage shall become effective under this Plan on the first [1st] day of the month following the election of health and/or dental coverage, and any break in coverage shall result in the application of the dental limitations. Excepted Benefits do not qualify as other health coverage for purposes of this rule.

260:50-3-18. Eligibility criteria for disabled dependent children over the age of twenty-six [26]

Eligibility criteria for covering a disabled dependent child over the age of twenty-six [26] pursuant to 74 O. S. §1303(13) are as follows, provided all other eligibility requirements are also satisfied:

(1) It is intended that the following dependent children over the age of twenty-six [26] are eligible for coverage under this provision:

(A) A child who has been medically determined to be incapable of self-support because of mental or physical incapacity that currently exists and has continuously existed since before reaching the age of twenty-six [26] years; and

(B) The child is the primary member's natural child, an adopted child, a child for whom the primary member has been granted guardianship, or a child of the primary member's spouse when the spouse has

been ordered by a Court to provide health insurance for the child; and

(i) Eligibility through court appointed guardianship will be accepted only for individuals considered to be the primary member's immediate family members. ~~(such as a child or grandchild).~~ Guardianship for others not listed herein will not be considered as documentation supporting eligibility for coverage as a disabled dependent. The assessment/application for coverage must be submitted within thirty [30] days of obtaining legal guardianship. Power of attorney, including durable power of attorney, does not qualify as guardianship; and

(ii) Coverage ceases at the end of the month in which the primary member's appointment as guardian is terminated.

(C) An approved disabled dependent can only be added to coverage within thirty [30] days of a qualifying event. While changes to coverage (benefits or plan options) may be made during the annual Option Period, enrollment of a disabled dependent will not be considered without a qualifying event.

(2) Other criteria required for disabled dependent status are:

(A) For an individual who is a new hire or a re-hire, assessment/application for disabled dependent status must be completed and submitted to EGID within thirty [30] days of primary member's initial enrollment;

(B) Primary members must submit a copy of their federal and/or state income tax returns for the prior year reflecting their support of the dependent.

(C) Dependents are eligible only for the coverage in which the primary insured is enrolled. Only dependent life insurance can be carried by both parents if each is a primary member under the plan; and

(D) Primary members must apply for disabled dependent status for an eligible child at least thirty [30] days prior to the dependent's twenty-six [26th] birthday.

(3) Disabled dependent status must be continued for a minimum of one [1] year. If the dependent having the disabled status is dropped from coverage, the primary member may not reapply for disabled dependent status for the dependent for a period of twelve [12] months. The twelve [12] month requirement does not apply when the dependent has lost other group coverage.

260:50-3-20. Withdrawal from plan; termination or loss of coverage

(a) **Withdrawal from plan.** Those eligible entities participating on a voluntary basis that elect to withdraw cannot re-enter the Plan for one [1] year following the date of withdrawal except for extraordinary circumstances. Notice of the election to withdraw must be provided to EGID thirty [30] days prior to the actual withdrawal date.

(b) **Termination of coverage due to insolvency of carrier.** Any eligible entities who have withdrawn and purchased other coverage, then have been notified by their other health and/or group dental insurance carrier that coverage is being terminated due to insolvency of the carrier may re-enroll in the corresponding coverages within thirty [30] days after the loss of coverage by submitting a completed application form which must be approved by EGID prior to enrollment. Excepted Benefits do not qualify as other health coverage for purposes of this rule.

(c) **Individual member withdrawal and re-enrollment.** An individual employee who discontinues coverage on himself cannot re-enroll in any coverage for himself or his dependents for a period of twelve [12] months. Subsequent to the end of this twelve [12] month period, he may reapply for coverage offered by ~~the Oklahoma State and Education Employees Group Insurance Board~~ EGID provided that he is eligible through a participating entity. The orthodontic limitations will apply.

(d) **Loss of other health, group dental or group life insurance coverage.** The twelve [12] month requirement does not apply when the individual member has lost other health, group dental and/or group life insurance coverage and is seeking reinstatement pursuant to Rule 260:50-3-20(c). Excepted Benefits do not qualify as other health coverage for purposes of this rule.

SUBCHAPTER 5. COVERAGE AND LIMITATIONS

PART 3. THE PLANS

260:50-5-10. Plan limits

(a) **Deductible.** Covered members or dependents may be required to meet a calendar year deductible. Only covered charges will apply to the deductible.

(b) **Family deductible.** The family deductible is met when covered family medical expenses combined exceed the Plan's specified amount. No further deductible will be required from any covered participant for the remainder of the calendar year.

(c) **Network out-of-pocket maximum.** Per person and family calendar year out-of-pocket expenses are limited under HealthChoice to the percentage based on coinsurance and copayments. When the member or dependent exceeds the specified out-of-pocket calendar year maximum EGID will pay one hundred percent [100%] of the allowable fee for treatment provided by a Network provider. The one hundred percent [100%] payment of the allowable fee will be made by HealthChoice for the remainder of the calendar year. Network out-of-pocket maximum accumulations also apply to the non-Network out-of-pocket accumulations. The out-of-pocket maximum does not include charges for non-covered services and balance billing charges from non-Network providers.

(d) **Non-Network out-of-pocket.** The Plan will pay one hundred percent [100%] of the allowable fee for treatment provided by a non-Network provider, once the member or dependent exceeds the specified out-of-pocket calendar year threshold. The one hundred percent [100%] payment of

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the allowable fee will be made by the Plan for the remainder of the calendar year. Specific HealthChoice plans may apply non-Network out-of-pocket accumulations to the Network out-of-pocket maximums. Unlike Network providers, non-Network providers have no contractual obligation to limit members' financial responsibility after HealthChoice has paid the claim. HealthChoice processes claims based on limited allowable fees to Network and non-Network providers. Allowable fees are not the same as charges billed by providers. Network providers have agreed with HealthChoice to write off the remainder of their fees after all payments from HealthChoice and the member's deductible, copay and coinsurance have been determined. However, non-Network providers have no write-off agreement with HealthChoice, which means the member remains responsible for paying all outstanding billed charges for treatment which have not been paid by HealthChoice. In most cases, this leaves the member responsible for paying a substantial out-of-pocket charges for treatment by the non-Network provider. The out-of-pocket maximum does not include charges for non-covered services, balance billing charges from non-Network providers and copays. Copayments apply to the Network out-of-pocket maximum.

~~(e) **Lifetime maximum benefit.** There is a lifetime maximum benefit that will be paid by the Plan for a member or dependent, with regard to pharmacy benefits.~~

~~(f) **Treatment by non-Network providers.** Any treatment at a non-Network provider will remain subject to the fee schedule or any other form of maximum claim payment limitation. Claims paid pursuant to the benefit administration procedures or guidelines as adopted by EGID at any non-Network hospital or provider are subject to the limited maximum allowable fee in every case, regardless of the reason why the member sought and received treatment at the non-Network provider, and will usually result in substantial out-of-pocket expenses to the insured. Exceptions allowed by Statute at 74 O.S. §1304(12) and (13) may be made, when appropriate.~~

PART 13. COORDINATION OF HEALTH AND DENTAL BENEFITS

260:50-5-45. Definitions

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

"Allowable expense" means any medically necessary item of expense at least a portion of which is covered under at least one of the plans covering the person for whom the claim is made except where a statute requires a different definition. An expense or service, or a portion of an expense or service that is not covered by EGID's medical and or dental plan is not an allowable expense. The maximum liability under EGID's medical and or dental plan as a secondary or subordinate ~~payor~~ ~~payer~~ is the member's actual liability under any coordinating plan or EGID's standard benefit, whichever is less. However, items of expense under coverage such as, but not limited to dental care, vision care, prescription drug or hearing aid programs may be excluded from the definition of allowable

expense. A plan which provides benefits only for any such items of expense may limit its definition of allowable expense to like items of expense. When a plan provides benefits in the form of services rather than cash payments, the reasonable cash value of each service rendered shall be deemed to be both an allowable expense and a benefit paid. The difference between the cost of a private hospital room and the cost of a semi-private hospital room shall not be deemed to be an allowable expense, except for the period of time during which the patient's confinement to a private hospital room is deemed medically necessary in terms of generally accepted medical practice.

"Plan" means the following:

(A) "Plan" means any plan providing benefits or services for or by reason of medical or dental care or treatment, which benefits or services are provided by:

- (i) group, blanket or franchise insurance coverage,
- (ii) service plan contracts, group practice, individual practice and other prepayment coverage,
- (iii) any coverage under labor-management trustee plans, union welfare plans, employer organization plans, or employee benefit organization plans, and
- (iv) any coverage under governmental programs, and any coverage required or provided by any statute.

(B) The term "Plan" shall be construed separately with respect to each policy, contract, or other arrangement for benefits or services and separately with respect to that portion of any such policy, contract, or other arrangement which reserves the right to take the benefits or services of other plans into consideration in determining its benefits and that portion which does not.

(C) Individually underwritten and issued contracts which provide a contractual right to renewal regardless of membership in or connection with any particular organization or group shall not be considered group-type contracts, irrespective of the mode or channel of premium payment and regardless of any reduction in premium the covered person may receive by virtue of such method of premium collection.

(D) The definition of a "Plan" within the coordination of benefits provision of group contracts enumerates the types of coverage which the insurer may consider in determining whether other insurance exists with respect to a specific claim. Such definition:

- (i) May not include individual or family policies, or individual or family subscriber contracts, except as provided in (ii) of this part and in (E) of this definition.
- (ii) May include all group or group subscriber contracts as well as such group-type contracts as are not available to the general public and can be obtained and maintained only because of the covered person's membership in or connection with a

particular organization or group. Group-type contracts answering this description may be included in the definition, at the option of the insurer and its policyholder client, whether or not individual policy forms are utilized and whether the group-type coverage is designated as "franchise" or "blanket" or in some other fashion.

(E) The definition of "Plan" may include both group and individual automobile "no fault" contracts but, as to the traditional automobile "fault" contracts, only the medical benefits written on a group or group-type basis may be included.

(F) Interpretation of the definition of a "Plan" may not include group or group-type hospital indemnity benefits (written on a non-expense incurred basis) of thirty dollars [\$30] per day or less unless they are characterized as reimbursement type benefits but are designed to administer so as to give the insured the right to elect indemnity type benefits, in lieu of such reimbursement type benefits at the time of the claim. In any event, the amount of group and group-type hospital indemnity benefits which exceed thirty dollars [\$30] per day may be construed as being included under the definition of "Plan".

(G) School accident type coverages, written on either an individual, blanket, group or franchise basis should not be taken into consideration in coordination of benefits. In this context, school accident type coverages are defined to mean coverage covering grammar school, middle school, and high school students for accidents only, including athletic injuries, either on a twenty-four [24] hour basis or "to and from school" for which the parent pays the entire premium.

(H) If "Medicare" or similar governmental benefits are included in the definition of "Plan", such benefits may be taken into consideration without expanding any of the definitions of this provision beyond the hospital, medical, and surgical benefits which may be provided by the governmental program.

(I) A plan may not coordinate or design benefits so that the benefits payable are altered solely on the basis that:

- (i) another plan exists; or
- (ii) except with respect to Part B of Medicare, that the claimant is or could have been covered under another plan; or
- (iii) the claimant has elected an option under another plan providing a lower level of benefits than another option for which the claimant was eligible.

(J) With regard to plans offered by EGID an eligible person shall not be insured as a primary insured and also as a dependent for any benefit options except dependent life, nor can any dependent be covered simultaneously by more than one primary insured. Double enrollment, whether it occurs intentionally or by error, shall be deemed void from the inception, and EGID reserves the right to decide which form of

single enrollment coverage to allow, whether primary or dependent.

"This Plan" means that portion of the benefits that are subject to this part.

SUBCHAPTER 9. COBRA HEALTH INSURANCE CONTINUATION

260:50-9-1. Procedures and implementation

Notice of right to continue coverage. ~~Each agency or employer participating in the EGID Plan~~ shall advise each covered employee of his right to continue coverage under Federal COBRA provisions. COBRA coverage applies only to health, dental, and vision benefits. Life and disability coverage are not available through COBRA.

[OAR Docket #17-549; filed 6-29-17]

**TITLE 265. STATE FIRE MARSHAL COMMISSION
CHAPTER 50. FIRE EXTINGUISHER INDUSTRY**

[OAR Docket #17-474]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 3. License Requirements
265:50-3-2 [AMENDED]

AUTHORITY:

59 O.S. §§ 1820.1 et seq.; State Fire Marshal Commission

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n/a

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n/a

GIST/ANALYSIS:

Define changes to examination and re-examination procedures set forth in 265:50-3-2(a)(1)(G) and 265:50-3-2(c).

CONTACT PERSON:

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

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FINALLY ADOPTED AS SET FORTH IN 75 O.S.,
SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE
DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 3. LICENSE REQUIREMENTS

265:50-3-2. Application and license fees, period and display, and examination alternatives for prerequisites

(a) **Application and license fees.** The following fees apply to the Fire Extinguisher Industry licensure:

- (1) Initial application and licensing fees:
 - (A) Company - \$250.00;
 - (B) Company Qualified Agent - \$200.00;
 - (C) Designer Application - \$200.00;
 - (D) Technician - \$75.00;
 - (E) Trainee - \$75.00;
 - (F) Salesperson - \$75.00;
 - (G) ~~Re-Examination, Per Attempt - \$50.00~~
- (2) Renewal Fees:
 - (A) Company License - \$250.00;
 - (B) Company Qualified Agent - \$100.00;
 - (C) Designer - \$100.00;
 - (D) Technician - \$35.00;
 - (E) Trainee - \$35.00;
 - (F) Salesperson - \$35.00;
 - (G) Duplicate License - \$25.00

(b) **License period.**

- (1) A license shall expire on September 30, 2009 and each year thereafter. Renewals must be received or postmarked on or before September 30 of each year. Beginning October 1 a license may be renewed by paying double the renewal fee.
- (2) Initial applicants for managers, designers, technicians, salespersons and trainees shall provide either:
 - (A) An application and a current criminal history record check dates within thirty days of application, from the Oklahoma State Bureau of Investigations. If the applicant has not resided in the State of Oklahoma for the past ten (10) years, a current criminal history record check from each State of previous residents will be required. In addition two (2) completed fingerprint cards and two (2) passport photos (provides for temporary licensure);
 - (B) An application two (2) completed fingerprint cards and two (2) passport photos (does not provide for temporary licensure).
- (3) A license which has been expired for more than two (2) years shall not be renewed. An individual may obtain a valid license by successful completion of the appropriate examination and/or certification and other licensure requirements.
- (4) From July 1, 2008 through September 20, 2008 the State Fire Marshal shall, upon proper application and payment of fee, make license without examination those persons who can provide evidence that they were engaged

in fire suppression work prior to November 1, 2007. Example of evidence includes but not limited to:

- (A) Invoices for work performed;
- (B) Purchase receipts for industry related equipment;
- (C) Documents of installation or services by employee;
- (D) Provide documentation of printed advertising dated prior to the effective date of November 1, 2007; and
- (E) Other documents as provided by the Committee.

(c) **Examination and Re-examination.** Any applicant failing to pass the appropriate examination shall be required to retake the same category examination and after payment of the appropriate retest fee to the testing provider prior to licensure. However if the examinee notifies the Agency within the seventy two (72) hours before scheduled exam, the Agency will reschedule the examination date with no additional fee required pursuant to 265:50-3-2(a)(1). If a passing score is not achieved on the second exam attempt the applicant may only retake the examination once every thirty (30) days. The exam provider will send the exam results directly to the OSFM offices. Passing exam scores are valid for 90 days and application for licensure must be submitted 90 days from taking the exam or the exam must be retaken.

(d) **Company license display.** The state issued company license number shall be placed on all letterhead stationery, business cards, invoices, statements, contracts, bids, estimates, plans, submittals and printed advertisements and shall be included in electronic media advertisements. Decals and yard signs shall display the state issued company license number. The state issued company license number shall be located on all vehicles that display the company name.

(e) **Personal license display.** Each qualified agent, designer, technician, trainee or salesperson shall possess the state issued card any time the person is working in such capacity. The individual license shall be presented to any authorized representative of the Oklahoma State Fire Marshal's Office or other authorities having jurisdiction. In addition the individual shall have a state/government issued photo ID in their possession while engaged in the licensed activity.

(f) **Personal license information.**

- (1) Each individual license holder shall notify the Oklahoma State Fire Marshal's Office on a form specified and provided by the Oklahoma State Fire Marshal's Office within fourteen (14) days of the following:
 - (A) Any change in the home address.
 - (B) Any separation from an employer or change in employer.
 - (C) Any conviction for a felony or entry of a plea of guilty or nolo contendere to a felony charge.
- (2) No individual licensed under this Chapter shall contract for his services as an independent contractor without applying for and being issued a company and qualified agent license under this Chapter. No company

shall contract for the independent services of a holder of an individual license under this Section.

[OAR Docket #17-474; filed 6-20-17]

**TITLE 270. OKLAHOMA FIREFIGHTERS PENSION AND RETIREMENT SYSTEM
CHAPTER 10. FIREFIGHTERS PENSION AND RETIREMENT PLAN**

[OAR Docket #17-532]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

270:10-1-8 [AMENDED]

AUTHORITY:

Oklahoma Firefighters Pension and Retirement Board; 11 O.S., § 49-100.7

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

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COMMENT PERIOD:

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ADOPTION:

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SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

December 22, 2016

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 13, 2017

FINAL ADOPTION:

June 13, 2017

EFFECTIVE:

September 11, 2017

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

Rule 270:10-1-8 sets forth the Standard Operating Procedures for the Oklahoma Firefighters Pension and Retirement System (the "System").

The rule amendment to 270:10-1-8(c), reflects the effective date in 11 O.S., Section 49-117.1 of November 1, 2013.

The rule amendments to 270:10-1-8(l), which interprets 11 O.S., Section 49-106.1, Participation in Oklahoma Firefighters Deferred Option Plan, require, commencing with the plan year ending on June 30, 2018 and for each plan year thereafter, an annual mandatory distribution of interest earnings from the Deferred Option Plan and the Deferred Option Plan under the Back DROP provision (collectively "Plan B") for members of the System whose first period of employment with a participating employer of the System occurred before November 1, 2013. Pursuant to 11 O.S., Section 49-106.1(F), except for a lump sum payment or an annuity, the Board of Trustees must approve all other methods of payment for Plan B distributions from a member's Plan B account. Thus, revisions to the rules are necessary to reflect the Board of Trustees' approved methods of payment for any interest earnings credited to a member's Plan B account on or about June 30, 2018, and thereafter.

Under 270:10-1-8(l)(1)(E), the mandatory distribution of interest earnings applies to retired members, disabled members and surviving spouses. Under 270:10-1-8(l)(1)(F), the amount of the mandatory distribution of interest earnings for any plan year is reduced by the amount of the voluntary withdrawals from the member's Plan B account. Under 270:10-1-8(l)(1)(F), the mandatory distribution of interest earnings does not apply to an individual who is receiving an IRS required minimum distribution from Plan B, and the System's required minimum distribution requirements are referenced in 11 O.S., Section 49-106(B).

The amendments to 270:10-1-8(l)(1)(E) also clarify the calculation of interest earnings and the approved methods of payment for the annual mandatory distribution of interest earnings credited to a member's

account on or about June 30, 2018, and thereafter. The amendments to 270:10-1-8(l)(1)(A) and 270:10-1-8(p) provide that if a member fails to make an election for a mandatory distribution greater than \$1,000 made on or after June 28, 2018, the rule amendments state that such failure will result in an automatic rollover of such interest earnings to an individual retirement plan ("IRA"), consistent with Section 401(a)(31) of the Internal Revenue Code of 1986, as amended ("Code"), for any member before the member attains the later of age 62 or the member's normal retirement date ("Automatic Rollover"), and a direct lump sum distribution to the member for any other member before such member attains age 70 $\frac{1}{2}$.

The amendments 270:10-1-8(l)(1)(D) also change the terms "beneficiary" and "beneficiaries" to "designated recipient" and "designated recipients" with respect to any payment to these individuals from the Plan B account in order to be consistent with 11 O.S., Section 49-106.1(G).

The amendments to 270:10-1-8(l)(1)(G) and 270:10-1-8(m)(3) move language within a sentence to clarify the positions that may be held by a Plan B member after such member concludes participation in Plan B if reemployed by a participating municipality and is receiving in-service distributions of the member's accrued benefit from the System.

The amendments to 270:10-1-8(l)(3) and 270:10-1-8(m)(7) change the numbering of (1) and (2) to (A) and (B) to avoid potential confusion with the subsection numbering system.

The amendments to 270:10-1-8(m)(2)(C) add a cross-reference to 270:10-1-8(l).

The amendments adding 270:10-1-8(p) detail the automatic rollover provisions required by Code Section 401(a)(31) for the Automatic Rollover. The amendments provide that in the event of a mandatory distribution that is greater than \$1,000 and made on or after June 28, 2018, without the member's consent to the member before the member attains the later of age 62 or normal retirement date, if the member does not elect to have such distribution paid directly to an eligible retirement plan specified by the member in a direct rollover or to receive the distribution directly, then the State Board shall pay the distribution in a direct rollover to an IRA designated by the State Board.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

270:10-1-8. Standard operating procedures

(a) **Benefits.**

- (1) All pension benefits are paid in arrears the last working day of the month.
- (2) In determining a paid member's normal retirement date, fractional round-up of months and days shall not be used even if the member has volunteer credited service.
- (3) If a member serves the majority of the final month of service, the final month will count as a full month of credited service.
- (4) Where longevity pay or other salary which requires contributions is paid in a lump sum to a member, only the amount that would have been paid for a member's last thirty (30) months of credited service will be used for determining final average salary.
- (5) Retirement pursuant to 11 O.S. § 49-106 has at times included reemployment of a member by a participating municipality in a position which is not covered by the System. Thus, in-service distributions from the System to such a member are permitted. If a retired member is reemployed by a participating municipality in a paid position

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which is covered by the System, such member's monthly retirement payments shall cease during such period.

(b) **Clerks and fire chiefs.**

(1) The clerk and/or the fire chief of a participating municipality, fire protection district, county fire department or development authority are responsible for the administration of local retirement issues affecting all members of the System, including but not limited to enrollment of eligible members, assisting members in making application for benefits, and collection and payment of employer and member contributions.

(2) The clerk and/or the fire chief shall notify the System of any changes regarding active members such as termination, mailing addresses, and deaths. The fire chief will assist the clerk in obtaining necessary information concerning active members. Notices of termination must be provided on the System's Form 8 and shall be signed by the Fire Chief.

(c) **Volunteer firefighters.**

(1) A member of the System changing status from a paid member to a volunteer member is not entitled to combine the paid credited service and the subsequent volunteer credited service towards a paid or a volunteer pension. If a paid member whose first service with a participating employer of the System occurs prior to November 21, 2013, has completed ten (10) years but less than twenty (20) years of credited service, or a paid member whose first service with a participating employer of the System occurs on or after November 1, 2013, has completed eleven (11) years but less than twenty-two (22) years of credited service, such member would be eligible for a paid vested benefit upon meeting the requirements set forth in 11 O.S. Section 49-117.1. The member whose first service with a participating employer of the System occurs prior to November 1, 2013, would need to complete ten (10) or more years as a volunteer member to be eligible to receive a vested volunteer benefit and a member whose first service with a participating employer of the System occurs on or after November 1, 2013 would need to complete eleven (11) or more years as a volunteer member to be eligible to receive a vested volunteer benefit as set forth in 11 O.S. Section 49-101.

(2) Volunteer members are deemed to be employees of a fire department of a participating municipality for the purposes of the administration of the System.

(d) **State Board.**

(1) Applications for pension benefits will not be considered by the State Board until the applicant terminates employment with the fire department of a participating municipality on or before the date of the meeting of the State Board in which the application is considered.

(2) Applications for pension benefits, entrance into the system, refunds of contributions, etc. will be placed on the State Board agenda when all paperwork has been properly completed and received by the system. All necessary paperwork should be filed with the system no later than the Friday preceding the State Board's regular meeting so as to allow for sufficient time to process the application.

(e) **Member deaths and beneficiaries.**

(1) Guardian checks will be addressed with the Guardian's name and the statement: "Guardian of _____" on the face of the check.

(2) The Estate of the retiree or beneficiary shall be entitled to the benefit check written for the month a retiree or beneficiary dies.

(3) To continue monthly benefits on a child who has reached eighteen (18) years of age, verification that the child is enrolled full-time in an accredited school of learning must be received by the System. Documentation is required each semester until the child reaches twenty-two (22) years of age or marries at which time the benefits will cease.

(4) Step-children and grandchildren of members are not beneficiaries unless they are adopted by the member.

(5) Children adopted prior to January 1, 1981, are considered beneficiaries even though the child(ren) may have been adopted after the member's retirement date.

(6) A valid marriage certificate or other necessary proof of marriage is required before an Application of Surviving Spouse for Pension can be considered by the State Board.

(f) **Membership.**

(1) A part-time firefighter shall not belong to the System.

(2) All firefighters must be members of the System if their employer is a participating municipality in the System.

(3) A candidate for a paid firefighter position must first complete a required State Board approved pre-employment physical performance/agility test and physical examination in order to participate and receive any benefits from the System. The physical examination will be reviewed by a physician, selected by the State Board, to determine if the applicant meets the required medical standards. When the System receives all the information necessary for entrance into the System, including the written notice from the physician, selected by the State Board, that the candidate has met the minimum medical requirements for entrance, the Executive Director shall have the authority to approve an entrance date for the candidate no earlier than the date all the necessary information for entrance is received or the actual hire date whichever is later, provided that the date between the time of the administration of the physical examination and the approval for membership in the System by the Executive Director and the candidate's actual hire date by the participating municipality is less than six (6) months. The State Board shall have the authority to deny or revoke the membership of a candidate submitting false information in such candidate's membership application and shall have the final authority in determining eligibility for membership in the System.

(4) An applicant for a paid firefighter position, who is an active volunteer firefighter with the same fire department, and who has passed the physical performance/agility test approved by the State Board as a condition for entrance as a volunteer firefighter shall only

be required to pass the physical examination upon being employed as a paid firefighter if employed by the same fire department.

(5) A terminated paid firefighter who returns to work as a paid firefighter within six (6) months of his or her termination date will not be required to complete another physical examination.

(6) The classification of a paid firefighter shall be a firefighter who is carried on the city payroll as a paid firefighter and who receives a salary which is more than twice the amount of the minimum pension of a volunteer firefighter. Any firefighter making more than this amount will need to complete the required physical performance/agility test and physical exam and his or her employer must remit both the employee and employer contributions to the System.

(g) Credited Service.

(1) If a firefighter is off the participating municipality's payroll for a period of time and employer and employee contributions are not received by the System, that period of time will not count as credited service until said contributions are received by the System.

(2) New volunteer cities joining the System may purchase up to five (5) years of credited service for each member of the department at the annual rate in effect as of the date of purchase, provided verifiable evidence of active firefighter service for the purchased years for each individual is provided to the System. Even though a city is exempt from contributions, contributions must be paid for a volunteer firefighter to receive purchased credit.

(3) If a question arises concerning a member's correct amount of service time, the member must submit to the State Board three (3) affidavits, based upon the actual knowledge of the member's correct service time, and all other necessary documentation, as may be required by the State Board. The Chairman of the State Board may direct a member of the State Board or an employee of the System to visit the member and the city in question for further verification. Service time may be corrected to allow not more than twenty (20) years of service for a member of the Oklahoma Firefighters Pension and Retirement System whose first employment with a participating employer of the System occurs prior to November 1, 2013, or not more than twenty-two (22) years of service for a member of the Oklahoma Firefighters Pension and Retirement System whose first employment with a participating employer of the System occurs on or after November 1, 2013.

(h) Disability.

(1) Applications for disability pensions shall provide medical evidence certifying the disability, proof of injury unless otherwise provided, and that the applicant can no longer perform the duties of a firefighter. The proof of injury must be proof of the specific injury that prevented the disability pension applicant from continuing the duties of a firefighter from the time of injury until present. In a case where a disability applicant returned to performing the duties of a firefighter at any time following the injury, the proof of injury must be accompanied by proof that certifies

cumulative evidence of a continuing condition relating to that specific injury until the time of filing the disability application. In a case where a firefighter returned to a "light duty" or "restricted duty" only status, proof certifying the disability applicant's work status from the injury time until present shall be submitted along with the disability application. The application shall be filed with the Local Board, if the Local Board exists, or the Executive Director of the System. The existing Local Board or the Executive Director of the System will determine if additional medical evidence is required. If additional medical evidence is required, the State Board shall be responsible for payment of any physical examinations and certifications.

(2) If any additional medical evidence is produced concerning a disability pension application, said medical evidence must be presented to the Local Board, if the Local Board exists, or the Executive Director before the State Board considers the application. If an applicant requests a hearing before the State Board, all evidence concerning the application may be presented providing all parties affected by the hearing agree.

(3) A stroke condition that has been medically certified to be caused by heart disease shall be categorized as heart disease for the purpose of applying line of duty presumptions pursuant to 11 O.S. §49-110.

(4) Any additional medical testing requested by a physician for the purpose of certification of a disability at the request of an existing Local Board shall be approved by the Executive Director of the System prior to the medical testing.

(5) A volunteer member who has completed more than ten (10) years of credited service shall be eligible for consideration of a disability in line of duty pension and entitled to the presumptions pursuant to the provisions of 11 O.S. §49-110 provided that competent medical evidence is presented to support the certification of said disability request.

(6) A participating municipality may make an application for a disability pension on behalf of a member provided that medical evidence is presented supporting the existence of a disability. The member may present medical evidence to the contrary.

(7) If there are physician's statements presented which disagree or there is only one physician statement presented, then the Local Board, if one exists, or the Executive Director shall have the medical records examined by a physician of their choosing. If the participating municipality has made the application request and the member presents contrary medical evidence it shall be the responsibility of the existing Local Board or the Executive Director to obtain an authorization of release of medical records from the member prior to the third physician examination.

(i) Local Boards.

(1) If an existing Local Board desires to have a member, who is receiving a disability pension, re-examined by a physician for the purposes of certifying if a disability still exists, the request shall be approved by the State Board.

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- (2) An existing Local Board meets when necessary to review applications for benefits and disability benefits. The Local Board minutes must show action taken by roll call vote. In cities and towns where the city clerk and city treasurer hold both positions the local board becomes a five (5) member board. The board members shall elect a vice-chairman from among all board members who shall assume the duties of the mayor/chairman in that person's absence.
- (3) Any action taken by the local board must be documented. The local board must present objective evidence to the State Board regarding its recommendation. The State Board will consider only the evidence actually presented. The State Board will act upon the evidence presented and render a final decision.
- (4) If the city charter provides, the city council or similar authority, in the absence of the mayor, city clerk or the treasurer, may designate an authorized official as a replacement member of the local board, such as a vice-mayor if he or she has the responsibilities of the mayor. A firefighter member of the local board cannot send a replacement. Only local board members present at a local board meeting may vote. The chairman shall have a casting vote with the members only when necessary to avoid a tie vote among local board members. All local board meetings are subject to the Open Meeting Act.
- (j) **Contributions.**
- (1) There shall be a sixty (60) day waiting period of refund of contributions. If the firefighter requesting the refund of contributions was terminated from service, which resulted in litigation or administrative action, the refund of contributions will not be made until there is a final judgment or conclusion to the litigation or administrative action.
- (2) Gross salary shall include but not be limited to base salary, longevity pay, fire service training and other education pay, scuba pay, out of class pay, one time bonus pay earned during the current twelve (12) month period of employment, and buy back pay when paid on an annual basis and available to all firefighters. Gross salary shall not include payment for unscheduled overtime, payment for accumulated sick, annual or any other similar leave upon termination from employment, any uniform or clothing allowance, car allowance or any other compensation for reimbursement of out-of-pocket expenses. All other compensation not specifically mentioned must have contributions paid on them. Contributions shall be deducted from gross salary prior to federal and state income tax withholdings deductions.
- (3) Volunteer pension contributions are due on July 1 of each year. Cities, towns or fire protection districts subject to the statutory exemption from payment of volunteer contributions shall file for the exemption with the System on an annual basis.
- (4) Workers Compensation benefits shall not be considered a part of gross salary for the purpose of determining pension benefits. The System will not accept member contributions related to workers compensation.
- (5) If a paid member terminated employment prior to January 1, 1981, and then subsequently returns to work as a paid member after January 1, 1981 and then again terminates, contributions paid in prior to January 1, 1981 would not be refundable.
- (6) Salary means a predetermined sum payable at specified and regular times for services rendered, including benefits accumulated and paid as salary; furthermore, any salary received that is to be used in computing a "final average salary" shall be reduced or pro-rated to a monthly amount. It shall be a violation of this section to establish a special pay plan for the purpose of evading the intent of this section.
- (k) **Reinstatement of Prior Service.**
- (1) If a paid firefighter terminates employment and receives a refund of contributions and then subsequently returns to work for a participating municipality, all withdrawn contributions must be paid back to the System plus 10 percent (10%) interest per annum (from the date the member received his or her accumulated contributions to the date of repayment) in order for the member to receive credit for the missed credited service time.
- (2) The member's payment must be made to the System within ninety (90) days following acceptance of the member's application for reinstatement of prior service.
- (3) The member may pay for reinstatement of prior service by a lump-sum payment by check or money order. The member may also pay for reinstatement of prior service by a lump-sum payment (with interest) of non-Roth funds from a Code Section 403(b) annuity, a governmental 457 plan within Oklahoma or a Code Section 401(a) qualified plan.
- (l) **Deferred Option Plan (Plan B).**
- (1) Upon termination of employment, a member participating in the Deferred Option Plan (Plan B) pursuant to 11 O.S. Section 49-106.1 A, B, C, D, E and F shall have the following options:
- (A) Receive a lump sum payment of the member's total account balance, an annuity, a partial lump sum payment or withdrawal, or installment payments of the member's accumulated Plan B balance as described below. Direct rollovers are permitted pursuant to the provisions of 11. O.S. Section 49-106.3. Pursuant to 11 O.S., Section 49-106.1.F, the approved method of payment for any interest earnings credited to a member's Plan B account balance on or about June 30, 2018, and thereafter, as described in (E) of this paragraph, is either a direct lump sum payment of the interest earned for the applicable plan year, or the payment or transfer of the interest earned for the applicable plan year to an Eligible Retirement Plan as defined in 11 O.S., Section 49-106.3. Failure to make an election of either a direct lump sum payment of the interest earned for the applicable plan year, or the payment or transfer of the interest earned for the applicable plan year to an Eligible Retirement Plan shall result in:

(i) an automatic rollover of the interest earned for the applicable plan year to an individual retirement plan, consistent with the mandatory distribution rules of Section 401(a)(31) of the Internal Revenue Code of 1986, as amended, for any member before the member attains the later of age 62 or the member's normal retirement date; and

(ii) a direct lump sum distribution to the member for any other member before such member attains age seventy and one-half (70 $\frac{1}{2}$).

(B) The Subject to the required minimum distribution provisions of 11 O.S. Section 49-106 ("IRS Required Minimum Distribution") and the mandatory interest distribution provisions of (E) of this paragraph, the State Board retains custody of the member's remaining accumulated Plan B balance until the member receives there is a complete and final payout of a member's entire Plan B balance. No more than once a month, the member may elect, with eight (8) working days advance written notice, to change such payout period or payout amount for installment payments.

(C) In addition to the installment payments, a member may elect, with eight (8) working days advance written notice, a withdrawal, but no more than one such withdrawal may be made per month and each withdrawal must be as of the last working day of a month. If such withdrawal is made after installment payments have commenced, appropriate adjustments may be made in the installment payout period to reflect such withdrawal.

(D) ¶To the extent the Plan B balance is to be paid to the member's surviving spouse whether as a designated recipient or by statute, then if the member dies with a balance in the account, such balance will be paid in a lump sum or will continue to be paid in the same manner as was applicable to the member, as elected by the surviving spouse who meets the requirements of paragraph 16 of 11 O.S., Section 49-100.1. If there, except that automatic rollover of the mandatory distribution of interest shall not apply. Any designated recipient who is not the surviving spouse, any remaining beneficiaries shall receive a lump sum payment(s) from the account equal to the balance in the account of the member or any other approved method of payment. If there are no surviving beneficiaries designated recipients, a lump sum payment from the account equal to the balance in the account shall be paid to the member's estate. For purposes of this subparagraph, if a trust is the beneficiary designated recipient (even if the surviving spouse is a beneficiary under such trust), the deceased member's account balance may not remain in the Deferred Option Plan (Plan B) after the member's death.

(E) The interest earned annually on the Plan B account balances shall be calculated based on the return of the investment portfolio of the fund on June 30 of each year as provided in 11 O.S., Section

49-106.1(E)(2) and shall be credited as of June 30 for such plan year. The determined annual interest rate shall be applied on a pro rata account balance in the year the rate is established. Commencing with the plan year ending on June 30, 2018 and for each plan year thereafter, for retired members, disabled members and surviving spouses receiving monthly retirement benefits from the System (Plan A benefits), the interest earned annually on the member's accumulated Plan B balance shall be determined as of June 30 of such plan year and shall be distributed each year as follows:

(i) on or about June 30, 2018, and on or about each subsequent June 30, of such plan year, the initial distribution of interest earnings calculated based on the actuarial assumed interest rate on the first day of the plan year as certified by the actuary in the yearly valuation report shall be distributed; and

(ii) by September 30 of the following plan year, a true-up distribution of any additional earnings posted to a member's account above the interest earnings provided for in (i) of this subparagraph, shall be distributed.

(F) The amount of the mandatory distribution of interest for any plan year shall be reduced by the amount of voluntary withdrawals from the member's Plan B balance during the plan year. No individual shall receive both a mandatory distribution of interest and an IRS Required Minimum Distribution in the same calendar year. In a calendar year in which the System would otherwise distribute both a mandatory distribution of interest and an IRS Required Minimum Distribution to an individual, the IRS Required Minimum Distribution shall be made and not the mandatory distribution of interest. If the member dies before receiving the mandatory distribution of interest, the member's surviving spouse will receive the mandatory distribution of interest. If the member dies before receiving the mandatory distribution of interest with a nonspouse designated beneficiary (or the estate as the recipient), such nonspouse designated beneficiary (or estate) will receive the mandatory distribution of interest as part of a payout of the entire account. If a member withdraws all or a portion of his or her account balance prior to June 30 of a given plan year, the member shall receive at the time of withdrawal, a distribution of interest earnings on the withdrawn amount equal to the actuarial assumed interest rate as certified by the actuary in the yearly valuation report of the actuary on a pro rata basis. If the annual interest earnings calculated on June 30 of a given year exceed the actuarial assumed interest rate as certified by the actuary in the yearly valuation report of the actuary, a member who withdraws all or a portion of his or her account balance prior to June 30 of said plan year shall receive a distribution of additional interest earnings equal to the

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difference between the minimum actuarial interest rate and the calculated interest rate on a pro rata basis.

(FC) At the conclusion of a member's participation in Plan B, the member must terminate employment and shall start receiving the member's accrued monthly retirement benefit from the System. Such a member may be reemployed by a participating municipality ~~but only in a position not covered by the System,~~ and receive in-service distributions of such member's accrued monthly benefit from the System, but only in a position not covered by the System.

(2) Participation in the Oklahoma Firefighters Deferred Option Plan must begin the first day of a month.

(3) For a lump sum payment, direct rollover or a combination thereof, which is paid when the regular monthly benefits commence (Plan A), an exclusion ratio must be calculated and applied to the distribution amount from Plan B to determine the portion that may be excluded from income. This exclusion ratio will equal the member's after-tax contributions to the System divided by the expected return. The expected return is the sum of: ~~(+A)~~ the member's accumulated Plan B balance plus ~~(2B)~~ the amount of the value of the monthly pension from Plan A that the member is expected to receive over time based on single life expectancy factors from Table V issued as part of the income tax regulations under Section 72 of the Internal Revenue Code of 1986.

(4) The rules under this subsection shall only apply to a member whose first employment with a participating employer of the System occurred before November 1, 2013.

(m) **Deferred Option Plan under the Back DROP Provision.**

(1) For purposes of this subsection, the definitions as stated in 11 O.S. Section 49-106.1 (H)(1) shall apply.

(2) In lieu of participating in the Deferred Option Plan (Plan B) pursuant to subsections A, B, C, D, E, F and G of 11 O.S. Section 49-106.1 (referred to herein as an election under Plan B), a member may elect to participate in the Deferred Option Plan pursuant to 11 O.S. Section 49-106.1(H) (referred to herein as an election under the Back DROP provision) and this subsection.

(A) The applicant must submit his or her completed application for participation in the Deferred Option Plan under the Back DROP provision on the form provided by the System.

(B) The application must be received by the System no later than eight (8) working days from the end of the month in order to receive a payment at the end of that month. All distributions shall be paid on the last working day of a month.

(C) Upon the member's election to participate in the Deferred Option Plan under the Back DROP provision, the member's account balance shall remain in the System under the same conditions as ~~while an active member~~ described in (l) of this Section, until distributed.

(D) A member in the Back DROP has the same distribution options as described in (l)(1)(A), (B) and (C) of this Section.

(E) If the member dies with a balance in the account, such balance will be paid in a lump sum or will continue to be paid in the same manner as was applicable, as elected by the surviving spouse who meets the requirements of paragraph 16 of 11 O.S. Section 49-100.1. If there is no surviving spouse, any remaining beneficiaries shall receive a lump sum payment(s) from the account equal to the balance in the account of the member, or any other approved method of payment. If there are no surviving beneficiaries, a lump sum payment from the account equal to the balance in the account shall be paid to the member's estate. For purposes of this subparagraph, if a trust is the beneficiary (even if the surviving spouse is a beneficiary under such trust), the deceased member's account balance may not remain in the Deferred Option Plan (Plan B) after the member's death.

(3) At the member's termination date, his or her monthly pension benefit shall be determined based on earlier attained credited service and on the final average salary as of the back drop date. The member's individual deferred option account shall be credited with an amount equal to the deferred benefit balance, and the member shall terminate employment with all participating municipalities as a firefighter and the member shall start receiving the member's accrued monthly retirement benefit from the System. Such a member may be reemployed by a participating municipality ~~but only in a position not covered by the System,~~ and receive in-service distributions of such member's accrued monthly retirement benefit from the System, but only in a position not covered by the System. On the member's back drop date, the member's retirement benefit will be frozen, and at no time will the member be able to increase his or her benefit due to additional years of service, salary or other promotional increases.

(4) The member's credit of his or her deferred benefit balance shall be as follows:

(A) An amount equal to the accumulated contributions the member made to the System from his or her back drop date to termination date with interest based upon how the benefit would have accumulated on a compound basis as if the member had participated in the Deferred Option Plan (Plan B) pursuant to 11 O.S. Section 49-106.1 A-E from his or her back drop date to termination date;

(B) An amount equal to all monthly retirement benefits that would have been payable had the member elected to cease employment on the back drop date and receive a service retirement from the back drop date to the termination date with applicable cost of living adjustments and with interest based on how the benefit would have accumulated on a compound basis as if the member had participated in the Deferred Option Plan pursuant to O.S. 11 Section 49-106.1 A-E from his or her back drop date to termination date; and

(C) An amount equal to one-half (1/2) of the employer contributions from the back drop date to the termination date, with interest based on how the benefit would have accumulated on a compound basis as if the member had participated in the Deferred Option Plan pursuant to 11 O.S. Section 49-106.1 A-E from his or her back drop date to termination date.

(5) The provisions of 11 O.S. Section 49-106.1 B, C, E, F and G shall apply to this subsection.

(6) A member shall not participate in the Deferred Option Plan pursuant to the Back DROP provision if the member is participating in Plan B pursuant to subsections A, B, C, D, E, F and G of 11 O.S. Section 49-106.1.

(7) For a lump sum payment, direct rollover or a combination thereof, which is paid when the regular monthly benefits commence (Plan A), an exclusion ratio must be calculated and applied to the distribution amount from the Back DROP to determine the portion that may be excluded from income. This exclusion ratio will equal the member's after-tax contributions to the System divided by the expected return. The expected return is the sum of: (4A) the member's deferred benefit balance plus (2B) the amount of the value of the monthly pension from Plan A that the member is expected to receive over time based on single life expectancy factors from Table V issued as part of the income tax regulations under Section 72 of the Internal Revenue Code of 1986.

(8) The rules under this subsection shall only apply to a member whose first employment with a participating employer of the System occurred before November 1, 2013.

(n) **Deferred Option Plan (Plan B) For A Member of the System Whose First Employment With A Participating Employer of the System Occurs On Or After November 1, 2013.**

[RESERVED]

(o) **Vested Rights.**

(1) A paid firefighter who terminated active service with more than ten (10) years of credited service with the System prior to July 8, 1985, must return to active service as a paid firefighter in order to establish vested rights.

(2) A volunteer firefighter who terminated active service with ten (10) years of credited service with the System prior to July 20, 1987, must return to active service as a volunteer firefighter in order to establish vested rights.

(p) **Automatic Rollover.**

(1) "Mandatory distribution" means a distribution that is an eligible rollover distribution subject to Section 401(a)(31) of the Internal Revenue Code of 1986, as amended, and is made without the member's consent to a member before the member attains the later of age 62 or normal retirement date. A distribution to a surviving spouse, alternate payee, or a distribution made upon a member's death is not a mandatory distribution for purposes of the automatic rollover requirements of Section 401(a)(31)(B) of the Internal Revenue Code of 1986, as amended.

(2) In the event of a mandatory distribution greater than \$1,000 made on or after June 28, 2018, if the member does not elect to have such distribution paid directly to an eligible retirement plan specified by the member in a direct rollover or to receive the distribution directly, then the State Board shall pay the distribution in a direct rollover to an individual retirement plan designated by the State Board. For purposes of determining whether a mandatory distribution is greater than \$1,000, the portion of the member's distribution attributable to any rollover contribution is included.

[OAR Docket #17-532; filed 6-29-17]

**TITLE 300. GRAND RIVER DAM AUTHORITY
CHAPTER 35. LAKE RULES**

[OAR Docket #17-638]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. Definitions, Purpose and Application

300:35-1-1 [AMENDED]

300:35-1-2 [AMENDED]

300:35-1-4 [AMENDED]

300:35-1-5 [AMENDED]

300:35-1-6 [AMENDED]

Subchapter 3. General Provisions

300:35-3-2 [AMENDED]

300:35-3-3 [AMENDED]

300:35-3-5 [AMENDED]

300:35-3-9 [AMENDED]

300:35-3-10 [AMENDED]

300:35-3-11 [AMENDED]

300:35-3-12 [AMENDED]

300:35-3-14 [AMENDED]

300:35-3-15 [AMENDED]

Subchapter 5. Boating Safety Rules

300:35-5-3 [AMENDED]

300:35-5-8 [AMENDED]

300:35-5-10 [AMENDED]

300:35-5-11 [NEW]

Subchapter 7. Vessels

300:35-7-1 [AMENDED]

300:35-7-4 [AMENDED]

300:35-7-6 [AMENDED]

300:35-7-12 [AMENDED]

Subchapter 9. Sanctioned Events

300:35-9-1 [AMENDED]

300:35-9-2 [AMENDED]

Subchapter 11. Permits for Wharves, Landings, Buoys, Breakwaters and Docking Facilities

300:35-11-1 [AMENDED]

300:35-11-3 [AMENDED]

300:35-11-4 [AMENDED]

300:35-11-6 [AMENDED]

300:35-11-7 [AMENDED]

300:35-11-8 [AMENDED]

300:35-11-11 [AMENDED]

300:35-11-12 [AMENDED]

300:35-11-13 [AMENDED]

Subchapter 13. Permits for Dikes, Excavations, Dredgings, Erosion Control Devices, Retaining Walls, and Shoreline Stabilization

300:35-13-1 [AMENDED]

300:35-13-3 [AMENDED]

300:35-13-6 [AMENDED]

Permanent Final Adoptions

Subchapter 15. Commercial Use of the Lakes and Lands of GRDA

300:35-15-2 [AMENDED]

Subchapter 17. Raw Water Permits

300:35-17-1 [AMENDED]

300:35-17-4 [AMENDED]

Subchapter 21. Administration of Rules and Hearings

300:35-21-3 [AMENDED]

300:35-21-6 [AMENDED]

300:35-21-7 [AMENDED]

300:35-21-8 [AMENDED]

Subchapter 23. Four-Wheel Vehicles, Off-Road Vehicles and All Terrain Vehicles

300:35-23-1 [AMENDED]

300:35-23-2 [AMENDED]

300:35-23-4 [AMENDED]

300:35-23-5 [AMENDED]

300:35-23-6 [AMENDED]

AUTHORITY:

Grand River Dam Authority; 82 O.S. 2010 § 861A(B)(1), 82 O.S. Supp. 2012 § 863.2(B).

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

December 19, 2016

COMMENT PERIOD:

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March 8, 2017

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

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APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 13, 2017

FINAL ADOPTION:

June 13, 2017

EFFECTIVE:

September 11, 2017

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The proposed amendments add new definitions and provide clarification to existing definitions. Language concerning boat registration, towing activities, four-wheel vehicles, off-road vehicles, and all terrain vehicles has been expanded. A new paragraph has been added regarding usage of paddleboards, canoes, and kayaks. Vessels shall stop when directed, or operate at idle speed within five hundred feet from emergency vessels while emergency lights are activated. All buoys shall be purchased from Grand River Dam Authority ("GRDA") at cost and installed at the expense of the requestor. The requestor will be responsible for continuing maintenance and liability for the buoy. The authority for the rule amendments are found at 82 O.S. § 875.

CONTACT PERSON:

Ellen Caslavka Edwards, General Counsel, Grand River Dam Authority, P.O. Box 409, Vinita, OK 74301, (918) 256-0800.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 1. DEFINITIONS, PURPOSE AND APPLICATION

300:35-1-1. Definitions

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

"Authority or GRDA" means the Grand River Dam Authority.

"Board" means the Board of Directors for the Grand River Dam Authority.

"GM" or "CEO" means the General Manager and/or the Chief Executive Officer of the Grand River Dam Authority.

"GRDA land" or "GRDA property" or "lands of GRDA" means the land owned by GRDA. The location and boundaries of GRDA land is determined by a legal description (generally described by metes and bounds). ~~Many times, a~~ survey is necessary to determine the boundary of GRDA land. A particular elevation does not necessarily determine the boundary of GRDA land. Additionally, GRDA and/or the U.S. Army Corps of Engineers may have flowage easements over land.

"Habitable Structure" or "Dock-o-miniums" means structures used as living quarters constructed in conjunction with new or existing docks, piers, and floats. These structures generally resemble cabins and/or homes, placed on floating structures such as covered or enclosed docks, over boathouses and other similar structures where a building is or may be occupied by people overnight or for extended periods. Generally, these structures may contain water supply and/or waste disposal facilities such as sinks, showers, toilets, kitchen facilities, food preparation areas, etc.

"Neosho Bottoms Management Area" means all GRDA lands owned in Ottawa County along the Neosho River that lie West of U.S. Highway 69 and Spring Rivers not used in the delivery and transmission of electricity.

"Normal Idle Speed" means the vessel is in the forward gear with no additional throttle applied.

"Paddleboard" means a board or surfboard propelled through the water by an occupant by arms or paddle while lying, kneeling or standing on the board.

"Restricted Areas" means any area designated by GRDA where the public is prohibited from engaging in certain activities due to safety concerns or because the activity interferes with the business of GRDA.

"Rollover Protection System" or "ROPS" means a system or structure which can withstand the weight of the vehicle and is intended to protect a vehicle and passengers from being crushed.

"Shoreline Management Plan" or "SMP" means the rules relating to management of the shoreline as approved by the Federal Energy Regulatory Commission.

"Wake" means the track of waves left by a vessel or other object moving through the water and such waves are greater than the natural waves in the immediate area of the vessel or are cresting and showing white water or may cause injury to any person or property. However, a "no wake zone" is not violated when a vessel is safely proceeding with engine(s) engaged at normal idle speed.

"Water Jet Pack" means a propulsion system using jets of water and allows the operator to move above or below the surface of the water.

"Water Jet Pack Unit" means the system propelling a person being propelled in the air by water and includes any forced through a tube, the propulsion equipment worn by the person, and shall also include the vessel/PWC used to propel the equipment person into the air. This system may also be known as a jetlev, aquaboard, or aquaflyer, or flyboard.

"Waters of GRDA" means and refers to the waters of the Grand River and its tributaries, including, but not limited to, Grand Lake O' the Cherokees, Lake Hudson, and the W.R. Holway Reservoir.

300:35-1-2. Statutory authority

The Act (82 O.S.2001, § 861 *et seq.*, as amended) creating the Grand River Dam Authority prescribes the use that may be made of the properties and waters of GRDA and authorizes GRDA to promulgate, prescribe, and enforce rules and regulations, and charge a fee for the use, for recreational and commercial purposes, of its lakes and shorelands, including the use of firearms and the inspection of all vessels of every character proposing to operate or operating on said lakes. The travel of vessels on the waters of GRDA shall be in keeping with the following rules of GRDA in the interest of public health, safety and convenience in the use of the waters and the shorelands of GRDA.

300:35-1-4. Registration of boats

~~The Oklahoma Vessel and Motor Registration Act, 63 O.S.2001, § 4001 *et seq.*, as amended, applies to the waters of GRDA and must be complied with in addition to the Rules herein. Every vessel subject to the provisions of the Oklahoma Vessel and Motor Registration Act must have state registration and a current license by no later than June 30 of the current state fiscal year. Every vessel operating on GRDA waters is subject to the provisions of the Oklahoma Vessel and Motor Registration Act and must have state registration and a current license by no later than June 30 of the current state fiscal year, and shall properly display their current annual registration decal on the vessel at all times. A vessel's state assigned registration number must be displayed in accordance with state law, unless the vessel is a properly documented Coast Guard Approved vessel, and all documentation is available for any officer to view, upon request.~~

300:35-1-5. GRDA police and compliance division

- (a) GRDA has created a Police Department and a Compliance Division for the purpose of enforcing these Rules on the waters and land of GRDA.
- (b) The members of GRDA's Police and Compliance Division are hereby declared to be the enforcement officers for GRDA. The enforcement officers for GRDA may enforce GRDA rules and regulations and the provisions of Sections 861 *et seq.* of Title 82 of the Oklahoma Statutes. The GRDA Police may also enforce those rules and regulations as may

be issued pursuant to the provisions of Section 4200 *et seq.* of Title 63 of the Oklahoma Statutes, and all violations of criminal laws occurring within the boundaries of the counties where real property owned or leased by GRDA is located. The GRDA Police officers shall have the power of peace officers during the performance of their duties, except in the serving and execution of civil process.

(c) The GRDA Police officers shall, in the event of emergency, assist in the rescue of any person who may be in danger and shall assist in the saving of any property that is in danger of being lost or damaged. They ~~shall~~ may require the operator of any vessel operating on the waters of the lakes in any manner which is not in compliance with these Rules, or any applicable state law, to immediately remove said vessel from the lake until compliance has been had.

(d) ~~The GRDA Police officers are charged with the duty of causing all vessels to be registered with proper registration numbers, or permit numbers, which shall be displayed upon such vessels will enforce the state and federal laws related to the proper registration of vessels on GRDA waters.~~

(e) GRDA's Police officers may cooperate with federal, state and local enforcement officers in the enforcement of all federal and state laws upon the waters, lands and properties of GRDA or any other location within their jurisdiction.

300:35-1-6. Permitted activities

No person, firm, partnership, corporation or other entity shall perform any activity which requires a permit prior to the ~~issuance of the permit by receipt of written permission from GRDA.~~ For example, no dock may be placed upon the waters of GRDA until such time as the applicant receives written notice from GRDA that such activity may take place. Insurance may be required for permitted activities. Any person shall be subject to the penalties set forth in these Rules and law that performs any activity which requires a permit prior to the issuance of a permit, or written permission from GRDA ~~shall be subject to the penalties set forth in these Rules and law.~~ All applicants are required to notify GRDA of any change in address subsequent to their submission of an application.

SUBCHAPTER 3. GENERAL PROVISIONS

300:35-3-2. Lake elevations

Grand Lake, Lake Hudson, and W.R. Holway Reservoir are flood control and hydro_ electric power projects, and it is recognized and understood that the elevation of the waters in said lakes will vary from time to time as operations for flood control and hydro electric power generation demand, ~~and the~~ The water rights granted under these Rules shall be subject to these conditions and all laws governing the Grand River Dam Authority and shall be subject to all federal and state laws and rules governing the control, storage, release, and use of the waters of Grand River, Grand Lake, Lake Hudson, and W.R. Holway Reservoir.

Permanent Final Adoptions

300:35-3-3. Liability

(a) GRDA shall never be liable in any manner whatsoever because of the quantity or quality of the water in its lakes, nor shall GRDA ever be liable for any damage that the permittee may sustain to person or property which may be occasioned by or result from the construction, maintenance and operation of GRDA's projects and the Fort Gibson Reservoir.

(b) Neither GRDA nor any representative thereof assumes any responsibility for loss or damage to life or property by theft, storm, accident, or otherwise, in connection with or growing out of the exercising of the privileges conferred by any permit which may be issued in accordance with these Rules.

(c) Nothing contained in these Rules shall operate to relieve the owners of vessels from complying with, or from the obligation of complying with, the applicable laws of the United States and the State of Oklahoma.

300:35-3-5. Transfer or assignment of permit prohibited

Transfer or assignment of permits or licenses issued hereunder (both private and commercial) shall not be made except with written consent and approval of GRDA. ~~Additionally, all delinquent unpaid fees, plus interest at the rate of ten percent (10%) per annum must be paid prior to a transfer. In the event the current owner's use occurred prior to the transfer, the current~~ The owner of a dock shall be responsible for all fees incurred throughout the time they owned the dock ~~timeframe of current ownership~~. No person, firm or corporation shall allow his or its name to be used by any other person, firm or corporation to do any work under his or its permit.

300:35-3-9. Fishing and hunting

(a) Fishing or hunting within restricted areas will not be permitted.

(b) Fishing or hunting will not be permitted within two hundred (200) feet of the tailraces below the dams.

(c) Fishing or hunting, except commercial bait operators, will not be permitted at such other points on or about the lakes where such use will unduly interfere with navigation or proper conduct of the business of GRDA or endanger the public.

(d) Fishing and hunting in the Neosho ~~Bottoms Management Area (NMA)~~ will only be allowed when properly permitted by GRDA. All permitted individuals shall have a proper hunting license in accordance with Oklahoma law and shall only use shotguns, primitive firearms, or proper archery equipment. No rifles shall be allowed within the ~~NMA~~ Neosho Bottoms. ~~Additionally removal of trees, or shrubs of any kind from GRDA land shall not be allowed for use as utilized for ground blinds, but temporary commercial ground blinds that can be deployed on-site by the hunter may be permitted upon application. No commercial ground blinds are permitted to be deployed overnight.~~

(e) No hunting shall be allowed on GRDA lands used in the generation, delivery or transmission of electricity.

300:35-3-10. Firearms

(a) Only shotguns, primitive firearms, and ~~legal~~ proper archery equipment are allowed on GRDA property ~~designated as a Wildlife Management Area~~.

(b) All hunting on any GRDA property shall be conducted in accordance with Oklahoma Department of Wildlife Conservation regulations and all state and federal firearm laws. ~~If hunting within 3 mile of GRDA waters, only nontoxic shot may be used.~~

(c) The discharge of any firearms or archery equipment in, over or across the waters of the lakes is expressly prohibited except as regulated by the Oklahoma Department of Wildlife Conservation. In no event shall the use of firearms or archery equipment be conducted in a manner which interferes with the business of GRDA's projects or endangers the public.

(d) Persons properly licensed to carry concealed weapons may do so only in accordance with the laws of the State of Oklahoma.

(e) Hunting on any GRDA lands below Twin Bridges is limited to shotguns with steel shot only and proper archery equipment.

300:35-3-11. Gas and oil storage

The keeping or storage of gasoline and other combustible fuels, except for fuel tanks installed in vessels, in, upon or about GRDA lands and waters will not be permitted unless the location and detailed storage plans ~~therefor~~ are first submitted to and approved by GRDA and comply with all applicable state and federal statutes.

300:35-3-12. Health and sanitation

(a) All sanitary rules, regulations, and laws shall be complied with prior to the granting or renewal of any GRDA permit.

(b) In the interest of public health, sanitation and safety, there shall be no camping on GRDA's lands except in a designated camping area.

(c) Bottles, cans, garbage, rubbish, refuse, debris, wreckage, bilge water containing oil or grease, or materials used in the process of cleaning the outer surfaces of vessels, or any other material of any kind shall not be thrown into or released upon the lakes or deposited or dumped upon the shores of the lakes or upon any land under the jurisdiction of GRDA.

(d) No septic tank, lateral line or lagoon shall be placed on ~~the shorelands of GRDA property~~. No sewage shall be disposed of in the waters or on ~~the shorelands of GRDA property~~. No person shall operate a vessel equipped with a marine toilet which is not a total retention system in accordance with federal regulations regarding marine toilets.

(e) The preparation and marking of beaches shall be in such manner as to provide reasonable safety in their use. Commercial beaches shall be provided with adequate and sanitary dressing rooms, toilets, showers and other necessary accessories for public convenience and safety.

300:35-3-14. Permit applications

(a) Applications for GRDA permits required by these Rules are available at the permitting office inside the GRDA

Ecosystems & Education Center located at the west end of Pensacola Dam in Langley, Oklahoma or visit the website at www.GRDA.com.

(b) In addition to any other requirement that may be applicable to a permit application, GRDA may, in its sole discretion, forward any application to fish and wildlife resource agencies, environmental agencies, and/or tribes for comment.

(c) These Rules cover the following types of GRDA permits:

- (1) Private and commercial docks, wharves, landings, anchorages, and boat houses;
- (2) Buoys;
- (3) Private and commercial breakwaters;
- (4) Private and commercial rail-systems and tram systems;
- (5) ~~Fences located on GRDA lands;~~
- (6) Boat ramps;
- (7) Retaining walls;
- (8) Dredging (and excavation);
- (9) Erosion control devices;
- (10) Shoreline stabilization;
- (11) Commercial operations (including, but not limited to, a dock installer, dredging contractor, commercial boat operator, vessel rentals, or Water Jet Pack Unit rentals);
- (12) Taking of raw water;
- (13) Vegetation management plans; and
- (14) Sanctioned event.

(d) Permit applications are subject to change without notice. Permitted activities must comply with all standards, rules and regulations in effect at the time the activity commences.

300:35-3-15. Penalty

After notice and an opportunity to be heard in accordance with Subchapter 21 herein, any person, firm, partnership, corporation or other entity which violates any Rule in this Chapter (i.e. Chapter 35 Lake Rules), shall be required to pay all costs (including attorneys fees, GRDA staff time, and mitigation) related to the violation including the repair, restoration and reclamation of GRDA lands and waters. Other penalties may include, but are not limited to, suspension or revocation of a permit for a period of up to and including three (3) years; and any other fee, penalty or fine as authorized by statute. Also, GRDA may seek an injunction to prevent any violation or unauthorized activity.

SUBCHAPTER 5. BOATING SAFETY RULES

300:35-5-3. Flotation device required

All vessels shall carry a U.S. Coast Guard approved flotation device (life preserver) for each person on board. The operator of a vessel less than twenty-six (26) feet in length, while under way, shall require each passenger twelve (12) years of age or younger to wear a U.S. Coast Guard approved flotation device. Any person operating or manipulating, or who is a passenger on a personal watercraft, water skis, a sailboard, surfboard, wakeboard, parasail, paddleboard, kayak,

or a similar device shall wear a U.S. Coast Guard approved flotation device.

300:35-5-8. Skiing prohibited

(a) No skiing is allowed upstream of the Strang Bridge on Lake Hudson, upstream of Twin Bridges on Grand Lake, in Elm Creek east of Grove water intake tower, upstream of the Harbors View Marina (a/k/a the turn) on Duck Creek or upstream of the Lakemont Shores Ramp on Drowning Creek.

(b) Wake jumping is prohibited in Cowskin and Elk River and in any arm of Grand Lake that, in its name, ends in Creek, Cove or Hollow. Wake Jumping is defined as the act of repetitively crossing another vessel's wake in such a fashion that the crossing vessel's hull leaves the water.

300:35-5-10. Persons using Water Jet Packs Pack Units

The following rules shall apply ~~in the watercraft used in conjunction with a Water Jet Pack along with the person using the~~ to persons using Water Jet Pack Units:

- (1) A distance of 100 feet shall be maintained from any other person, watercraft, PWC or other fixed object at all times.
- (2) Six feet of water is required to operate the Water Jet Pack Unit.
- (3) The operator of the Water Jet Pack Unit shall wear a life vest at all times. Additionally, if there is an and the operator of the watercraft/PWC propelling the used as part of the Water Jet Pack Unit, such operator shall also wear a life vest at all times shall wear a life vest at all times.
- (4) The person being propelled into the air operating the Water Jet Pack shall wear a helmet at all times.
- (5) Any ~~The~~ PWC or unit used as part of a ~~to power the~~ Water Jet Pack Unit shall have an orange warning flag when in operation.
- (6) Only one person may be propelled into the air operate the Water Jet Pack at one time and there shall not be any passengers on a PWC or unit used as part of a the Water Jet Pack or Water Jet Pack Unit.
- (7) No person under the age of 18 shall operate a ~~Water Jet Pack or a~~ Water Jet Pack Unit without the supervision of a person over the age of 25 years.
- (8) A Water Jet Pack Unit may only be operated during the hours between one-half hour after sunrise and one-half hour before sunset.

300:35-5-11. Persons using paddleboards, canoes and kayaks

Persons using Paddleboards, canoes or kayaks on the waters of GRDA must wear a life jacket at all times. Paddleboards, canoes, and kayaks shall not be used between the hours of one-half hour before sunset and one-half hour after sunrise. Paddleboards, canoes, and kayaks shall stay within one-hundred fifty (150) feet of the shoreline unless in a no wake cove, hollow or creek.

SUBCHAPTER 7. VESSELS

Permanent Final Adoptions

300:35-7-1. Inspection, registration and certificate of safety

(a) All vessels and equipment used for transportation of ~~the public for pecuniary gain or profit~~ people shall be subject to inspection during each permit year by GRDA.

(b) All vessels must be licensed under the Oklahoma Vessel and Motor Registration Act.

300:35-7-4. Vessel operating distance

No person shall operate any vessel, including personal watercraft, within fifty (50) feet ~~of in proximity to~~ another vessel when running at speeds of over ten (10) miles per hour. Vessels shall stop when directed, or operate at idle speed within five hundred (500) feet from emergency vessels while their emergency lights are activated.

300:35-7-6. Noise abatement

No person shall unlawfully disturb the peace through operation of a vessel or by a person's actions ~~operate a vessel that exceeds the noise level of ninety (90) decibels on an A-weighted scale when subjected to a sound level test as prescribed by SAE J2005~~ within fifty (50) feet of any public or private dock or at any location between the hours of 9:00 p.m. through 9:00 a.m. C.S.T.

300:35-7-12. Duck Creek and Woodard Hollow boating rules

Due to the unique nature of Duck Creek, ~~and~~ Woodard Hollow, and Courthouse Hollow on the Grand Lake O' the Cherokees, GRDA implements, from time to time, special boating rules for the area. Please contact the GRDA Police, located at the GRDA Ecosystems & Education Center in Langley, Oklahoma, or visit the website, www.GRDA.com for the current applicable Duck Creek, ~~and~~ Woodard Hollow, and Courthouse Hollow Boating Rules.

SUBCHAPTER 9. SANCTIONED EVENTS

300:35-9-1. Sanctioned event definition

A sanctioned event is any organized event which has been permitted by GRDA that occurs on the waters and lands of GRDA, including, but not limited to, regattas, motorboat or other boat races, marine parades, tournaments, fishing tournaments, "poker" runs, motorized rock-climbing, fireworks displays, concerts and other exhibitions.

300:35-9-2. Permit required

No sanctioned event shall be held without a written permit issued by GRDA ~~at least ten (10) days~~ prior to the event.

SUBCHAPTER 11. PERMITS FOR WHARVES, LANDINGS, BUOYS, BREAKWATERS AND DOCKING FACILITIES

300:35-11-1. Private use

No person, firm, association, partnership or corporation may construct, modify the footprint, install, relocate, transfer or operate any private wharf, dock, landing, anchorage, boat house or breakwater (or any other type of floating structure) on waters or lands of GRDA until the applicant submits a completed application and written permission has been issued by GRDA. Approval of the Federal Energy Regulatory Commission (FERC) may also be required prior to installation or modification. Upon completion of any modification, installation, or relocation, the private wharf, dock, landing, anchorage, boat house or breakwater shall be subject to a final inspection by GRDA prior to the issuance of a permit. Such inspection will include verification that the wharf, dock, landing, anchorage, boat house or breakwater was constructed, modified, and/or installed in accordance with the application submitted to GRDA and also in accordance with all applicable laws, regulations, rules and building codes.

300:35-11-3. Waivers

(a) Upon written application and hearing, the Board of Directors of GRDA may grant a waiver, exception or modification to the requirements imposed on private and/or commercial permit applicants. Additionally, the Board of Directors may impose additional requirements upon any such applicant. Such waivers, exceptions, modifications, or additional requirements shall be based upon the totality of the circumstances, in consideration of public and environmental concerns.

(b) In approving waivers of these rules, the Board shall consider the SMP and all positive and negative impacts to the following:

- (1) Characteristics of existing permitted and recreational uses, zoning and prevailing permitted uses within a half-mile radius of the proposed activity;
- (2) Shoreline topography and geometry;
- (3) Safety and navigation and flood control requirements;
- (4) Environmental impacts;
- (5) Potential economic development and tourism benefits;
- (6) Recreational use impacts; and
- (7) Statutory mandates.

(c) The applicant shall be required to give notice and the Board shall allow for public comment before acting on any request for a waiver of these rules.

(d) Public notice of the waiver request shall be given in accordance with guidelines established by the GRDA staff and shall include:

- (1) Publication in newspapers of general circulation, including the county in which the property is located; and
- (2) Mailing of written notice, via certified mail, return receipt requested, to all owners of property within ~~a three hundred (300) foot radius of the exterior boundaries of the subject shoreline property~~ one hundred fifty (150) feet from the outer edge of the proposed dock(s). Copies of certified mail receipts must be submitted to GRDA prior to any hearing and before GRDA posts any notice.

- (3) The waiver application shall be posted on GRDA's website for a period of at least thirty (30) days.
- (4) Any other notice as required by GRDA.

300:35-11-4. Electrical inspections

- (a) Each commercial and private boat dock (or any other type of floating structure) shall comply with and be maintained in accordance with all laws, regulations and codes regarding electrical systems and wiring.
- (b) All commercial and private boat docks constructed, modified, relocated, or transferred shall be required to provide to GRDA, ~~within thirty (30) days following completion, modification, relocation or transfer~~ a current certificate signed by an Oklahoma licensed electrical ~~contractor~~inspector, evidencing compliance with all laws, regulations and codes regarding electrical systems and wiring.
- ~~(c) Any dock which has been classified as "Not Electrically Wired" shall be prohibited from installing any permanent electric supply until GRDA has issued a classification change which shall require a certificate from an Oklahoma licensed electrical inspector evidencing compliance with all laws, regulations and codes regarding electrical systems and wiring. A dock will not have any permanent electrical supply installed without first obtaining written approval from GRDA. No temporary electric supply shall be used and left unattended on a dock or walkway and no submersible pump shall be allowed in the water. Any temporary electric supply shall be an approved UL Listed Supply Cord and be in good condition with all electrical connectors attached and in use. Any temporary electric supply shall use GFCI (ground fault circuit interrupter) receptacles.~~

300:35-11-6. Buoys

- (a) No buoy shall be placed or replaced on the waters of GRDA without a permit from GRDA. All buoys shall be purchased from GRDA at cost and installed at the expense of the requestor. The buoy will be installed to specifications provided by GRDA. The GRDA Police will inspect the installation to ensure compliance with all applicable GRDA rules and Oklahoma law. The requestor will be responsible for continuing maintenance and liability for the buoy.
- (b) All buoys placed on the lakes shall be commercially manufactured units purchased from approved by the GRDA ~~Police~~ and shall have reflective tape or paint on the top side. Any buoy not maintained in its proper location shall be subject to removal by GRDA. Any buoys, lighthouses or other types of markers placed with the permission of or installed ~~and maintained~~ by GRDA are primarily warning devices for the convenience of the public and should not be relied upon solely as navigational aids. GRDA assumes no liability or responsibility for loss or damages to life or property arising out of the public's reliance upon said devices.

300:35-11-7. Rail-systems, tram systems, fences, and boat ramps

- (a) No private or commercial rail-systems, tram systems, ~~fences,~~ or boat ramps shall be constructed on GRDA property or waters without first obtaining a permit.
- (b) A rail-system is used to accommodate a watercraft storage facility where standard dock installations are not applicable or desirable.
- (c) A tram-system is a device capable of transporting people to and from a boat dock (or other floating structure) either for private, public or commercial use. Tram-systems are typically utilized on steep inclines associated with cliffs, bluffs, or to accommodate individuals with physical limitations.
- (d) ~~Railways, and tram systems, and fences~~ shall be maintained in a manner such that all electrical systems are to code, that environmental guidelines are met, and that the structures are safe and pose no risk or threat to the public.
- (e) No boat ramp shall be constructed unless the ramp may be accessed by at least twenty-five (25) homeowners in a residential community or the public at large. Approval from the U.S. Army Corps of Engineers, the Federal Energy Regulatory Commission and/or other state and federal agencies may also be required.

300:35-11-8. Removal and cancellation for failure to comply

- (a) ~~If, at any time, GRDA may if~~ any structure, private or commercial, is (i) not installed in accordance with the plans and specifications approved by GRDA, (ii) fails to meet current minimum standards adopted by GRDA, (iii) is not kept in a good state of repair, (iv) has not been inspected by an Oklahoma licensed electrical ~~contractor~~inspector as provided herein, (v) does not have a permit in the name of the current owner, or (vi) has delinquent fees assessed against it upon failure of payment of any fee when due, GRDA, after notice and opportunity to be heard in accordance with Subchapter 21 herein, shall have the right to remove or cause to be removed from GRDA's waters and lands such structure and/or cancel any license or permit in the event the owner fails to remedy the violation~~repair or remove the same~~ after being notified by GRDA ~~to repair or remove the same of the violation.~~
- (b) Any loose, ~~or abandoned, or unpermitted~~ structure located on GRDA land or water ~~shall~~may be ~~removed~~impounded by GRDA and the owner shall be responsible for any expense incurred by GRDA.
- (c) In the event GRDA removes a dock, wharf, boat house, breakwater, buoy, ~~fence,~~ rail-system, tram system or any other structure, private or commercial, the owner of same shall be required to pay all past due fees and costs of such removal and may be required to pay all costs related to the repair and reclamation of GRDA lands and waters associated with the removal. Any expenses which remain unpaid in excess of 45 days shall accrue interest at the rate of 10% per annum.

300:35-11-11. Expiration of permit

- (a) The construction, modification, installation, and final GRDA approval of private docks, landings, anchorages, boat

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houses, breakwaters, buoys, rail-systems, and tram-systems, ~~and fences~~ must be completed within two (2) years from the date the permission to construct or modify is issued by GRDA.

(b) The construction, modification, installation, and final GRDA approval of commercial docks, landings, anchorages, boat houses, breakwaters, buoys, rail-systems, and tram-systems, ~~and fences, walls~~ must be completed within seven (7) years from either the date the permission to construct or modify is issued by GRDA or ~~and, if applicable,~~ the date the Federal Energy Regulatory Commission issues an order approving the action, whichever occurs later.

(c) Prior to the expiration of the permission to construct or modify, the GRDA Board of Directors may extend the time in which such structure must be completed upon request of the permit holder.

(d) If the permit expires, the permit is null and void.

300:35-11-12. Dock modification prohibited

Any person, firm, corporation, business or other entity must obtain permission from GRDA prior to making any modification, change, addition or improvement to an existing private or commercial dock, landing, anchorage, boat house, breakwater, buoy, rail-system, or tram system, ~~or fence~~. If any such structure will be reconfigured, modified, or expanded from the plans and specifications originally submitted for the construction of the structure, such change must be approved prior to installation in advance by GRDA and prior to installation on the Federal Energy Regulatory Commission, if applicable. ~~Approval from the Federal Energy Regulatory Commission (FERC) may also be required. This rule applies to both private docks and commercial docks.~~

300:35-11-13. One-third cove rule for private and commercial docks

No dock shall extend more than one-third (1/3) of the cove measured on Grand Lake from 745 feet elevation Pensacola Datum to 745 feet elevation Pensacola Datum. On Lake Hudson, the elevation shall be 622 feet mean sea level in figuring the one-third (1/3) of the cove rule. This rule applies to private docks and commercial docks.

SUBCHAPTER 13. PERMITS FOR DIKES, EXCAVATIONS, DREDGINGS, EROSION CONTROL DEVICES, RETAINING WALLS, AND SHORELINE STABILIZATION

300:35-13-1. Permit required

(a) The contour, elevation or surface of any of GRDA's lands or the reservoir bed shall not be changed in any manner whatsoever by the construction of retaining walls, erosion control devices, dams, dikes, jetties, channels, canals or landings until and unless a permit has been issued by GRDA.

(b) No person, firm, partnership, corporation or other entity may excavate, dredge, stabilize or make any improvement or change upon GRDA land or waters until a permit ~~has~~ shall have been issued by GRDA. Approval from the Federal Energy

Regulatory Commission (FERC), the U.S. Army Corps of Engineers (Corps), and other state and local agencies may also be required. All such activities shall be performed in strict accordance with the plans and specifications approved by GRDA (and, if required, by FERC and the Corps). Additionally, an approved wetland delineation report and metals testing report ~~may~~ shall be required prior to the commencement of any dredging or excavation activity.

300:35-13-3. Dredging

(a) All dredging activities on GRDA-owned property require a permit from GRDA. Dredging is defined as the activities associated with digging, gathering, removing, or deepening of any channel, depression, or cavity to achieve sufficient navigable water depth (i.e. 8' at 742' PD Grand Lake, or 619' msl Lake Hudson). The U.S. Army Corps of Engineers may also require a permit for dredging activities. Additionally, the Federal Energy Regulatory Commission must approve all dredging activities on GRDA waters requiring the removal of more than 2,000 cubic yards of material or metals test results indicate toxicity levels as outlined in the current dredging management plan. A wetland delineation study must accompany every application and the study must be conducted by a GRDA approved wetland delineation specialist. Dredging activities must be conducted in accordance with the GRDA dredging management plan and the Shoreline Management Plan. These approvals and permits must be obtained prior to commencing any dredging activity.

(b) Dredging of individual boat channels shall be approved only when GRDA determines there is no other practicable alternative to achieving sufficient navigable water depth and the action would not substantially impact sensitive resources.

(1) No more than two thousand (2,000) cubic yards of material shall be removed for any individual boat channel.

(2) Materials from dredging activities must be placed in accordance with all applicable local, state, and federal regulations at an upland site above the applicable flowage easement.

(3) Dredged shoreline perimeter shall have a slope ratio of at least 3:1 and must allow for the drainage of water.

(4) Dredging activities are not authorized during the months of April, May, June and July to avoid potential impact to fish spawning habitat.

(5) Dredging within vegetated wetlands is not authorized and will not be permitted.

300:35-13-6. Expiration of permit

(a) Any ~~permit issued~~ project permitted pursuant to Subchapter 13 of these rules must be completed within two (2) years from either the date the ~~permit or modification approval is issued by GRDA~~ permission to construct or modify is issued by GRDA or the date the Federal Energy Regulatory Commission issues an order approving the action, whichever occurs later.

(b) Prior to the expiration of the dredging permit, upon written request of the permit holder, the GRDA Board of Directors

may extend the time in which such dredging activities must be completed.

(c) If the permit expires, the permit is null and void.

SUBCHAPTER 15. COMMERCIAL USE OF THE LAKES AND LANDS OF GRDA

300:35-15-2. Dock installer's permit

(a) Any person, firm, partnership, corporation, or any other entity operating for pecuniary gain or profit or any business that, directly or indirectly, is engaged in the building, placing, transfer, demolition or removal, of piers, wharves, landings, anchorages, floating boat houses, docks, barges or other floating structures of a stationary or semi-stationary nature upon the waters of GRDA shall obtain an annual permit. Such person or entity shall not build, place, transfer, demolish or remove a pier, wharf, landing, anchorage, floating boat house, dock, barge or other floating structure of a stationary or semi-stationary nature upon the waters of GRDA until a Dock Installer's permit has been issued by GRDA.

(b) At the time a new or ~~substantially~~ significantly modified dock is installed, ~~or transferred,~~ the dock installer shall post a permanent sign visible on the dock a sign shall be prominently displayed stating the installer's name and the year the dock was installed. The sign shall include the name of the dock installer, the dock installer's phone number and the year the dock was installed. The sign shall measure at least 5" x 5".

(c) A dock installer shall build, construct, place, transfer, demolish and remove docks in strict compliance with the plans and specifications approved by GRDA and in accordance with all applicable laws, regulations, rules and building codes. All Styrofoam, trash and construction materials shall be disposed in an environmentally appropriate fashion and shall not be allowed to remain or float in the waters of GRDA. All Styrofoam, trash and construction materials shall be stored off GRDA property and above the flowage easement. No dock shall be stored on GRDA property for longer than ~~thirty (30) days~~ six (6) months. GRDA property shall not be used without prior written permission.

(d) A dock installer's permit may be revoked at any time during the permit period for the following reasons:

- (1) Nonpayment of permit fee.
- (2) Failure to comply with current dock standards.
- (3) Installation of a dock not permitted by GRDA.
- (4) Upon three sustained complaints of the public regarding the dock installer's business practices.
- (5) Upon conviction of a felony or fraud misdemeanor crime by a court of competent jurisdiction of the owner of the dock installer business or dock installer related to the dock installer's business.
- (6) Failure to maintain insurance required by GRDA and to provide GRDA with a certificate of insurance.
- (7) Improper disposal or storage of waste and other dock materials upon GRDA property or flowage easement.

SUBCHAPTER 17. RAW WATER PERMITS

300:35-17-1. Definition

(a) ~~For the purpose of these Rules and Regulations, the following terms shall apply "domestic"~~ Domestic and household use" shall mean water that is taken by the permittee in and upon his premises for all usual and ordinary household uses and purposes which shall include sprinkling and watering lawns and gardens of not to exceed three (3) acres. The term "irrigation" shall mean water that is taken by the permittee in and upon the premises covered by the permit for the purpose of irrigating lands, crops and vegetables growing in and upon said lands by ditches, canals, sprinkling systems and such other usual and ordinary means of irrigation.

(b) Water rights granted under these Rules and Regulations shall not be construed as the supplying or furnishing of water for domestic purposes to the public; such permits only grant the permittee the right to take and use the water as provided by these Rules and Regulations.

(c) Commercial use of water requires a written contract with GRDA.

300:35-17-4. Location of diversion

The granting of such permit to take water from Grand Lake or Lake Hudson shall authorize the permittee to locate upon the lands of GRDA the facilities necessary to take such water covered by the permit; provided, the location and manner of diversion is first approved by GRDA; however, a permit for the use of water from Fort Gibson Lake shall give the permittee no permission or right to take or use any lands for any purpose whatsoever. (The lake bed and shorelands of Fort Gibson Lake are owned by the United States of America and are under the jurisdiction and control of the United States Army Corps of Engineers, District Office, Tulsa, Oklahoma.)

SUBCHAPTER 21. ADMINISTRATION OF RULES AND HEARINGS

300:35-21-3. Hearings for violation of rules

(a) **Notice of Violation.** A Notice of Violation may be issued by the General Manager or his designee after the discovery of a violation of any rule. A Notice of Violation shall be signed by the GRDA employee issuing it and shall state:

- (1) The name of the person or entity responsible for the violation (the "respondent");
- (2) A description of the nature of the violation;
- (3) The remedial action and/or the relief required, which may include the imposition of a fee, penalty or fine as authorized by statute and/or the correction of any deficiency;
- (4) A reasonable time to comply with the remedial action and/or the relief required;
- (5) That the respondent may submit a response to the Notice of Violation, how and where a response may be submitted, and the deadline to submit a response; and

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- (6) That, in connection with the submission of a response to the Notice of Violation, the respondent may request a hearing before the General Manager or his designee to challenge the Notice of Violation.
- (b) **Service of the Notice of Violation.** At the election of the GRDA, a Notice of Violation shall be served:
- (1) By delivering a copy of the Notice of Violation to the respondent or by leaving a copy of the Notice of Violation at the respondent's dwelling house or usual place of abode with some person then residing therein who is fifteen (15) years of age or older, or by posting the Notice on the dock or walkway to the dock, or
- (2) By mailing a copy of the Notice of Violation to the respondent at the last known address on file with GRDA by certified mail, return receipt requested, and delivery restricted to the addressee. Service by mail shall be effective on the date of receipt or if refused, on the date of refusal.
- (3) In the event respondent cannot be notified as stated in paragraphs 1 and 2 above, service of the Notice of Violation may be made by publication of a notice one (1) day a week for three (3) consecutive weeks in a newspaper of general circulation which is published in the county where the violation occurred or an adjoining county.
- (c) **Permits.** In matters involving permits issued by the GRDA, the respondent shall be the person in whose name the permit is currently listed or the current owner of the dock. ~~That person~~ The Respondent shall be the only person entitled to notice under this subsection.
- (d) **Response to Notice of Violation.** In the event that the respondent submits a response to the Notice of Violation, the response shall include a detailed statement of the reasons that respondent objects to the Notice of Violation and all arguments that the respondent desires to make at hearing, if requested. A respondent who fails to submit a response to the Notice of Violation in the time and manner stated in the Notice of Violation may be deemed by the GRDA General Manager or his designee to have waived the right to object or present a defense to the Notice of Violation.
- (e) **Hearing.** A respondent who requests a hearing must also submit a response to the Notice of Violation and must provide an address and telephone number that the GRDA may use to communicate with the respondent concerning the hearing and final order. Upon timely receipt of a request for a hearing, the General Manager or his designee shall set the matter for hearing and shall notify the respondent in writing of the hearing at least ten (10) calendar days before the hearing. Notice of the hearing shall be delivered to the respondent using the address specified in the response to the Notice of Violation and shall state the date, time and location of the hearing.

300:35-21-6. Final order

- (a) ~~As soon as practicable after~~ After the hearing officer has sent his recommendation to the GRDA Board of Directors as provided in 300:35-21-5 or after the time to remedy the violation has passed in the event the respondent does not request a hearing, the Board of Directors shall adopt, amend, or reject any findings or conclusions presented to the Board of the hearing officer, or If a hearing was previously held, the

Board may remand the proceeding for additional argument or the introduction of additional evidence at a hearing held for that purpose.

- (b) ~~At the conclusion of the proceedings and~~ Upon review of the record by the Board of Directors, the Board of Directors shall issue a final order reflecting the findings of fact, conclusions of law, and specifying the action to be taken.

300:35-21-7. Administrative appeal

A challenge from the Board of Director's Final Order shall be made within twenty (20) days from the date of respondent's receipt of the Final Order to the District Court. Service of the Final Order shall be made in the same manner as provided for service of the Notice of Violation.

300:35-21-8. Noncompliance, violations and penalties

Any person, firm or corporation that fails to comply with, or violates any Rule promulgated by GRDA shall, after notice and an opportunity for hearing as provided for herein, be required to reimburse GRDA for any direct cost and overhead incurred as a result of such failure to comply or violation. Such costs may include, but are not limited to, the costs associated with the repair, restoration and reclamation of the lands and waters of GRDA and any storage costs for the respondent's personal property and any other fee, penalty or fine as authorized by statute. Additionally, GRDA may cancel any permit or license which has been issued in connection with said boat, structure or facility and may remove or cause it to be removed from GRDA's lands and waters at the owner's expense.

SUBCHAPTER 23. FOUR-WHEEL VEHICLES, OFF-ROAD VEHICLES AND ALL TERRAIN VEHICLES

300:35-23-1. Designated areas

In the interest of public safety, there shall be no four-wheel vehicles, off-road vehicles or all terrain vehicles on GRDA lands except in designated areas. Operators of such vehicles are subject to federal and state laws and GRDA rules.

300:35-23-2. Passengers prohibited

~~No passengers~~ Passengers are only allowed on three (3) wheelers, four (4) wheelers, or motorcycles when the manufacturer has equipped the vehicle for such passenger which includes a separate seat and foot support.

300:35-23-4. Racing prohibited

No racing on GRDA property is allowed except as ~~other~~ permitted by a sanctioned event permit.

300:35-23-5. Lights required

All vehicles, including motorcycles, must be equipped with a working dimmable front headlight and working rear lights if operating between one-half hour before sunset and

one-half hour after sunrise. Any vehicle utilizing light bars shall turn them off upon the approach of another vehicle.

300:35-23-6. Roll bar, helmet, and seat belt requirements

Dune buggies and 4x4 vehicles must have a ~~roll bar~~ ROPS sufficient to support the weight of the vehicle and must have a seat belt for each passenger. Helmets shall be required for the driver and passenger of motorcycles, ATVs or bikes.

[OAR Docket #17-638; filed 7-13-17]

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

[OAR Docket #17-652]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

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

AUTHORITY:

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

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APPROVED BY GOVERNOR'S DECLARATION:

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SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

These rules implement the agency's requirements from House Bill Number 2835, from the 2nd Session of the 55th Oklahoma Legislature (2016), codified at 63 O.S. §§ 2-801 through 2-805. The regulations remove the age limitation for clinical trials on the use of cannabidiol as required by the House Bill.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF OCTOBER 1, 2017:

SUBCHAPTER 1. PURPOSE AND DEFINITIONS

310:15-1-2. Definitions

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

"**Clinical Trial**" means a trial at an academic medical center of the use of cannabidiol at an academic medical center on patients ~~eighteen (18) years of age or younger~~ pursuant to the requirements of Katie and Cayman's Law, codified at 63 O.S. §§ 2-801 through 2-805.

"**O.S.**" means Oklahoma Statute.

"**Severe forms of epilepsy**" means refractory epilepsy that is not adequately treated by traditional medical therapies, including Lennox-Gastaut Syndrome and Dravet Syndrome, also known as Severe Myoclonic Epilepsy of Infancy.

SUBCHAPTER 3. PHYSICIAN APPLICATION AND REPORTING

310:15-3-1. Physician application

Any physician, who has been designated a principal investigator of a clinical trial concerning *Lennox-Gastaut Syndrome*, also known as *Severe Myoclonic Epilepsy of Infancy*; any other severe form of epilepsy not adequately treated by traditional medical therapies (63 O.S. § 2-101 (23)), or any other form of refractory epilepsy that is not adequately treated by traditional medical therapies, spasticity due to multiple sclerosis or due to paraplegia; intractable nausea and vomiting; or appetite stimulation with chronic wasting diseases (63 O.S. § 2-801 (5)) on individuals ~~eighteen (18) years of age or younger~~, and who requests approval from the Commissioner of Health, or designee shall:

- (1) Submit an application on a form provided by the Commissioner of Health, which shall include the name, address and other contact information for the principal investigator;
- (2) Submit a statement from either the Oklahoma State Board of Medical Licensure or the Oklahoma State Board of Osteopathic Examiners that the physician is licensed and in good standing with said licensure board;
- (3) Submit a copy of the documents from the United States Food and Drug Administration naming the physician as the principal investigator;
- (4) Submit a copy of the license obtained by the United States Drug Enforcement Administration;
- (5) Submit and maintain a current Oklahoma State Bureau of Narcotics and Dangerous Drugs Control registration;
- (6) Demonstrate registration with the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control;
- (7) Submit the names, addresses and other contact information of any subinvestigators who will be assisting the principal investigator and include with the submission:
 - (A) A copy of the license obtained by the United States Drug Enforcement Administration; and

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- (B) Information demonstrating registration of the subinvestigator with the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control;
- (8) Submit the following information concerning the clinical trial to be performed:
- (A) Name, address and contact information of the academic medical center where the clinical trial will occur;
 - (B) Statement from Institutional Review Board (IRB) of the academic medical center where the clinical trial will occur, concurring with the requirements for said clinical trial;
 - (C) Statement from the United States Food and Drug Administration allowing cannabidiol to be used as an investigation new drug on qualified patients with severe forms of epilepsy;
 - (D) Name, address and other contact information of the source of the cannabidiol to be used for the study. The submission of the information of the source of the cannabidiol shall include:
 - (i) Information that the cannabidiol was manufactured at a facility in the United States or in a foreign country that was approved by the United States Food and Drug Administration; and
 - (ii) Information that the cannabidiol has been tested on animals to:
 - (I) demonstrate preliminary effectiveness; and
 - (II) ensure the cannabidiol is safe to administer to humans;
 - (E) Submit a statement that the clinical trial will be performed at the highest standards of clinical research; and
 - (F) Submit a statement that the clinical trial will conclude no later than December 31, 2017;
- (9) Submit a statement that the principal investigator and all subinvestigators shall adhere to the rules and regulations established by the relevant Institutional Review Board for the clinical trial; and
- (10) Submit an attestation by the principal investigator as to the accuracy and completeness of the information provided in the application.

[OAR Docket #17-652; filed 7-13-17]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 233. BODY PIERCING AND TATTOOING

[OAR Docket #17-651]

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RULES:
Subchapter 9. License Requirements
310:233-9-2. Artist license [AMENDED]

AUTHORITY:

Oklahoma State Board of Health; Title 63 O.S. § 1-104 and Title 21 O.S. Section 842.3

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

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October 1, 2017

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

These amendments are enacted pursuant to authority found in Title 21 of the Oklahoma statutes, section 842.3, which authorize the State Board of Health to promulgate rules regulating tattooing and the requirements for license. They modify the proof of training and experience required before an applicant is approved to take the license examination as a tattoo artist. They delete the requirement for proof of two years' license from another state, and substitute a requirement for documentation of two years' experience from another state. A licensure candidate will be allowed to submit proof of completion of training that is substantially equivalent to the requirements for apprentice programs in Oklahoma. The changes give candidates credit for experience or training in a state that does not license artists and clarify the process for approving an applicant to take the license examination and issue the permanent artist license.

CONTACT PERSON:

Information regarding this rule may be obtained by contacting Lynnette Jordan, Service Director, Consumer Health Service, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1207; phone (405) 271-5243, e-mail lynnette@health.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF OCTOBER 1, 2017:

SUBCHAPTER 9. LICENSE REQUIREMENTS

310:233-9-2. Artist license

- (a) The artist must be a minimum of eighteen (18) years of age to be eligible for a license.
- (b) No person shall practice body piercing or tattooing procedures without first obtaining an artist license from the Department.
- (c) The artist license shall be valid from the date of issuance and shall automatically expire one (1) year from the date of issuance unless revoked or suspended by the Department. The artist shall have a current bloodborne pathogen certificate, CPR certificate and current first aid certification for license or renewal of license.
- (d) The application for an artist license shall include:

- (1) Name;
- (2) Date of birth;
- (3) Sex;
- (4) Residence address;
- (5) Mailing address;
- (6) Telephone number;
- (7) Place(s) and licensed license number of employment as an artist;
- (8) Proof of training and experience which shall include one of the following:
 - (A) ~~Two (2) years license from another state~~ Documentation of two (2) years' experience acquired in another state in compliance with applicable requirements of that state. Documentation may include copies of licenses, statements from the state's regulatory authority, statements from the facility operator where the applicant worked, membership in an entity for which practice as an artist is a requisite, or government forms such as tax returns filed by the artist showing employment as an artist; or
 - (B) ~~Proof~~ Documentation of a completed approved completion of an Oklahoma apprentice program, that has been accepted by the Department complies with 310:233-9-5, 310:233-9-6 and 310:233-9-7, or documentation from another state showing completion of training that is substantially equivalent to an Oklahoma apprentice program and sponsorship per 310:233-9-5, 310:233-9-6 and 310:233-9-7;
- (9) Current bloodborne pathogen certification recognized from a nationally accredited program compliant with 310:233-9-2(m); and
- (10) Current first aid certification compliant with 310:233-9-2(n); and
- (11) Current CPR certification compliant with 310:233-9-2(o).
- (e) Each artist license shall be conditioned upon continued compliance with the provisions of this section as well as all applicable provisions of OAC 310:233.
- (f) Each artist license shall be posted in a prominent and conspicuous area where it may be readily observed by clients.
- (g) License fees shall be as follows:
 - (1) \$250.00 for an initial license;
 - (2) \$250.00 for a renewal license;
 - (3) \$350.00 for late renewal when the license is not renewed within thirty (30) days after expiration; and
 - (4) \$50.00 temporary artist license, not to exceed 7 days.
- (h) A person who has acceptable proof of experience or training as stated required in 310:233-9-2(d)(8)(A and B) in performing tattooing may be ~~deemed to have met the Department approved preparedness requirements status as per 310:233-9-2(d)(8)(A and B)~~ approved by the Department to take the test specified in 310:233-9-2(j). A candidate shall have a minimum passing score of 70% on the written examination that will include:
 - (1) Knowledge of Anatomy, Physiology, and Disease;
 - (2) Theory and application of ink;
 - (3) Safety and Aseptic Technique;
 - (4) Professionalism; and
 - (5) Client Consultation Services.
- (i) A candidate who does not meet this score can retest up to two (2) times. A candidate who does not pass the written examination must wait at least seven (7) days before retesting. Any candidate who is unable to attain competency after three attempts shall be required to enroll or re-enroll in an apprentice program. To apply, the candidate shall submit an application that requires the following:
 - (1) Notarized copy of the applicant's certificate of birth;
 - (2) Notarized copy of the applicant's driver's license or other similar photo identification;
 - (3) Notarized copy of his/her credentials and professional resume of satisfactory completion of any programs they have completed for proof of experience; and
 - (4) Proof of experience as required in 310:233-9-2(d)(8)(A and B).
- (j) The Department shall accept the test administered by the Oklahoma Department of Career Technology with results to be evidenced by a completed testing verification provided to the Department by the Oklahoma Department of Career Technology.
- (k) ~~The~~ Within 30 days after receipt of a completed application, the Department shall notify the applicant in writing of its decision to approve or disapprove the applicant to take the examination within 30 days after receipt of a completed application. An applicant who is eligible for the testing process must present a letter of notification from the Department to administer the test given by Oklahoma Department of Career and Technology Education.
- (l) Upon successful completion of the testing process, the applicant is eligible ~~to apply for an Artist~~ issuance of a permanent artist license. In order to ~~apply for~~ request issuance of a license, the candidate applicant must submit the following to the Department:
 - (1) ~~Completed~~ Any changes in the application previously submitted as specified required in 310:233-9-2(i)(1-4) 310:233-9-2(d); and
 - (2) Completed Testing Verification Form provided by the Department which includes:
 - (A) Skills evaluation information; and
 - (B) Written certification examination records.
- (m) Bloodborne training certification shall contain at a minimum the following elements:
 - (1) A general explanation of the epidemiology and symptoms of bloodborne diseases;
 - (2) An explanation of the modes of transmission of bloodborne pathogens;
 - (3) An explanation of the employer's exposure control plan and the means by which the employee can obtain a copy of the written plan;
 - (4) An explanation of the appropriate methods for recognizing tasks and other activities that may involve exposure to blood and other potentially infectious materials;

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- (5) An explanation of the use and limitations of methods that will prevent or reduce exposure including appropriate engineering controls, work practices, and personal protective equipment;
 - (6) Information on the types, proper use, location, removal, handling, decontamination and disposal of personal protective equipment;
 - (7) An explanation of the basis for selection of personal protective equipment;
 - (8) Information on the Hepatitis B vaccine, including information on its efficacy, safety, method of administration, the benefits of being vaccinated;
 - (9) Information on the appropriate actions to take and persons to contact in an emergency involving blood or other potentially infectious materials;
 - (10) An explanation of the procedure to follow if an exposure incident occurs, including the method of reporting the incident and the medical follow-up that will be made available;
 - (11) Information on the post-exposure evaluation and follow-up that the employer is required to provide for the employee following an exposure incident; and
 - (12) An explanation of the signs and labels and/or color coding required.
- (n) First aid certification shall include instruction in:
- (1) Injury and acute illness as a health problem;
 - (2) Interactions with the local emergency medical services system;
 - (3) Responsibility for maintaining a current list of emergency telephone numbers (police, fire, ambulance, poison control) easily accessible to all employees;
 - (4) Instruction in the principles and performance of bandaging of the head, chest, shoulder, arm, leg, wrist, elbow, foot, ankle, fingers, toes, and knee; and
 - (5) Apprentices shall be provided with adequate instruction on the need for and use of universal precautions that should include:
 - (A) The meaning of universal precautions;
 - (B) Which body fluids are considered potentially infectious, and which are regarded as hazardous;
 - (C) The value of universal precautions for infectious diseases;
 - (D) The necessity for keeping gloves and other protective equipment readily available and the appropriate use of them; and
 - (E) The appropriate tagging and disposal of any sharp item or instrument requiring special disposal measures such as blood soaked material, and the appropriate management of blood spills.
- (o) CPR training certification shall include instruction in:
- (1) Performing a primary survey of each victim including airway, breathing, and circulation assessments;
 - (2) The presence of any bleeding, establishing and maintaining adult airway patency;
 - (3) Performing adult breathing resuscitation; and

- (4) Performing choking assessments and appropriate first aid intervention.

[OAR Docket #17-651; filed 7-13-17]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 250. FEE SCHEDULE FOR CONSUMER HEALTH SERVICES SERVICE

[OAR Docket #17-650]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 3. License Classifications and Associated Fees for Consumer Health Services

310:250-3-1. Food service establishments permits fees [AMENDED]

310:250-3-2. Drug operational permits [AMENDED]

310:250-3-3. Lodging establishment operational permits [AMENDED]

310:250-3-4. Late renewal [AMENDED]

310:250-3-5. Radiation producing machine permits [AMENDED]

310:250-3-6. Public ~~Bathing Places~~ bathing places [AMENDED]

310:250-3-7. Application fee [AMENDED]

AUTHORITY:

Oklahoma State Board of Health; Title 63 O.S. § 1-104; and 63 O.S. § 1-1119, 63 O.S. § 1-1201, 63 O.S. § 1-1013; and 63 O.S. § 1-1501.1

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INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

These rules apply to application and licensure fees for programs overseen by the Consumer Health Service specific to: food establishments (Title 63 O.S. § 1-1118 & 1-1119), drug manufacturers (Title 63 O.S. § 1-1119), lodging establishments (Title 63 O.S. § 1-1201), diagnostic x-ray facilities (Title 63 O.S. § 1-1501.1), and public bathing places (Title 63 O.S. § 1-1013.1). These statutes authorize the Department of Health to establish fees for licenses. The changes modify the fee schedule for establishments licensed in these areas. The changes are necessary to cover increasing costs for these programs, to allow flexibility to better track types of establishments for reporting purposes and streamline application processes. The effect of these changes increase fees for licensed establishments. The effect will also allow flexibility to better identify types of businesses which will assist in the focused identification of hazards to specific establishment types.

CONTACT PERSON:

Information regarding this rule may be obtained by contacting Lynnette Jordan, Service Director, Consumer Health Service, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1207; phone (405) 271-5243, e-mail lynnette@health.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF OCTOBER 1, 2017:

SUBCHAPTER 3. LICENSE CLASSIFICATIONS AND ASSOCIATED FEES FOR CONSUMER HEALTH SERVICES

310:250-3-1. Food service establishments' permits fees

(a) The following are license classifications and associated fees for food service establishments, manufacturers, or wholesalers regulated by Title 63 O.S. § 1-915, Title 63 O.S. § 1-1118, Title 63 O.S. § 1-1119, or Title 63 O.S. § 1-1120 et seq., and the rules promulgated thereunder::

- (1) Food service, manufacturing, or wholesale.
 - (A) Initial - \$425.00
 - (B) Renewal - \$335.00
 - (C) Late Renewal - \$375.00
- (2) State Operated, Non-Profit or Health Facilities not meeting exempt status.
 - (A) Initial - \$175.00
 - (B) Renewal - \$125.00
 - (C) Late Renewal - \$150.00
- (3) Seasonal includes any establishment that meets the definition of "Seasonal food establishment" outlined in OAC 310:257-1-2 where the license is valid for only one hundred eighty (180) consecutive days per year. The license may be reinstated no sooner than one hundred eighty 180 days after the expiration of the previous license.
 - (A) Initial - \$250.00
 - (B) Reinstatement - \$250.00
- (4) The fee for a temporary food establishment, as defined in OAC 310:257-1-2, shall be \$100.00 for a three (3) day period plus \$40.00 for each additional day.
 - (1) Type 45 Class A "Frozen Food Locker":
 - (A) Initial—\$350.00
 - (B) Renewal—\$250.00
 - (C) Late Renewal—\$300.00
 - (2) Type 45 Class B "Bar":
 - (A) Initial—\$350.00
 - (B) Renewal—\$250.00
 - (C) Late Renewal—\$300.00
 - (3) Class C "Combination Retail Food":
 - (A) Initial—\$350.00
 - (B) Renewal—\$250.00
 - (C) Late Renewal—\$300.00
 - (4) Class E "Health Facilities, State Prisons, Schools, or Non-Profit Institutions":
 - (A) Initial—\$100.00
 - (B) Renewal—\$100.00
 - (C) Late Renewal—\$150.00
 - (5) Class F "Food Service Establishment":
 - (A) Initial—\$350.00
 - (B) Renewal—\$250.00

- (C) Late Renewal—\$300.00
- (6) Class G "Food Service with Bar":
 - (A) Initial—\$350.00
 - (B) Renewal—\$250.00
 - (C) Late Renewal—\$300.00
- (7) Class M "Mobile Food Service and Vendor":
 - (A) Initial—\$350.00
 - (B) Renewal—\$250.00
 - (C) Late Renewal—\$300.00
- (8) Class R "Retail Food Store":
 - (A) Initial—\$350.00
 - (B) Renewal—\$250.00
 - (C) Late Renewal—\$300.00
- (9) Class S "Seasonal Food Service":
 - (A) Non-Renewable—\$200.00 for one hundred eighty (180) consecutive days only
- (10) Class T "Temporary Food Service":
 - (A) \$30.00 up to three (3) days + \$15.00 each day in excess of three (3) days
- (11) Class P "Food Processors":
 - (A) Initial—\$350.00
 - (B) Renewal—\$250.00
 - (C) Late Renewal—\$300.00
- (12) Class W "Food Wholesaler":
 - (A) Initial—\$350.00
 - (B) Renewal—\$250.00
 - (C) Late Renewal—\$300.00
- (13) Class X "Privately Owned Prisons":
 - (A) Initial—\$350.00
 - (B) Renewal—\$250.00
 - (C) Late Renewal—\$300.00
- (14) Class Y "Salvage Food":
 - (A) Initial—\$350.00
 - (B) Renewal—\$250.00
 - (C) Late Renewal—\$300.00
- (15) Class Z "Water Bottling Facilities":
 - (A) Initial—\$350.00
 - (B) Renewal—\$250.00
 - (C) Late Renewal—\$300.00

(b) An establishment qualifies for a fee exempt license if it is a "food service establishment -- fee exempt" as that term is defined in OAC 310:257-1-2.

(c) Late renewal fees apply to any renewal application post-marked and/or received thirty (30) days after the expiration date of the license.

(d) A license not renewed within ninety (90) days of the date shall be ineligible for the renewal. Thereafter, the establishment shall be required to pay an initial fee. The establishment that has not had a valid license for one (1) year is considered a new establishment.

310:250-3-2. Drug operational permits

The following are license classifications and associated fees for over-the-counter wholesalers, brokers, and drug manufacturers: regulated by the Drugs, Medical Devices and Cosmetics Article of the Public Health Code, Title 63 O.S. Sections 1-1119 and 1-1401 et seq. and the rules promulgated thereunder.

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(1) ~~Type 48 Class M "Drug Manufacturers, over the counter"~~ Drug Operational Category includes any over-the-counter wholesalers, brokers and manufacturers of drugs:

- (A) Initial - ~~\$350.00~~\$375.00
- (B) Renewal - ~~\$250.00~~\$325.00
- (C) Late Renewal - ~~\$300.00~~\$350.00

(2) ~~Type 48 Class W "Drug Warehouse":~~

- (A) ~~Initial~~ - \$350.00
- (B) ~~Renewal~~ - \$250.00
- (C) ~~Late Renewal~~ - \$300.00

310:250-3-3. Lodging establishment operational permits

~~Fees~~The following are associated fees for lodging establishment operational permits ~~are as follows: regulated by the lodging establishment statute at Title 63 O.S. § 1-1201 and the rules promulgated thereunder.~~

(1) ~~Type 51 Class Category A "Hotels and Motels" (Not more than 20 units):~~

- (A) Initial - ~~\$250.00~~\$300.00
- (B) Renewal - ~~\$150.00~~\$225.00
- (C) Late Renewal - ~~\$200.00~~\$250.00

(2) ~~Type 51 Class Category B "Hotels and Motels" (Not more than 100 units):~~

- (A) Initial - ~~\$300.00~~\$350.00
- (B) Renewal - ~~\$200.00~~\$275.00
- (C) Late Renewal - ~~\$250.00~~\$300.00

(3) ~~Type 51 Class Category C "Hotels and Motels" (More than 100 units):~~

- (A) Initial - ~~\$350.00~~\$400.00
- (B) Renewal - ~~\$250.00~~\$325.00
- (C) Late Renewal - ~~\$300.00~~\$350.00

310:250-3-4. Late renewal

(a) When a Consumer Health Service's license renewal fee is required by statute or regulation to be paid by a date certain and such fee was paid more than thirty (30) days after the date certain, there shall be assessed a late fee to cover the cost of non-routine processing. The late renewal fee unless specifically set shall equal one-half of the renewal fee for any given type and class, unless the maximum authorized by law would be exceeded thereby.

(b) Late renewal fees apply to renewal applications received by the Department more than thirty (30) days after the expiration date of the license.

(c) If the license holder does not file with the Department a renewal application and fee within ninety (90) days after the expiration date of the license, the Department shall not renew the license. The license may be re-instated with payment of an initial license fee.

310:250-3-5. Radiation producing machine permits

(a) ~~The Annual~~ annual permit fee for facilities to use radiation machines shall be based on type of facility and the number of x-ray tubes.

(1) All facilities except dental, podiatric and veterinary with:

- (A) ~~first tube \$100.00; and~~
- (B) ~~each additional tube \$90.00~~\$95.00; but
- (C) ~~a maximum permit fee of \$500.00.~~

(2) Dental and podiatric facilities with:

- (A) ~~first tube \$40.00; and~~
- (B) ~~each additional tube \$25.00~~\$30.00; but
- (C) ~~a maximum permit fee of \$500.00.~~

(3) Veterinary facilities with:

- (A) ~~first tube \$30.00; and~~
- (B) ~~each additional tube \$20.00~~\$25.00; but
- (C) ~~a maximum permit fee of \$500.00.~~

(b) Diagnostic radiation producing machine permit renewal fees for applications received by the Department more than thirty (30) days after the expiration date of the current permit shall be assessed a late fee to cover the cost of non-routine processing. The late renewal fee shall equal one-half of the renewal fee, unless the maximum authorized by law would be exceeded. If the permit holder does not file with the Department a renewal application and fee within ninety (90) days after the expiration date of the license, the Department shall not renew the permit. An initial permit application and initial permit fee shall be required.

310:250-3-6. Public Bathing Places ~~bathing places~~

(a) The following are license classifications and associated fees for Public Bathing Places:

(1) ~~Type 82 Class~~ Public Bathing Category I "Indoor Facility"

- (A) Public Bathing Places Initial License Fee - ~~\$50.00~~\$125.00
- (B) Public Bathing Places Renewal License Fee - \$75.00
- (C) Public Bathing Places Re-inspection Fee - \$250.00

(2) ~~Type 82 Class~~ Public Bathing Category O "Outdoor Facility"

- (A) Public Bathing Places Initial License Fee - ~~\$50.00~~\$125.00
- (B) Public Bathing Places Renewal License Fee - \$75.00
- (C) Public Bathing Places Re-inspection Fee - \$250.00

(3) Pool Category M "Municipality of 5,000 or less population"

- (A) Public Bathing Places Annual License Fee - \$50.00
- (B) Public Bathing Places Re-inspection Fee - \$250.00

(b) Each filter system for a construction project shall require a separate permit. One project may contain several construction items and require more than one permit. The maximum fee for each public bathing place construction permit will be \$2000.00

(1) New Construction

- (A) Pool - Rounded to the nearest 5000 gallons volume - \$100.00 per 5000 gallons (minimum \$500.00 fee)
- (B) Spray Pool -Rounded to the nearest 5000 gallons volume - \$100.00 per 5000 gallons (minimum \$500.00 fee)
- (C) Spas - Rounded to nearest 100 gallons volume - \$50.00 per 100 gallons (minimum \$250.00 fee)
- (2) Modification to Existing Permit
 - (A) Pool - Rounded to the nearest 5000 gallons volume - \$50.00 per 5000 gallons (minimum \$250.00 fee)
 - (B) Spray Pool - Rounded to the nearest 5000 gallons volume -50.00 per 5000 gallons (minimum \$250.00 fee)
 - (C) Spas - Rounded to the Nearest 100 gallons volume - \$25.00 per 100 gallons (minimum \$125.00 fee)
- (c) An annual securing fee of \$50.00 will be applied to each public bathing place that is placed out of service and is not maintaining annual licensure. This pertains to a secured public bathing place permanently out of service where the current owner has no intention to reopen and does not fill in the public bathing place. It also applies to a public bathing place closed for longer than a year with the intent of re-opening. A securing fee will be due at the same time as the original license expiration and each year thereafter while the facility remains permanently out of service. When a public bathing place resumes operation, the local county health department shall be notified by the owner and any remaining license fee will be required for that year of operation.

310:250-3-7. Application fee

- (a) Applicant shall submit the prepared plans and specifications for review and approval as stated in "Food Service Establishment Regulations" OAC 310:257-15-6 thru 310:257-15-17 or OAC 310:260 "Good Manufacturing Practice Regulations". The application fee and plans shall be submitted to the Oklahoma State Department of Health, or respective County Health Department in which the establishment shall operate as instructed on a plan review application prescribed by the Department.
 - (1) Food service, manufacturing, wholesale, or brokers of food - \$425.00
 - (2) State Operated, Non-Profit or Health Facilities not meeting exempt status - \$425.00
 - (3) Seasonal establishment - \$425.00
 - (4) Food establishment - Fee Exempt as an establishment meeting the definition outlined in OAC 310:257-1-2 - \$425.00
- Type 45 Class A - "Frozen Food Locker" \$200.00
- (2) Type 45 Class B - "Bar" \$200.00
- (3) Type 45 Class C - "Combination Retail Food" \$200.00
- (4) Type 45 Class E - "Health Facilities, State Prisons, Schools, Non Profit Institutions" \$200.00
- (5) Type 45 Class F - "Food Service Establishment" \$200.00
- (6) Type 45 Class G - "Food Service with Bar" \$200.00

- (7) Type 45 Class M - "Mobile Food Service and Vendor" \$200.00
- (8) Type 45 Class R - "Retail Food Store" \$200.00
- (9) Type 45 Class S - "Seasonal Food Service" \$200.00
- (b) Applicant shall submit the prepared plans and specifications for review and approval as stated in OAC 310:260 "Good Manufacturing Practice Regulations". The application fee and plans shall be submitted to the Oklahoma State Department of Health. The drug operational category fee is \$425.00.
 - (1) Type 45 Class A - "Frozen Food Locker" \$200.00
 - (2) Type 45 Class E - "Health Facilities, State Prisons, Non Profit Institutions" \$200.00
 - (3) Type 45 Class P - "Food Processors" \$200.00
 - (4) Type 45 Class W - "Food Wholesalers" \$200.00
 - (5) Type 45 Class X - "Privately Owned Prisons" \$200.00
 - (6) Type 45 Class Y - "Salvage Food" \$200.00
 - (7) Type 45 Class Z - "Water Bottling Facilities"
 - (8) Type 48 Class M - "Drug Manufacturers, over the counter" \$200.00
 - (9) Type 48 Class W - "Drug Warehouse" \$200.00
- (c) Applicant shall submit the prepared plans and specifications for review and approval as stated in OAC 310:285 "Lodging Establishment Regulations". The application fee and plans shall be submitted to the Oklahoma State Department of Health, respective County Health Department in which the establishment shall operate.
 - (1) Type 51 Class A - "Hotels and Motels" ~~\$200.00~~ \$425.00
 - (2) Type 51 Class B - "Hotels and Motels" ~~\$200.00~~ \$425.00
 - (3) Type 51 Class C - "Hotels and Motels" ~~\$200.00~~ \$425.00

[OAR Docket #17-650; filed 7-13-17]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 512. CHILDHOOD LEAD POISONING PREVENTION RULES

[OAR Docket #17-649]

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Subchapter 1. General Provisions

310:512-1-1 [AMENDED]

310:512-1-2 [AMENDED]

310:512-1-3 [AMENDED]

310:512-1-4 [AMENDED]

Subchapter 3. ~~Specimen~~ Risk Assessment, Screening and Management

310:512-3-1 [AMENDED]

310:512-3-2 [REVOKED]

310:512-3-2.1 [NEW]

310:512-3-3 [AMENDED]

310:512-3-4 [REVOKED]

310:512-3-4.1 [NEW]

310:512-3-5 [AMENDED]

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n/a

GIST/ANALYSIS:

These amendments are enacted pursuant to authority found in Title 63 of the Public Health Code at section 1-114.1. This law established the Comprehensive Childhood Lead Poisoning Prevention Program to be administered by the State Department of Health and authorizes the Department to enact rules for lead toxicity screening. The amended rules address changes enacted in House Bill 1467 (2013) that created the Infant and Children's Health Advisory Council as the advisory body, replacing the legislatively struck lead poisoning advisory board; clarify that the Oklahoma Childhood Lead Poisoning Prevention Program maintains a statewide surveillance system of elevated blood lead levels only; adds definitions and terms used in the updated rules to ensure that all terms are defined; removes definitions of terms that are no longer used; adds the term for the risk assessment questionnaire to refer to the document as the Lead Exposure Risk Assessment Questionnaire (LERAQ) and allows for an alternative risk assessment questionnaire. The changes clarify the appropriate ages and times for lead screening for children up to the age of 72 months; amend and renumber sections where extensive rewrite occurs; define the role of the health care provider in assessment and screening of children under the age of 72 months for lead exposure; clarify the process regarding a refusal by a parent or guardian for blood lead testing of their child; clarify continuing follow-up requirements and health care provider responsibilities as they pertain to blood lead screening and aftercare; and add language indicating the domain and responsibility among health care providers to follow screening requirements.

The amended rules change guidance that a capillary blood lead sample may be obtained for confirmation of an elevated blood lead level when a venous sample is not obtainable; venous sample testing is required for confirmation of blood lead concentration equal to or greater than 10 µg/dL; and add information regarding the use of Point-of-Care instruments for on-site lead testing and clarify that Point-of-Care instruments are not to be used to confirm elevated blood lead levels.

The amended rules provides clarification regarding primary prevention, the use of chelation therapy, developmental screening and directs providers to the Oklahoma Childhood Lead Poisoning Prevention Program's Clinical Management Guidelines which are available on the program's website.

The rule is amended to address the procedure and terms of blood lead screening reporting requirements to clearly state the method of reporting the results to the Oklahoma Childhood Lead Poisoning Prevention Program; clarify procedures for reporting by providers who use the Point-of-Care devices for blood lead testing; and promotes electronic reporting. Various amendments are provided for improved clarity in terminology and references.

CONTACT PERSON:

Information regarding this rule may be obtained by contacting Susan Quigley, Administrative Programs Manager, Childhood Lead Poisoning Prevention Program, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1207; phone (405) 271-6711, e-mail susanq@health.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S.,

SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF OCTOBER 1, 2017:

SUBCHAPTER 1. GENERAL PROVISIONS

310:512-1-1. Purpose

~~Under 63 O.S. 1991, Sections 1-114.1 the following rules are established concerning the screening of all Oklahoma children, ages 6 months to 72 months of age, for lead poisoning, designated by the Oklahoma State Board of Health. The rules in this Chapter establish procedures and standards for childhood lead screening, assessment, poison prevention, and reporting as authorized under the provisions of Title 63 O.S. Section 1-114.1.~~

310:512-1-2. Criteria

(a) ~~The Oklahoma State Board of Health shall establish procedures for blood lead screening which shall include risk assessment, laboratory assays, sample collection, reporting, follow-up, and parent education. The Infant and Children's Health Advisory Council shall advise the Oklahoma State Board of Health on the establishment of rules for the prevention of childhood lead poisoning which shall include risk assessment, blood lead screening, laboratory assays, sample collection, reporting, lead hazard control, and rules related to the role of the provider such as: follow-up, diagnosis and treatment, developmental screening, referral for environmental assessments and lead hazard control, and parent education.~~

(b) All health care providers shall comply with the following procedures for blood lead screening ~~established by the Oklahoma State Board of Health.~~

(c) After sufficient statewide data collection and documented incidence of low lead exposure, the Commissioner of Health may exempt a community or county from universal lead screening.

310:512-1-3. Lead poisoning prevention program

(a) The Department shall ~~establish~~ maintain a lead poisoning prevention program. This program shall be responsible for establishing and coordinating activities to prevent lead poisoning and to minimize risk of exposure to lead.

(b) The Department shall ~~promulgate~~ and enforce rules for screening children for lead poisoning, and for follow-up of children who have elevated blood lead levels.

(c) The Department may enter into interagency agreements to coordinate lead poisoning prevention, exposure reduction, identification and treatment activities and lead reduction activities with other federal, state and local agencies and programs.

(d) The Department shall ~~establish~~ maintain a statewide ~~registry surveillance system of children with elevated lead levels~~ all Oklahoma children's blood lead levels provided such information is monitored as confidential except for disclosure for medical treatment purposes ~~and~~ or disclosure of non-identifying epidemiological data.

(e) The Department shall develop and implement public education and community outreach programs on lead exposure, detection and risk reduction.

310:512-1-4. Definitions

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

"Advisory Council" means the ~~advisory council on lead poisoning prevention~~ Infant and Children's Health Advisory Council.

"Anticipatory guidance" means providing parents or guardians of children under the age of six with information regarding the major causes of lead poisoning and means of preventing lead exposure. Such guidance shall be pertinent to the environment of the child.

"Blood lead screening" refers to measuring lead concentration by capillary or venous blood collection to identify elevated blood lead levels.

"Case Management" refers to providing a collaborative process to assess, educate, coordinate, monitor, or evaluate options and services required to meet the child's environmental health and human service needs.

"CLIA '88"/"CLIA" means the Clinical Laboratory Improvement Amendments. These amendments apply to the Federal Law that governs laboratories who examine human specimens for the diagnosis, prevention, or treatment of any disease or impairment, or the assessment of the health of human beings.

"Clinical Management Guidelines" means voluntary guidelines produced by the Department for clinical management and treatment decisions based on the initial or confirmed blood lead level.

"Confirmatory testing" refers to a blood lead concentration measured on venous blood the collection of a venous blood sample to confirm an initial elevated capillary blood lead screening result. The collection of a capillary sample within 12 weeks to confirm an initial elevated capillary blood lead screening test result may be used if the initial capillary level is less than 10 µg/dL.

"Confirmed elevated blood lead level" refers to a concentration of lead in the blood taken from a venous sample which is above the reference level. It may also refer to a second capillary test as described in "confirmatory testing".

"Department" refers to the Oklahoma State Department of Health.

"Dwelling" refers to a building or structure thereof, including the property occupied by and appurtenant to such dwelling, which is occupied in whole or in part as the home, residence or sleeping place of one or more human beings and shall without limiting the foregoing, include child care facilities for children under six years of age, schools and nursery schools.

"Elevated blood lead level" means a confirmed concentration of lead of 10 micrograms (µg) per deciliter (dL) or greater in blood at or above the current reference level as defined by the Centers for Disease Control.

"Environmental management investigation" refers to on-site dwelling environmental investigation and exposure assessment, sampling for lead, environmental testing and reporting, notice of conditions conducive to lead poisoning, environmental intervention means an on-site dwelling investigation to determine the existence, nature, severity, and location of lead or lead-based paint hazards, completed by a person licensed as a certified risk assessor by the Oklahoma Department of Environmental Quality.

"Follow-up" refers to actions by local health departments and health care providers which, depending on the blood lead level and exposure history of the child, shall include as appropriate: risk reduction education, follow-up testing, confirmatory testing, medical evaluation, medical management, environmental ~~management~~ investigation, and case management, in accordance with generally accepted medical standards and public health guidelines.

"Follow-up testing" refers to repeat blood lead testing by venous blood draw for any child with a previously confirmed elevated blood lead level.

"Health care provider" means any health professional or facility authorized to conduct blood lead screening. Health care provider includes, but is not limited to, physicians, physician assistants, advance practice registered nurses, city-county health departments, county health departments, medical clinics, medical offices, hospitals, and Head Start programs.

"High risk lead exposure" refers to any positive response on the LERAQ or other suitable risk assessment questionnaire.

"Laboratory" refers to the Oklahoma State Department of Health Laboratory or a laboratory approved by the Oklahoma State Department of Health to conduct blood lead measurement any in-state CLIA approved laboratory or out-of-state CLIA approved laboratory providing blood lead testing for residents of Oklahoma. Laboratory may also refer to any entity using a point of care instrument for the purpose of blood lead testing of Oklahoma residents.

"LERAQ" refers to the Lead Exposure Risk Assessment Questionnaire which consists of a model set of questions developed by the Department to assess a child's risk of exposure to lead and includes information regarding areas of the state with higher than average risks for lead exposure.

"Low risk lead exposure" refers to negative responses to all questions on the LERAQ or other suitable risk assessment questionnaire.

"Person" means any natural person.

"Point-of-Care Instrument" refers to a blood lead testing device designed for the quantitative measurement of lead in fresh whole blood.

"Primary Health Care Provider" refers to any person or government entity that provides well child health care services, such as annual examinations and immunizations, to children under six years of age. Primary health care provider includes, but is not limited to, physicians, physician assistants, advance practice registered nurse, local health departments, medical clinics, medical offices, and hospital outpatient clinics.

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"Program" refers to the Oklahoma Childhood Lead Poisoning Prevention Program (OCLPPP) lead poisoning prevention program in of the Department.

"Reference Level" means a level of lead in the blood measured in micrograms per deciliter used to identify children with lead levels that are much higher than most children's lead levels. This level is based on the U.S. population of children ages 1-5 years who are in the highest 2.5% of children when tested for lead in their blood based on the 97.5 percentile of the National Health and Nutrition Examination Survey (NHANES) for the two most recent surveys. The reference level currently in use is 5 micrograms per deciliter.

"Risk Assessment Questionnaire" means a set of questions designed to determine an individual's risk for lead exposure and lead poisoning, as approved by the Department and based on recommendations from the CDC.

"Satisfactory specimen" means a specimen collected using an appropriate procedure which is suitable in both blood quantity and quality to perform screening for Blood Lead measurement. ~~Federal CLIA '88 regulations require that the laboratory requisitions contain sufficient patient data that must include patient's name, date of birth, date of collection, test(s) to be performed, and name and address of person requesting the test.~~

"Submitter" any health care provider (primary and non-primary), hospital, physician, laboratory, or other facility that submits blood specimens for blood lead measurements.

"Target population" refers to any infant or child, 6 months to 72 months of age.

"Unsatisfactory specimen" means a blood specimen which is not suitable in quality or quantity to perform blood lead measurements.

SUBCHAPTER 3. SPECIMEN RISK ASSESSMENT, SCREENING AND MANAGEMENT

310:512-3-1. Screening Parameters Risk assessment and screening criteria

(a) All children in Oklahoma, 6 months to 72 months of age shall be assessed for blood lead exposure utilizing the risk assessment questionnaire as defined in paragraph (c) ~~and should have access to service which will assess the exposure to lead in their environments as part of each periodic health care visit occurring at age 6, 12, and 24 months and age 3 years, 4 years and 5 years. An initial capillary or venous sample should be done at 12 months and 24 months of age, anytime the child has not had a baseline before the age of 72 months, or with any change in the child's assessment.~~

(b) ~~A parent or guardian who refuses blood lead testing screening of their child shall also indicate in writing this refusal in the child's record.~~ All children in Oklahoma shall have a blood lead screening test as part of each periodic health care visit occurring at age 12 and 24 months of age or at any age after age 24 months up to age 72 months, if not previously tested for blood lead.

(c) A risk assessment questionnaire is based on recommendations from the CDC and shall be approved by the Department prior to implementation. The questionnaire should include questions related to the following:

(1) Does the child live in or frequently visit a home built before 1978?

(2) Does the child have a sibling or playmate with an elevated blood lead level?

(3) Is the child eligible for Medicaid, WIC, or Head Start?

(4) Does the child live with someone who has a job or hobby that may involve lead (example: jewelry making, building renovation or repair, working with automobile batteries, lead solder, or battery recycling)?

(5) Does the child eat or mouth trinkets or items that contain lead?

(6) Does the child live in an area identified as a high risk target area by the Program?

(d) A "Yes" or "Don't know" answer to the questions in paragraph (c) is considered a positive answer and requires the child to have a blood lead test.

(e) The Department publishes current high risk target areas on its website located at: <http://lpp.health.ok.gov>.

(f) The Department publishes the LERAQ as an approved risk assessment questionnaire on its website.

310:512-3-2. Screening criteria [REVOKED]

~~(a) For children at low risk for lead exposure, according to risk assessment questions, the health care provider should perform an initial blood lead test at 12 months of age, or when initially assessed if older.~~

~~(1) If the result is $<10 \mu\text{g/dL}$, the child should be retested at 24 months of age.~~

~~(2) If the result is between $10-19 \mu\text{g/dL}$, the child should be retested every 3-4 months until two consecutive measurements are $<10 \mu\text{g/dL}$ or three consecutive measurements are $<15 \mu\text{g/dL}$. At this point, the child should be retested in one year.~~

~~(3) If the result is $\geq 20 \mu\text{g/dL}$, retest every 3-4 months and individual case management should be provided.~~

~~(b) For children at high risk for lead exposure, according to risk assessment questions, the health care provider should perform an initial blood lead test at 6 months of age, or when initially assessed if older.~~

~~(1) If the result is $<10 \mu\text{g/dL}$, the child should be retested every 6 months until two consecutive measurements are $<10 \mu\text{g/dL}$ or three consecutive measurements are $<15 \mu\text{g/dL}$. At this point, retested yearly, if the child remains at high risk for lead exposure.~~

~~(2) If the result is between $10-19 \mu\text{g/dL}$, the child shall be retested every 3-4 months until two consecutive measurements are $<10 \mu\text{g/dL}$ or three consecutive measurements are $<15 \mu\text{g/dL}$. At this point, retested yearly, if the child remains at high risk for lead exposure.~~

~~(3) If the result is $\geq 20 \mu\text{g/dL}$, the child should be retested every 3-4 months and individual case management shall be provided.~~

310:512-3-2.1. Primary health care provider responsibilities for risk assessment and screening

(a) Every primary health care provider who provides a periodic health care visit to a child at age 6, 12, and 24 months and age 3, age 4 and 5 years shall assess the child for risk of lead exposure using the LERAQ, or suitable risk assessment questionnaire approved by the Department.

(b) For children at high risk for lead exposure according to the LERAQ, or suitable risk assessment questionnaire, the primary health care provider shall perform a blood lead test beginning at 6 months of age, or when initially assessed, if older.

(c) Every primary health care provider who provides a periodic health care visit to a child shall order an initial capillary or venous blood lead screening test at age 12 and 24 months, or at any age after age 24 months up to age 72 months if never tested.

(d) Every primary health care provider who provides a periodic health care visit to a child at age 6, 12, and 24 months and age 3, age 4, and 5 years shall:

- (1) Give oral or written anticipatory guidance to a parent or guardian on prevention of childhood lead poisoning, including, at minimum, the information that children can be harmed by exposure to lead, especially deteriorating or disturbed lead-based paint and the dust from it, and are particularly at risk of lead poisoning from the time the child begins to crawl until 72 months of age; and
- (2) Discuss the child's blood lead test results with the child's family and any necessary follow up.

(e) Any health care provider who performs blood lead screening of a child who is six months of age to six years of age and who is not the child's ongoing primary health care provider shall forward the blood lead test result, if elevated at or above the reference level, to the child's primary health care provider.

(f) If a parent or guardian refuses blood lead testing screening of their child, the health care provider shall have the parent or guardian indicate in writing this refusal in the child's medical record and provide a copy via mail or by fax to the Oklahoma Childhood Lead Poisoning Prevention Program.

310:512-3-3. Blood collection-lead screening tests

(a) **Capillary sample for blood lead testing.** Capillary blood specimens are acceptable for initial blood lead screening if appropriate collection procedures are followed; to minimize the risk of environmental lead contamination. A capillary blood lead sample may be obtained for confirmation of an elevated blood lead level less than 10 µg/dL when a venous sample is not obtainable.

(b) **Venous sample for blood lead testing.** Venous blood is the preferred specimen for blood lead analysis and should be used for lead measurement whenever practical. A venous sample is required for confirmation of blood lead concentration equal to or greater than 10 µg/dL and preferred for confirmation of an elevated blood lead level less than 10 µg/dL.

(c) **Point-of-Care instruments.** Point-of-Care instruments shall not be used to confirm elevated blood lead levels even if the sample is collected by venipuncture.

310:512-3-4. Providers screening and follow-up [REVOKED]

(a) Primary provider screening and follow-up.

(1) ~~At each routine well child visit or at least annually if a child has not had routine well child visits, primary health care providers should assess each child who is at least six months of age but under six years of age for high dose lead exposure using a risk assessment tool based on currently accepted public health guidelines. Each child at high risk for lead exposure should be tested.~~

(2) ~~Primary health care providers should provide the parent or guardian of each child under six years of age anticipatory guidance on lead poisoning prevention as part of routine care.~~

(3) ~~Primary health care providers should screen each child for lead exposure starting at 6 months of age, as part of routine well child care.~~

(4) ~~Each primary health care provider who screens a child for an elevated blood lead level should explain the blood lead test results and any necessary follow up.~~

(5) ~~Primary health care providers should provide or make reasonable efforts to ensure the provision of follow up testing for each child with an elevated blood lead level ≥ 10 µg/dL.~~

(6) ~~Primary health care providers should confirm blood lead levels ≥ 10 µg/dL of blood obtained on a capillary fingerstick specimen from a child using a venous blood sample.~~

(7) ~~For each child who has a confirmed blood lead level of ≥ 20 µg/dL (micrograms per deciliter), the primary health care providers should provide or make reasonable efforts to ensure the provision of medical evaluation, or referral for medical evaluation; medical treatment if necessary; and referral to the appropriate local or state health department for environmental management. Medical evaluation should include at a minimum: a detailed lead exposure assessment, a nutritional assessment, including iron status, and a developmental screening.~~

(b) Non-Primary provider screening and follow-up.

(1) ~~A health care provider who provides services to a child who is at least six months of age but under six years of age and who is not the child's ongoing primary care provider, (such as a hospital inpatient facility, an emergency service if the child's condition permits, or another facility or practitioner which provides services to the child on a one-time or walk-in basis), should inquire if the child has been appropriately screened for lead exposure.~~

(2) ~~If the child, under 72 months of age, has not received such appropriate lead assessment and screening, the health care provider should screen the child for a blood lead level.~~

(3) ~~If screening is performed, the blood lead test result should be sent to the child's primary care provider or, if not available, to the local health department for appropriate follow up.~~

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310:512-3-4.1. Health care provider responsibilities for follow-up after screening

(a) Health care providers shall provide or make reasonable efforts to ensure the provision of confirmation and follow-up testing for each child with an elevated blood lead level above the reference level.

(b) If the initial blood lead test result is below the reference level on either a venous or capillary sample, the health care provider shall retest the child annually if answers on the LERAQ or suitable risk assessment questionnaire indicate continuing high risk for lead exposure.

(c) For each child who has an elevated blood lead level at or above the reference level, the health care provider shall take those actions that are reasonably and medically necessary and appropriate based upon the child's blood lead level to reduce, to the extent possible, the child's blood lead level below the reference level. Such actions may include the following:

(1) Education of a parent or guardian on lead hazards and lead poisoning;

(2) Clinical evaluation for complication of lead poisoning;

(3) Follow-up blood lead analyses as indicated based on level of elevation and period of time;

(4) Developmental screening;

(5) Referral to the Department for an environmental investigation for a single venous blood lead test result equal to or greater than 20 µg/dL; and

(6) Chelation therapy should be considered and, when possible, a medical toxicologist, provider experienced in chelation therapy, or pediatric environmental health specialist should be consulted for a child with a blood lead test greater than 45 µg/dL.

(d) If the initial capillary blood lead test result is elevated, the health care provider shall obtain a venous confirmation test in accordance with the Clinical Management Guidelines as established by the Department.

(e) If the initial venous blood lead test result or the confirmation test is elevated, the health care provider shall obtain venous follow-up testing in accordance with the Clinical Management Guidelines as set forth by the Department.

310:512-3-5. Reporting requirements

(a) Laboratory.

(1) Laboratories shall report the results of all blood lead tests performed on ~~children 6 months to 72 months of age~~ persons ~~that~~ who are residents of Oklahoma to the Childhood Lead Poisoning Prevention Program. These reports shall be confidential and may be utilized only for the purpose of assuring service delivery, program administration, data analysis, and evaluation.

(2) Federal CLIA regulations at Title 42, of the Code of Federal Regulations, Section 493.1241 (relating to standards for test requests), require that laboratory requisitions contain sufficient patient data that must include patient's name, sex, date of birth, date of collection, test(s) to be performed, the source of the specimen, name and address of person requesting the test, as well as "Any additional information relevant and necessary for a

specific test to ensure accurate and timely testing and reporting of results, including interpretation, if applicable." Laboratories shall report the following information to the Childhood Lead Poisoning Prevention Program by ~~mail, telephone, facsimile, or~~ electronic data transmission: name, date of birth, sex, address, county of residence, type of sample (venous or capillary), blood lead level, health care provider ordering the test, laboratory identifiers, date the sample was collected, ~~and~~ the date of analysis, and additional information already available such as race, ethnicity, Medicaid status and/or Medicaid Number. The laboratory receiving the sample from the health care provider taking the sample shall assure that the laboratory requisition slip is fully completed and includes the information required pursuant to the Subsection. In the event electronic submission is not available, lab reports must be submitted by a method and format approved by the Oklahoma Childhood Lead Poisoning Prevention Program.

(3) Time limits for reporting test results to the Childhood Lead Poisoning Prevention Program shall be as follows:

(A) Results of all blood lead levels ~~<10 µg/dL less than the reference level~~ at a minimum of a monthly basis.

(B) Results of all blood lead levels equal to or ~~>10 µg/dL greater than the reference level~~ at a minimum of a weekly basis and if possible daily.

(4) All clinical laboratories shall notify the health care provider ordering the blood lead test by ~~telephone or fax~~ when the results of any analysis in a child up to 72 months of age is ~~=equal to or greater than~~ 20 µg/dL within 24 hours of the date of the analysis.

(5) Nothing in this Subsection shall be construed to relieve any laboratory from reporting results of any blood lead analysis to the physician, or other health care provider ~~that~~ who ordered the test or to any other entity as required by State, Federal or local statutes or regulations or in accordance with accepted standard of practice.

(b) Health care providers.

(1) All health care providers ~~should~~ shall ensure that all of the information as specified in 310:512-3-5(b) (relating to standards for test requests), is completed for all blood lead analyses ordered by health care providers and that this information accompanies the sample to the testing laboratory.

(2) On written or verbal notification of an elevated capillary lead level, ~~=10 mg/dL equal to or greater than the reference level,~~ the child's health care provider will obtain a ~~confirmatory test by venous sample~~ confirmatory testing.

(3) All health care providers shall notify the Childhood Lead Poisoning ~~and~~ Prevention Program of any blood lead level in a child up to 72 months of age ~~equal to or >10 µg/dL equal to or greater than the reference level~~ within 1 week and equal to or ~~greater than~~ > 20 µg/dL within 24 hours of having been notified of this result by the testing

laboratory; ~~the~~ The following information shall be provided when reporting: name, date of birth, sex, address, county of residence, type of sample (venous or capillary), blood lead level, health care provider ordering the test, laboratory identifiers, date the sample was collected and the date of analysis.

(4) ~~Upon notification of a blood lead level ≥ 20 $\mu\text{g}/\text{dL}$, an environmental investigation and public health followup will be carried out by the Oklahoma State Department of Health. Any health care provider utilizing a point-of-care instrument to test blood lead samples is required to report all such results, regardless of the level, to the Childhood Lead Poisoning Prevention Program, and follow the guidelines for reporting as stated in 310:512-3-5(a) (relating to laboratory reporting).~~

(5) ~~On~~ Upon written notification of unsatisfactory specimens, the child's health care provider will obtain a repeat specimen.

(6) These reports shall be confidential and may be utilized only for the purpose of assuring service delivery, program administration, data analysis, and evaluation.

[OAR Docket #17-649; filed 7-13-17]

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

[OAR Docket #17-648]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 1. Disease and Injury Reporting
- 310:515-1-1.1. Definitions [AMENDED]
- 310:515-1-2. Diseases to be reported [AMENDED]
- 310:515-1-3. Diseases to be reported immediately [AMENDED]
- 310:515-1-4. Additional diseases, conditions, and injuries to be reported [AMENDED]
- 310:515-1-6. Additional diseases may be designated [AMENDED]
- 310:515-1-7. Control of Communicable Diseases Manual [AMENDED]
- 310:515-1-8. Organisms/specimens to be sent to the Public Health Laboratory [AMENDED]

AUTHORITY:

Oklahoma State Board of Health; Title 63 O.S. § 1-104 and 63 O.S. §§ 1-502 and 1-503

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

September 8, 2016

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SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

December 23, 2016

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 13, 2017

FINAL ADOPTION:

June 13, 2017

EFFECTIVE:

October 1, 2017

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

These amendments are enacted pursuant to authority found in Title 63 of the Public Health Code at sections 1-502 and 1-503. These sections authorize the Department to adopt such rules as it deems necessary to aid in the prevention and control of communicable disease and for establishing a system of reporting of cases of diseases. These changes amend the lists of reportable diseases in order to clarify those conditions and diseases that are required to be reported to the Department. The amendments add conditions of public health importance that require investigation and implementation of prevention activities. These changes minimally increase the reporting burden placed upon clinicians, have no impact on the reporting burden placed upon laboratories, and do not adversely affect the public health disease control and prevention activities.

The amendments remove the reference to a "non-versioned/non-codified" document which could further specify requirements of reporting. This change will eliminate any possibility of requirements that are not stated in rule. The duplicative requirements at OAC 310:515-1-4(3) (relating to occupational or environmental diseases) are amended by removing the requirements listed and adding a reference to the amended rules on reporting blood lead levels in OAC 310:512, Childhood Lead Poisoning Prevention Rules. Amendments change the current reporting guidance for hepatitis C to include persons of all ages, and lower the alanine aminotransferase (ALT) levels for reporting from 400 to 200. This modification is in accordance with the Council of State and Territorial Epidemiologists case definition for hepatitis C that was revised effective January 1, 2016. Lastly, the revisions more clearly specify which syphilis tests are required for reporting to the Department.

CONTACT PERSON:

Information regarding this rule may be obtained by contacting Kristy Bradley, State Epidemiologist, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1207; phone (405) 271-7637, e-mail KristyB@health.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF OCTOBER 1, 2017:

SUBCHAPTER 1. DISEASE AND INJURY REPORTING

310:515-1-1.1. Definitions

When used in this Chapter, the following words or terms shall have the following meaning unless the context of the sentence requires another meaning:

"AIDS" means Acquired Immunodeficiency Syndrome.

"Anti-HAV-IgM+" means a positive test result for the hepatitis A virus immunoglobulin M antibody.

"Anti-HBc-IgM+" means a positive test result for the hepatitis B core immunoglobulin M antibody.

"CD4" means cluster of differentiation 4 glycoprotein that serves as a receptor for HIV on T helper cells.

"Department" or "OSDH" means the Oklahoma State Department of Health.

"E. coli" means *Escherichia coli*.

"EIA" means enzyme immunoassay.

"HBsAg+" means a positive test result for the hepatitis B "e" antigen.

"HBsAg+" means a positive test result for the hepatitis B surface antigen.

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"HBV DNA+" means a positive test result for deoxyribonucleic acid of the hepatitis B virus.

"HIV" means Human Immunodeficiency Virus.

"PHIDDO" or "PHIDDO system" means Public Health Investigation and Disease Detection of Oklahoma system.

"NAT for HCV RNA+" means a nucleic acid amplification test with a positive test result for hepatitis C virus ribonucleic acid.

"Outbreak of disease" means two or more cases residing in different households that have a similar clinical syndrome of a potentially infectious disease, toxin, or agent of known or unknown etiology.

"RIBA" means recombinant immunoblot assay.

"S/co" means the signal-to-cut-off-ratio.

"Spp." is an abbreviation referring to the term "species," and is used to broaden the antecedent term in order to include all organisms that may be found or described within a given genus.

"Unusual disease or syndrome" means a case of an uncommon, possibly infectious disease of known or unknown etiology, even if laboratory testing may be pending or inconclusive, or if testing for common etiologies is negative. Such cases of disease may not normally be endemic to Oklahoma, may be an emerging or re-emerging disease, and/or represent diseases for which a public health intervention may be needed. Examples of such unusual diseases or syndromes include but are not limited to, unexplained adult respiratory distress syndrome, rash illness with atypical presentation, or an illness occurring along with an unusual pattern of illness or death among animals.

~~"VISA" means vancomycin intermediate *Staphylococcus aureus*.~~

~~"VRSA" means vancomycin resistant *Staphylococcus aureus*.~~

310:515-1-2. Diseases to be reported

The diseases listed in this Chapter must be reported, along with patient identifiers, demographics, and contact information, to the Department upon discovery as dictated in sections OAC 310:515-1-3 and OAC 310:515-1-4. ~~The current "Oklahoma Disease Reporting Manual" shall serve as the standard for disease specific diagnostic test results to be reported. Ancillary laboratory test results, signs, and symptoms must be reported upon request. The current edition of the "Oklahoma Disease Reporting Manual" may be accessed from the Acute Disease Service disease reporting and alerts web page of the OSDH web site at <http://IDReportingAndAlerts.health.ok.gov>. Laboratories having greater than 400 positive tests performed on-site per year for reportable diseases described in 310:515-1-3, 310:515-1-4(1) and 310:515-1-4(2), or as may be otherwise required to be reported by OSDH, shall begin electronic laboratory reporting no later than August 30, 2010 using secure electronic data transmission meaningful use standards.~~

310:515-1-3. Diseases to be reported immediately

The following diseases must be reported by any health practitioner or laboratory personnel to the OSDH electronically via the secure web-based Public Health Investigation and Disease Detection of Oklahoma system or by telephone (405-271-4060 or 800-234-5963) immediately upon suspicion, diagnosis, or testing ~~as specified in the "Oklahoma Disease Reporting Manual".~~

- (1) Anthrax (*Bacillus anthracis*).
- (2) Bioterrorism - suspected disease.
- (3) Botulism (*Clostridium botulinum*).
- (4) Diphtheria (*Corynebacterium diphtheriae*).
- (5) Haemophilus influenzae invasive disease.
- (6) Hepatitis A (Anti HAV IgM+).
- (5) Free-living amebae infections causing primary amebic meningoencephalitis (*Naegleria fowleri*).
- ~~(7)~~ Hepatitis B during pregnancy (HBsAg+).
- ~~(8)~~ Measles (Rubeola).
- ~~(9)~~ Meningococcal invasive disease (*Neisseria meningitidis*).
- ~~(10)~~ Novel coronavirus.
- ~~(11)~~ Novel influenza A.
- ~~(12)~~ Outbreaks of apparent infectious disease.
- ~~(13)~~ Plague (*Yersinia pestis*).
- ~~(14)~~ Poliomyelitis.
- ~~(15)~~ Rabies.
- ~~(16)~~ Smallpox.
- ~~(17)~~ Tularemia (*Francisella tularensis*).
- ~~(18)~~ Typhoid fever (*Salmonella* Typhi).
- ~~(19)~~ Viral hemorrhagic fever.

310:515-1-4. Additional diseases, conditions, and injuries to be reported

The following diseases, conditions and injuries must be reported by physicians, laboratories, and hospitals (by infection control practitioners, medical records personnel, and other designees) to the OSDH as dictated in the following subsections:

- (1) **Infectious diseases.** Reports of infectious diseases and conditions listed in this subsection must be submitted electronically via the PHIDDO system, telephoned, or submitted via secure electronic data transmission to the OSDH within one (1) working day (Monday through Friday, state holidays excepted) of diagnosis or positive test ~~as specified in the "Oklahoma Disease Reporting Manual".~~
 - (A) Acid Fast Bacillus (AFB) positive smear. Report only if no additional testing is performed or subsequent testing is indicative of *Mycobacterium tuberculosis* Complex.
 - (B) AIDS (Acquired Immunodeficiency Syndrome).
 - (C) Anaplasma phagocytophilum infection.
 - ~~(D)~~ Arboviral infections (West Nile virus, St. Louis encephalitis virus, Eastern equine encephalitis virus, Western equine encephalitis virus, Powassan virus, California serogroup virus, chikungunya virus, Zika virus).
 - ~~(E)~~ Brucellosis (*Brucella* spp.).

- (~~EF~~) Campylobacteriosis (*Campylobacter* spp.).
- (~~FG~~) Congenital rubella syndrome.
- (~~GH~~) Cryptosporidiosis (*Cryptosporidium* spp.).
- (~~HI~~) Dengue Fever.
- (~~HJ~~) *E. coli* O157, O157:H7, or a Shiga toxin producing *E. coli*.
- (~~JK~~) Ehrlichiosis (*Ehrlichia* or *Anaplasma* spp.).
- (L) *Haemophilus influenzae* invasive disease.
- (M) Hantavirus infection, without pulmonary syndrome.
- (~~KN~~) Hantavirus pulmonary syndrome.
- (~~LO~~) Hemolytic uremic syndrome, postdiarrheal.
- (P) Hepatitis A (Anti-HAV-IgM+).
- (~~MQ~~) Hepatitis B. If HBsAg+, anti-HBc-IgM+, HBsAg+, or HBV DNA+ then report results of the entire hepatitis panel.
- (~~NR~~) Hepatitis C in persons ~~< or = 40 years or in persons~~ having jaundice or ALT > or = 400 ~~200~~ regardless of age with laboratory confirmation. If hepatitis C EIA is confirmed by NAT for HCV RNA, or signal-to-cut-off (s/co) ratio or index is predictive of a true positive then report results of the entire hepatitis panel.
- (~~OS~~) Human Immunodeficiency Virus (HIV) infection.
- (~~PT~~) Influenza associated hospitalization or death.
- (~~QU~~) Legionellosis (*Legionella* spp.).
- (~~RV~~) Leptospirosis (*Leptospira interrogans*).
- (~~SW~~) Listeriosis (*Listeria monocytogenes*).
- (~~TX~~) Lyme disease (*Borrelia burgdorferi*).
- (~~UY~~) Malaria (*Plasmodium* spp.).
- (~~VZ~~) Mumps.
- (~~WAA~~) Pertussis (*Bordetella pertussis*).
- (~~XBB~~) Psittacosis (*Chlamydophila psittaci*).
- (~~YCC~~) Q Fever (*Coxiella burnetii*).
- (~~ZDD~~) Rocky Mountain Spotted Fever (*Rickettsia rickettsii*).
- (AAEE) Rubella.
- (BBFF) Salmonellosis (*Salmonella* spp.).
- (CCGG) Shigellosis (*Shigella* spp.).
- (~~DD~~) ~~*Staphylococcus aureus* with reduced susceptibility to vancomycin (VISA or VRSA).~~
- (HH) Streptococcal disease, invasive, Group A (GAS) (*Streptococcus pyogenes*).
- (~~EEII~~) *Streptococcus pneumoniae* invasive disease, in persons less than 5 years of age.
- (~~FFJJ~~) Syphilis (*Treponema pallidum*). Nontreponemal and treponemal tests are reportable. If any syphilis test is positive, then all syphilis test results on the panel must be reported. For infants < or = 12 months, all syphilis tests ordered, regardless of test result, must be reported.
- (~~GGKK~~) Tetanus (*Clostridium tetani*).
- (~~HHLL~~) Trichinellosis (*Trichinella spiralis*).
- (~~HMM~~) Tuberculosis (*Mycobacterium tuberculosis*).
- (~~JNN~~) Unusual disease or syndrome.

- (~~KKOO~~) Vibriosis (*Vibrionaceae* family: *Vibrio* spp. (including cholera), *Grimontia* spp., *Photobacterium* spp., and other genera in the family).
- (~~LLPP~~) Yellow Fever.
- (2) **Infectious diseases.** Reports of infectious diseases and conditions listed in this subsection must be reported to the OSDH within one (1) month of diagnosis or test result as specified in the OSDH Disease Reporting Manual.
 - (A) CD4 cell count with corresponding CD4 cell count percentage of total (by laboratories only).
 - (B) Chlamydia infections (*Chlamydia trachomatis*).
 - (C) Creutzfeldt-Jakob disease.
 - (D) Gonorrhea (*Neisseria gonorrhoeae*).
 - (E) HIV viral load (by laboratories only).
- (3) **Occupational or Environmental diseases.** Laboratories ~~must report blood lead level results greater than 105 ug/dL within one (1) week and results less than 10 ug/dL within one (1) month and~~ health care providers must report blood lead level results pursuant to the requirements established in Title 310, Chapter 512, Childhood Lead Poisoning Prevention Rules ~~20 ug/dL or greater within twenty four (24) hours and results 10-19 ug/dL within one (1) week.~~
 - (4) **Injuries (hospitalized and fatal cases only).**
 - (A) Burns.
 - (B) Drownings and Near Drownings.
 - (C) Traumatic Brain Injuries.
 - (D) Traumatic Spinal Cord Injuries.

310:515-1-6. Additional diseases may be designated

The Commissioner of Health may designate any disease or condition as reportable for a designated period of time for the purpose of enhanced public health surveillance or special investigation.

310:515-1-7. Control of Communicable Diseases Manual

The OSDH adopts the most recently published edition of the publication, "Control of Communicable Diseases Manual," published by the American Public Health Association, as a guideline for the prevention and control of communicable diseases. ~~In order to determine the most recently published edition of the "Control of Communicable Diseases Manual," access the American Public Health Association web site at <https://secure.apha.org/source/orders/index.cfm>.~~

310:515-1-8. Organisms/specimens to be sent to the Public Health Laboratory

- (a) Isolates or appropriate specimens of the following organisms shall be sent to the OSDH Public Health Laboratory for typing.
 - (1) *Bacillus anthracis*.
 - (2) *Brucella* spp.
 - (3) Carbapenem-resistant *Enterobacteriaceae*.
 - (~~34~~) *E. coli* O157, O157:H7, or a Shiga toxin producing *E. coli*.

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- (45) *Francisella tularensis*.
- (56) *Haemophilus influenzae* (sterile site).
- (67) *Listeria monocytogenes* (sterile site).
- (78) *Mycobacterium tuberculosis*.
- (89) *Neisseria meningitidis* (sterile site).
- (910) *Plasmodium* spp.
- (1011) *Salmonella* spp.
- (11) ~~*Staphylococcus aureus* that are VISA or VRSA~~
- (12) *Vibrionaceae* family (*Vibrio* spp., *Grimontia* spp., *Photobacterium* spp. and other genera in the family).
- (13) *Yersinia* spp.

(b) Following consultation with an OSDH epidemiologist, clinical specimens from suspected cases of Botulism must be sent to the OSDH Public Health Laboratory for referral and testing.

[OAR Docket #17-648; filed 7-13-17]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 599. ZOOONOTIC DISEASE CONTROL

[OAR Docket #17-647]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 1. General Provisions
- 310:599-1-2. Definitions [AMENDED]
- Subchapter 3. Rabies Control
- 310:599-3-1. Management of dogs, cats, or ferrets that bite a person [AMENDED]
- 310:599-3-2. Supervising veterinarian's responsibility [AMENDED]
- 310:599-3-5. Vaccinated domestic animals exposed to a rabid animal [AMENDED]
- 310:599-3-6. Unvaccinated domestic animals exposed to a rabid animal [AMENDED]
- 310:599-3-9. Administration of rabies vaccine [AMENDED]

AUTHORITY:

Oklahoma State Board of Health; Title 63 O.S. § 1-104 and Title 63 O.S. § 1-508

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

September 22, 2016

COMMENT PERIOD:

October 17, 2016 through November 17, 2016

PUBLIC HEARING:

November 17, 2016

ADOPTION:

December 13, 2016

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

December 23, 2016

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 13, 2017

FINAL ADOPTION:

June 13, 2017

EFFECTIVE:

October 1, 2017

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

These amendments are enacted pursuant to authority found in Title 63 of the Public Health Code at section 1-508. This section authorizes the State

Board of Health to adopt such rules as it deems necessary for the quarantine, isolation, impounding, immunization and disposal of an animal to prevent and control any zoonotic disease. These amendments update Subchapter 3, Rabies Control, to align with new scientific findings which indicate that dogs and cats with an out-of-date rabies vaccination status that are exposed to a rabid animal can be effectively managed by immediate vaccination booster and observation for 45 days similar to the method currently in place for management of currently vaccinated dogs, cats and ferrets that are exposed to a rabid animal. Minor revisions to the rules were made to update sections for alignment with current national guidance on animal rabies control and changes in animal rabies vaccine products.

CONTACT PERSON:

Information regarding this rule may be obtained by contacting Kristy Bradley, State Epidemiologist, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1207; phone (405) 271-7637, e-mail KristyB@health.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF OCTOBER 1, 2017:

SUBCHAPTER 1. GENERAL PROVISIONS

310:599-1-2. Definitions

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

"**Animal**" means any warm-blooded mammal.

"**Cat**" means any *Felis catus*.

"**Currently vaccinated**" means properly immunized by or under the supervision of a licensed veterinarian with an antirabies vaccine licensed and approved by the United States Department of Agriculture for use in that animal species, or meeting conditions specified in OAC 310:599-3-8. Vaccine must have been given at appropriate time interval(s) for the age of the animal and type of vaccine administered. Within 28 days after initial vaccination, a peak rabies antibody titer is expected, and the animal is considered immunized. Regardless of the age of the animal at initial vaccination, a booster vaccination should be administered one year later, then at appropriate time intervals based on the type of vaccine administered.

"**Department**" means the Oklahoma State Department of Health.

"**Department designee**" means an employee of the Oklahoma State Department of Health, or a county health department, who is acting within their scope of rabies control authority designated through the Commissioner of Health.

"**Dog**" means any *Canis familiaris*, excluding hybrids.

"**Domestic animal**" means a companion animal including dogs, cats, and ferrets; an equine animal; or a livestock animal.

"**Euthanize**" means the humane killing of an animal generally performed by a veterinarian, or personnel at an animal control facility under the indirect supervision of a veterinarian.

"**Exposure to rabies**" means a bite or introduction of saliva or neural tissue into open cuts in skin, or onto mucous membranes ~~physical contact with the saliva or other potentially~~

infectious tissues from by an animal confirmed or suspected of being infected with rabies.

"Ferret" means any *Mustela putorius furo*.

"First party ownership" means a situation where the owner of a biting animal is directly related to the bite victim, that is parent-child, sibling-sibling, grandparent-child; or when the legal residence of the animal owner and the bite victim are the same.

"Home quarantine" means confinement and observation of an animal allowed at the animal owner's property for a specified time period, where one of the following acceptable methods of confinement for a dog are used: (a) complete indoor housing, (b) caging or kenneling in an enclosure with a securely latched door, or (c) yard confinement with perimeter fencing that the dog is unable to climb over or dig under. Acceptable methods of confinement for a cat or ferret are: (a) complete indoor housing, or (b) caging in an enclosure that prevents escape. The animal's needs for ambient temperature control, water, nutrition, elimination, and space to comfortably stand up and lie down must be adequately provided by the selected confinement method. Should the animal exhibit neurologic signs, die, or disappear during the specified period, an Oklahoma licensed veterinarian and the Department shall be immediately notified.

"Hybrid" means an offspring of wild animals crossbred to domestic dogs or cats; considered to be wild animals in the enforcement of OAC 310:599.

"Quarantine" means physical confinement of an animal during a specified time period when the animal is monitored for the development of disease. During this time period, the animal is prevented from having contact with other animals, and human contact is limited to as few caretakers as possible.

"Rabies" means an acute disease of humans and warm-blooded mammals caused by the rabies virus (genus *Lyssavirus*) that affects the central nervous system and is almost always fatal.

"Recognized animal control facility" means any facility operating for the purpose of stray animal control and/or animal welfare that is under contract or letter of agreement which identifies a licensed veterinarian responsible for animal quarantines.

"Recognized zoological park" means any member of the American Association of Zoological Parks.

"Severe injury" means any physical injury that results in broken bones or lacerations requiring multiple sutures or cosmetic surgery. [4 O.S. Supp. 1991, § 44 (3)]

"Wild animal" means an animal considered as wildlife; any animal not normally adapted to live in intimate association with humans nor raised for consumption by humans.

"Zoonotic disease" means a disease that is transmissible from animals to humans under natural conditions.

SUBCHAPTER 3. RABIES CONTROL

310:599-3-1. Management of dogs, cats, or ferrets that bite a person

(a) Any person or entity owning, harboring, or keeping a dog, cat or ferret which in the preceding ten (10) days has bitten any person, shall upon receipt of written notice by the local animal control authority or Department designee, place such animal in quarantine under the supervision of a licensed veterinarian for a period of ten (10) days from the date the person was bitten. The impoundment and observation of the dog, cat, or ferret shall be conducted at the veterinarian's facility, or a recognized animal control facility. Unvaccinated animals shall be vaccinated against rabies on the final day of the ten (10) day observation period prior to discharge from the veterinarian's supervision.

(b) Exceptions to this rule include the following circumstances:

(1) Dogs, cats, or ferrets involved in a first party ownership may be allowed to be placed in a home quarantine for a ten (10) day period immediately following the bite.

(2) Dogs, cats, and ferrets meeting the criteria of currently vaccinated against rabies, and not inflicting a severe injury, shall be placed in a home quarantine until the end of a 10 day period from the bite. In some instances, a certification of animal health obtained after examination by a licensed veterinarian on the tenth day may be required by the Department or local animal control authority.

(3) Animals in service to the blind or hearing-impaired, and search and rescue dogs or other animals used for police enforcement duties shall be exempt from the quarantine when a bite exposure occurs and proper record of immunization against rabies is presented. A certification of animal health obtained after examination by a licensed veterinarian at the end of 10 days may be required by the Department.

(4) Stray or unwanted dogs, cats, or ferrets that have bitten any person may either be quarantined for ten (10) days at a veterinary facility or a recognized animal control facility; or immediately euthanized and the brain tissue submitted to the Oklahoma State Department of Health Public Health Laboratory for rabies testing. Upon successful completion of the ten (10) day period, a stray animal may be placed for adoption at the discretion of the animal control authority.

(5) Dogs, cats, and ferrets that bite a veterinarian or staff member under their supervision during a routine examination or elective procedure may be considered eligible for home quarantine if the bite victim and owner agree the animal will be examined by a licensed veterinarian at the end of the ten (10) day period from the bite to confirm the animal's health status.

(56) In rare instances, other good and valid health reasons of the owner or animal may be considered for justification to home quarantine (e.g., a bitch with a litter of very young puppies, an animal with a contagious disease, etc.). Approval for home quarantine will be determined by the Department or its designee.

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310:599-3-2. Supervising veterinarian's responsibility

It shall be the duty of the veterinarian in whose supervision the dog, cat, or ferret is placed to keep the animal isolated and secured in a separate cage or kennel and under observation for any symptoms of rabies. The veterinarian shall report immediately to the Department designee any changes occurring in the condition of the dog, cat, or ferret. In the event the animal being observed dies, or develops rabies-like symptoms within the specified period of confinement, the head of the animal shall be removed immediately and packed in a shipping container in accordance with instructions published on the rabies laboratory form, ODH Form 460, and sent to the Oklahoma State Department of Health Public Health Laboratory, 1000 N.E. Tenth Street, Oklahoma City, Oklahoma 73117-1299, for rabies testing.

310:599-3-5. Vaccinated domestic animals exposed to a rabid animal

Any domestic animal which is currently vaccinated against rabies and is exposed to a rabid animal shall be re-vaccinated within three (3) days of notification and isolated, by leashing or confinement under the owner's supervision, for a period of at least forty-five (45) days from exposure date.

310:599-3-6. Unvaccinated domestic animals exposed to a rabid animal

(a) Any dog, cat, or ferret ~~which is not currently~~ that has never been vaccinated against rabies and is exposed to a rabid animal shall be:

(1) Euthanized immediately either by a veterinarian of the owner's choice, or the local animal control officer ~~or his/her agent; or~~

(2) Placed in strict quarantine and observed for a period of ~~four (4) months for dogs and cats~~ or six (6) months for ferrets under the supervision of a licensed veterinarian, either at a veterinary facility or a recognized animal control facility. The exposed animal shall be immediately vaccinated against rabies upon entry into quarantine and then given booster vaccinations at the third and eighth week of the quarantine period. Animals less than 16 weeks of age at the time of entry into quarantine may be required to receive a booster vaccine in addition to the above protocol.

(b) Any dog or cat that is overdue for a booster vaccination, and has documentation of receiving a USDA-licensed rabies vaccine at least once previously by or under the supervision of a licensed veterinarian, shall be re-vaccinated and isolated, by leashing or confinement under the owner's supervision, for a period of at least 45 days from exposure date. Ferrets that are overdue for rabies booster vaccination shall be evaluated on a case-by-case basis by the Department, taking into consideration factors such as the severity of exposure, time elapsed since last vaccination, number of previous vaccinations, and current health status to determine the need for euthanasia or immediate booster vaccination and isolation for a period of at least 45 days from exposure date.

(c) Any dog or cat that is overdue for a booster vaccination and without appropriate documentation of having received a USDA-licensed rabies vaccine at least once by or under the supervision of a licensed veterinarian shall be:

(1) Treated as unvaccinated by the Department and either euthanized as described in (a) of this section; or

(2) Immediately given a booster vaccination and placed in strict quarantine for a period of four months under the supervision of a licensed veterinarian; or

(3) Prior to booster vaccination, the owner may work with the licensed veterinarian to conduct prospective serologic monitoring. Serologic monitoring shall include collecting paired blood samples to document prior vaccination by providing evidence of an anamnestic response to booster vaccination. If an adequate anamnestic response is documented, the animal can be considered to be overdue for booster vaccination as described in (b) of this section. If there is inadequate anamnestic response, the animal is considered to have never been vaccinated and managed as described in (a) of this section.

(d) Any livestock or equine animal which is not currently vaccinated and is exposed to a rabid animal will be managed according to the most current Compendium of Animal Rabies Control published by the National Association of State Public Health Veterinarians, Inc. and any State Department of Agriculture guidelines that may apply.

310:599-3-9. Administration of rabies vaccine

(a) It is prohibited for anyone to administer rabies vaccine to any animal unless said vaccine is licensed for use in the particular animal species in question. Exceptions to this include:

(1) The vaccination of wolf-dog hybrids with a rabies vaccine approved for dogs; or

(2) Use at recognized nonprofit zoological parks, or research institutions; or

(3) Special approval by the Commissioner of Health permitting the vaccination in a particular species where the preponderance of scientific literature suggests vaccine efficacy, and vaccine usage is determined to protect public health and safety.

(b) Animals vaccinated per these exceptions will still be considered as a wild animal species if involved in a bite to a person, and will be handled according to OAC 310:599-3-4.

(c) Rabies vaccines presently licensed are listed in the most current Compendium of Animal Rabies Control published annually by the National Association of State Public Health Veterinarians. ~~Copies shall be available from the Communicable Disease Division, Oklahoma State Department of Health, 1000 N.E. Tenth Street, Oklahoma City, Oklahoma 73117-1299.~~

[OAR Docket #17-647; filed 7-13-17]

**TITLE 310. OKLAHOMA STATE
DEPARTMENT OF HEALTH
CHAPTER 615. AMBULATORY SURGICAL
CENTERS**

[OAR Docket #17-646]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 1. General Provisions
- 310:615-1-3. General considerations [AMENDED]
- 310:615-1-3.1. Submission of plans and specifications and related requests for services [AMENDED]
- 310:615-1-3.2. Preparation of plans and specifications [AMENDED]
- 310:615-1-5. Self-certification of plans [NEW]

AUTHORITY:

Oklahoma State Board of Health; Title 63 O.S. § 1-104 and 63 O.S. Section 1-106.1; and 63 O.S. Section 2662.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

November 23, 2016

COMMENT PERIOD:

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PUBLIC HEARING:

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ADOPTION:

February 14, 2017

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

February 24, 2017

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 13, 2017

FINAL ADOPTION:

June 13, 2017

EFFECTIVE:

October 1, 2017

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

Incorporated standards:

Facility Guidelines Institute (FGI): Guidelines for Design and Construction of Hospitals and Outpatient Facilities, 2014 Edition.

National Fire Protection Association (NFPA) 101: Life Safety Code, 2012 Edition, adopted in 81 Federal Register 26871 by the Centers for Medicare & Medicaid Services on July 5, 2016.

Incorporating rules:

310:615-1-3

Availability:

8:00 a.m. to 5:00 p.m., Monday through Friday at Medical Facilities Division, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1299, 405-271-6576.

GIST/ANALYSIS:

These amendments are enacted pursuant to authority found in Title 63 of the Public Health Code at section 1-106.1. This section authorizes the State Board of Health to establish a system of fees to be charged for health services and for services rendered to members of the public in the issuance and renewal of licenses and permits by the State Commissioner of Health and the State Department of Health. Section 2662 of the Public Health Code authorizes the State Board of Health to adopt rules necessary to insure that the quality of medical care in ambulatory surgical centers is the same as that required in hospitals licensed in the State of Oklahoma. These changes amend physical plant requirements in Subchapter 1 by updating references to the Facility Guidelines Institute (FGI): Guidelines for Design and Construction of Hospitals and Outpatient Facilities, 2014 Edition, and the Life Safety Code adopted by the Centers for Medicare & Medicaid Services on July 5, 2016. Added are criteria and a process for ambulatory surgical centers to request exceptions and temporary waivers of the requirements of this Chapter for design or construction techniques that represent innovations or improvements.

The amendments revise the requirements for stage one, stage two, and special construction plan submittals, and give ambulatory surgical centers the option to move directly to stage two plan submittal. The changes set fees

for related services including review of temporary waivers and applications for self-certification; establish a process to ensure timely review of design and construction documents; and, establish requirements and a process for ambulatory surgical centers to self-certify compliance of their plans for certain types of projects.

CONTACT PERSON:

Information regarding this rule may be obtained by contacting Lee Martin, Director, Medical Facilities Service, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-6576, or by e-mail to LeeM@health.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF OCTOBER 1, 2017:

SUBCHAPTER 1. GENERAL PROVISIONS

310:615-1-3. General considerations

(a) **Narrative program.** ~~The sponsor for each ambulatory surgical center shall provide a narrative program which describes the functional requirements, staffing patterns, departmental relationships, and other basic information relating to the fulfillment of the institution's objectives.~~

(b) **Services.** ~~Ambulatory surgical centers shall contain but not be limited to all the elements described herein, or the narrative program shall indicate the manner in which the services are to be made available to the ambulatory patient. When services are to be shared or purchased, appropriate modifications or deletions in space and equipment requirements should be made to avoid duplication. Each element provided in the ambulatory surgical center must meet the requirements outlined herein as a minimum, with the understanding that in some instances the elements will need to be expanded to fulfill the program requirements.~~

(c) **Location.** ~~An ambulatory surgical center may be located within a hospital setting, but it may be located apart from a hospital.~~

(d) **Size.** ~~The number and types of clinical facilities to be provided will be determined by the services contemplated and the estimated patient load as described in the narrative program.~~

(e) **Applicable requirements.** ~~If the facility is an integral part of the hospital and is intended to accommodate hospital inpatients as well as outpatients, the applicable requirements relating to general hospital facilities shall apply. If an ambulatory surgical center is not part of a hospital building, the facilities listed herein shall be provided unless they are available for convenient use by the patients in an associated health facility.~~

(f) **Privacy for patient.** ~~The planning of ambulatory surgical centers shall provide for the privacy and dignity of the patient during interview, examination, and treatment. The facilities shall be located so that ambulatory patients do not traverse inpatient areas.~~

(g) **Parking.** ~~In the absence of a formal parking study, off-street vehicle parking for ambulatory surgical centers shall be provided at the ratio of two spaces for each recovery bed plus~~

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sufficient parking spaces to accommodate the maximum number of staff on duty at one time. Exceptions may be made with approval of the appropriate State agency for facilities located in areas with a high population density if adequate public parking is available or if the facility is accessible to a public transportation system.

(h) **Environmental pollution control.** In accordance with the National Environmental Policy Act, the site and project shall be developed to minimize any adverse environmental effects on the neighborhood and community.

(i) **Equipment.** All equipment necessary for the operation of the facility as planned shall be shown on the drawings or equipment list.

(a) The following national standards are incorporated by reference:

(1) Facility Guidelines Institute (FGI): Guidelines for Design and Construction of Hospitals and Outpatient Facilities, 2014 Edition; and

(2) National Fire Protection Association (NFPA) 101: Life Safety Code, 2012 Edition, adopted in 81 Federal Register 26871 by the Centers for Medicare & Medicaid Services on July 5, 2016.

(b) Oklahoma statutes prevail if there is conflict between the FGI Guidelines and Oklahoma statutes. For Medicare-certified ambulatory surgical centers, the Life Safety Code adopted by the Centers for Medicare & Medicaid Services prevails if there is a conflict between the Life Safety Code and this Chapter.

(c) An ambulatory surgical center may submit a request for exception or temporary waiver if the FGI Guidelines create an unreasonable hardship, or if the design and construction for the ambulatory surgical center property offers improved or compensating features with equivalent outcomes to the FGI Guidelines.

(d) The Department may permit exceptions and temporary waivers of the FGI Guidelines if the Department determines that such exceptions or temporary waivers comply with the requirements of 63 O.S. Section 2657 et seq., this Chapter, and the following:

(1) Any ambulatory surgical center requesting an exception or temporary waiver shall apply in writing on a form provided by the Department and pay the exception to or temporary waiver of FGI Guidelines fee set in OAC 310:615-1-3.1. The form shall include:

(A) The FGI Guidelines section(s) for which the exception or temporary waiver is requested;

(B) Reason(s) for requesting an exception or temporary waiver;

(C) The specific relief requested; and

(D) Any documentation which supports the application for exception.

(2) In consideration of a request for exception or temporary waiver, the Department shall consider the following:

(A) Compliance with 63 O.S. Section 2657 et seq.;

(B) The level of care provided;

(C) The impact of an exception on care provided;

(D) Alternative policies or procedures proposed; and

(E) Compliance history with provisions of the FGI Guidelines, Life Safety Code and this Chapter.

(3) The Department shall permit or disallow the exception or waiver in writing within forty-five (45) calendar days after receipt of the request.

(4) If the Department finds that a request is incomplete, the Department shall advise the ambulatory surgical center in writing and offer an opportunity to submit additional or clarifying information. The applicant shall have thirty (30) calendar days after receipt of notification to submit additional or clarifying information in writing to the Department of Health, or the request shall be considered withdrawn.

(5) An ambulatory surgical center which disagrees with the Department's decision regarding the exception or temporary waiver may file a written petition requesting relief through an individual proceeding pursuant to OAC 310:2 (relating to Procedures of the State Department of Health).

(6) The Department may revoke an exception or temporary waiver through an administrative proceeding in accordance with OAC 310:2 and the Oklahoma Administrative Procedures Act upon finding the ambulatory surgical center is operating in violation of the exception or temporary waiver, or the exception or temporary waiver jeopardizes patient care and safety or constitutes a distinct hazard to life.

(7) The Department shall publish decisions on requests for exceptions and waivers and make them available to facilities and the public.

(e) Documentation of the ambulatory surgical center governing body's approval of the functional program shall be sufficient to meet the requirements in this Chapter relating to Department approval of the functional program.

310:615-1-3.1. Submission of plans and specifications and related requests for services

(a) **Submission of Plans.** Before construction is begun, plans and specifications, covering the construction of new buildings or major alterations to existing buildings, shall be submitted to the Oklahoma State Department of Health for review and approval as provided in OAC 310:615-1-3.2 or 310:615-1-5.

(1) Plans and specifications are required for the following alterations:

(A) Changes that affect path of egress;

(B) Change of use or occupancy;

(C) Repurposing of spaces;

(D) Structural modifications;

(E) Heating, ventilation and air conditioning (HVAC) modifications;

(F) Electrical modifications that affect the essential electrical system;

(G) Changes that require modification or relocation of fire alarm initiation or notification devices;

(H) Changes that require modification or relocation of any portion of the automatic fire sprinkler system;

- (I) Replacement of fixed medical equipment if the alteration requires any work noted in (A) through (H) of this paragraph;
- (J) Replacement of, or modifications to, any required magnetic or radiation shielding;
- (K) Changes to or addition of any egress control devices or systems.
- (2) Plans and specifications are not required for the following alterations:
 - (A) Painting, papering tiling, carpeting, cabinets, counter tops and similar finish work provided that the new finishes shall meet the requirements of this Chapter;
 - (B) Ordinary repairs and maintenance;
 - (C) Modifications to nurse call or other signaling/communication/information technology systems provided the modifications meet the requirements of this Chapter; or
 - (D) Replacement of fixed or moveable medical equipment that does not affect electrical, HVAC, or shielding requirements noted above.
- (b) **Fees.** Each construction project ~~submission~~ submitted for approval under OAC 310:615-1-3.2 shall be accompanied by the appropriate review fee based on the cost of design and construction of the project. Review fees are as follows:
 - (1) Project cost less than \$10,000.00: \$250.00 Fee
 - (2) Project cost \$10,000.00 to \$50,000.00: \$500.00 Fee
 - (3) Project cost \$50,000.00 to \$250,000.00: \$1000.00 Fee
 - (4) Project cost \$250,000.00 to \$1,000,000.00: \$1500.00 Fee
 - (5) Project cost greater than \$1,000,000.00: \$2000.00 Fee
- (c) **Fees when greater than two (2) submittals required.** The review fee shall cover the cost of review for up to two (2) stage one and two (2) stage two submittals and one final inspection. If a stage one or stage two submittal is not approved after two (2) submissions, another review fee based on the cost of the project shall be required with the third submittal. Fast-track projects shall be allowed two reviews for each package submitted. If a fast-track stage package is not approved after the second submittal, another review fee based on the cost of the project shall be required with the third submittal of the package.
- (d) **Review process.** ~~All construction project submittals~~ Design and construction plans and specifications shall be reviewed ~~within 45 calendar days of receipt by the Oklahoma State Department of Health~~ in accordance with the following process.
 - (1) Unless otherwise provided in this Subchapter, the Department shall have ten (10) calendar days in which to determine if the filed application is administratively complete
 - (A) Upon determining that the application is not administratively complete, the Department shall immediately notify the applicant in writing and shall

- indicate with reasonable specificity the inadequacies and measures necessary to complete the application. Such notification shall not require nor preclude further review of the application and further requests for specific information. If the Department fails to notify the applicant as specified in this Paragraph, the period for technical review shall begin at the close of the administrative completeness review period. Upon submission of correction of inadequacies, the Department shall have an additional ten (10) calendar days to review the application for completeness.
 - (B) Upon determination that the application is administratively complete, the Department shall immediately notify the applicant in writing. The period for technical review begins.
 - (2) The Department shall have forty-five (45) calendar days from the date a completed application is filed to review each application for technical compliance with the relevant regulations and reach a final determination.
 - (A) The time period for technical review is tolled (the clock stops) when the Department has asked for supplemental information and advised the applicant that the time period is tolled pending receipt.
 - (B) To make up for time lost in reviewing inadequate materials, a request for supplemental information may specify that up to 30 additional calendar days may be added to the deadline for technical review, unless the request for supplemental information is a second or later request that identifies new deficiencies not previously identified
 - (C) An application shall be deemed withdrawn if the applicant fails to supplement an application within 90 calendar days after the Department's request, unless the time is extended by agreement for good cause.
 - (D) Extensions may be made as provided by law.
 - (e) **Fees for other services.** Fees for other services related to construction projects are as follows:
 - (1) Request for exception to, or temporary waiver of, FGI Guidelines fee: Five Hundred Dollars (\$500.00);
 - (2) Application for self-certification fee: One Thousand Dollars (\$1,000.00);
 - (3) Courtesy inspection, prior to final inspection for approval of occupancy, fee: Five Hundred Dollars (\$500.00);
 - (4) Professional consultation or technical assistance fee: Five Hundred Dollars (\$500.00) for each eight staff hours or major fraction thereof. For technical assistance requiring travel, the fee may be increased to include the Department's costs for travel.
- 310:615-1-3.2. Preparation of plans and specifications**
- (a) **Stage one.** Preliminary plans and outline specifications shall be submitted and include sufficient information ~~to establish for approval by the Department~~ of the following: scope of project; project location; required fire-safety and exiting criteria; building-construction type, compartmentation showing fire and smoke barriers, bed count and services; the assignment of all spaces, areas, and rooms for each floor level, including

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the basement. An ambulatory surgical center has the option, at its own risk, to bypass the stage one submittal and proceed directly to submittal of stage two documents.

(b) **Stage two.** A proposed construction document shall be submitted that includes final drawings and specifications adequate for ~~proposed contract purposes~~ approval by the Department. All final plans and specifications shall be appropriately sealed and signed by an architect registered by the State of Oklahoma. All construction modifications of approved documents are subject to review and approval, and shall be submitted timely.

(c) **Special submittals.**

(1) **Fast-track projects.** The fast track process applies only to stage two submittals. A stage one submittal and functional program must be approved before entering the fast track process.

(A) Equipment and built-in furnishings are to be identified in the stage one submittal.

(B) The ambulatory surgical center has the option to submit two packages: civil, landscaping and structural in stage one, and the balance of the components in stage two.

(C) Fast-track projects shall have prior approval and be submitted in no more than four (4) separate packages.

(A~~i~~) Site work, foundation, structural, under-slab mechanical, electrical, plumbing work, and related specifications.

(B~~ii~~) Complete architectural plans and specifications.

(C~~iii~~) All mechanical, electrical, and plumbing plans and specifications.

(D~~iv~~) Equipment and furnishings.

(2) ~~Automatic sprinkler systems.~~ At least two (2) sets of sprinkler system show drawings, specifications, and calculations (if applicable), prepared by the installer, shall be submitted to the Office of the State Fire Marshal for review and approval prior to installation of the proposed system in the project.

(3) **Radiation protection.** Any project that includes radiology or special imaging equipment used in medical diagnosis, treatment, and therapy of patients, shall include plans, specifications, and shielding criteria, prepared by a qualified medical physicist. These plans shall be submitted and approved by the Oklahoma State Department of Health prior to installation of the equipment.

(d) **Floor plan scale.** Floor plans are to be submitted at a scale of one-eighth (1/8) inch equals one (1) foot, with additional clarifying documents as required.

(e) **Application form.** The submittal shall be made using a Department application form which requests information required by this Chapter and specifies the number of copies and format for document submittal.

310:615-1-5. Self-certification of plans

(a) The Department shall make available professional consultation and technical assistance services covering the requirements of this section to an ambulatory surgical center considering self-certification of plans. The consultation and technical assistance is subject to the fee for professional consultation and technical assistance services set in OAC 310: 310:615-1-3.1. The consultation is optional and not a prerequisite for filing a request through the self-certification review process.

(b) The ambulatory surgical center and the project architect or engineer may elect to request approval of design and construction plans through a self-certification review process. The ambulatory surgical center and the project architect or engineer shall submit a self-certification request on a form provided by the Department, along with a self-certification application fee set in OAC 310: 310:615-1-3.1. The form shall be signed by the ambulatory surgical center and the project architect or engineer attesting that the plans and specifications are based upon and comply with the requirements of this Chapter. The form shall require information necessary to demonstrate compliance with OAC 310:615-1-5(c).

(c) To be eligible for self-certification, projects must comply with the following requirements:

(1) The project involves any portion of the ambulatory surgical center where patients are intended to be examined or treated and the total of design and construction cost is five million dollars (\$5,000,000.00) or less; or

(2) The project involves only portions of the ambulatory surgical center where patients are not intended to be examined or treated; and

(3) The project architect or engineer attesting the application has held a license to practice architecture or engineering for at least five (5) years prior to the submittal of the application, is licensed to practice in Oklahoma; and

(4) The ambulatory surgical center owner/operator acknowledges that the Department retains the authority to:

(A) Perform audits of the self-certification review program and select projects at random for review;

(B) Review final construction documents;

(C) Conduct on-site inspections of the project;

(D) Withdraw approval based on the failure of the ambulatory surgical center or project architect or engineer to comply with the requirements of this Chapter; and

(5) The ambulatory surgical center agrees to make changes required by the Department to bring the construction project into compliance with this Chapter.

(d) Within twenty-one (21) calendar days after receipt of a complete application, the Department shall approve or deny the application for self-certification and send notification to the ambulatory surgical center. If the application is denied, the ambulatory surgical center shall have thirty (30) calendar days to submit additional or supplemental information demonstrating that the application complies with the requirements for self-certification of plans and specifications. The Department shall have fourteen (14) calendar days after receipt of supplemental information to reconsider the initial denial and issue a final approval or denial of the self-certification request.

(e) After denial of the application for self-certification and prior to the start of construction, the ambulatory surgical center shall pay the applicable fee for plan review specified in OAC 310: 310:615-1-3.1. Upon receipt of the plan review fee, the Department shall review the ambulatory surgical center's plans in accordance with the process in 310:615-1-3.1.

[OAR Docket #17-646; filed 7-13-17]

**TITLE 310. OKLAHOMA STATE
DEPARTMENT OF HEALTH
CHAPTER 663. CONTINUUM OF CARE
AND ASSISTED LIVING**

[OAR Docket #17-645]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 7. Physical Plant Design
 - 310:663-7-3. Submission of plans and specifications and related requests for services [NEW]
 - 310:663-7-4. Preparation of plans and specifications [NEW]
 - 310:663-7-5. Self-certification of plans [NEW]
 - 310:663-7-6. Exceptions and temporary waivers [NEW]
- Subchapter 15. Resident Rights and Responsibilities
 - 310:663-15-4. Prohibited restrictions and fees [NEW]
- Subchapter 19. Administration, Records and Policies
 - 310:663-19-1. Incident reports [AMENDED]

AUTHORITY:

Oklahoma State Board of Health; Title 63 O.S. Section 1-104, 63 O.S. Section 1-106.1; 63 O.S. Section 1-890.3, and 63 O.S. Section 1-890.3(A)(8)

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

September 8, 2016 and November 23, 2016

COMMENT PERIOD:

October 3, 2016 through November 3, 2016 and December 15, 2016 through January 17, 2017

PUBLIC HEARING:

November 3, 2016 and January 17, 2017

ADOPTION:

February 14, 2017

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

February 24, 2017

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 13, 2017

FINAL ADOPTION:

June 13, 2017

EFFECTIVE:

October 1, 2017

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

These amendments are enacted pursuant to authority found in Title 63 of the Public Health Code at section 1-106.1. This section authorizes the State Board of Health to establish a system of fees to be charged for health services and for services rendered to members of the public in the issuance and renewal of licenses and permits by the State Commissioner of Health and the State Department of Health. Section 1-890.3 of the Public Health Code authorizes the State Board of Health to adopt rules necessary to implement the provisions of the Continuum of Care and Assisted Living Act. This authorization includes requirements for the physical plant to meet construction and life safety codes. These changes amend construction and physical plant requirements in Subchapter 7. The changes require submittal of plans and specifications for new buildings or major alterations; establishes fees for review of design and construction plans and specifications; sets fees for related services including

review of temporary waivers and applications for self-certification; establishes a process to ensure timely review of design and construction documents; and establishes requirements and a process for assisted living centers to self-certify compliance of their plans for certain types of projects. A section is added to set requirements for stage one, stage two, and special construction plan submittals, and to give assisted living centers the option to move directly to the stage two plan submittal. Added are criteria and a process for assisted living centers to request exceptions and temporary waivers of the requirements of this Chapter to allow for design or construction techniques that represent innovations or improvements.

Section 310:663-15-4 is added as new rule to address requirements in statute related to a resident's freedom of choice in physician and pharmacist and prohibits any financial penalty or fee for their choice. This change enacts the authorizing statute at Title 63 O.S. Section 1-890.3(A)(8). The change amends section 310:663-19-1 to reduce the unnecessary reporting of certain incidents.

CONTACT PERSON:

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

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF OCTOBER 1, 2017:

SUBCHAPTER 7. PHYSICAL PLANT DESIGN

310:663-7-3. Submission of plans and specifications and related requests for services

(a) Submission of plans. Before construction is begun, plans and specifications covering the construction of new buildings or major alterations to existing buildings shall be submitted to the Department for review as provided in OAC 310:663-7-4 or OAC 310:663-7-5.

(1) Plans and specifications are required for the following alterations:

- (A) Changes that affect path of egress;**
- (B) Change of use or occupancy;**
- (C) Repurposing of spaces;**
- (D) Structural modifications;**
- (E) Heating, ventilation and air conditioning (HVAC) modifications;**
- (F) Electrical modifications that affect the essential electrical system;**
- (G) Changes that require modification or relocation of fire alarm initiation or notification devices;**
- (H) Changes that require modification or relocation of any portion of the automatic fire sprinkler system;**
- (I) Replacement of fixed medical equipment if the alteration requires any work noted in (A) through (H) of this paragraph;**
- (J) Replacement of or modifications to any required magnetic or radiation shielding;**
- (K) Changes to or addition of any egress control devices or systems.**

(2) Plans and specifications are not required for the following alterations:

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- (A) Painting, papering tiling, carpeting, cabinets, counter tops and similar finish work provided that the new finishes shall meet the requirements of this Chapter;
- (B) Ordinary repairs and maintenance;
- (C) Modifications to nurse call or other signaling/communication/information technology systems provided the modifications meet the requirements of this Chapter; or
- (D) Replacement of fixed or moveable medical equipment that does not affect electrical, HVAC, or shielding requirements noted above.
- (b) **Fees.** Each construction project submission shall be accompanied by the appropriate review fee based on the cost of design and construction of the project. Fees for plan and specification reviews and related Department services are as follows:
- (1) Design and construction plans and specifications fee: two one-hundredths percent (0.02%) of the cost of design and construction of the project, with a minimum fee of Fifty Dollars (\$50.00) and a maximum fee of One Thousand Dollars (\$1,000.00);
 - (2) Request for exception or temporary waiver fee: Five Hundred Dollars (\$500.00);
 - (3) Application for self-certification fee: Five Hundred Dollars (\$500.00);
 - (4) Courtesy construction inspection fee: Five Hundred Dollars (\$500.00);
 - (5) Professional consultation or technical assistance fee: Five Hundred Dollars (\$500.00) for each eight hours or major fraction thereof of staff time. For technical assistance requiring travel, the fee may be increased to include the Department's costs for travel.
- (c) **Fees when greater than two (2) submittals required.** The fee for review of design and construction plans and specifications shall cover the cost of review for up to two (2) stage one and two (2) stage two submittals and one final inspection. If a stage one or stage two submittal is not approved after two (2) submissions, another review fee shall be required with the third submittal. Fast-track projects shall be allowed two reviews for each package submitted. If a fast-track stage package is not approved after the second submittal, another review fee based on the cost of the project shall be required with the third submittal of the package.
- (d) **Review process.** Design and construction plans and specifications shall be reviewed in accordance with the following process.
- (1) Unless otherwise provided in this Subchapter, the Department shall have ten (10) calendar days in which to initially determine if the filed application is administratively complete
 - (A) Upon determining that the application is not administratively complete, the Department shall immediately notify the applicant in writing and shall indicate with reasonable specificity the inadequacies and measures necessary to complete the application. Such notification shall not require nor preclude further review of the application and further requests for

specific information. If the Department fails to notify the applicant as specified in this Paragraph, the period for technical review shall begin at the close of the administrative completeness review period. Upon submission of correction of inadequacies, the Department shall have an additional ten (10) calendar days to review the application for completeness.

(B) Upon determination that the application is administratively complete, the Department shall immediately notify the applicant in writing. The period for technical review begins.

(2) The Department shall have forty-five (45) calendar days from the date a completed application is filed to review each application for technical compliance with the relevant regulations and reach a final determination.

(A) The time period for technical review is tolled (the clock stops) when the Department has asked for supplemental information and advised the applicant that the time period is tolled pending receipt.

(B) To make up for time lost in reviewing inadequate materials, a request for supplemental information may specify that up to 30 additional calendar days may be added to the deadline for technical review, unless the request for supplemental information is a second or later request that identifies new deficiencies not previously identified

(C) An application shall be deemed withdrawn if the applicant fails to supplement an application within 90 calendar after the Department's request, unless the time is extended by agreement for good cause.

(D) Extensions may be made as provided by law.

310:663-7-4. Preparation of plans and specifications

(a) **Stage one.** Preliminary plans and outline specifications shall be submitted and include sufficient information for approval by the Department of the following: scope of project; project location; required fire-safety and exiting criteria; building-construction type, compartmentation showing fire and smoke barriers, bed count and services; the assignment of all spaces, areas, and rooms for each floor level, including the basement. An assisted living center has the option, at its own risk, to bypass the stage one submittal and proceed directly to submittal of stage two documents.

(b) **Stage two.** A proposed construction document shall be submitted that includes final drawings and specifications adequate for approval by the Department. All final plans and specifications shall be appropriately sealed and signed by an architect registered by the State of Oklahoma. All construction modifications of approved documents are subject to review and approval, and shall be submitted timely.

(c) **Special submittals.**

(1) **Fast-track projects.** The fast track process applies only to stage two submittals. A stage one submittal and functional program must be approved before entering the fast track process.

(A) Equipment and built-in furnishings are to be identified in the stage one submittal.

(B) The assisted living center has the option to submit two packages: civil, landscaping and structural in stage one, and the balance of the components in stage two.

(C) Fast-track projects shall have prior approval and be submitted in no more than four (4) separate packages.

(i) Site work, foundation, structural, under-slab mechanical, electrical, plumbing work, and related specifications.

(ii) Complete architectural plans and specifications.

(iii) All mechanical, electrical, and plumbing plans and specifications.

(iv) Equipment and furnishings.

(2) **Radiation protection.** Any project that includes radiology or special imaging equipment used in medical diagnosis, treatment, and therapy of patients, shall include plans, specifications, and shielding criteria, prepared by a qualified medical physicist. These plans shall be submitted and approved by the Department prior to installation of the equipment.

(d) **Floor plan scale.** Floor plans are to be submitted at a scale of one-eighth (1/8) inch equals one (1) foot, with additional clarifying documents as required.

(e) **Application form.** The submittal shall be made using a Department application form which requests information required by this Chapter and specifies the number of copies and format for document submittal.

310:663-7-5. Self-certification of plans

(a) The Department shall make available consultation and technical assistance services covering the requirements of this section to an assisted living center considering self-certification of plans. The consultation and technical assistance is subject to the fees specified in OAC 310:663-7-3. The consultation is optional and not a prerequisite for filing a request through the self-certification review process.

(b) The assisted living center and the project architect or engineer may elect to request approval of design and construction plans through a self-certification review process. The assisted living center and the project architect or engineer submit a self-certification request on a form provided by the Department, along with the review fee specified in OAC 310:663-7-3. The form shall be signed by the assisted living center and the project architect or engineer attesting that the plans and specifications are based upon and comply with the requirements of this Chapter. The form shall require information necessary to demonstrate compliance with OAC 310:665-7-5(c).

(c) To be eligible for self-certification, projects must comply with the following requirements:

(1) The project involves any portion of the assisted living center where residents are intended to be examined or treated and the total cost of design and construction is two million five hundred thousand dollars (\$2,500,000) or less; or

(2) The project involves only portions of the assisted living center where residents are not intended to be examined or treated; and

(3) The project architect or engineer attesting the application has held a license to practice architecture or engineering for at least five (5) years prior to the submittal of the application, is licensed to practice in Oklahoma; and

(4) The assisted living center owner/operator acknowledges that the Department retains the authority to:

(A) Perform audits of the self-certification review program and select projects at random for review;

(B) Review final construction documents;

(C) Conduct on-site inspections of the project;

(D) Withdraw approval based on the failure of the assisted living center or project architect or engineer to comply with the requirements of this Chapter; and

(5) The assisted living center agrees to make changes required by the Department to bring the construction project into compliance with this Chapter.

(d) Within twenty-one (21) calendar after receipt of a complete application, the Department shall approve or deny the application for self-certification and send notification to the assisted living center. If the application is denied, the assisted living center shall have thirty (30) calendar to submit additional or supplemental information demonstrating that the application complies with the requirements for self-certification of plans and specifications. The Department shall have fourteen (14) calendar after receipt of supplemental information to reconsider the initial denial and issue a final approval or denial of the self-certification request.

(e) After denial of the application for self-certification and prior to the start of construction, the assisted living center shall pay the applicable fee for plan review specified in OAC 310:663-7-3. Upon receipt of the plan review fee, the Department shall review the assisted living center's plans in accordance with the process in OAC 310:663-7-3.

310:663-7-6. Exceptions and temporary waivers

(a) These standards are not intended to restrict innovations and improvements in design or construction techniques. Accordingly, the Department may approve plans and specifications that contain deviations if it is determined that the respective intent or objective of this Chapter has been met.

(b) An assisted living center may submit a request for exception or temporary waiver if the rules in this Chapter create an unreasonable hardship, or if the design and construction for the assisted living center property offers improved or compensating features with equivalent outcomes to this Chapter.

(c) The Department may permit exceptions and temporary waivers of this Chapter if the Department determines that such exceptions or temporary waivers comply with the requirements of 63 O.S. Section 1-1901 et seq., and the following:

(1) Any assisted living center requesting an exception or temporary waiver shall apply in writing on a form provided by the Department. The form shall include:

(A) The section(s) of this Chapter for which the exception or temporary waiver is requested;

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- (B) Reason(s) for requesting an exception or temporary waiver;
- (C) The specific relief requested; and
- (D) Any documentation which supports the application for exception.
- (2) In consideration of a request for exception or temporary waiver, the Department shall consider the following:
- (A) Compliance with 63 O.S. Section 1-1901 et seq.;
- (B) The level of care provided;
- (C) The impact of an exception on care provided;
- (D) Alternative policies or procedures proposed; and
- (E) Compliance history with provisions of this Chapter.
- (3) The Department shall permit or disallow the exception or waiver in writing within forty-five (45) calendar days after receipt of the request.
- (4) If the Department finds that a request is incomplete, the Department shall advise the assisted living center in writing and offer an opportunity to submit additional or clarifying information. The applicant shall have thirty (30) calendar days after receipt of notification to submit additional or clarifying information in writing to the Department of Health, or the request shall be considered withdrawn.
- (5) An assisted living center which disagrees with the Department's decision regarding the exception or temporary waiver may file a written petition requesting relief through an individual proceeding pursuant to OAC 310:2 (relating to Procedures of the State Department of Health).
- (6) The Department may revoke an exception or temporary waiver through an administrative proceeding in accordance with OAC 310:2 and the Oklahoma Administrative Procedures Act upon finding the assisted living center is operating in violation of the exception or temporary waiver, or the exception or temporary waiver jeopardizes patient care and safety or constitutes a distinct hazard to life.
- (7) The Department shall publish decisions on requests for exceptions and waivers and make them available to facilities and centers and the public.

SUBCHAPTER 15. RESIDENT RIGHTS AND RESPONSIBILITIES

310:663-15-4. Prohibited restrictions and fees

Residents shall have the freedom of choice regarding any personal attending physicians and all other providers of medical services and supplies without a financial penalty or fee charged by the assisted living center [Title 63 O.S. Section 1-890.3 (A)(8)].

SUBCHAPTER 19. ADMINISTRATION, RECORDS AND POLICIES

310:663-19-1. Incident reports

- (a) **Timeline for reporting.** All reports to the Department shall be made ~~via facsimile or by telephone~~ within one (1) Department business day of the reportable incident's discovery. A follow-up report of the incident shall be submitted ~~via facsimile or mail~~ to the Department within five (5) Department business days after the incident. The final report shall be filed with the Department when the full investigation is complete, not to exceed ten (10) Department business days after the incident. Notifications to the Nurse Aide Registry using the ODH Form 718 must be made within one (1) Department business day of the reportable incident's discovery.
- (b) **Incidents requiring report.** Each continuum of care facility and assisted living center shall prepare a written incident report for the following incidents:
- (1) allegations and incidents of resident abuse;
 - (2) allegations and incidents of resident neglect;
 - (3) allegations and incidents of misappropriation of resident's property;
 - (4) accidental fires and fires not planned or supervised by facility staff, occurring on the licensed real estate;
 - (5) storm damage resulting in relocation of a resident from a currently assigned room;
 - (6) deaths by unusual occurrence, including accidental deaths or deaths other than by natural causes;
 - (7) residents missing from the assisted living center upon determination by the assisted living
 - (8) utility failure for more than 4 ~~eight~~ (8) hours;
 - (9) incidents occurring at the assisted living center, on the assisted living center grounds or during assisted living center sponsored events, that result in fractures, ~~head injury or require~~ injury requiring treatment at a hospital, a physician's diagnosis of closed head injury or concussion, or head injuries that require more than first aid;
 - (10) reportable diseases and injuries as specified by the Department in OAC 310:515 (relating to communicable disease and injury reporting); and,
 - (11) situations arising where a criminal act is suspected. Such situations shall also be reported to local law enforcement.
- (c) **Incidents involving another provider.** Each continuum of care facility and assisted living center shall promptly refer incidents involving another provider, including a hospice or home health agency, to the certification or licensure agency having jurisdiction over the provider.
- (d) **Reports to the Department.** Each assisted living center shall report to the Department those incidents specified in 310:663-19-1(b). An assisted living center may use the Department's Long Term Care Incident Report Form.
- (e) **Licensing boards.** Each assisted living center shall report allegations and incidents of resident abuse, neglect, or misappropriation of resident's property by licensed personnel to the appropriate licensing board within five (5) business days.
- (f) **Notification of nurse aide registry.** Each continuum of care facility and assisted living center shall report allegations and occurrences of resident abuse, neglect, or misappropriation of resident's property by a nurse aide to the Nurse Aide Registry by submitting a completed "Notification of Nurse Aide Abuse,

Neglect, Mistreatment or Misappropriation of Property" form (ODH Form 718), which requires the following:

- (1) facility/center name, address and telephone;
- (2) facility type;
- (3) date;
- (4) reporting party name or administrator name;
- (5) employee name and address;
- (6) employee certification number;
- (7) employee social security number;
- (8) employee telephone number;
- (9) termination action and date (if applicable);
- (10) other contact person name and address; and
- (11) the details of the allegation or occurrence of abuse, neglect, or misappropriation of resident property.

(g) Content of incident report.

- (1) The preliminary report shall at the minimum include:
 - (A) who, what, when, and where; and
 - (B) measures taken to protect the resident(s) during the investigation.
- (2) The follow-up report shall at the minimum include:
 - (A) preliminary information;
 - (B) the extent of the injury or damage if any; and
 - (C) preliminary findings of the investigation.
- (3) The final report shall, at the minimum, include preliminary and follow-up information and:
 - (A) a summary of investigative actions;
 - (B) investigative findings and conclusions based on findings;
 - (C) corrective measures to prevent future occurrences; and
 - (D) if items are omitted, why the items are omitted and when they will be provided.

(h) Emergency Response. In lieu of making incident reports during an emergency response to a natural or man-made disaster, the facility may coordinate its communications, status reports and assistance requests through the local emergency response coordinator, and file a final report with the Department within ten (10) days after conclusion of the emergency response.

[OAR Docket #17-645; filed 7-13-17]

**TITLE 310. OKLAHOMA STATE
DEPARTMENT OF HEALTH
CHAPTER 667. HOSPITAL STANDARDS**

[OAR Docket #17-642]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 41. General Construction Provisions
310:667-41-1. General [AMENDED]
- Subchapter 47. Submittal Requirements
310:667-47-1. Submission of plans and specifications and related requests for services [AMENDED]
- 310:667-47-2. Preparation of plans and specifications [AMENDED]
- 310:667-47-10. Self-certification of plans [NEW]

AUTHORITY:

Oklahoma State Board of Health; Title 63 O.S. § 1-104; 63 O.S. Section 1-106.1; and 63 O.S. Section 1-705; and 63 O.S. Section 1-707.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

November 23, 2016

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APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 13, 2017

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June 13, 2017

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October 1, 2017

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

Incorporated standards:

Facility Guidelines Institute (FGI): Guidelines for Design and Construction of Hospitals and Outpatient Facilities, 2014 Edition.

National Fire Protection Association (NFPA) 101: Life Safety Code, 2012 Edition, adopted in 81 Federal Register 26871 by the Centers for Medicare & Medicaid Services on July 5, 2016.

Incorporating rules:

310:667-41-1

Availability:

8:00 a.m. to 5:00 p.m., Monday through Friday at Medical Facilities Division, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1299, 405-271-6576.

GIST/ANALYSIS:

Title 63 of the Public Health Code, at section 1-106.1, authorizes the State Board of Health to establish a system of fees to be charged for health services and for services rendered to members of the public in the issuance and renewal of licenses and permits by the State Commissioner of Health and the State Department of Health. Sections 1-705 and 1-707 of the Public Health Code authorize the State Board of Health to promulgate rules for the construction and operation of hospitals and for the review of plans and the assessment of fees for plan review.

The physical plant requirements in Subchapter 41 are amended by updating references to the Facility Guidelines Institute (FGI): Guidelines for Design and Construction of Hospitals and Outpatient Facilities, 2014 Edition, and the Life Safety Code adopted by the Centers for Medicare & Medicaid Services on July 5, 2016. Added are criteria and a process for hospitals to request exceptions and temporary waivers of the requirements of this Chapter for design or construction techniques that represent innovations or improvements.

Subchapter 47 is updated by revising the requirements for stage one, stage two, and special construction plan submittals, and by giving hospitals the option to move directly to stage two plan submittal. The proposal sets fees for related services including review of temporary waivers and applications for self-certification. The proposal establishes a process to ensure timely review of design and construction documents. The proposal establishes requirements and a process for hospitals to self-certify compliance of their plans for certain types of projects.

CONTACT PERSON:

Information regarding this rule may be obtained by contacting Lee Martin, Director, Medical Facilities Service, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-6576, or by e-mail to LeeM@health.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF OCTOBER 1, 2017:

SUBCHAPTER 41. GENERAL CONSTRUCTION PROVISIONS

310:667-41-1. General

(a) ~~These requirements are intended as minimum standards for constructing and equipping hospital and specialized hospital projects. For brevity and convenience these standards are presented in "code language". Use of words such as "shall" is mandatory. Insofar as practical, these standards relate to desired performance or results or both. Details of construction and engineering are assumed to be part of good design practice and local building regulations. Design and construction shall conform to the requirements of these standards. Requirements set forth in these standards shall be considered as minimum. For aspects of design and construction not included, local governing building codes shall apply. Where there is no local governing building code, the prevailing model code used within the geographic area is hereby specified for all requirements not otherwise specified in these standards. (See OAC 310:667-41-4(b) for wind and seismic local requirements.) Where American Society of Civil Engineers (ASCE 9-72) is referenced, similar provisions in the model building code are considered substantially equivalent.~~

(b) ~~These standards are not intended to restrict innovations and improvements in design or construction techniques. Accordingly, the Department may approve plans and specifications which contain deviations if it is determined that the respective intent or objective has been met.~~

(c) ~~Some projects may be subject to the regulations of several different programs, including those of other state agencies, local agencies, and federal authorities. While every effort has been made for coordination, individual project requirements shall be verified, as appropriate.~~

(d) ~~The Centers for Medicare & Medicaid Services (CMS), which is responsible for Medicare and Medicaid reimbursement, has adopted the National Fire Protection Association 101 Life Safety Code (NFPA 101). To ensure non-conflicting requirements, the 2000 version of this code is hereby adopted by the Department and all new construction shall comply with that code. Existing construction may continue to comply with the version of NFPA 101 for which construction was approved.~~

(e) ~~The health care provider shall supply for each project a functional program for the facility that describes the purpose of the project, the projected demand or utilization, staffing patterns, departmental relationships, space requirements, and other basic information relating to fulfillment of the institution's objectives. This program shall include a description of each function or service; the operational space required for each function; the quantity of staff or other occupants of the various spaces; the numbers, types, and areas (in net square feet) of all spaces; the special design features; the systems of operation; and the interrelationships of various functions and spaces. The functional program shall include a description of those services necessary for the complete operation of the facility and shall also include the Infection Control Risk Assessment (ICRA). Services available elsewhere in the institution or community need not be duplicated in the facility. The functional program shall also address the potential future expansion~~

~~of essential services which may be needed to accommodate increased demand. The approved functional program shall be available for use in the development of project design and construction documents.~~

(f) ~~An ICRA is a determination of the potential risk of transmission of various agents in the facility. This continuous process is an essential component of a facility functional or master program to provide a safe environment of care. The ICRA shall be conducted by a panel with expertise in infection control, risk management, facility design, construction, ventilation, safety, and epidemiology. The design professional shall incorporate the specific, construction related requirements of the ICRA in the contract documents. The contract documents shall require the contractor to implement these specific requirements during construction. The ICRA is initiated in design and planning and continues through construction and renovation. After considering the facility's patient population and programs, The ICRA shall address but not be limited to the following key elements:~~

- ~~(1) The impact of disrupting essential services to patients and employees;~~
- ~~(2) Patient placement or relocation;~~
- ~~(3) Placement of effective barriers to protect susceptible patients from airborne contaminants such as Aspergillus sp.~~
- ~~(4) Air handling and ventilation needs in surgical services, airborne infection isolation and protective environment rooms, laboratories, local exhaust systems for hazardous agents, and other special areas;~~
- ~~(5) Determination of additional numbers of airborne infection isolation or protective environment room requirements;~~
- ~~(6) Consideration of the domestic water system to limit Legionella sp. and waterborne opportunistic pathogens.~~

(a) ~~The following national standards are incorporated by reference:~~

- (1) Facility Guidelines Institute (FGI): Guidelines for Design and Construction of Hospitals and Outpatient Facilities, 2014 Edition; and
- (2) National Fire Protection Association (NFPA) 101: Life Safety Code, 2012 Edition, adopted in 81 Federal Register 26871 by the Centers for Medicare & Medicaid Services on July 5, 2016.

(b) Oklahoma statutes prevail if there is conflict between the FGI Guidelines and Oklahoma statutes. For Medicare-certified hospitals, the Life Safety Code adopted by the Centers for Medicare & Medicaid Services prevails if there is a conflict between the Life Safety Code and this Chapter.

(c) A hospital may submit a request for exception or temporary waiver if the FGI Guidelines create an unreasonable hardship, or if the design and construction for the hospital property offers improved or compensating features with equivalent outcomes to the FGI Guidelines.

(d) The Department may permit exceptions and temporary waivers of the FGI Guidelines if the Department determines that such exceptions or temporary waivers comply with the requirements of 63 O.S. Section 1-701 et seq., this Chapter, and the following:

(1) Any hospital requesting an exception or temporary waiver shall apply in writing on a form provided by the Department and pay the exception to, or temporary waiver of, FGI Guidelines fee set in OAC 310:667-47-1. The form shall include:

- (A) The FGI Guidelines section(s) for which the exception or temporary waiver is requested;
- (B) Reason(s) for requesting an exception or temporary waiver;
- (C) The specific relief requested; and
- (D) Any documentation which supports the application for exception.

(2) In consideration of a request for exception or temporary waiver, the Department shall consider the following:

- (A) Compliance with 63 O.S. Section 1-701 et seq.;
- (B) The level of care provided;
- (C) The impact of an exception on care provided;
- (D) Alternative policies or procedures proposed; and
- (E) Compliance history with provisions of the FGI Guidelines, Life Safety Code and this Chapter.

(3) The Department shall permit or disallow the exception or waiver in writing within forty-five (45) calendar days after receipt of the request.

(4) If the Department finds that a request is incomplete, the Department shall advise the hospital in writing and offer an opportunity to submit additional or clarifying information. The applicant shall have thirty (30) calendar days after receipt of notification to submit additional or clarifying information in writing to the Department of Health, or the request shall be considered withdrawn.

(5) A hospital which disagrees with the Department's decision regarding the exception or temporary waiver may file a written petition requesting relief through an individual proceeding pursuant to OAC 310:2 (relating to Procedures of the State Department of Health).

(6) The Department may revoke an exception or temporary waiver through an administrative proceeding in accordance with OAC 310:2 and the Oklahoma Administrative Procedures Act upon finding the hospital is operating in violation of the exception or temporary waiver, or the exception or temporary waiver jeopardizes patient care and safety or constitutes a distinct hazard to life.

(7) The Department shall publish decisions on requests for exceptions and waivers, subject to the confidentiality provisions of 63 O.S. Section 1-709.

(e) Documentation of the hospital governing body's approval of the functional program shall be sufficient to meet the requirements in this Chapter relating to Department approval of the functional program.

SUBCHAPTER 47. SUBMITTAL REQUIREMENTS

310:667-47-1. Submission of plans and specifications and related requests for services

(a) **Submission of plans.** Before construction is begun, plans and specifications, covering the construction of new buildings or major alterations to existing buildings, shall be submitted to the Department for review and approval as provided in OAC 310:667-47-2 or OAC 310:667-47-10.

(1) Plans and specifications are required for the following alterations:

- (A) Changes that affect path of egress;
- (B) Change of use or occupancy;
- (C) Repurposing of spaces;
- (D) Structural modifications;
- (E) Heating, ventilation and air conditioning (HVAC) modifications;
- (F) Electrical modifications that affect the essential electrical system;
- (G) Changes that require modification or relocation of fire alarm initiation or notification devices;
- (H) Changes that require modification or relocation of any portion of the automatic fire sprinkler system;
- (I) Replacement of fixed medical equipment if the alteration requires any work noted in (A) through (H) of this paragraph;
- (J) Replacement of or modifications to any required magnetic or radiation shielding;
- (K) Changes to or addition of any egress control devices or systems.

(2) Plans and specifications are not required for the following alterations:

- (A) Painting, papering tiling, carpeting, cabinets, counter tops and similar finish work provided that the new finishes shall meet the requirements of this Chapter;
- (B) Ordinary repairs and maintenance;
- (C) Modifications to nurse call or other hospital signaling/communication/information technology systems provided the modifications meet the requirements of this Chapter; or
- (D) Replacement of fixed or moveable medical equipment that does not affect electrical, HVAC, or shielding requirements noted above.

(b) **Fees.** Each construction project ~~submission~~ submitted for approval under OAC 310:667-47-2 shall be accompanied by a ~~check~~ for the appropriate review fee based on the cost of design and construction of the project. Review fees are as follows:

- (1) Project cost less than \$10,000.00: \$250.00 Fee
- (2) Project cost \$10,000.00 to \$50,000.00: \$500.00 Fee
- (3) Project cost \$50,000.00 to \$250,000.00: \$1000.00 Fee
- (4) Project cost \$250,000.00 to \$1,000,000.00: \$1500.00 Fee
- (5) Project cost greater than \$1,000,000.00: \$2000.00 Fee

Permanent Final Adoptions

(c) **Fees when greater than two (2) submittals required.**

The review fee shall cover the cost of review for up to two (2) stage one and two (2) stage two submittals and one final inspection. If a stage one or stage two submittal is not approved after two (2) submissions, another review fee based on the cost of the project shall be required with the third submittal. Fast-track projects shall be allowed two reviews for each package submitted. If a fast-track stage package is not approved after the second submittal, another review fee based on the cost of the project shall be required with the third submittal of the package.

(d) **Review process.** ~~All construction project submittals.~~ Design and construction plans and specifications shall be reviewed within 45 calendar days of receipt by the Department in accordance with the following process.

(1) Unless otherwise provided in this Subchapter, the Department shall have ten (10) calendar days in which to determine if the filed application is administratively complete

(A) Upon determining that the application is not administratively complete, the Department shall immediately notify the applicant in writing and shall indicate with reasonable specificity the inadequacies and measures necessary to complete the application. Such notification shall not require nor preclude further review of the application and further requests for specific information. If the Department fails to notify the applicant as specified in this Paragraph, the period for technical review shall begin at the close of the administrative completeness review period. Upon submission of correction of inadequacies, the Department shall have an additional ten (10) calendar days to review the application for completeness.

(B) Upon determination that the application is administratively complete, the Department shall immediately notify the applicant in writing. The period for technical review begins.

(2) The Department shall have forty-five (45) calendar days from the date a completed application is filed to review each application for technical compliance with the relevant regulations and reach a final determination.

(A) The time period for technical review is tolled (the clock stops) when the Department has asked for supplemental information and advised the applicant that the time period is tolled pending receipt.

(B) To make up for time lost in reviewing inadequate materials, a request for supplemental information may specify that up to 30 additional calendar days may be added to the deadline for technical review, unless the request for supplemental information is a second or later request that identifies new deficiencies not previously identified

(C) An application shall be deemed withdrawn if the applicant fails to supplement an application within 90 calendar days after the Department's request, unless the time is extended by agreement for good cause.

(D) Extensions may be made as provided by law.

(e) **Fees for other services.** Fees for other services related to construction projects are as follows:

(1) Request for exception to or temporary waiver of FGI Guidelines fee: Five Hundred Dollars (\$500.00);

(2) Application for self-certification fee: One Thousand Dollars (\$1,000.00);

(3) Courtesy inspection, prior to final inspection for approval of occupancy, fee: Five Hundred Dollars (\$500.00);

(4) Professional consultation or technical assistance fee: Five Hundred Dollars (\$500.00) for each eight staff hours or major fraction thereof. For technical assistance requiring travel, the fee may be increased to include the Department's costs for travel.

310:667-47-2. Preparation of plans and specifications

(a) **Stage one.** Preliminary plans and outline specifications shall be submitted and include sufficient information ~~to establish for approval by the Department of~~ the following: scope of project; project location; required fire-safety and exiting criteria; building-construction type, compartmentation showing fire and smoke barriers, bed count and services; the assignment of all spaces, areas, and rooms for each floor level, including the basement. A hospital has the option, at its own risk, to bypass the stage one submittal and proceed directly to submittal of stage two documents. The option to bypass the stage one submittal does not apply if the project is being submitted for the stage two fast-track project review.

(b) **Stage two.** A proposed construction document shall be submitted that includes final drawings and specifications adequate for ~~proposed contract purposes~~ approval by the Department. All final plans and specifications shall be appropriately sealed and signed by an architect registered by the State of Oklahoma. All construction modifications of approved documents are subject to review and approval, and shall be submitted timely.

(c) **Special submittals.**

(1) ~~Fast-track~~ **Stage two fast-track projects.** The fast track process is a method for phased approval of a project as specified in this paragraph.

(A) Equipment and built-in furnishings are to be identified in the stage one submittal.

(B) The hospital has the option to submit two packages: civil, landscaping and structural in stage one, and the balance of the components in stage two.

(C) Fast-track projects shall have prior approval and be submitted in no more than four (4) separate packages.

(A*i*) Site work, foundation, structural, under-slab mechanical, electrical, plumbing work, and related specifications.

(B*ii*) Complete architectural plans and specifications.

(C*iii*) All mechanical, electrical, and plumbing plans and specifications.

(D*iv*) Equipment and furnishings.

(D) The hospital may begin site work on packages after approval by the Department.

(2) ~~Automatic sprinkler systems.~~ At least two (2) sets of sprinkler system show drawings, specifications, and calculations (if applicable), prepared by the installer, shall be submitted to the Office of the State Fire Marshal for review and approval prior to installation of the proposed system in the project.

(3) ~~Radiation protection.~~ Any project that includes radiology or special imaging equipment used in medical diagnosis, treatment, and therapy of patients, shall include plans, specifications, and shielding criteria, prepared by a qualified medical physicist. These plans shall be submitted and approved by the Department prior to installation of the equipment.

(d) Floor plan scale. Floor plans are to be submitted at a scale of one-eighth (1/8) inch equals one (1) foot, with additional clarifying documents as required.

(e) Application form. The submittal shall be made using a Department application form which requests information required by this Chapter and specifies the number of copies and format for document submittal.

310:667-47-10. Self-certification of plans

(a) The Department shall make available professional consultation and technical assistance services covering the requirements of this section to a hospital considering self-certification of plans. The consultation and technical assistance is subject to the fee for professional consultation and technical assistance services set in OAC 310:667-47-1. The consultation is optional and not a prerequisite for filing a request through the self-certification review process.

(b) The hospital and the project architect or engineer may elect to request approval of design and construction plans through a self-certification review process. The hospital and the project architect or engineer shall submit a self-certification request on a form provided by the Department, along with a self-certification application fee set in OAC 310:667-47-1. The form shall be signed by the hospital and the project architect or engineer attesting that the plans and specifications are based upon and comply with the requirements of this Chapter. The form shall require information necessary to demonstrate compliance with OAC 310:667-47-10(c).

(c) To be eligible for self-certification, projects must comply with the following requirements:

(1) The project involves any portion of the hospital where patients are intended to be examined or treated and the total cost of design and construction is fifteen million dollars (\$15,000,000.00) or less; or

(2) The project involves only portions of the hospital where patients are not intended to be examined or treated; and

(3) The project architect or engineer attesting the application has held a license to practice architecture or engineering for at least five (5) years prior to the submittal of the application, is licensed to practice in Oklahoma; and

(4) The hospital owner/operator acknowledges that the Department retains the authority to:

(A) Perform audits of the self-certification review program and select projects at random for review;

(B) Review final construction documents;
(C) Conduct on-site inspections of the project;
(D) Withdraw approval based on the failure of the hospital or project architect or engineer to comply with the requirements of this Chapter; and

(5) The hospital agrees to make changes required by the Department to bring the construction project into compliance with this Chapter.

(d) Within twenty-one (21) calendar days after receipt of a complete application, the Department shall approve or deny the application for self-certification and send notification to the hospital. If the application is denied, the hospital shall have thirty (30) calendar days to submit additional or supplemental information demonstrating that the application complies with the requirements for self-certification of plans and specifications. The Department shall have fourteen (14) calendar days after receipt of supplemental information to reconsider the initial denial and issue a final approval or denial of the self-certification request.

(e) After denial of the application for self-certification and prior to the start of construction, the hospital shall pay the applicable fee for plan review specified in OAC 310:667-47-1(b)(1) through (5). Upon receipt of the plan review fee, the Department shall review the hospital's plans in accordance with the process in OAC 310:667-47-1(d).

[OAR Docket #17-642; filed 7-13-17]

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

[OAR Docket #17-644]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 5. Physical Plant
 - 310:675-5-18. Design and construction [AMENDED]
 - 310:675-5-22. Exceptions and temporary waivers [NEW]
 - 310:675-5-23. Submission of plans and specifications and related requests for services [NEW]
 - 310:675-5-24. Preparation of plans and specifications [NEW]
 - 310:675-5-25. Self-certification of plans [NEW]
- Subchapter 7. Administration
 - 301:675-7-5.1. Reports to state and federal agencies [AMENDED]
 - 310:675-7-6.1. Complaints [AMENDED]
 - 310:675-7-12.1. ~~Incident~~ Internal facility incident reports [AMENDED]
- Subchapter 11. Intermediate Care Facilities ~~for the mentally retarded~~ (16 beds and less (ICF/MR 16) of 16 Beds and Less for Individuals with Intellectual Disabilities (ICF/IID-16)
 - 310:675-11-5. Physical plant [AMENDED]
 - 310:675-11-5.1. Plans and specifications requirements applicable to ICF/IID-16 [NEW]

AUTHORITY:

Oklahoma State Board of Health; Title 63 O.S. § 1-104, and 63 O.S. Sections 1-106.1, 1-1908, and 1-1942

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

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APPROVED BY GOVERNOR'S DECLARATION:

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n/a

INCORPORATIONS BY REFERENCE:

Incorporated standards:

National Fire Protection Association (NFPA) 101: Life Safety Code, 2012 Edition, adopted in 81 Federal Register 26871 by the Centers for Medicare & Medicaid Services on July 5, 2016.

Incorporating rules:

310:675-5-18

Availability:

8:00 a.m. to 5:00 p.m., Monday through Friday at Medical Facilities Division, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1299, 405-271-6576.

GIST/ANALYSIS:

Title 63, the Public Health Code, at section 1-106.1, authorizes the State Board of Health to establish a system of fees to be charged for health services and for services rendered to members of the public in the issuance and renewal of licenses and permits by the State Commissioner of Health and the State Department of Health. Section 1-1908 of the Public Health Code authorizes the State Board of Health to promulgate rules for the submission and resubmission of construction plans and the assessment of fees for the review. Section 1-1942 authorizes the adoption of rules in furtherance of the Nursing Home Care Act, which includes provisions for complaint investigations and incident reporting.

The physical plant requirements in Subchapter 5 are amended by updating references to the most recent Life Safety Code adopted by the Centers for Medicare & Medicaid Services. The changes provide criteria and a process for exceptions and waivers for design and construction techniques that represent innovations or improvements; establishes fees for review of design and construction plans and specifications and related services including review of temporary waivers and applications for self-certification; establishes a process to ensure timely review of design and construction documents. Requirements are added to allow for stage one, stage two, and special construction plan submittals, and to give nursing facilities the option to move directly to stage two plan submittal. A process is established for nursing facilities to self-certify compliance of their plans for certain types of projects.

Subchapter 7 is amended relating to reportable incidents and updates language for reporting utility failures. The changes clarify the reporting of injuries that have certain physician diagnoses or require treatment at a hospital. Certain complaint investigation timeframes are amended and definitions added.

Subchapter 11 is updated to use current terminology for individuals with intellectual disabilities, and to incorporate the most recent Life Safety Code and the updated plans and specifications requirements of Subchapter 5.

CONTACT PERSON:

Information regarding this rule may be obtained by contacting Michael Cook, Service Director, Long Term Care Service, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1207, telephone (405) 271 6868, or by e-mail to MikeC@health.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF OCTOBER 1, 2017:

SUBCHAPTER 5. PHYSICAL PLANT

310:675-5-18. Design and construction

The requirements in applicable portions of ~~NFPA 101, 1981, shall supersede all other standards and codes unless indicated herein to the contrary~~ the National Fire Protection Association (NFPA) 101: Life Safety Code, 2012 Edition, adopted in 81 Federal Register 26871 by the Centers for Medicare & Medicaid Services on July 5, 2016 are incorporated by reference. For Medicare or Medicaid certified nursing or specialized facilities, the Life Safety Code adopted by the Centers for Medicare & Medicaid Services prevails if there is a conflict between the Life Safety Code and this Chapter. A high degree of safety for the occupants shall be provided to minimize the incidence of accidents with special consideration for residents who will be ambulatory to assist them in self care. Hazards such as sharp corners shall be avoided.

(1) **Existing facilities.** Nonconforming portions which because of financial hardship are not being totally modernized, shall comply with the safety requirements dealing with details and finishes as listed in Chapter 13 NFPA Standard 1-1, 1981.

(2) New construction projects including additions and alterations. Details and finishes shall comply with the following:

(A) Items such as drinking fountains, telephone booths, vending machines, and portable equipment shall be located so as not to restrict corridor traffic or reduce the corridor width below the required minimum.

(B) All rooms containing bathtubs, sitz baths, showers, and water closets, subject to occupancy by residents, shall be equipped with doors and hardware which will permit access from the outside in any emergency. When such rooms have only one opening or are small, the doors shall be capable of opening outward or be otherwise designed to be opened without need to push against a resident who may have collapsed within the room.

(C) The minimum width of all doors to resident rooms and rooms needing access for beds shall be 3'8" (1.12 m.). Doors to rooms needing access for stretchers and to resident's toilet rooms and other rooms needing access for wheelchairs shall have a minimum width of 2'10" (86.3 cm.).

(D) Doors on all openings between corridors and rooms or spaces subject to occupancy, except elevator doors, shall be swing type. Openings to showers, baths, resident's toilets, and other small wet type areas not subject to fire hazard are exempt from this requirement.

(E) Windows and outer doors which may be frequently left in an open position shall be provided with insect screens. Windows shall be designed to prevent accidental falls when open.

(F) Resident rooms intended for occupancy of 24 hours or more shall have windows operable without the use of tools and shall have sills not more than 3'0" (91 cm.) above the floor. Windows in buildings designed with an engineered smoke control system

in accordance with NFPA 90A are not required to be operable. However, attention is called to the fact that natural ventilation possible with operable windows may in some areas permit a reduction in energy requirements.

(G) Doors, except doors to spaces such as small closets which are not subject to occupancy, shall not swing into corridors in a manner that might obstruct traffic flow or reduce the required corridor width. (Large walk-in type closets are considered as occupiable spaces.)

(H) Safety glazing shall be of materials and at locations required by the Oklahoma Safety Glazing Material Law.

(I) Thresholds and expansion joint covers shall be made flush with the floor surface to facilitate use of wheelchairs and carts and shall be constructed to restrict the passage of smoke.

(J) Grab bars shall be provided at all residents' toilets, showers, tubs, and sitz baths. The bar shall have 1 1/2" (3.8 cm.) clearance to walls and shall have sufficient strength and anchorage to sustain a concentrated load of 250 lbs. (113.4 kg.).

(K) Recessed soap dishes shall be provided in showers and bathrooms.

(L) Handrails shall be provided on both sides of corridors used by residents. A clear distance of 1 1/2" (3.8 cm.) shall be provided between the handrail and the wall. Ends of handrails and grab bars shall be constructed to prevent snagging the clothes of residents.

(M) Location and arrangement of handwashing facilities shall permit their proper use and operation.

(N) Lavatories and handwashing facilities shall be securely anchored to withstand an applied vertical load of not less than 250 lbs. (113.4 kg.) on the front of the fixture.

(O) Mirrors shall be arranged for convenient use by residents in wheelchairs as well as by residents in a standing position. Mirrors shall not be installed at handwashing fixtures in food preparation areas.

(P) Provisions for hand drying shall be included at all handwashing facilities. These shall be single-use separate, individual paper or cloth units enclosed in such a way as to provide protection against the dust or soil and ensure single unit dispensing. Hot air dryers are permitted provided that installation is such to preclude possible contamination by recirculation of air.

(Q) The minimum ceiling height shall be 8'0" (2.44 m.) with the following exceptions:

(i) Boiler rooms shall have ceiling clearances not less than 2'6" (76 cm.) above the main boiler header and connecting piping.

(ii) Rooms containing ceiling-mounted equipment shall have height required to accommodate the equipment.

(iii) Ceilings in corridors, storage rooms, toilet rooms, and other minor rooms shall be not less than 7'8" (2.34 m.).

(iv) Suspended tracks, rails and pipes located in path of normal traffic shall not be less than 6'8" (2.03 m.) above the floor.

(R) Recreation rooms, exercise rooms, and similar spaces where impact noise may be generated shall not be located directly over resident bed areas unless special provisions are made to minimize such noise.

(S) Rooms containing heat producing equipment (such as boiler or heater rooms and laundries) shall be insulated and ventilated to prevent any floor surface above from exceeding a temperature 10° F. (6° C.) above the ambient room temperature.

(3) Finishes.

(A) Floor materials shall be easily cleanable and have wear resistance appropriate for the location involved. Floors in areas used for food preparation or food assembly shall be water-resistant and grease-proof. Joints in tile and similar material in such areas shall be resistant to food acids. In all areas frequently subject to wet cleaning methods, floor materials shall not be physically affected by germicidal and cleaning solutions. Floors that are subject to traffic while wet (such as shower and bath areas, kitchens, and similar work areas) shall have a non-slip surface.

(B) Wall bases in kitchens, soiled workrooms, and other areas which are frequently subject to wet cleaning methods shall be made integral and covered with the floor, tightly sealed within the wall, and constructed without voids that can harbor insects.

(C) Wall finishes shall be washable and, in the immediate area of plumbing fixtures, shall be smooth and moisture resistant. Finish trim, and wall and floor constructions in dietary and food preparation areas shall be free from spaces that can harbor rodents and insects.

(D) Floor and wall penetrations by pipes, ducts, and conduits shall be tightly sealed to minimize entry of rodents and insects. Joints of structural elements shall be similarly sealed.

(E) Ceilings throughout shall be easily cleanable. Ceilings in the dietary and food preparation areas shall have a finished ceiling covering all overhead piping and duct work. Finished ceilings may be omitted in mechanical and equipment spaces, shops, general storage areas, and similar spaces, unless required for fire-resistive purposes.

310:675-5-22. Exceptions and temporary waivers

(a) These standards are not intended to restrict innovations and improvements in design or construction techniques. Accordingly, the Department may approve plans and specifications which contain deviations if it is determined that the respective intent or objective of this Chapter has been met.

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(b) A nursing facility may submit a request for exception or temporary waiver if the rules in this Chapter create an unreasonable hardship, or if the design and construction for the nursing facility property offers improved or compensating features with equivalent outcomes to this Chapter.

(c) The Department may permit exceptions and temporary waivers of this Chapter if the Department determines that such exceptions or temporary waivers comply with the requirements of 63 O.S. Section 1-1901 et seq., and the following:

(1) Any nursing facility requesting an exception or temporary waiver shall apply in writing on a form provided by the Department. The form shall include:

(A) The section(s) of this Chapter for which the exception or temporary waiver is requested;

(B) Reason(s) for requesting an exception or temporary waiver;

(C) The specific relief requested;

(D) Any supporting requirements in the Facility Guidelines Institute (FGI): Guidelines for Design and Construction of Residential Health, Care, and Support Facilities, 2014 Edition; and

(E) Any documentation which supports the application for exception.

(2) In consideration of a request for exception or temporary waiver, the Department shall consider the following:

(A) Compliance with 63 O.S. Section 1-1901 et seq.;

(B) The level of care provided;

(C) The impact of an exception on care provided;

(D) Alternative policies or procedures proposed;

(E) Compliance with the Facility Guidelines Institute (FGI): Guidelines for Design and Construction of Residential Health, Care, and Support Facilities, 2014 Edition; and

(F) Compliance history with provisions of the Life Safety Code and this Chapter.

(3) The Department shall permit or disallow the exception or waiver in writing within forty-five (45) calendar days after receipt of the request.

(4) If the Department finds that a request is incomplete, the Department shall advise the nursing facility in writing and offer an opportunity to submit additional or clarifying information. The applicant shall have thirty (30) calendar days after receipt of notification to submit additional or clarifying information in writing to the Department of Health, or the request shall be considered withdrawn.

(5) A nursing facility which disagrees with the Department's decision regarding the exception or temporary waiver may file a written petition requesting relief through an individual proceeding pursuant to OAC 310:2 (relating to Procedures of the State Department of Health).

(6) The Department may revoke an exception or temporary waiver through an administrative proceeding in accordance with OAC 310:2 and the Oklahoma Administrative Procedures Act upon finding the nursing facility is operating in violation of the exception or temporary waiver,

or the exception or temporary waiver jeopardizes patient care and safety or constitutes a distinct hazard to life.

(7) The Department shall publish decisions on requests for exceptions and waivers and make them available to facilities and the public.

310:675-5-23. Submission of plans and specifications and related requests for services

(a) **Submission of plans.** Before construction is begun, plans and specifications, covering the construction of new buildings or major alterations to existing buildings shall be submitted to the Department for review as provided in OAC 310:675-5-24 or OAC 310:675-5-25.

(1) Plans and specifications are required for the following alterations:

(A) Changes that affect path of egress;

(B) Change of use or occupancy;

(C) Repurposing of spaces;

(D) Structural modifications;

(E) Heating, ventilation and air conditioning (HVAC) modifications;

(F) Electrical modifications that affect the essential electrical system;

(G) Changes that require modification or relocation of fire alarm initiation or notification devices;

(H) Changes that require modification or relocation of any portion of the automatic fire sprinkler system;

(I) Replacement of fixed medical equipment if the alteration requires any work noted in (A) through (H) of this paragraph;

(J) Replacement of or modifications to any required magnetic or radiation shielding;

(K) Changes to or addition of any egress control devices or systems.

(2) Plans and specifications are not required for the following alterations:

(A) Painting, papering tiling, carpeting, cabinets, counter tops and similar finish work provided that the new finishes shall meet the requirements of this Chapter;

(B) Ordinary repairs and maintenance;

(C) Modifications to nurse call or other signaling/communication/information technology systems provided the modifications meet the requirements of this Chapter; or

(D) Replacement of fixed or moveable medical equipment that does not affect electrical, HVAC, or shielding requirements noted above.

(b) **Fees.** Each construction project submission shall be accompanied by the appropriate review fee based on the cost of design and construction of the project. Fees for plan and specification reviews and related Department services are as follows:

(1) Design and construction plans and specifications fee: two one-hundredths percent (0.02%) of the cost of design and construction of the project, with a minimum fee of Fifty Dollars (\$50.00) and a maximum fee of One Thousand Dollars (\$1,000.00);

- (2) Request for exception or temporary waiver fee: Five Hundred Dollars (\$500.00);
- (3) Application for self-certification fee: Five Hundred Dollars (\$500.00);
- (4) Courtesy construction inspection fee: Five Hundred Dollars (\$500.00);
- (5) Professional consultation or technical assistance fee: Five Hundred Dollars (\$500.00) for each eight hours or major fraction thereof of staff time. For technical assistance requiring travel, the fee may be increased to include the Department's costs for travel.

(c) **Fees when greater than two (2) submittals required.** The fee for review of design and construction plans and specifications shall cover the cost of review for up to two (2) stage one and two (2) stage two submittals and one final inspection. If a stage one or stage two submittal is not approved after two (2) submissions, another review fee shall be required with the third submittal. If a fast-track stage package is not approved after the second submittal, another review fee based on the cost of the project shall be required with the third submittal of the package.

(d) **Review process.** Design and construction plans and specifications shall be reviewed in accordance with the following process.

(1) Unless otherwise provided in this Subchapter, the Department shall have ten (10) calendar days in which to initially determine if the filed application is administratively complete

(A) Upon determining that the application is not administratively complete, the Department shall immediately notify the applicant in writing and shall indicate with reasonable specificity the inadequacies and measures necessary to complete the application. Such notification shall not require nor preclude further review of the application and further requests for specific information. If the Department fails to notify the applicant as specified in this Paragraph, the period for technical review shall begin at the close of the administrative completeness review period. Upon submission of correction of inadequacies, the Department shall have an additional ten (10) calendar days to review the application for completeness.

(B) Upon determination that the application is administratively complete, the Department shall immediately notify the applicant in writing. The period for technical review begins.

(2) The Department shall have forty-five (45) calendar days from the date a completed application is filed to review each application for technical compliance with the relevant regulations and reach a final determination. The Department shall provide the results of the review, including a statement of any deficiencies, in writing. The written notice shall offer the applicant an opportunity to discuss the results of the review with the Department.

(A) The time period for technical review is tolled (the clock stops) when the Department has asked for supplemental information and advised the applicant that the time period is tolled pending receipt.

(B) To make up for time lost in reviewing inadequate materials, a request for supplemental information may specify that up to 30 additional calendar days may be added to the deadline for technical review, unless the request for supplemental information is a second or later request that identifies new deficiencies not previously identified

(C) An application shall be deemed withdrawn if the applicant fails to supplement an application within 90 calendar days after the Department's request, unless the time is extended by agreement for good cause.

(D) Extensions may be made as provided by law.

310:675-5-24. Preparation of plans and specifications

(a) **Stage one.** Preliminary plans and outline specifications shall be submitted and include sufficient information for approval by the Department of the following: scope of project; project location; required fire-safety and exiting criteria; building-construction type, compartmentation showing fire and smoke barriers, bed count and services; the assignment of all spaces, areas, and rooms for each floor level, including the basement. A nursing facility has the option, at its own risk, to bypass the stage one submittal and proceed directly to submittal of stage two documents. After the first review and before Department approval of stage one plans, the nursing facility at its own risk may choose to make a stage two submittal; a nursing facility electing this option would not be eligible for the fast track process.

(b) **Stage two.** A proposed construction document shall be submitted that includes final drawings and specifications adequate for approval by the Department. All final plans and specifications shall be appropriately sealed and signed by an architect registered by the State of Oklahoma. All construction modifications of approved documents are subject to review and approval, and shall be submitted timely.

(1) **Fast-track projects.** The fast track process applies only to stage two submittals. A stage one submittal and functional program must be approved before entering the fast track process.

(A) Equipment and built-in furnishings are to be identified in the stage one submittal.

(B) The nursing facility has the option to submit two packages: civil, landscaping and structural in stage one, and the balance of the components in stage two.

(C) Fast-track projects shall have prior approval and be submitted in no more than four (4) separate packages.

(i) Site work, foundation, structural, under-slab mechanical, electrical, plumbing work, and related specifications.

(ii) Complete architectural plans and specifications.

(iii) All mechanical, electrical, and plumbing plans and specifications.

(iv) Equipment and furnishings.

(2) **Radiation protection.** Any project that includes radiology or special imaging equipment used in medical

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diagnosis, treatment, and therapy of residents, shall include plans, specifications, and shielding criteria, prepared by a qualified medical physicist. These plans shall be submitted and approved by the Department prior to installation of the equipment.

(d) **Floor plan scale.** Floor plans are to be submitted at a scale of one-eighth (1/8) inch equals one (1) foot, with additional clarifying documents as required.

(e) **Application form.** The submittal shall be made using a Department application form which requests information required by this Chapter and specifies the number of copies and format for document submittal.

310:675-5-25. Self-certification of plans

(a) The Department shall make available consultation and technical assistance services covering the requirements of this section to a nursing facility considering self-certification of plans. The consultation and technical assistance is subject to the fees specified in OAC 310:675-5-23. The consultation is optional and not a prerequisite for filing a request through the self-certification review process.

(b) The nursing facility and the project architect or engineer may elect to request approval of design and construction plans through a self-certification review process. The nursing facility and the project architect or engineer shall submit a self-certification request on a form provided by the Department, along with the review fee specified in OAC 310:675-5-23. The form shall be signed by the nursing facility and the project architect or engineer attesting that the plans and specifications are based upon and comply with the requirements of this Chapter. The form shall require information necessary to demonstrate compliance with OAC 310:675-5-25(c).

(c) To be eligible for self-certification, projects must comply with the following requirements:

(1) The project involves any portion of the nursing facility where residents are intended to be examined or treated and the total cost of design and construction is two million and five hundred thousand dollars (\$2,500,000) or less; or

(2) The project involves only portions of the nursing facility where residents are not intended to be examined or treated; and

(3) The project architect or engineer attesting the application has held a license to practice architecture or engineering for at least five (5) years prior to the submittal of the application, is licensed to practice in Oklahoma; and

(4) The nursing facility owner/operator acknowledges that the Department retains the authority to:

(A) Perform audits of the self-certification review program and select projects at random for review;

(B) Review final construction documents;

(C) Conduct on-site inspections of the project;

(D) Withdraw approval based on the failure of the nursing facility or project architect or engineer to comply with the requirements of this Chapter; and

(5) The nursing facility agrees to make changes required by the Department to bring the construction project into compliance with this Chapter.

(d) Within twenty-one (21) days after receipt of a complete application, the Department shall approve or deny the application for self-certification and send notification to the nursing facility. If the application is denied, the nursing facility shall have thirty (30) calendar days to submit additional or supplemental information demonstrating that the application complies with the requirements for self-certification of plans and specifications. The Department shall have fourteen (14) calendar days after receipt of supplemental information to reconsider the initial denial and issue a final approval or denial of the self-certification request.

(e) After denial of the application for self-certification and prior to the start of construction, the nursing facility shall pay the applicable fee for plan review specified in OAC 310:667-47-1(b)(1) through (5). Upon receipt of the plan review fee, the Department shall review the nursing facility's plans in accordance with the process in OAC 310:675-5-23.

SUBCHAPTER 7. ADMINISTRATION

310:675-7-5.1. Reports to state and federal agencies

(a) **Timeline for reporting.** All reports to the Department shall be made ~~by telephone or facsimile~~ within twenty-four (24) hours of the reportable incident unless otherwise noted. A follow-up report of the incident shall be ~~mailed or faxed~~ submitted to the Department within five (5) Department business days after the incident. The final report shall be filed with the Department within ten (10) Department business days after the incident.

(b) **Reporting abuse, neglect or misappropriation.** The facility shall report to the Department allegations and incidents of *resident abuse, neglect or misappropriation of residents' property* [63 O.S. §1-1939(A)(1)(e)]. This requirement does not supersede reporting requirements in Title 43A of the Oklahoma Statutes (relating to the Protective Services for the Elderly and for Incapacitated Adults Act).

(d) **Reporting to licensing boards.** The facility shall also report allegations and incidents of resident abuse, neglect, or misappropriation of residents' property by licensed personnel to the appropriate licensing board.

(d) **Reporting communicable diseases.** The facility shall report *communicable diseases* [63 O.S. §1-1939(A)(1)(a)] and injuries as specified by the Department in OAC 310:515 (relating to communicable disease and injury reporting).

(e) **Reporting certain deaths.** The facility shall report *deaths by unusual occurrence, such as accidental deaths or deaths other than by natural causes, and deaths that may be attributed to a medical device*, [63 O.S. §1-1939(A)(1)(b)] according to applicable state and federal laws. The facility shall also report such deaths to the Department.

(f) **Reporting missing residents.** The facility shall report *missing residents* to the Department after a search of the facility and facility grounds and a determination by the facility that the resident is missing. *In addition, the facility shall make a report to local law enforcement agencies within two (2) hours if the resident is still missing* [63 O.S. §1-1939(A)(1)(c)].

(g) **Reporting criminal acts.** The facility shall report *situations arising where a criminal intent is suspected. Such situations shall also be reported to local law enforcement* [63 O.S. §1-1939(A)(1)(d)]. Where physical harm has occurred to a resident as a result of a suspected criminal act, a report shall immediately be made to the municipal police department or to the sheriff's office in the county in which the harm occurred. A facility that is not clear whether the incident should be reported to local law enforcement should consult with local law enforcement.

(h) **Reporting utility failures.** The facility shall report to the Department utility failures of more than ~~four~~ (4) eight (8) hours.

(i) **Reporting certain injuries.** The facility shall report to the Department incidents that result in: fractures, head injury or require injury requiring treatment at a hospital, a physician's diagnosis of closed head injury or concussion, or head injuries that require more than first aid.

(j) **Reporting storm damage.** The facility shall report to the Department storm damage resulting in relocation of a resident from a currently assigned room.

(k) **Reporting fires.** The facility shall report to the Department all ~~fires~~ accidental fires and fires not planned or supervised by facility staff occurring on the licensed real estate.

(l) **Reports made following local emergency response.** In lieu of making incident reports during an emergency response to a natural or man-made disaster, the facility may coordinate its communications, status reports and assistance requests through the local emergency response coordinator, and file a final report with the Department within ten (10) days after conclusion of the emergency response.

(m) **Reporting nurse aides.** The facility shall report to the Department allegations and incidents of abuse, neglect, or misappropriation of resident property by a nurse aide by submitting a completed Nurse Aide Abuse, Neglect, Misappropriation of Resident Property Form (ODH Form 718), which requires the following:

- (1) facility name, address, and telephone;
- (2) facility type;
- (3) date;
- (4) reporting party name or administrator name;
- (5) employee name and address;
- (6) employee certification number;
- (7) employee social security number;
- (8) employee telephone number;
- (9) termination action and date;
- (10) other contact person name and address; and
- (11) facts of abuse, neglect, or misappropriation of resident property.

(~~nn~~) **Content of reports to the department.** Reports to the Department made pursuant to this section shall contain the following:

- (1) The preliminary report shall, at the minimum, include:
 - (A) who, what, when, and where; and
 - (B) measures taken to protect the resident(s) during the investigation.

(2) The follow-up report shall, at the minimum, include:

- (A) preliminary information;
- (B) the extent of the injury or damage if any; and
- (C) preliminary findings of the investigation.

(3) The final report shall, at the minimum, include preliminary and follow-up information and:

- (A) a summary of investigative actions;
- (B) investigative findings and conclusions based on findings; and
- (C) corrective measures to prevent future occurrences.
- (D) if items are omitted, why the items are omitted and when they will be provided.

(o) Form for incident reports to the Department. Facilities shall use the Incident Report Form, ODH Form 283, to report incidents required to be reported to the Department under OAC 310:675-7-5.1. The ODH Form 283 shall require: the facility name, address and identification number; the date, location and type of incident; parties notified in response to the incident; description of the incident; the relevant resident history; summary of the investigation; and name of person completing the report.

310:675-7-6.1. Complaints

(a) **Complaints to the facility.** The facility shall make available to each resident or the resident's representative a copy of the facility's complaint procedure. The facility shall ensure that all employees comply with the facility's complaint procedure. The facility's complaint procedure shall include at least the following requirements.

(1) The facility shall list in its procedures and shall require to be posted in a conspicuous place outside the administrator's office area the following information:

- (A) The names, addresses and telephone numbers of facility staff persons designated to receive complaints for the facility;
- (B) Notice that a good faith complaint made against the facility shall not result in reprisal against the person making the complaint; and
- (C) Notice that any person with a complaint is encouraged to attempt to resolve the complaint with the facility's designated complaint staff, but that the person may submit a complaint to the Department without prior notice to the facility.

(2) If a resident, resident's representative or facility employee submits to the administrator or designated complaint staff a written complaint concerning resident abuse, neglect or misappropriation of resident's property, the facility shall comply with the Protective Services for Vulnerable Adults Act, Title 43A O.S. Sections 10-101 through 10-110.

(b) **Complaints to the Department.** The following requirements apply to complaints filed with the Department.

(1) The Department shall provide to each facility a notice identifying the telephone number and location of the Department's central call center to which complaints

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may be submitted. The facility shall post such notice in a conspicuous place outside the administrator's office area.

(2) Any person may submit a complaint to the Department in writing, by phone, or personally. The Department shall reduce to writing a verbal complaint received by phone or in person.

(3) If the complainant is a facility resident, the resident's representative, or a current employee of the facility, the Department shall keep the complainant's identity confidential. For other complainants the Department shall ask the complainant's preference regarding confidentiality.

(4) The Department shall receive and triage complaints at a central call center. The complaints shall be classified and investigated according to the following priorities:

(A) A complaint alleging a situation in which the facility's noncompliance with state or federal requirements relating to nursing facilities has caused or is likely to cause serious injury, harm, impairment or death to a resident shall be classified as immediate jeopardy and shall be investigated by the Department within two (2) working days;

(B) A complaint alleging minimal harm or more than minimal harm to a resident but less than an immediate jeopardy situation shall be classified as actual harm and shall be investigated by the Department within ten (10) working days; and

(C) A complaint alleging other than immediate jeopardy or actual harm ~~to a resident but that represents a repeated or ongoing violation shall be classified as a continuing complaint and investigated within twenty five (25) days shall be scheduled for an onsite survey and investigated during the next onsite survey or sooner if deemed necessary by the Department;~~ and

(D) ~~A complaint alleging other than immediate jeopardy or actual harm to a resident and that is not a continuing complaint shall be classified as a primary complaint and shall be investigated within thirty (30) days~~A complaint alleging a violation that caused no actual harm but the potential for more than minimal harm to a resident, that repeats a violation cited by the Department within the preceding twelve (12) months, and that is alleged to have occurred after the Department determined the facility corrected the previous violation, shall be classified as continuing and investigated the earlier of the next onsite survey or ninety (90) calendar days.

(5) In addition to scheduling investigations as provided in paragraph (4) of this subsection, the Department shall take necessary immediate action to remedy a situation that alleges a violation of the Nursing Home Care Act, any rules promulgated under authority of the Act, or any federal certification laws or rules, if that situation represents a serious threat to the health, safety and welfare of a resident.

(6) In investigating complaints, the Department shall:

(A) Protect the identity of the complainant if a current or past resident or resident's representative or

designated guardian or a current or past employee of the facility by conforming to the following:

(i) The investigator shall select at least three (3) records for review, including the record of the resident identified in the complaint. The three records shall be selected based on residents with similar circumstances as detailed in the complaint if possible. All three (3) records shall be reviewed to determine whether the complaint is substantiated and if the alleged deficient practice exists; and

(ii) The investigator shall interview or observe at least three (3) residents during the facility observation or tour, which will include the resident referenced in the complaint if identified. If no resident is identified, then the observations used of the three residents shall be used to assist in either substantiating or refuting the complaint;

(B) Review the facility's quality indicator profile using resident assessments filed pursuant to OAC 310:675-9-5.1 to determine whether the facility has been "flagged", if the complaint involves resident abuse, pressure ulcers, weight loss or hydration;

(C) Review surveys completed within the last survey cycle to identify tendencies or patterns of non-compliance by the facility;

(D) Attempt to contact the State or Local Ombudsman prior to the survey; and

(E) Interview the complainant, the resident, if possible, and any potential witness, collateral resource or affected resident.

(7) The Department shall limit the complaint report to the Health Care Financing Administration Form 2567 if applicable and the formal report of complaint investigation.

(A) The Form 2567 shall be issued to the facility within ten (10) business days after completion of the investigation.

(B) The formal report of complaint investigation shall be issued to the facility and the complainant, if requested, within ten (10) business days after completion of the investigation. The formal report of investigation shall include at least the following:

(i) Nature of the allegation(s);

(ii) Written findings;

(iii) Deficiencies, if any, related to the complaint investigation;

(iv) Warning notice, if any;

(v) Correction order, if any; and

(vi) Other relevant information.

310:675-7-12.1. ~~Incident~~Internal facility incident reports

(a) **Incident defined.** An incident is any accident or unusual occurrence where there is apparent injury, ~~or~~ where injury may ~~or may not~~ have occurred, ~~including but not limited to, head injuries, medication, treatment errors or events subject to the reporting requirements in 310:675-7-5.1 (relating to reportable~~

incidents). The incident report shall cover all unusual occurrences within the facility, or on the premises, affecting residents, and incidents within the facility or on the premises affecting visitors or employees.

(b) **Incident records.** Each facility shall maintain an incident report record and shall have incident report forms available.

(c) **Incident report format.** ~~Incident reports shall be on a printed incident report form. The form used shall be Long Term Care's Incident Report Form, ODH Form 283. The Incident Report Form requires incident report shall include, at a minimum: the facility name, address and identification number;~~ the date, location and type of incident; parties notified in response to the incident; description of the incident; the relevant resident history; summary of the investigation; and name of person completing the report.

(d) **Incident report preparation.** At the time of the incident, the administrator, or the person designated by the facility with authority to exercise normal management responsibilities in the administrator's absence, shall be notified of the incident and prepare the report. The report shall include the names of the persons witnessing the incident and their signatures where applicable.

(e) **Incident reporting: scope.** ~~The incident report shall cover all unusual occurrences within the facility, or on the premises, affecting residents, and incidents within the facility or on the premises affecting visitors or employees.~~

(f) **Incident records on file.** A copy of each incident report shall be on file in the facility.

(g) **Incident in clinical record.** The resident's clinical record shall describe the incident and indicate the findings on evaluation of the resident for injury.

(h) **Incidents: reviewers.** All incident reports shall be reviewed by the director of nursing and the administrator and shall include corrective action taken where health and safety are affected.

SUBCHAPTER 11. INTERMEDIATE CARE FACILITIES FOR THE MENTALLY RETARDED (16 BEDS AND LESS (ICF/MR-16) OF 16 BEDS AND LESS FOR INDIVIDUALS WITH INTELLECTUAL DISABILITIES (ICF/IID-16)

310:675-11-5. Physical plant

(a) ~~ICF/MR-16~~ICF/IID-16 facilities shall be of one hour (minimum) fire resistant construction as approved by the Department and the State Fire Marshal, or shall be fully protected by an automatic sprinkler system approved by the Department and the State Fire Marshal. In addition, ~~ICF/MR-16~~ICF/IID-16 facilities shall comply with the requirements of Chapter 21, "Life Safety Code; NFPA 101, 1985", the National Fire Protection Association (NFPA) 101: Life Safety Code, 2012 Edition, adopted in 81 Federal Register 26871 by the Centers for Medicare & Medicaid Services on July 5, 2016 applicable to residential board and care occupancies for small facilities are incorporated by reference. The text and commentary provided in the "Life Safety Code

Handbook, Third Edition: based on the "Life Safety Code; NFPA 101, 1985", shall be the official interpretation for the Code. For Medicare or Medicaid certified ICF/IID-16s, the Life Safety Code adopted by the Centers for Medicare & Medicaid Services prevails if there is a conflict between the Life Safety Code and this Chapter.

(b) Prior to issuance of license, the essential operation functions of the physical plant shall be submitted to licensing agency for review and approval. This submittal shall be in such detail as will depict compliance with applicable codes, including emergency evacuation and day to day living accommodations. This submittal shall be accompanied by the applicant's written certification declaring the classification (prompt, slow, impractical) shown for "evacuation capabilities" Chapter 21, LSC 1985 Edition. The certified evacuation classification shall not change without written approval of State Fire Marshal and Licensing Agency. The Department shall receive, prior to each required survey, a written declaration by a physician or nurse or qualified ~~mental retardation~~intellectual disabilities professional, stating that each resident qualifies for the evacuation classification, as previously submitted and approved.

(c) Each facility must have a license. Any facility licensed under this part shall consist of contiguous construction.

(1) **Resident rooms.** The following requirements shall be provided:

- (A) Capacity shall be a maximum of four (4) residents.
- (B) Minimum area shall be 80 square feet per occupant in multi-bed rooms and 100 square feet in single bed rooms.
- (C) Each resident shall have a minimum of three square feet of closet or locker space which shall contain at least a clothes rod and one adjustable shelf.

(2) **Service areas.** The following shall be provided:

- (A) Toilet and bathing facilities shall be provided in an arrangement similar to general domestic residential facilities, except that bathrooms combining toilet, lavatory, tub and/or shower shall be no less than 60 square feet in size.
- (B) Bathing and toilet facilities shall be provided on a ratio of one facility for each five residents.
- (C) Resident staff offices shall be provided at the facility in sufficient size and number to permit the safe storage and handling of prescription medications used by the individual residents, space for private counseling of residents, space for the business affairs of the ~~ICF MR-16~~ICF/IID-16 to be conducted in private, and space for the maintenance of records pertaining to resident care.
- (D) Linen and supply areas shall be provided in a manner which permits the separation of the clean and soiled materials. Clean linen and supplies shall be stored separately from the area in which the soiled materials are collected.
- (E) Meal service space shall be provided as follows:

(i) Kitchen. Space for conventional food preparation and baking with sufficient storage for maintaining at least a four day supply of all foods required for a general diet, including cold storage.

(ii) Dining. There shall be 15 square feet per person allocated to permit residents and on-duty staff to dine at the same time.

(iii) Warewashing shall be in accordance with the requirements of the care facilities as stated in Chapter 257 (relating to Food Service Establishments) of this Title.

(F) Housekeeping materials and supplies shall be maintained in a designated area which is apart from the food service and sleeping areas.

(3) **Recreation, lounge and public areas.** Each ~~ICF/MR 16~~ICF/IID-16 shall provide interior lounge and recreation space at a rate of no less than 20 square feet per bed. If public visitation areas are included, the lounge and recreation space shall be no less than 25 square feet per bed. Outside recreation lounge areas shall be provided. These areas shall have sufficient lighting to permit utilization after sundown.

(4) **Natural lighting and ventilation of rooms.** All habitable and occupiable rooms or spaces shall contain windows, skylights, monitors, glazed doors, transoms, glass block panels or other light transmitting media opening to the sky or on a public street, yard or court. The light transmitting properties and the area of the devices used shall be adequate to meet the minimum day lighting and ventilating requirements specified herein.

(5) **Window size.** Windows and exterior doors may be used as a natural means of light and ventilation, and when so used their aggregate glass area shall amount to not less than eight percent of the floor area served, and with not less than one half of this required area available for unobstructed ventilation.

310:675-11-5.1. Plans and specifications requirements applicable to ICF/IID-16

The following sections of this Chapter shall apply to ICF/IID-16 facilities: 310:675-5-22 (relating to exceptions and temporary waivers), 310:675-5-23 (relating to submission of plans and specifications and related requests for services), 310:675-5-24 (relating to preparation of plans and specifications) and 310:675-5-25 (relating to self-certification of plans).

[OAR Docket #17-644; filed 7-13-17]

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

[OAR Docket #17-643]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 3. Licensure Requirements
310:680-3-3. Applications [AMENDED]
310:680-3-6. Records and reports [AMENDED]
310:680-3-9. Complaints [AMENDED]
310:680-3-14. Appropriate occupancy [AMENDED]
Subchapter 5. Construction Requirements and Physical Plant
310:680-5-6. Building elements [AMENDED]
310:680-5-7. Resident rooms [AMENDED]
310:680-5-9. Submission of plans and specifications and related requests for services [NEW]
310:680-5-10. Preparation of plans and specifications [NEW]
310:680-5-11. Self-certification of plans [NEW]
Subchapter 7. Environmental Health and Sanitary Requirements
310:680-7-5. Housekeeping [AMENDED]
Subchapter 11. Staffing Requirements
310:680-11-1. Requirements [AMENDED]

AUTHORITY:

Oklahoma State Board of Health; Title 63 O.S. § 1-104, 63 O.S. Sections 1-106.1, 1-1908 and 1-821

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

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Approved by Governor's declaration on June 13, 2017

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June 13, 2017

EFFECTIVE:

October 1, 2017

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

Title 63, the Public Health Code, at section 1-106.1, authorizes the State Board of Health to establish a system of fees to be charged for health services and for services rendered to members of the public in the issuance and renewal of licenses and permits by the State Commissioner of Health and the State Department of Health. Section 1-1908 of the Public Health Code authorizes the State Board of Health to promulgate rules for the submission and resubmission of construction plans and the assessment of fees for the review. Section 1-821 authorizes the adoption of rules in furtherance of the Residential Care Act, which includes provisions for issuance of licenses, complaint investigations, incident reporting, housekeeping and staffing.

Subchapter 3 is amended to authorize the use of a physician assistant or advanced practice registered nurse to provide services and consultation; requirements for records and reports for licensure are updated to reflect current law. Certain incident reporting is amended to encourage coordination with local emergency response managers. Reporting of injuries that have certain physician diagnoses or require treatment at a hospital are addressed.

Certain complaint investigation timeframes are amended and definitions added. Statutory requirements for appropriate occupancy are clarified in the rule. Resident choice in room furnishings is asserted. In Subchapter 5 a process for reviewing plans and specifications for new buildings or major alterations is defined with fees for review of design and construction

plans and specifications and fees for related services including applications for self-certification, a process for residential care homes to self-certify compliance of their plans for certain types of projects. Housekeeping requirements are clarified in Subchapter 7 as are staff training requirements for first aid and CPR for direct care staff in Subchapter 11.

CONTACT PERSON:

Information regarding this rule may be obtained by contacting Michael Cook, Service Director, Long Term Care Service, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1207, telephone (405) 271 6868, or by e-mail to MikeC@health.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF OCTOBER 1, 2017:

SUBCHAPTER 3. LICENSURE REQUIREMENTS

310:680-3-3. Applications

- (a) An applicant for license or renewal thereof to operate a residential care home shall submit to the Department a completed application along with the fifty dollar (\$50.00) license fee and documents required by the Commissioner to determine that the applicant is of reputable and responsible character and otherwise demonstrates the skill and fitness to provide the necessary services. In addition, the applicant shall have appropriate business or professional experience in dealing with the type of residents in the home. The license fee of fifty dollars (\$50.00) is not refundable.
(b) A license fee of twenty dollars (\$20.00) shall accompany any application for modification of a license.
(c) An application for license, or renewal, shall include a copy of all agreements with the professional consultants utilized by the home.
(d) An application for an initial license to operate a residential care home shall include documentation that the State Fire Marshal or the State Fire Marshal's representative has inspected and approved the home. Each application for renewal of a license for a residential care home with more than six beds shall include documentation of annual inspection and approval by the State Fire Marshal or the State Fire Marshal's representative.
(e) The following items must be renewed annually:
(1) An Agreement/agreement with a physician, physician assistant or advanced practice registered nurse to provide emergency medical services and clinical consultation.
(2) Agreements with registered nurse, registered dietitian, and registered pharmacist, as required based on the needs of the residents.
(3) Licensed plumber or building inspector's report.
(4) Licensed electrician or municipal inspector's report.
(5) Kitchen inspection report made by a registered sanitarian.

(f) An approval letter from the local zoning authority shall accompany each initial license application. Each initial application shall be accompanied by a statement from the unit of local government having zoning jurisdiction over the location of the home stating that the location is not in violation of a zoning ordinance. [63:1-822(C)]

(g) Each application shall be accompanied by an attested statement from the applicant assuring that the applicant has not been convicted of a felony in connection with the operation or management of a home, or facility as defined in Section 1-1902 of Title 63 of the Oklahoma Statutes or the care and treatment of the residents of a home, or facility as defined in Section 1-1902 of Title 63 of the Oklahoma Statute [63:1-822.D]complies with 63 O.S. Section 1-822(D). If the applicant is a firm, partnership or corporation, the application shall include an attested statement from each member of the firm or partnership and from each officer and major stockholder of the corporation.

310:680-3-6. Records and reports

- (a) Every residential care home shall conspicuously post in an area of its offices accessible to residents, employees, and visitors, the following:
(1) Its current license.
(2) The name of the current administrator and their certificate license posted.
(3) A copy of Residents' Rights.
(4) Complaint procedure, established by the Nursing Home Care Act and provided by the Department which includes name, address, and telephone number of a person within the Department who is authorized to receive complaints.
(5) A copy of any order pertaining to the facility/home issued by the Department or a court, which is currently in effect.
(b) Every residential care home shall retain the following for public inspection:
(1) A complete copy of every inspection report of the residential care home received from the Department during the past three (3) years.
(2) A copy of every order pertaining to the residential care home issued by the Department or a court during the past three (3) years.
(3) A description of the services provided by the residential care home, the rates charged for those services, and items for which a resident may be separately charged.
(4) A copy of the statement of ownership.
(5) A list of personnel who are licensed, certified, or registered and employed or retained by the residential care home, including area in which individual is credentialed.
(6) If source of payment for resident's care is from public funds, the contract with the agency providing the funds.
(c) Reports of communicable disease shall be made in accordance with 63 O.S. 1-501, et seq.
(d) The Department shall be notified of all incidents pertaining to fire, storm damage, death other than natural, residents missing, or utilities/utility failure for more than eight (8) four (4) hours, and incidents that result in fractures, head injuries or require treatment at a hospital. The home shall report to the

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Department incidents that result in: fractures, injury requiring treatment at a hospital, a physician's diagnosis of closed head injury or concussion, or head injuries that require more than first aid. Notice shall be made no later than the next working day. In lieu of making incident reports during an emergency response to a natural or man-made disaster, the home may coordinate its communications, status reports and assistance requests through the home's local emergency response coordinator, and file a final report with the Department within ten (10) days after conclusion of the emergency response.

(e) An evacuation plan shall be developed and permanently displayed in the hallways and sitting room. Fire drills shall be conducted at least quarterly.

(f) ~~Facility~~The home shall have a written plan for temporary living arrangements in case of fire, climatic conditions that warrant evacuation and/or other natural disasters that may render the home unsuitable.

310:680-3-9. Complaints

(a) **Complaints to the residential care home.** The home shall make available to each resident or the resident's representative a copy of the home's complaint procedure. The home shall ensure that all employees comply with the home's complaint procedure. The home's complaint procedure shall include at least the following requirements:

(1) The home shall list in its procedures and shall require to be posted in a conspicuous place outside the administrator's office area the following information:

(A) The names, addresses and telephone numbers of staff persons designated to receive complaints for the home;

(B) Notice that a good faith complaint made against the home shall not result in reprisal against the person making the complaint; and

(C) Notice that any person with a complaint is encouraged to attempt to resolve the complaint with the home's designated complaint staff, but that the person may submit a complaint to the Department without prior notice to the home.

(2) If a resident, resident's representative or home employee submits to the administrator or designated complaint staff a written complaint concerning resident abuse, neglect or misappropriation of resident's property, the home shall comply with the Protective Services for Vulnerable Adults Act, Title 43A O.S. Sections 10-101 through 10-110.

(b) **Complaints to the Department.** The following requirements apply to complaints filed with the Department.

(1) The Department shall provide to each home a notice identifying the telephone number and location of the Department's central call center to which complaints may be submitted. The home shall post such notice in a conspicuous place outside the administrator's office area.

(2) Any person may submit a complaint to the Department in writing, by phone, or personally. The Department shall reduce to writing a verbal complaint received by phone or in person.

(3) If the complainant is a resident, the resident's representative, or a current employee of the home, the Department shall keep the complainant's identity confidential. For other complaints, the Department shall ask the complainants preference regarding confidentiality.

(4) The Department shall receive and triage complaints at a central call center. The complaints shall be classified and investigated according to the following priorities:

(A) A complaint alleging a situation in which the home's noncompliance with state requirements relating to residential care homes has caused or is likely to cause serious injury, harm, impairment or death to a resident shall be classified as immediate jeopardy and shall be investigated by the Department within two (2) working days;

(B) A complaint alleging minimal harm or more than minimal harm to a resident but less than an immediate jeopardy situation shall be classified as actual harm and shall be investigated by the Department within ten (10) working days; and

(C) A complaint alleging other than immediate jeopardy or actual harm ~~to a resident but that represents a repeated or ongoing violation shall be classified as a continuing complaint and investigated within twenty five (25) days shall be scheduled for an onsite survey and investigated during the next onsite survey or sooner if deemed necessary by the Department;~~ and

(D) ~~A complaint alleging other than immediate jeopardy or actual harm to a resident and that is not a continuing complaint shall be classified as a primary complaint and shall be investigated within thirty (30) days.~~ A complaint alleging a violation that caused no actual harm but the potential for more than minimal harm to a resident, that repeats a violation cited by the Department within the preceding twelve (12) months, and that is alleged to have occurred after the Department determined the facility corrected the previous violation, shall be classified as continuing and investigated the earlier of the next onsite survey or ninety (90) calendar days.

(5) In addition to scheduling investigations as provided in paragraph (4) of this subsection, the Department shall take necessary immediate action to remedy a situation that alleges a violation of the Residential Care Act or any rules promulgated under authority of the Act if that situation represents a serious threat to the health, safety and welfare of a resident.

(6) In investigating complaints, the Department shall:

(A) Protect the identity of the complainant if a current or past resident or resident's representative or designated guardian or a current or past employee of the home by conforming to the following:

(i) The investigator shall select at least three (3) records for review, including the record of the resident identified in the complaint. The three records shall be selected based on residents with similar circumstances as detailed in the complaint

if possible. All three (3) records shall be reviewed to determine whether the complaint is substantiated and if the alleged deficient practice exists; and

(ii) The investigator shall interview or observe at least three (3) residents during the home observation or tour, which will include the resident referenced in the complaint if identified and available in the home. If no resident is identified, then the observations used of the three residents shall be used to assist in either substantiating or refuting the complaint;

(B) Review surveys completed within the last survey cycle to identify tendencies or patterns of non-compliance by the home;

(C) Attempt to contact the State or Local Ombudsman and the complainant, if identified, prior to the survey; and

(D) Interview the complainant, the resident, if possible, and any potential witness, collateral resource or affected resident.

(7) The Department shall limit the complaint report to the formal report of complaint investigation. The formal report of complaint investigation shall be issued to the home and the complainant, if requested, within ten (10) business days after completion of the investigation. The formal report of investigation shall include at least the following:

- (A) Nature of the allegation(s);
- (B) Written findings;
- (C) Deficiencies, if any, related to the complaint investigation;
- (D) Warning notice, if any;
- (E) Correction order, if any; and
- (F) Other relevant information.

310:680-3-14. Appropriate occupancy

~~A residential care home shall not admit or provide services to a resident who is not ambulatory and essentially capable of participating in their own activities of daily living. Residents shall not routinely require nursing services~~The residents of a residential care home shall be ambulatory and essentially capable of participating in their own activities of daily living, but shall not routinely require nursing services [63 O.S. Section 1-820(a)]. The resident may receive nursing services that an individual otherwise may receive in their private home provided by an individual or agency qualified under state or federal law.

SUBCHAPTER 5. CONSTRUCTION REQUIREMENTS AND PHYSICAL PLANT

310:680-5-6. Building elements

(a) Each residential care home shall have its address clearly visible from the street.

(b) At least two (2) flashlights in working order shall be maintained for emergency lighting.

(c) All doors and windows opening to the outside for ventilation shall be screened. Screens shall be well fitted and in good repair.

(d) Adequate enclosed secure storage space shall be provided for items belonging to residents. ~~Clothing, bedding, and residents's personal belongings shall be stored off the floor.~~

(e) Each residential care home shall have one toilet facility for every six (6) residents. Toilet facility shall contain one (1) stool and one (1) lavatory.

(f) Bathtubs or showers shall be provided at the rate of one (1) for each ten (10) residents.

(g) Hot water temperatures at faucets accessible to residents shall be maintained within a range of 100° to 120° Fahrenheit.

(h) Laundry equipment, if on premises, shall be housed in a safe, well-ventilated and clean area. Laundry equipment shall be kept clean and dryer shall be vented to outside.

(i) Linen storage areas shall be provided and be clean and organized.

(j) Cleaning supplies and equipment shall be stored in a separate, clean, and locked area.

(k) Telephone service must be available within the building. Pay phones are not acceptable as the only telephone service.

310:680-5-7. Resident rooms

(a) Each resident shall be provided with clean, comfortable orderly, and reasonably private living accommodations.

(b) Each resident's room shall have direct access to exits and other areas of the home without passing through another resident's room, the kitchen, laundry, or bathroom.

(c) Each single resident room shall contain a minimum of 80 square feet of floor space.

(d) Each resident room containing multiple beds shall provide a minimum of 60 square feet per bed.

(e) Each resident room shall have at least one (1) outside operable window installed in a vertical wall which can be used as an emergency exit. However, if a facility~~home~~ has a sprinkler system approved by the State Fire Marshall, it shall be exempt from the requirement of an outside operable window in each resident room useable as an emergency exit but shall be required to have a window. Minimum dimension of this window shall be 22 inches and the area shall be minimum of 5 square feet. Windows shall have adjustable coverings to provide privacy.

(f) Each resident room shall have a full door which can be closed to provide privacy.

(g) Male and female residents shall not be housed in the same or adjoining rooms which do not have a full floor-to-ceiling partition and door which can be locked, except immediate family may occupy the same room.

(h) Each resident room shall have an electrical outlet.

(i) Each resident room shall have a minimum of 20 foot candle power of lighting.

(j) ~~Each~~Unless the resident elects otherwise, each resident shall have a comfortable chair, a bedside table and a bureau or its equivalent for storing personal belongings.

(k) When residents' personal furniture is used, it shall be clean and in good repair.

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- (l) Each resident's bed shall have a comfortable mattress and bed linens which are clean and in good condition.
- (m) Clean towels and wash cloths shall be available to meet the needs of all residents. Towels and wash cloths shall be in good condition.

310:680-5-9. Submission of plans and specifications and related requests for services

(a) **Submission of plans.** Before construction is begun, plans and specifications covering the construction of new buildings or major alterations to existing buildings shall be submitted to the Department for review as provided in OAC 310:680-5-10 or OAC 310:680-5-11.

(1) Plans and specifications are required for the following alterations:

- (A) Changes that affect path of egress;
- (B) Change of use or occupancy;
- (C) Repurposing of spaces;
- (D) Structural modifications;
- (E) Heating, ventilation and air conditioning (HVAC) modifications;
- (F) Electrical modifications that affect the essential electrical system;
- (G) Changes that require modification or relocation of fire alarm initiation or notification devices;
- (H) Changes that require modification or relocation of any portion of the automatic fire sprinkler system;
- (I) Replacement of fixed medical equipment if the alteration requires any work noted in (A) through (H) of this paragraph;
- (J) Replacement of or modifications to any required magnetic or radiation shielding;
- (K) Changes to or addition of any egress control devices or systems.

(2) Plans and specifications are not required for the following alterations:

- (A) Painting, papering, tiling, carpeting, cabinets, counter tops and similar finish work provided that the new finishes shall meet the requirements of this Chapter;
- (B) Ordinary repairs and maintenance;
- (C) Modifications to nurse call or other signaling/communication/information technology systems provided the modifications meet the requirements of this Chapter; or
- (D) Replacement of fixed or moveable medical equipment that does not affect electrical, HVAC, or shielding requirements noted above.

(b) **Fees.** Each construction project submission shall be accompanied by the appropriate review fee based on the cost of design and construction of the project. Fees for plan and specification reviews and related Department services are as follows:

(1) Design and construction plans and specifications fee: two one-hundredths percent (0.02%) of the cost of design and construction of the project, with a minimum fee of Fifty Dollars (\$50.00) and a maximum fee of One Thousand Dollars (\$1,000.00);

(2) Request for exception or temporary waiver fee: Five Hundred Dollars (\$500.00);

(3) Application for self-certification fee: Five Hundred Dollars (\$500.00);

(4) Courtesy construction inspection fee: Five Hundred Dollars (\$500.00);

(5) Professional consultation or technical assistance fee: Five Hundred Dollars (\$500.00) for each eight hours or major fraction thereof of staff time. For technical assistance requiring travel, the fee may be increased to include the Department's costs for travel.

(c) **Fees when greater than two (2) submittals required.** The fee for review of design and construction plans and specifications shall cover the cost of review for up to two (2) stage one and two (2) stage two submittals and one final inspection. If a stage one or stage two submittal is not approved after two (2) submissions, another review fee shall be required with the third submittal. Fast-track projects shall be allowed two reviews for each package submitted. If a fast-track stage package is not approved after the second submittal, another review fee based on the cost of the project shall be required with the third submittal of the package.

(d) **Review process.** Design and construction plans and specifications shall be reviewed in accordance with the following process.

(1) Unless otherwise provided in this Subchapter, the Department shall have ten (10) calendar days in which to initially determine if the filed application is administratively complete

(A) Upon determining that the application is not administratively complete, the Department shall immediately notify the applicant in writing and shall indicate with reasonable specificity the inadequacies and measures necessary to complete the application. Such notification shall not require nor preclude further review of the application and further requests for specific information. If the Department fails to notify the applicant as specified in this Paragraph, the period for technical review shall begin at the close of the administrative completeness review period. Upon submission of correction of inadequacies, the Department shall have an additional ten (10) calendar days to review the application for completeness.

(B) Upon determination that the application is administratively complete, the Department shall immediately notify the applicant in writing. The period for technical review begins.

(2) The Department shall have forty-five (45) calendar days from the date a completed application is filed to review each application for technical compliance with the relevant regulations and reach a final determination.

(A) The time period for technical review is tolled (the clock stops) when the Department has asked for supplemental information and advised the applicant that the time period is tolled pending receipt.

(B) To make up for time lost in reviewing inadequate materials, a request for supplemental information may specify that up to 30 additional calendar

days may be added to the deadline for technical review, unless the request for supplemental information is a second or later request that identifies new deficiencies not previously identified.

(C) Failure by an applicant to supplement an application within 90 calendar days after the request shall be deemed to be withdrawn unless the time is extended by agreement for good cause.

(D) Extensions may be made as provided by law.

310:680-5-10. Preparation of plans and specifications

(a) **Stage one.** Preliminary plans and outline specifications shall be submitted and include sufficient information for approval by the Department of the following: scope of project; project location; required fire-safety and exiting criteria; building-construction type, compartmentation showing fire and smoke barriers, bed count and services; the assignment of all spaces, areas, and rooms for each floor level, including the basement. A residential care home has the option, at its own risk, to bypass the stage one submittal and proceed directly to submittal of stage two documents.

(b) **Stage two.** A proposed construction document shall be submitted that includes final drawings and specifications adequate for proposed contract purposes. All final plans and specifications shall be appropriately sealed and signed by an architect registered by the State of Oklahoma. All construction modifications of approved documents are subject to review and approval, and shall be submitted timely.

(c) **Special submittals.**

(1) **Fast-track projects.** The fast track process applies only to stage two submittals. A stage one submittal and functional program must be approved before entering the fast track process.

(A) Equipment and built-in furnishings are to be identified in the stage one submittal.

(B) The residential care home has the option to submit two packages: civil, landscaping and structural in stage one, and the balance of the components in stage two.

(C) Fast-track projects shall have prior approval and be submitted in no more than four (4) separate packages.

(i) Site work, foundation, structural, under-slab mechanical, electrical, plumbing work, and related specifications.

(ii) Complete architectural plans and specifications.

(iii) All mechanical, electrical, and plumbing plans and specifications.

(iv) Equipment and furnishings.

(2) **Radiation protection.** Any project that includes radiology or special imaging equipment used in medical diagnosis, treatment, and therapy of residents, shall include plans, specifications, and shielding criteria, prepared by a qualified medical physicist. These plans shall be submitted and approved by the Department prior to installation of the equipment.

(d) **Floor plan scale.** Floor plans are to be submitted at a scale of one-eighth (1/8) inch equals one (1) foot, with additional clarifying documents as required.

(e) **Application form.** The submittal shall be made using a Department application form which requests information required by this Chapter and specifies the number of copies and format for document submittal.

310:680-5-11. Self-certification of plans

(a) The Department shall make available consultation and technical assistance services covering the requirements of this section to a residential care home considering self-certification of plans. The consultation and technical assistance is subject to the fees specified in OAC 310: 680-5-9. The consultation is optional and not a prerequisite for filing a request through the self-certification review process.

(b) The residential care home and the project architect or engineer may elect to request approval of design and construction plans through a self-certification review process. The residential care home and the project architect or engineer shall submit a self-certification request on a form provided by the Department, along with the review fee specified in OAC 310:680-5-9. The form shall be signed by the residential care home and the project architect or engineer attesting that the plans and specifications are based upon and comply with the requirements of this Chapter. The form shall require information necessary to demonstrate compliance with OAC 310:680-5-11(c).

(c) To be eligible for self-certification, projects must comply with the following requirements:

(1) The project involves any portion of the residential care home where residents are intended to be examined or treated and the total cost of design and construction is two million five hundred thousand dollars (\$2,500,000) or less; or

(2) The project involves only portions of the residential care home where residents are not intended to be examined or treated; and

(3) The project architect or engineer attesting the application has held a license to practice architecture or engineering for at least five (5) years prior to the submittal of the application, is licensed to practice in Oklahoma; and

(4) The residential care home owner/operator acknowledges that the Department retains the authority to:

(A) Perform audits of the self-certification review program and select projects at random for review;

(B) Review final construction documents;

(C) Conduct on-site inspections of the project;

(D) Withdraw approval based on the failure of the residential care home or project architect or engineer to comply with the requirements of this Chapter; and

(5) The residential care home agrees to make changes required by the Department to bring the construction project into compliance with this Chapter.

(d) Within twenty-one (21) calendar days after receipt of a complete application, the Department shall approve or deny the application for self-certification and send notification to the residential care home. If the application is denied, the residential care home shall have thirty (30) calendar days to submit

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additional or supplemental information demonstrating that the application complies with the requirements for self-certification of plans and specifications. The Department shall have fourteen (14) calendar days after receipt of supplemental information to reconsider the initial denial and issue a final approval or denial of the self-certification request.

(e) After denial of the application for self-certification and prior to the start of construction, the residential care home shall pay the applicable fee for plan review specified in OAC 310:680-5-9. Upon receipt of the plan review fee, the Department shall review the residential care home's plans in accordance with the process in OAC 310:680-5-9.

SUBCHAPTER 7. ENVIRONMENTAL HEALTH AND SANITARY REQUIREMENTS

310:680-7-5. Housekeeping

- (a) The interior and exterior of the home shall be safe, clean and sanitary.
- (b) Practices and procedures shall be utilized to keep the home free from offensive odors, accumulation of dirt, rubbish, dust, and safety hazards.
- (c) Floors and floor coverings shall be clean and in good condition. Floor polishes shall provide for a non-slip finish.
- (d) Walls and ceilings shall be in good condition and shall be cleaned regularly. All homes shall have walls capable of being cleaned.
- (e) Deodorizers shall not be used to cover up odors caused by unsanitary conditions or poor housekeeping practices.
- (f) Home and surrounding areas shall be kept free from refuse, discarded furniture, and old newspaper. Combustibles such as cleaning rags and compounds must be kept in closed metal containers in areas away from residents' rooms. No items shall be stored in the hot water heater closet or furnace closet.
- (g) General laundry shall be placed in linen ~~hampers/carts with the lids closed~~ hampers, carts, laundry bags, or similar containers suitable for laundry not soiled by body fluids.
- (h) Soiled linens or clothing shall be placed in bags or non-porous containers with lids tightly closed.

SUBCHAPTER 11. STAFFING REQUIREMENTS

310:680-11-1. Requirements

Residential care homes shall employ sufficient personnel appropriately qualified and trained to provide the essential services of the home.

(1) Sufficient number of persons.

- (A) Each residential care home shall have one (1) person who is administratively responsible for the home.
- (B) There shall be at least one (1) person in charge of the home and its operation on duty in the home whenever residents are present.

(C) There shall be a minimum of 3/4 hour of personnel per day per resident based on average daily census.

(D) All residential care homes shall have a signed, written agreement with a registered nurse to act as a consultant. Documentation of the use of the nurse consultant shall be maintained in the home.

(2) Staff qualifications.

(A) Each residential care home shall have a person designated as "Administrator," ~~who is at least 21 years old and has obtained a residential care administrator's certificate of training from an institute of higher learning whose program has been reviewed by the Department is licensed in accordance with Title 63 O.S. Section 330.51 et seq.~~

(B) All personnel who have the responsibility for administering or monitoring medication to residents shall obtain a certificate of training in medication administration from an institution of higher learning whose program has been reviewed by the Department. (Currently licensed physicians, registered nurses and licensed practical nurses shall be deemed to meet the medication administration training requirement.)

(C) All other staff shall have training and/or experience relevant to their job description.

(D) Personnel responsible for providing professional services must be appropriately certified, registered, or licensed.

(3) **Staff training.** In order to ensure all homes maintain a level of competency necessary to meet the needs of each individual served in the home, personnel must complete the following training requirements.

(A) ~~All employees~~ At all times there shall be in the home at least one staff person ~~shall be currently certified~~ trained in first-aid and cardiopulmonary resuscitation ~~(that is Red Cross training or equivalent training with a hands-on component).~~ Proof of ~~certification~~ and training shall be kept on file in the home. First-Aid and CPR certificate training shall be renewed annually, or as required to be kept current.

(B) Administrators shall ~~have sixteen (16) hours of job related training annually. First aid and CPR training do not count for the sixteen (16) hours~~ obtain continuing education training as required to maintain an administrator's license pursuant to Title 63 O.S. Section 330.51 et seq. All training shall be documented and the record kept in the home.

(C) Direct care staff who are responsible for administering or monitoring medication shall annually be required to receive at least eight (8) hours of training by the administrator of the home in patient reporting and observation, record keeping, independent or daily living skills, leisure skills and recreation, human relations and such other training relevant to residential care program and operation.

(D) All direct care staff shall begin eight (8) hours of inservice by the administrator of the home or other person designated by the administrator of the home

within ninety (90) days of employment and completed within twelve (12) months of employment. Eight (8) hours of inservice shall be required annually thereafter.

(E) All residential care programs shall provide a new employee orientation program which includes instruction in policies and procedures regarding the areas of abuse and neglect, resident rights, confidentiality, procedure for handling emergencies, and job descriptions.

(4) Personnel practices.

(A) Residents shall not supervise other residents.

(B) The behavior of staff reflects sensitivity to the needs of the individuals served for privacy and dignity. For example, confidentiality and normal sensibility are exercised in speaking about an individual, and undignified displays, exhibitions, or exposure of individuals served, whether deliberate or unintentional, do not occur.

(C) The home shall have written personnel policies and procedures which address such issues as: job description, terms of employment, authorized leave procedures, grievance procedures, and professional conduct.

[OAR Docket #17-643; filed 7-13-17]

**TITLE 325. OKLAHOMA HORSE RACING COMMISSION
CHAPTER 1. COMMISSION POWERS AND JURISDICTION**

[OAR Docket #17-564A]

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GIST/ANALYSIS:

The proposed amendments redefine the range of fines that may be imposed against licensees by the Boards of Stewards for violations of racing rules.

CONTACT PERSON:

Bennett Abbott, Assistant General Counsel, Oklahoma Department of Agriculture, Food, and Forestry, Office of General Counsel, P.O. Box 528804, Oklahoma City, OK 73152-8804, phone: (405) 522-5803, email: bennett.abbott@ag.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E) WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

325:1-1-7. Jurisdiction of Stewards to suspend or fine

(a) The Stewards' jurisdiction in any matter is ~~continuous~~ continuous. The Stewards may deny, refuse to issue, or refer to the Commission for revocation, or suspend for not more than one year per violation the occupation license of any person whom they have the authority to supervise; or they may impose a fine not to exceed ~~Two Thousand Five Hundred Dollars (\$2,500.00)~~ Ten Thousand Dollars (\$10,000) per violation; or they may exclude from all enclosures in this state; or they may suspend and fine and/or exclude; or they may order that a person be ineligible for a license. All such suspensions, fines, denials, refusals to issue, referrals or exclusions shall be reported immediately to the Commission.

(b) Upon a first offense for the following rule violations, the Stewards shall assess no less than the Stewards' maximum fine and suspension authorization to any person found to be in violation of Commission rules concerning:

- (1) a positive laboratory report involving a United States Drug Enforcement Agency Schedule I or II controlled substance, or
- (2) possession of a United States Drug Enforcement Agency Schedule I or II controlled substance within the enclosure, or
- (3) possession or use within the enclosure of a prohibited electrical or mechanical device. Any person whose racing record(s) reflects such prior rule violation(s) shall, upon a subsequent violation, be referred by the Stewards to the Commission with the Stewards' recommendation for specific fine and suspension above the Stewards' authorized fine and suspension maximums.

(c) The Stewards may suspend a horse from participating in races if the horse has been involved in violation(s) of the Rules promulgated by the Commission or the provisions of the Oklahoma Horse Racing Act under the following circumstances:

- (1) A horse is a confirmed Bleeder as determined by the Official Veterinarian, and the Official Veterinarian recommends to the Stewards that the horse be suspended from participation.
- (2) A horse is involved with:
 - (A) Any violation of medication laws and rules;
 - (B) Any suspension or revocation of an occupation license by the Stewards or the Commission or any

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racing jurisdiction recognized by the Commission;
and/or
(C) Any violation of prohibited devices, laws, and
rules.

[OAR Docket #17-564A; filed 7-7-17]

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

[OAR Docket #17-563A]

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RULES:

325:45-1-24 [AMENDED]

AUTHORITY:

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Incorporated Standards:

Uniform Classification Guidelines of Foreign Substances (Version 12.0)

Incorporating Rules:

325:45-1-24

Availability:

See contact person below.

GIST/ANALYSIS:

The proposed amendments redefine the range of fines that may be imposed against licensees by the Boards of Stewards for violations of racing rules.

CONTACT PERSON:

Bennett Abbott, Assistant General Counsel, Oklahoma Department of Agriculture, Food, and Forestry, Office of General Counsel, P.O. Box 528804, Oklahoma City, OK 73152-8804, phone: (405) 522-5803, email: bennett.abbott@ag.ok.gov

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,
THE FOLLOWING RULES ARE CONSIDERED
FINALLY ADOPTED AS SET FORTH IN 75 O.S.,
SECTIONS 250.3(5) AND 308(E) WITH AN EFFECTIVE
DATE OF SEPTEMBER 11, 2017:**

325:45-1-24. Drug classification and penalties

Upon a finding of a violation of any medication or prohibited substances rule in this Chapter, the Stewards shall consider

the classification level of the violation as currently established by the UNIFORM CLASSIFICATION GUIDELINES OF FOREIGN SUBSTANCES (Version 12.0) as promulgated by the Association of Racing Commissioners International, Inc. and may impose penalties and disciplinary measures consistent with the recommendations contained therein, except not to conflict with the mandates of 325:45-1-9 and 325:45-1-22. Provided, however, that in the event a majority of the Stewards determine that mitigating circumstances require imposition of a ~~lesser~~different penalty than the penalty suggested by the guidelines, ~~they~~the Stewards may impose ~~the lesser~~a different penalty. In the event a majority of the Stewards wish to impose ~~a greater penalty~~ or a penalty in excess of the authority granted them by 325:1-1-7, ~~then, and in such event, they~~the Stewards may impose a penalty up to the maximum penalty authorized by state law and refer the matter to the Commission with specific recommendations for further action.

[OAR Docket #17-563A; filed 7-7-17]

TITLE 325. OKLAHOMA HORSE RACING COMMISSION CHAPTER 50. HUMAN SUBSTANCE ABUSE TESTING

[OAR Docket #17-562A]

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325:50-1-3.1 [AMENDED]

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INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The proposed amendments clarify the procedures for substance abuse testing, payment of related costs, impose a license suspension for refusal to submit to testing, and make other minor grammatical changes for the purpose of clarity.

CONTACT PERSON:

Bennett Abbott, Assistant General Counsel, Oklahoma Department of Agriculture, Food, and Forestry, Office of General Counsel, P.O. Box 528804, Oklahoma City, OK 73152-8804, phone: (405) 522-5803, email: bennett.abbott@ag.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E) WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

325:50-1-3.1. Prohibited Licensee Activities/Substance Abuse Testing Procedures/Assessment/Treatment/ Penalties

- (a) All licensees shall be deemed to be exercising the privileges of their license... (b) It shall be a violation to exercise the privileges granted by a license from this Commission if the licensee: (1) Is engaged in the illegal sale or distribution of alcohol or a controlled substance; (2) Possesses, without a valid prescription, a controlled substance; (3) Is intoxicated or under the influence of alcohol or a controlled substance; (4) Is addicted, having been determined to be so by a professional evaluation, to alcohol or other drugs and not engaged in an abstinence-based program of recovery acceptable to the Commission; (5) Has in his/her possession within the enclosure any equipment, products or materials of any kind which are used or intended for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled dangerous substance; (6) Refuses to submit to urine or drug and/or alcohol testing, when notified that such testing is based on probable cause or reasonable grounds that the person is using drugs or alcohol or is based on the licensee's acting as if in an impaired condition; or (7) Presently has drugs (controlled substances) or alcohol in his or her body. With regard to alcohol, the results of a breathalyzer test showing a reading of more than .05 percent of alcohol in the blood shall be the criterion for a finding of alcohol present in the body. With regard to other controlled substances, presence of the drug in any quantity measured by the testing instrument establishes the presence of the drug for purposes of this paragraph. (c) The fact that a person charged with a violation of this rule is or has been lawfully entitled to use a prescribed substance shall not constitute a defense against any charge of violating this rule. (d) At its discretion, the Commission may conduct probable cause drug and/or alcohol testing in order to ensure safety on the racetrack. (e) When conducted, probable cause drug and/or alcohol testing shall apply, equally, to all licensees who may affect

- the outcome of a race and are exercising the privileges of their license. (f) No notice need be given as to onset or cessation of probable cause drug and/or alcohol testing. (g) For licensees who are tested under the provisions in this chapter, and whose testing shows the presence of drugs (controlled substances) or alcohol, any field screening test results shall be confirmed by a laboratory acceptable to the Commission which shall include Gas Chromatography/Mass Spectrometry (GC/MS) procedures. (h) When the sample quantity permits, each test sample shall be divided into portions so that one portion may be used for the confirmation procedure and another portion may be utilized for the licensee to obtain an independent analysis of the urine sample through the Commission designated laboratory. (i) The Commission shall provide for a secure chain of custody for the sample to be made available for drug and/or alcohol testing for the licensee. (j) All costs for the transportation and testing for the sample portion for the licensee shall be the financial responsibility of the requesting person as follows: (1) If the licensee is required by order/ruling by a Board of Stewards or OHRC to obtain testing prior to being eligible for license, all cost associated with drug and/or alcohol testing shall be paid by applicant. (2) If the licensee is ordered to obtain a drug and/or alcohol test by an OHRC Representative, all cost associated with testing shall be paid by OHRC. (k) Payment shall be due from the requesting person within 30 days of receipt of notice of the costs made prior to drug and/or alcohol testing. (l) Refusal to submit to a required drug and/or alcohol test will result in an immediate sixty (60) day suspension and require two (2) negative test results thirty (30) days apart prior to reinstatement. However, A licensee penalized or restricted pursuant to this chapter shall retain rights of due process with respect to any determination of alleged violations which may adversely affect the right capacity to hold a license. (m) If there has been a violation, under (b) above, the following additional procedures will be followed: (1) The Stewards/Commission may, at its discretion, order the licensee to obtain a professional assessment to determine whether there is a substantial probability that the licensee is dependent on, or abuses, alcohol or other drugs or the Stewards/Commission may act on the information at hand. (2) Actions in the case of a first violation may include revocation of the license, suspension of the license for up to six months, placing the violator on probation for up to 90 days and/or ordering formal assessment and treatment. (3) Actions in the case of a second violation may include revocation of the license, suspension of the license up to one year and/or a professional assessment of the person may be ordered by the Stewards/Commission. (4) Treatment or assessment, if ordered, must meet the conditions established in this rule. (5) If a professional assessment indicates presence of a problem of alcohol or other drug abuse that is not treatable

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within the reasonably foreseeable future (360 days) the license may be suspended for a period of up to one year.

(6) If a professional assessment indicates presence of a treatable problem of alcohol or other drug abuse or dependence, the Stewards/Commission may order the licensee to undergo treatment as a condition of continuing licensure. Such treatment will be through a program or by a practitioner, acceptable to the licensee and the Stewards/Commission. Required features of any program or practitioner acceptable to the Stewards/Commission will be:

- (A) Accreditation or licensure by an appropriate government agency, if required by state statute;
- (B) A minimum of one year follow-up of formal treatment; and
- (C) A formal contract indicating the elements of the treatment and follow up program that will be completed by the licensee and, upon completion, certified by the program administrator to the Stewards/Commission as completed. To effect the contract, the licensee will authorize release of information by the treating agency, hospital or individual.

(7) When a licensee is determined to have failed in maintaining abstinence, the licensee shall furnish to the Stewards/Commission an assessment by the treating agency, hospital or individual practitioner indicating whether the licensee was compliant with the agreed upon program of recovery.

(8) Persons being reinstated following a violation of these rules who have not successfully completed a rehabilitation program shall submit a negative drug and/or alcohol test prior to being licensed.

(9) Actions in the case of a third violation may include revocation of the license and the violator being deemed ineligible for licensure for up to five years.

(10) Prior human substance abuse violation reflected on a person(s) racing records from any racing jurisdiction(s) recognized by the Commission, including Oklahoma, shall be counted as violations when determining appropriate penalties as set forth in this rule.

[OAR Docket #17-562A; filed 7-7-17]

TITLE 325. OKLAHOMA HORSE RACING COMMISSION CHAPTER 70. OBJECTIONS AND PROTESTS; HEARINGS AND APPEALS

[OAR Docket #17-560A]

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325:70-1-19 [AMENDED]
325:70-1-24 [AMENDED]

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GIST/ANALYSIS:
The proposed amended rules are needed to protect personal information of licensees and to streamline deliberative processes.

CONTACT PERSON:
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E) WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

325:70-1-19. Rulings/orders by the Stewards

Any ruling or order issued by the Stewards shall specify the full name of the licensee or person subject to the ruling or order; most recent address on file with the Commission; date of birth; ~~social security number~~; statement of the offense charged including any rule number; date of ruling; fine and/or suspension imposed or other action taken; changes in the order of finish and purse distribution in a race, when appropriate; and any other information deemed necessary by the Stewards or the Commission. Any member of a Board of Stewards may, after consultation with and by mutual agreement of the other Stewards, issue an order or notice signed by one Steward on behalf of the Board of Stewards. Subsequently, an order containing all three Stewards' signatures shall be made part of the official record. [3A:204 and 3A:204.3]

325:70-1-24. Appeal hearing procedure

(a) Both appellant and appellee are entitled to have counsel present to present arguments. The appeal hearing is a hearing on the record and not a new hearing; therefore, presentations by both sides will be limited to arguments and/or comments regarding the record of the Stewards' hearing. Any alleged new evidence as discussed in 325:70-1-22 shall require that an offer of proof be made to the Commission, such offer of proof being a brief explanation of the new evidence to the Commission. If such offer is accepted and new evidence and/or witnesses allowed, both appellant and appellee are entitled to present evidence and witnesses and to cross-examine other witnesses.

(b) The Commission will allow each side 15 minutes for his/her presentation based on the record as alleged in the appeal petition. Upon conclusion of argument, Commissioners may ask questions. ~~Each party shall have the opportunity to submit proposed Findings of Fact and Conclusions of Law to the Commission prior to the Commission's deliberation.~~

[OAR Docket #17-560A; filed 7-7-17]

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

[OAR Docket #17-561A]

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RULES:

325:75-1-3 [AMENDED]

325:75-1-21 [AMENDED]

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GIST/ANALYSIS:

The proposed amendments revise the standards of care for retired and unwanted Oklahoma-Bred horses and the expenditure of funds from the Oklahoma Breeding Development Fund Special Account to care for retired and unwanted Oklahoma-Bred horses. The proposed rule amendments, among other changes, add provisions that permit the recertification of an accredited Oklahoma-Bred stallion after the certification has expired. The proposed fees are new and relate to the recertification of an accredited Oklahoma-Bred stallion after the certification has expired.

CONTACT PERSON:

Bennett Abbott, Assistant General Counsel, Oklahoma Department of Agriculture, Food, and Forestry, Office of General Counsel, P.O. Box 528804, Oklahoma City, OK 73152-8804, phone: (405) 522-5803, email: bennett.abbott@ag.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E) WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

325:75-1-3. Definition of Accredited Oklahoma-Bred Thoroughbred

As used in this Chapter, an accredited Oklahoma-Bred Thoroughbred horse shall mean a Thoroughbred horse which meets the requirements below:

(1) Stallion. An accredited Oklahoma-Bred stallion is one that is domiciled in Oklahoma, stands for service in Oklahoma, and is enrolled in the Oklahoma-Bred stallion registry. An Oklahoma-Bred stallion that is accredited as racing stock is not accredited as breeding stock in the registry unless the required application is filed and fee paid to Registering Agency. For resulting foals to be eligible for accreditation as Oklahoma-Bred racing stock, the stallion must be accredited in the Oklahoma-Bred stallion registry prior to the service that produces the resulting foal. Except for those foals eligible for accreditation that are sired by non-accredited stallions, any foals conceived prior to the stallion being accredited in the Oklahoma-Bred stallion registry will not be eligible for accreditation. Eligibility for participation in the Oklahoma-Bred Program begins when the application for the stallion registry is submitted, at which time the stallion must be domiciled in Oklahoma, and such application is in substantial compliance with the requirements of the registry. The stallion's application must be filed with the Oklahoma-Bred Registering Agency by February 1 of that breeding season. Late applications will be accepted after February 1 and through June 30 of that season. A stallion's accreditation shall not be forfeited if the stallion leaves Oklahoma for an indefinite period of time for racing, medical treatment, performance, or approved departure for breeding purposes in another hemisphere. An Oklahoma-Bred stallion may leave Oklahoma for the purpose of being offered in a recognized sale consignment. In the case of a sale consignment, an accredited stallion returned to Oklahoma to resume his domicile within 30 days after the sale date is not required to become re-accredited. Foals conceived after sale date will be ineligible if the stallion fails to resume domicile within thirty (30) days. Should the stallion not meet the return period from the sale, the stallion must be re-accredited upon resuming his domicile in order to be eligible for breeder awards from foals conceived after the date of departure. The burden of proof relating to such race, performance, medical treatment, sale consignment or breeding shall be on the Owner of record who shall produce such evidence to the Oklahoma-Bred Registering Agency.

(A) Stallions Leaving Oklahoma for Breeding Purposes in Another Hemisphere: Approved departure for breeding purposes shall be granted by the Registering Agency upon written notification by the stallion Owner or manager as to the destination of the stallion, the anticipated date the stallion will be leaving and the anticipated date of return to Oklahoma. The stallion must re-establish his domicile in Oklahoma prior to servicing any mare for which subsequent foals conceived by service from that stallion are to be eligible for accreditation. The Owner or manager of the stallion must provide written notice

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of the exact date of stallion's return and re-established domicile location in Oklahoma and the effective date for the stallion's eligibility to earn awards will be the date of return if notice is provided within 30 days of that date, or upon receipt of notice if longer than 30 days after the return of the Stallion.

(B) Re-Accreditation of Stallions: If a stallion leaves the State of Oklahoma for any reason other than breeding, sale consignment, performance, or medical treatment and terminates his domicile, that stallion will not be eligible to sire subsequent foals eligible for accreditation as racing stock in the Oklahoma-Bred Program. If the stallion returns to Oklahoma to re-establish his domicile, pays the appropriate fees and meets all other qualifying requirements, the stallion may become re-accredited in the Oklahoma-Bred stallion registry. If a stallion stands for service outside of Oklahoma during the calendar year in which a foal(s) was conceived, any foal conceived after accreditation or re-accreditation in the Oklahoma-Bred stallion registry and while the accredited stallion was standing in Oklahoma and which otherwise may be accredited in the Oklahoma-Bred Program upon presentation of acceptable documentation reflecting that the service producing the foal occurred while the accredited stallion was standing in Oklahoma. The stallion shall be eligible for stallion awards only from those breedings that occurred while the accredited stallion was physically domiciled in Oklahoma. The Registering Agency may require an affidavit for any breeding season during which the stallion is standing as an accredited Oklahoma-Bred stallion. Failure to provide the required documentation for any year shall result in the stallion Owner being ineligible for stallion awards for all foals resulting from that breeding season unless the required documentation is received by the Registering Agency within thirty (30) days after written request. Further, foals conceived during that breeding season shall be ineligible for accreditation unless the required affidavit is received by the Registering Agency not later than thirty (30) days after written request. An accredited stallion who terminates his domicile in Oklahoma and later returns to Oklahoma to resume his domicile, prior to breeding, but fails to re-accredit in the Oklahoma-Bred stallion registry, may qualify for a hardship re-accreditation. In addition to the regular application fee, the applicant shall be charged an additional \$200.00 fee. All other qualifications and requirements of the Oklahoma-Bred stallion registry must be met as well. The Registering Agency may require proof that all requirements for accreditation have been met. Any foal by the stallion seeking re-accreditation that would otherwise be eligible for accreditation as racing stock in the Oklahoma-Bred Program will be eligible for accreditation upon hardship re-accreditation in the Oklahoma-Bred stallion registry. Acceptance of a foal application under these

circumstances, by the official Registering Agency, is subject to the stallion being enrolled under a hardship re-accreditation application in the Oklahoma-Bred stallion registry within sixty (60) days from receipt of notice by the stallion Owner that the stallion was not re-accredited in the Oklahoma-Bred stallion registry prior to breeding. The fee to enroll the racing stock in the Oklahoma-Bred Program will be based upon the age of the foal on the date the Registering Agency receives the racing stock application. Failure to enroll a stallion under a Hardship Application within sixty (60) days from receipt of notice that the stallion was not re-accredited prior to breeding will result in the rejection of any pending racing stock applications for foals by the stallion. The Owner of an accredited Oklahoma-Bred stallion (for the purpose of qualifying for stallion awards) is the Owner or Lessee of record at the time the offspring is conceived.

(C) Yearly Re-Certification Fee. The Owner of the ~~accredited Oklahoma-Bred Stallion~~ stallion must pay a yearly re-certification fee. ~~If paid prior to February 1, the~~ The yearly recertification fee is \$25.00; and due on or before ~~after February 1, but before June 30,~~ after February 1, but before June 30, the fee is \$50.00. If the yearly recertification fee is paid after between June 30 and December 31, the yearly fee is \$400.00 ~~\$250.00. If the yearly recertification fee is not paid on or before December 31, the stallion will lose its certification as an accredited Oklahoma-Bred stallion. The owner of a stallion may re-certify the stallion as an accredited Oklahoma-Bred stallion by paying a hardship fee of \$500.00 prior to the stallion's foal(s) becoming a yearling or \$1,000.00 prior to the foal(s) two-year-old year.~~ If the Stallion ~~stallion~~ is not re-certified, the horse ~~stallion~~ loses its accreditation in the Oklahoma-Bred Stallion Registry, and the Owner is ineligible for stallion awards for all foals resulting from that breeding season.

(2) Broodmare. An accredited Oklahoma-Bred broodmare is one that is domiciled in Oklahoma and is enrolled in the Oklahoma-Bred broodmare registry. An Oklahoma-Bred mare that is accredited as racing stock is not accredited as breeding stock in the registry unless the required application is filed and fee paid to Registering Agency. Eligibility for participation in the Oklahoma-Bred Program begins when the application for the broodmare registry is submitted, at which time the broodmare must be domiciled in Oklahoma, and such application is in substantial compliance with the requirements of the registry. The broodmare's application must be filed with the Oklahoma-Bred Registering Agency by December 31 of the year prior to foaling. Late applications will be accepted after December 31, but must be prior to foaling. Hardship Applications are accepted at any time. A broodmare's accreditation shall not be forfeited if the broodmare leaves Oklahoma for an indefinite period of time for racing, medical treatment, performance,

or approved departure for breeding purposes in another hemisphere. An Oklahoma-Bred broodmare may leave Oklahoma for the purpose of being offered in a recognized sale consignment. In the case of sale consignment, an accredited broodmare returned to Oklahoma to resume her domicile within 30 days after the sale date is not required to become re-accredited. The burden of proof relating to such race, performance, medical treatment, sale consignment or breeding shall be on the Owner of record who shall produce such evidence to the Oklahoma-Bred Registering Agency.

(A) **Broodmares Serviced by Out-of-State Stallions:** An accredited Oklahoma-Bred broodmare may be shipped out of Oklahoma to be serviced by a non-accredited stallion, provided she is returned to Oklahoma to resume her domicile not later than August 15 of the calendar year in which she is serviced. Failure of the accredited broodmare to return to Oklahoma to resume her domicile not later than August 15 shall have two results: First, the broodmare loses her accreditation in the program; Second, the resultant foal is ineligible for accreditation in the Oklahoma-Bred Program, unless the broodmare resumes her domicile in Oklahoma and files for re-accreditation prior to the birth of the foal. In order for the broodmare to produce successive foals eligible for accreditation in the Oklahoma-Bred Program, beginning with foals born in 2011, she must produce a foal in Oklahoma in alternating years by an accredited stallion standing in Oklahoma.

(B) **Thoroughbred Broodmares Serviced by Non-Thoroughbred Stallions:** An accredited Oklahoma-Bred Thoroughbred broodmare that is serviced by a Non-Thoroughbred stallion shall be subject to the same regulations as Quarter Horse, Paint, or Appaloosa broodmares with regard to its accreditation and eligibility to produce accredited Oklahoma-Bred racing stock so long as the mare is serviced by a Quarter Horse, Paint, or Appaloosa stallion.

(C) **Re-accreditation Rule:** If a broodmare leaves the State of Oklahoma for any reason other than breeding, performance, sale consignment or medical treatment, the broodmare is deemed terminated and loses broodmare accreditation in the Oklahoma-Bred Program. Such broodmare will not be eligible to produce subsequent foals eligible for accreditation as racing stock in the Oklahoma-Bred Program. If the broodmare returns to Oklahoma to re-establish her domicile, pays the appropriate fees and meets all other qualifying requirements, the broodmare may become re-accredited in the Oklahoma-Bred broodmare registry provided, however, a broodmare re-accredited in consecutive years shall not be eligible to produce accredited foals born in the second or subsequent, consecutive year of back to back re-accreditation, unless the application for re-accreditation includes a valid transfer of Ownership between individuals that are not related by blood or marriage, or that share the

same physical address. In the event a re-accredited broodmare produces successive foals by non-accredited Oklahoma-Bred stallions, the broodmare Owner will not receive any breeder awards for the second foal. The Registering Agency may request a copy of the foal report submitted to the official breed registry for any accredited Oklahoma-Bred broodmare. An accredited broodmare who terminates her domicile in Oklahoma and later returns to Oklahoma to resume her domicile, prior to foaling, but fails to re-accredit in the Oklahoma-Bred broodmare registry, may qualify for a hardship re-accreditation. In addition to the regular application fee, the applicant shall be charged an additional \$200.00 fee. All other qualifications and requirements of the Oklahoma-Bred broodmare registry must be met as well. The Registering Agency may require proof that all requirements for accreditation have been met. Any foal out of the broodmare seeking re-accreditation that would otherwise be eligible for accreditation as racing stock in the Oklahoma-Bred Program will be eligible for accreditation upon hardship re-accreditation in the Oklahoma-Bred broodmare registry provided however, a broodmare re-accredited in consecutive years shall not be eligible to produce accredited foals born in the second or subsequent, consecutive year of back to back re-accreditation, unless the application for re-accreditation includes a valid transfer of Ownership between individuals that are not related by blood or marriage, or that share the same physical address. Acceptance of a foal application under these circumstances, by the official Registering Agency, is subject to the broodmare being enrolled under a hardship re-accreditation application in the Oklahoma-Bred broodmare registry within sixty (60) days from receipt of notice by the broodmare Owner that the broodmare was not re-accredited in the Oklahoma-Bred broodmare registry prior to foaling. The fee to enroll the racing stock in the Oklahoma-Bred Program will be based upon the age of the foal on the date the Registering Agency receives the racing stock application. Failure to enroll a broodmare under a Hardship Application within sixty (60) days from receipt of notice that the broodmare was not re-accredited prior to foaling will result in the rejection of any pending racing stock applications for foals out of that mare.

(D) Oklahoma broodmares are classified annually as one of the following and are eligible for awards from Oklahoma-Bred funds as defined, and must meet all other eligibility requirements:

- (i) **Category A - Accredited Oklahoma-Bred broodmare** who is bred to an accredited Oklahoma-Bred stallion receives 100% of the available broodmare awards for that foal [Oklahoma conceived and foaled].
- (ii) **Category B - Accredited Oklahoma-Bred broodmare** who is bred to a non-Oklahoma-Bred

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accredited stallion receives 50% of the available broodmare awards for that foal [Oklahoma foaled].

(iii) Category C - A broodmare who is accredited for the first time in the Oklahoma-Bred Program, whether or not bred to an accredited Oklahoma-Bred stallion, receives 100% of the available breeders awards for her first foal. [Re-accredited broodmares do not qualify for Category C.]

All subsequent awards for the broodmare will be based upon the first two foal options listed above.

(E) For Purposes of Qualifying for Broodmare Awards: the Owner of an accredited Oklahoma-Bred Thoroughbred broodmare is the Owner or Lessee of record at the time of foaling.

(3) Hardship Application. Notwithstanding other provisions of this Section, a mare accredited in the Oklahoma-Bred Program as a racing stock (with the proper Oklahoma-Bred stamp) but which has not been accredited in the Oklahoma-Bred broodmare registry prior to producing a foal that would otherwise be eligible for accreditation in the Oklahoma-Bred Program may be accredited in the Oklahoma-Bred broodmare registry. In addition to the regular application fee, the applicant shall be charged an additional \$200.00 fee. All other qualifications and requirements of the Oklahoma-Bred broodmare registry must be met as well. The Registering Agency may require proof that all requirements for accreditation have been met. Any foal out of the broodmare that would otherwise be eligible for accreditation as racing stock in the Oklahoma-Bred Program will be eligible for accreditation upon enrollment in the Oklahoma-Bred broodmare registry. Acceptance of a foal application under these circumstances by the official Registering Agency is subject to the broodmare being enrolled under a Hardship Application in the Oklahoma-Bred broodmare registry within sixty (60) days from receipt of notice by the broodmare Owner that the broodmare was not accredited in the Oklahoma-Bred broodmare registry. The fee to enroll the racing stock in the Oklahoma-Bred Program will be based upon the age of the foal on the date the Oklahoma-Bred Registering Agency received the racing stock application. Failure to enroll a broodmare under a Hardship Application within sixty (60) days from receipt of notice from the official Registering Agency that the broodmare was accredited in the Oklahoma-Bred racing stock registry and not in the Oklahoma-Bred broodmare registry, will result in the rejection of any pending racing stock applications for foals out of that mare.

(4) Racing stock. An accredited Oklahoma-Bred racehorse is one that foaled in Oklahoma, and meets the following requirements:

(A) Beginning with the foal crop of 2001 there will be two (2) classifications of Thoroughbred foals eligible for accreditation in the Oklahoma-Bred Program. The category for those foals out of an accredited Oklahoma-Bred broodmare and by an accredited

Oklahoma-Bred Stallion shall be classified as Oklahoma-Bred Conceived and Foaled. The second category for foals out of an accredited Oklahoma-Bred broodmare and by a non-accredited stallion shall be classified as Oklahoma-Bred Foaled. A foal out of an accredited Oklahoma-Bred broodmare and by a non-accredited stallion may receive accreditation in the Oklahoma-Bred racing stock registry provided all other requirements are met. In such an event, to be eligible for accreditation, the next foal out of said broodmare presented for accreditation must be by an accredited Oklahoma-Bred stallion and meet all other requirements. Further, in no event can a broodmare produce accredited Oklahoma-Bred foals in succession that are by non-accredited stallions. Except for the initial foal accredited in the Oklahoma-Bred Program, all accredited foals sired by non-accredited stallions must be preceded [by year of birth] in the registry by an accredited foal sired by an accredited stallion. Re-accreditation shall not preclude the listed rule. Provided all other requirements are met, both classifications are eligible for accreditation and may compete in Oklahoma-Bred races.

(B) An Oklahoma-Bred that is accredited as racing stock is not accredited as breeding stock in the registry. The Owner of an accredited Oklahoma-Bred racehorse (for the purpose of qualifying for added purse supplements) is the Owner or Lessee of record at the time of the race.

(5) Late applications.

(A) Broodmare. A broodmare may be accredited in the Oklahoma-Bred broodmare registry after December 31 of the year prior to foaling if the application for accreditation is submitted to the Oklahoma-Bred Registering Agency prior to foaling; and the broodmare is otherwise in substantial compliance with the requirements of the registry. Domicile must be established in Oklahoma when the broodmare's application is filed with the Oklahoma-Bred Registering Agency.

(B) Stallion. A stallion may be accredited in the Oklahoma-Bred stallion registry after February 1 and by June 30 and complete the current breeding season if the stallion is otherwise in substantial compliance with the requirements of the registry. Domicile must be established in Oklahoma when the stallion's application is filed with the Oklahoma-Bred Registering Agency.

(C) Fee. The fee to accredit a broodmare or stallion under a late application is twice the regular fee. The fee will not be refunded if the Registering Agency rejects the application but will be applied to accreditation of the horse for the next ensuing year.

(6) Domicile exception. An Oklahoma-Bred broodmare or stallion may leave Oklahoma for an indefinite period of time for race, performance or for medical treatment. The broodmare or stallion may leave Oklahoma for the purpose of being offered in a recognized sale consignment, and, if returned within thirty (30) days of sale

date, is not required to become re-accredited. Should the broodmare or stallion not meet the return period from the sale, it must be re-accredited. The burden of proof shall be on the Owner to notify the Registering Agency of the intent to leave the state for any of the above reasons. The Registering Agency may further require verification of participation, treatment or consignment to a sale. Further, the Owner must report to the Oklahoma-Bred Registering Agency the date the broodmare or stallion returned to Oklahoma.

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

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

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

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

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

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

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

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

(i) A horse participating in the "Adoption Program" must be stalled alone or have access to a pen with a constructed shelter to accommodate all horses in said pen.

(ii) The Adoption Program shall not include horses that are currently being "let down" will fall under the Pension Program funding until they are actively participating in the Adoption Program. In the event a horse is injured while in the Adoption Program and requires more than two consecutive weeks off, said horse shall only be eligible to receive Pension Program funding until it can

return to training. Horses deemed eligible to receive funding for the Adoption Program can only receive said funding for a maximum of twelve (12) months.

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

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

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

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

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

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

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

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

(F) The program shall maintain adequate dental care to allow a horse to chew and digest the provided feed.

~~(G)~~ The non-profit entity and subcontractor participating in the program must agree to and allow

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random, unannounced inspections of their care operations and facilities by the ~~Commission's Law Enforcement Division~~ OHRC or its representative;

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

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

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

(A) The horse must be ~~of~~ registered with a participating breed, named and tattooed;

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

(C) ~~The horse's last race or last workout cannot have occurred more than twelve (12) months prior to its entering into care in a program receiving funding under this Rule.~~ The horse must have raced at an Oklahoma Horse Racing Commission (OHRC) licensed racetrack within twelve (12) months of submitting an application for funding or had at least three (3) official workouts at an OHRC licensed racetrack within twelve (12) months of submitting an application for funding;

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

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

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

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

(A) No non-profit entity will be eligible to receive monies from the Oklahoma Breeding Development Fund Special Account for the purpose of caring for retired and unwanted Oklahoma-Bred racing stock during any calendar year unless the official horsemen's representative organization for a participating breed requests that the entity receive such from the Special Account during the calendar year. Requests by the official horsemen's representative organization

must be made on an annual basis and no matter when made will only make the non-profit entity eligible during the calendar year in question, assuming all other requirements are met by the non-profit entity.

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

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

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

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

(C) Of the funding made available to a non-profit entity for the purpose of providing care to retired and unwanted horses, the non-profit entity may use up to fifteen percent (15%) of those funds for administrative expenses, which are any expenses not related to directly providing of care to horses in the program.

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

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

racing stock horse and whether the horse is eligible under this Rule.

(F) A non-profit entity must notify the Commission's Executive Director within ~~two (2) weeks on an eligible horse's leaving the non-profit's Adoption or Pension Program~~ by virtue of death, adoption or any other reason forty eight (48) hours of a participating horse leaving their care for reason, including death, sale or adoption.

[OAR Docket #17-561A; filed 7-7-17]

**TITLE 330. OKLAHOMA HOUSING FINANCE AGENCY
CHAPTER 20. FINANCING PROJECTS FOR RESIDENTIAL MULTIFAMILY RENTAL PROPERTY [REVOKED]**

[OAR Docket #17-555]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 1. General Provisions and Administration [REVOKED]
- 330:20-1-1 [REVOKED]
- 330:20-1-2 [REVOKED]
- 330:20-1-3 [REVOKED]
- Subchapter 3. Applications [REVOKED]
- 330:20-3-1 [REVOKED]
- 330:20-3-2 [REVOKED]
- Subchapter 5. Submission of Requirements and Procedure [REVOKED]
- 330:20-5-1 [REVOKED]
- 330:20-5-2 [REVOKED]
- Subchapter 7. OHFA Fees [REVOKED]
- 330:20-7-1 [REVOKED]
- 330:20-7-2 [REVOKED]
- 330:20-7-3 [REVOKED]
- 330:20-7-4 [REVOKED]
- Subchapter 9. Agency Requirements-Multifamily [REVOKED]
- 330:20-9-1 [REVOKED]
- 330:20-9-2 [REVOKED]
- 330:20-9-3 [REVOKED]
- Subchapter 11. Evaluation Considerations [REVOKED]
- 330:20-11-1 [REVOKED]
- 330:20-11-2 [REVOKED]
- 330:20-11-3 [REVOKED]
- 330:20-11-4 [REVOKED]
- Subchapter 13. Compliance and Reporting Requirements [REVOKED]
- 330:20-13-1 [REVOKED]
- 330:20-13-2 [REVOKED]
- 330:20-13-3 [REVOKED]
- Subchapter 15. Sale, Transfer/Assumption [REVOKED]
- 330:20-15-1 [REVOKED]
- 330:20-15-2 [REVOKED]
- Appendix A. [REVOKED]
- Appendix B. [REVOKED]
- Appendix C. [REVOKED]

AUTHORITY:

These Chapter 20 Rules are authorized by 75 O.S., Section 302; 60 O.S., Sections 176 through 180.3; the Board of Trustees of Oklahoma Housing Finance Agency (OHFA), the Amended Trust Indenture, and the Bylaws of OHFA as established by the OHFA Board of Trustees.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

December 15, 2016

COMMENT PERIOD:

January 17, 2017 through March 3, 2017

PUBLIC HEARING:

n/a

ADOPTION:

March 22, 2017

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

March 23, 2017

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 13, 2017

FINAL ADOPTION:

June 13, 2017

EFFECTIVE:

September 11, 2017

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

Revocation of this Chapter 20 because a more current and updated Title 330. Chapter 30 covers same program.

The rules of this Chapter have been adopted for the purpose of complying with the provisions of the Administrative Procedures Act, 75 O.S., Section 250 et seq. OHFA conducts programs, transactions and activities relating to the financing of residential multifamily rental property and cooperatives with tax exempt debt and/or taxable debt. Chapter 20. Financing Projects for Residential Multifamily Rental Property (Rules) have not been updated since 1991. Title 330. Chapter 30. Multifamily Housing Bond Program rules are current and govern the same type of activity. In an effort to achieve simplicity and clarity, OHFA is recommending revocation of these Chapter 20 Rules. All information contained in Rules is now part of and included in Title 330. Chapter 30.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308 (E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 1. GENERAL PROVISIONS AND ADMINISTRATION [REVOKED]

330:20-1-1. Purpose [REVOKED]

~~The rules of this Chapter have been adopted for the purpose of complying with the provisions of the Administrative Procedures Act, 75 O.S., Sections 250 et seq. The rules of this Chapter shall be utilized by OHFA in the implementation and administration of financing projects for residential rental property.~~

330:20-1-2. Program description [REVOKED]

~~OHFA has determined that the proceeds from tax exempt or taxable debt can be used as an economical means of financing the construction, acquisition, and/or rehabilitation of multifamily housing projects to provide rental housing to individuals or families of low to moderate income to a greater extent than would otherwise be available. The rules of this chapter are designed to provide guidelines under which OHFA may act as a financing agency for residential rental housing projects using tax exempt or taxable debt.~~

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330:20-1-3. Techniques [REVOKED]

(a) Credit Enhancements may be used as a technique to achieve a bond rating, and/or lower interest rates and/or additional collateral for tax exempt or taxable financing of residential rental projects. Examples of such techniques include, but are not limited to:

- (1) the pledging of collateral which is maintained at certain levels;
- (2) third party guarantees;
- (3) a bank letter of credit;
- (4) any combination thereof, and other security features.

(b) Credit Enhancement may be provided during construction and/or completion and delivery of a complying mortgage, but must be approved by formal action of OHFA.

SUBCHAPTER 3. APPLICATIONS [REVOKED]

330:20-3-1. Applications; new construction [REVOKED]

A party (the "Developer") requesting OHFA to finance the construction of a residential rental housing project by the tax-exempt or taxable debt of OHFA shall submit the following to OHFA:

- (1) The Application Fee. (330:20-7-1(a))
- (2) The Application (Appendix A of this Chapter)
- (3) An opinion letter of counsel for Developer that all materials being submitted to OHFA therewith have been reviewed by said counsel and that in the opinion of said counsel the submitted materials comply with all requirements of the Rules and Regulations of OHFA applicable thereto.
- (4) A true and correct statement of all partners or stockholders in the partnership or corporation, as may be applicable. Include all partners of all partnerships involved and all stockholders of all corporations involved. Include all persons and entities owning or having any rights pertaining to any interest, direct or indirect, in the Developer, as is necessary to fully reveal all persons, parties, and entities having any interest, direct or indirect, in the Developer.
- (5) Developer's verified "Conflict of Interest" statement showing that the Developer has used due diligence to ascertain whether any Trustee, employee, attorney, or consultant for OHFA or any of their affiliates, as defined by Title 60, Oklahoma Statutes, Sections 175.3 and 178.8, has any direct or indirect interest with the Developer, (including, but not necessarily limited to, all firms, persons, parties, and entities named in the application in response to (4) of this subsection) the project, including, but not limited to, providing labor, services, consultation, goods, supplies or materials for the project or to or for Developer or other parties affiliated with the project or with the placement of the Bonds or other debt instrument proposed to be issued by OHFA to provide financing for the project.
- (6) A detailed plan for the management of the project.

(7) A set of plans and specifications (in final form, if available) for the construction of the project.

(8) If Developer(s) is/are not an individual(s), evidence of Developer(s) authority to enter into the project and borrow the financing funds from OHFA (Corporate resolutions, partnership minutes, etc.).

(9) Identification of the project by legal description.

330:20-3-2. Applications; existing - acquisition/rehabilitation [REVOKED]

A Developer requesting OHFA to finance the acquisition and/or rehabilitation of a residential rental housing project by the issuance of tax-exempt or taxable debt by OHFA shall submit the following to OHFA:

- (1) The Application Fee. (330:20-7-1(a))
- (2) The Application (Appendix A of this Chapter)
- (3) An opinion letter of counsel for Developer that all materials being submitted to OHFA therewith have been reviewed by said counsel and that in the opinion of said counsel the submitted materials comply with all requirements of the Rules and Regulations of OHFA applicable thereto.
- (4) A true and correct statement of all partners or stockholders in the corporation, as may be applicable. Include all partners of all partnerships involved and all stockholders of all corporations involved. Include all persons and entities owning or having any rights pertaining to any interest, direct or indirect, in the Developer, as is necessary to fully reveal all persons, parties, and entities having any interest, direct or indirect, in the Developer.
- (5) Developer's verified "Conflict of Interest" statement showing that the Developer has used due diligence to ascertain whether any Trustee, employee, attorney, or consultant for OHFA or any of their affiliates, as defined by Title 60, Oklahoma Statutes, Sections 175.3 and 178.8, has any direct or indirect interest in the Developer, (including, but not limited to, all firms, persons, parties and entities named in the application in response to (4) of this subsection) the project (including, but not limited to, providing labor, services, consultation, goods, supplies or materials for the project or to or for the Developer), or other parties affiliated with the project or with the placement of the Bonds or other debt instruments proposed to be issued by OHFA to provide financing for the project.
- (6) A detailed plan for the management of the project.
- (7) A set of plans and specifications (in final form, if available) for the rehabilitation of the project (when applicable).
- (8) For rehabilitation, a description of the major systems and/or common elements to be replaced; work write up and cost estimate of anticipated improvements to existing individual units and work items on any new units.
- (9) If the Developer(s) is/are not an individual(s), evidence of Developer(s) authority to enter into the project and borrow the financing funds from OHFA (Corporate resolutions, partnership minutes, etc.).

- (10) Independent appraisal of the project property and/or the rehabilitation to be performed thereon made by a qualified appraiser satisfactory to OHFA.
- (11) Financial statements, including profit and loss, of the project for the year to date and statements for previous two years, (preferably accompanied by an opinion of a Certified Public Accountant, if one has been rendered).
- (12) A true and correct statement of all partners or stockholders in the Developer, as may be applicable. Include all partners of all partnerships involved and all stockholders of all corporations involved. Include all persons and entities owning or having any rights pertaining to any interest, direct or indirect, in the Developer, as is necessary to fully reveal all persons, parties, and entities having any interest, direct or indirect, in the Developer.
- (13) A history of the financing of the project (interim and permanent).
- (14) List of any appliances or furniture to be supplied by the owner.

SUBCHAPTER 5. SUBMISSION REQUIREMENTS AND PROCEDURE [REVOKED]

330:20-5-1. Initial resolution [REVOKED]

- (a) A meeting of OHFA's Board of Trustees will be scheduled, or the proposed project will be placed on the next Trustee meeting scheduled after OHFA's staff and other personnel have reviewed the application and required materials and sufficient information has been mailed to the Trustees for their review for the purpose of approving/disapproving the INITIAL RESOLUTION (Appendix B of this Chapter). OHFA will not hold a meeting relative to the proposed project on the day materials are received.
- (b) In accordance with the provisions of the Internal Revenue Code of 1954, as amended, and after being authorized by the Trustees by adoption of the Multifamily INITIAL RESOLUTION, the Hearing Officer designated by OHFA's Executive Director will provide for the publication of a public notice, conduct the public hearing, and provide for a record to be kept of the comments from the public hearing in order to provide a report thereof to the Trustees for their review.
- (c) In the event the project is located within the corporate boundaries of any municipality, OHFA will notify the appropriate elected city official of the INITIAL RESOLUTION and the notice of the public hearing, noting time and location.

330:20-5-2. Second resolution [REVOKED]

- (a) If the INITIAL RESOLUTION is adopted and the Public Hearing conducted, the Developer, not more than twenty (20) nor less than ten (10) working days prior to the anticipated date for consideration of the SECOND RESOLUTION by OHFA's Board of Trustees, must submit the following items in substantially final form if the items have not been previously submitted or have changed since submission:

- (1) The final detailed statement of the source and application of funds for the project, certified by the Developer(s).
- (2) A true, correct, and complete copy of the construction and/or rehabilitation contract with the general contractor, or all the major contractors if no general contractor is used.
- (3) A true, correct, and complete copy of the final plans.
- (4) A true, correct, and complete copy of the agreement with the architect, if applicable.
- (5) An independent appraisal of the project and the construction and/or rehabilitation to be performed thereon made by a qualified appraiser satisfactory to OHFA.
- (6) Final detailed project cost estimate and estimated draw schedule for the construction, acquisition, and/or rehabilitation of the project costs.
- (7) A primary binder from an insurance carrier satisfactory to OHFA, to provide fire, public liability, and property damage insurance to the Developer and OHFA, so their interest may appear, in an amount not less than eighty percent (80%) of the estimated Fair Market Value of the project upon completion, and public liability in the aggregate of not less than \$100,000 property damage/\$300,000 personal damage (per Person)/\$1,000,000 per incident for the project. However, OHFA's Trustees may require a larger amount of insurance depending upon the amount of financing required.
- (8) A draft copy of Developer's Tax Certification Form.
- (9) A certificate from the lending institution or other appropriate party in the transaction that the project has been underwritten, describing the underwriting standards employed (i.e., FHA, FNMA, GNMA, etc.), that the project has passed and satisfied those standards, and setting out the detailed cash flow estimates applicable to the project.
- (10) Such additional materials, etc., necessary to disclose any and all changes having occurred in the information submitted with the original application of the Developer(s) and as may be required by OHFA's staff or Trustees, or as may be necessary to make the information called for by these rules true and complete as of the most current date before the filing of such supplemental information with OHFA.
- (b) A meeting of OHFA's Board of Trustees will be scheduled, or the proposed project will be placed on the next scheduled Trustee meeting, after all the conditions set forth in this Subchapter have been satisfactorily met, for the purpose of approving/disapproving the SECOND RESOLUTION (Appendix C of this Chapter).

SUBCHAPTER 7. OHFA FEES [REVOKED]

330:20-7-1. Developer(s) [REVOKED]

- (a) Developer(s) must submit a non-refundable application fee as required by 330:20-3-1(a)(1) or 330:20-3-2(a)(1) in the greater amount of either two thousand dollars (\$2000) or five

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(5) basis points (.0005) of the requested amount of total debt estimated to be required to finance the developer's loan request.

(b) If the bond issue is successfully completed, the amount submitted pursuant to (a) of this Section will be counted as a part of the total application fee as described in 330:20-7-2 which is due at closing on the issuance of the debt by OHFA.

330:20-7-2. Total application fee [REVOKED]

A total fee will be charged by OHFA for each of the following described types of financing and must be submitted to OHFA as cash or a check, drawn on a solvent bank, that will be cashed the same day of receipt. All fees paid are non-refundable for any cause whatsoever.

(1) For Profit Developer/Owner: 90 basis points of the actual amount of bond issue (.0090 x bond issue amount).

(2) For Not for Profit Developer/Owner: 65 basis points of the actual amount of bond issue (.0065 x bond issue amount).

330:20-7-3. Annual service fee [REVOKED]

A total annual service fee for all multifamily projects, equaling fifteen (15) basis points of the outstanding principal amount of issuance of debt by OHFA or \$1200, whichever is greater, payable monthly to Oklahoma Housing Finance Agency will be charged by OHFA.

330:20-7-4. Assumption/transfer fee [REVOKED]

A total assumption/transfer fee for all multifamily projects will equal one (1) percent of the outstanding principal amount of OHFA debt not to exceed \$50,000. If for any reason the assumption/transfer is not approved or completed, an equitable portion of the paid fee may be returned after the deduction for OHFA's expenses and staff time. The amount of any such refund will be determined by the Trustees upon written application therefor by the party having paid the same to OHFA.

SUBCHAPTER 9. AGENCY REQUIREMENTS-MULTIFAMILY [REVOKED]

330:20-9-1. Disclosure [REVOKED]

Prior to any financing, a complete disclosure of all fees relative to the Project and bond/note issuance will be made to OHFA, and OHFA's Trustees shall review said fees for reasonableness, and shall have the right to require adjustment to such fees as a condition of providing the requested financing.

330:20-9-2. Review [REVOKED]

At any regular or special meeting, OHFA's Board of Trustees, upon recommendation of OHFA staff (after the public hearing), shall review the pending application and determine whether the project contemplated therein is in the judgment of the Trustees appropriate under the purposes of

the Agency, and in their sole discretion whether to grant final approval of the requested financing.

330:20-9-3. Project guarantees [REVOKED]

As to all projects, whether or not guaranteed by FHA, FmHA (or other federal programs), FNMA, or GNMA, the following shall apply:

(1) All project designs shall meet the applicable design standards established by local, state, and/or federal governmental authorities, including zoning, building, housing, and other codes and ordinances. The developer shall certify compliance with all zoning, building, housing, and other codes in effect in the municipality.

(2) The general construction and/or rehabilitation contract for the project must meet the Federal and State laws and regulations (including but not necessarily limited to equal opportunity laws) and shall be in accordance with the current American Institute of Architects Forum. All such contracts shall make provision for reserves for patent and latent defect corrections after completion of construction and developer's acceptance thereof. Such reserve shall be not less than one hundred fifty percent (150%) of the cost of correcting patent defects and two and one half percent (2 1/2%) of the contract amount for latent defects. Such reserves shall be held by the Trustee Bank for a period of one (1) year after acceptance of the project.

(3) The Indenture Agreement or other appropriate instrument shall provide that, upon commencement of operation of the project, the Trustee Bank, or other designated party to be approved by the Agency, shall make inspection of the project and appropriate records as necessary, but at least quarterly, to assure that the project is being properly constructed, and after completion of construction, at least annually, to assure that the project is being properly operated and maintained in accordance with all contractual requirements, rules and regulations, State, Federal, and Internal Revenue Code requirements.

(4) The loan agreement or other appropriate instrument shall:

(A) Provide that the developer shall at least make a quarterly report to the Trustee Bank on the total tenant occupancy, the required low to moderate income tenant occupancy, amount of rents due, rent collections (including arrearages), major maintenance performed, and such other information as may be required from time to time by OHFA.

(B) Provide that management fees for management and operation of the project be approved by OHFA at the time of closing the mortgage loan on the project.

(C) OHFA may require that the developer deposit with the Trustee Bank out of the developer's separate funds (not bond or mortgage proceeds) a special reserve fund as additional security for OHFA against default by the developer, which shall not be released to the developer until the mortgage note is paid in full; provided, however, that the interest earned upon said special reserve shall be first applied to any other reserve which is not current, then to current mortgage

payments, and then, if all are current, any other remaining interest in said special reserve may be released annually to the developer; and further provided that if developer commits a percentage of the project rental revenues to the replacement of such initial special reserve, any excess in paid reserve account may be released in accordance with the aforementioned priorities.

(5) ~~The Loan Agreement, Note and Mortgage shall provide that the sale of the project or change of control of the developer and whether 100% or less, direct or indirect, ownership of the subject or any direct or indirect interest therein shall accelerate the due date of the mortgage note, which shall thereupon be paid in full unless the sale or change of control or change in direct or indirect ownership is approved by the current bondholders and/or OHFA Trustees (whichever is applicable) prior to the time of the actual sale or change of control, whether such change(s) be 100% or less, or direct or indirect.~~

(6) ~~The mortgage shall require that the project be insured at all times in accordance with the requirements specified in 330:20-5-2(a)(7).~~

(7) ~~No projects that are requesting tax exempt issuance will be considered for financing by the Agency unless, in the opinion of the BOND COUNSEL and GENERAL COUNSEL for the Agency, the Agency's bonds to be issued to finance the project will qualify for tax exempt status under the laws and applicable regulations.~~

(8) ~~All debt issued by OHFA to provide financing must be without recourse against OHFA or its Trustees, officers, employees, counsel, agents, or other representatives, but shall be recoverable solely from the project property and the liability of the developer(s) upon the mortgage and note to OHFA. OHFA may require such personal guarantee by principals of the developer as it deems necessary to adequately insure the performance and payment by the developer of the mortgage note and mortgage.~~

(9) ~~The Mortgage, Mortgage Note, Bonds, Bond Indenture Agreement, Building or Rehabilitation Loan Agreement, Regulatory Agreement, Agency, Developer, and Trustee Bank resolutions, Official Statement, Inducement Letter, Note and Bond Purchase Agreement, and all other documents as may be required by counsel for OHFA shall be provided, and shall be in such form and of such content as may be required or approved by counsel for OHFA.~~

(10) ~~The performance of and payment for all construction contracts on the project must be secured by an irrevocable unconditional letter of credit by a commercial bank or fully funded one hundred percent (100%) with performance and payment bond by a surety company licensed to do business in the State of Oklahoma and recognized as acceptable to Moody's and/or Standard & Poor's rating agencies; however, OHFA Trustees may act to waive this performance bond requirement.~~

(11) ~~The loan agreement, trust indenture agreement, and regulatory agreement and other appropriate instrument shall provide that OHFA will be provided, at the~~

~~developer(s)' expense, with copies of all records, etc., pertaining to the project and/or satisfaction of the terms of the documents entered into by OHFA in connection with the project.~~

SUBCHAPTER 11. EVALUATION CONSIDERATIONS [REVOKED]

330:20-11-1. Evaluations [REVOKED]

~~In evaluating whether to issue OHFA debt for the purpose of financing residential multifamily rental projects, OHFA's Board of Trustees shall take into consideration the following:~~

~~(1) The amount of bond/note proceeds and other monies to be made available for the project's financing.~~

~~(2) The likelihood that the supply of rental property for low to moderate income tenants will be increased by financing the project and whether a need for rental units in the area exists which will be satisfied at least in part by the project.~~

~~(3) The means of distribution of the proceeds of OHFA's debt.~~

~~(4) Whether there have been adequate and/or prudent underwriting evaluations of the project and certifications of underwriting of the project according to the applicable program guidelines; i.e., FNMA, FHA, GNMA.~~

~~(5) Such other considerations as the Trustees, in their discretion deem appropriate to further the public purpose of OHFA.~~

330:20-11-2. Final decision [REVOKED]

~~OHFA's Board of Trustees reserves the right to make the final decision on financing any project.~~

330:20-11-3. Felony conviction [REVOKED]

~~OHFA shall not finance any project where the seller(s) or the developer(s) or the owner(s) or any of their partners, stockholders, or any of their respective partners or stockholders, or any other person, party or entity owning, claiming or having the right or obligation to own or claim ownership, of any interest, whether direct or indirect, immediate or remote, in the seller(s), developer(s), or owner(s) has been convicted of a felony involving moral turpitude under the laws of any state or jurisdiction, the United States or any other nation, foreign country or jurisdiction.~~

330:20-11-4. Developer/buyer affidavits [REVOKED]

~~The developer and prospective buyer must submit an affidavit showing that no individual who is a controlling officer, director, shareholder partner or direct or indirect owner of any interest, whether direct or indirect, of the developer, owner, buyer, seller, or transferee has been convicted of a felony or crime involving moral turpitude within the last 30 years. And further that there will be no transfer or change in control of ownership, etc. of the transferee that would result in an individual who has been convicted of a felony or crime involving~~

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moral turpitude within the last 30 years becoming a controlling officer, director or shareholder of the transferee.

SUBCHAPTER 13. COMPLIANCE AND REPORTING REQUIREMENTS [REVOKED]

330:20-13-1. Compliance with state laws [REVOKED]

~~Any issuance of OHFA tax exempt or taxable debt is subject to compliance with all state laws applicable to the prospective project financing or any portion or aspect thereof. Such state laws which may have application include:~~

- ~~(1) Central Purchasing Act (74 O.S., Section 85.1 et seq.)~~
- ~~(2) Open Meeting Act (25 O.S., Section 301 et seq.)~~
- ~~(3) Administrative Procedures Act(s) (75 O.S., Section 250 et seq.)~~
- ~~(4) Conflict of Interest Laws~~
- ~~(5) Open Records Law(s) (51 O.S., Section 24A.1 et seq.)~~
- ~~(6) Competitive Bidding Act (60 O.S., Section 176, and 74 O.S., Section 85.1 et seq.)~~
- ~~(7) Minimum Wages on Public Works Act (40 O.S., Section 196.1)~~
- ~~(8) Oklahoma Economic Development Act of 1986 (H.B. 1444)~~

330:20-13-2. Records and accounts [REVOKED]

~~The developer(s) must agree and certify, by executing certain project/program documents (e.g., regulatory agreement), to keep proper books, records and accounts in which complete and correct entries of all financial transactions relating to the project are entered and to keep copies of all certificates required to be provided, together with all invoices, receipts, tenant certifications, complete rent roll information or other records regarding the low to moderate income tenants, and other supporting documentation reasonably sufficient to demonstrate the accuracy of such certification. The developer(s) shall make such books and records available for inspection by OHFA.~~

330:20-13-3. Audits [REVOKED]

~~OHFA shall have the right, at any time and from time to time, to examine and audit any and all of the developer's records or accounts pertaining to the project and the project loan, including but not limited to those referred to in 330:20-13-2 and all records of ownership of developer, whether direct or indirect ownership is involved, and all records which may be necessary to verify the true ownership, direct and indirect, of developer and all parties and entities listed in response to 330:20-3-1. OHFA shall have the right to require the developer(s) to furnish said documents at developer(s) expense as OHFA in their sole discretion and from~~

~~time to time deems necessary in order to determine that the rules of this Chapter, and the provisions of the project/program documents have been complied with, and to satisfy OHFA's statutory record keeping requirements and/or all requirements under 330:20-13-1, 330:20-3-1, and 330:20-3-2.~~

SUBCHAPTER 15. SALE, TRANSFER/ASSUMPTION [REVOKED]

330:20-15-1. Written consent [REVOKED]

~~The developer(s) and owners must covenant and agree not to sell, transfer, or otherwise dispose of the project, or any material portion of the project site or any material portion of the project facilities, without obtaining the prior written consent of OHFA. The developer and owners of developer and/or the project must also agree that no interest in the developer will be sold, conveyed or transferred directly or indirectly without the prior written consent of OHFA.~~

330:20-15-2. Submission requirements [REVOKED]

~~The developer(s) and prospective buyer must submit the following to OHFA for its review:~~

- ~~(1) Assumption/transfer fee in accordance with 330:20-7-4.~~
- ~~(2) Consent to Transfer Agreement.~~
- ~~(3) Assumption Agreement or other documents to be used in the proposed transfer for which OHFA approval is requested.~~
- ~~(4) A copy of the certified transcript of the organization of the prospective buyer or other entity or such other documents creating or pertaining to the creation or perpetuation of the prospective buyer or other entity.~~
- ~~(5) A copy of the Real Estate Purchase Contract, if applicable.~~
- ~~(6) An opinion of counsel for the transferee that the transferee has duly assumed (or at closing will assume) the remaining obligation of the developer under the Regulatory Agreement, and any and all documents relative thereto which were executed by the developer(s), shall be remaining obligations of the transferee and binding on the transferee.~~
- ~~(7) Financial statements of the prospective buyer for at least the last three (3) years (preferably accompanied by an opinion of a Certified Public Accountant, if in existence), and if a new entity has been formed, the financials of the new general partner(s) or other entities.~~
- ~~(8) A detailed statement of the past history of ownership and management of multifamily projects of the transferee.~~
- ~~(9) Such additional material as may be required by OHFA, its counsel, or the Trustees.~~

APPENDIX A. APPLICATION FOR FINANCING OF MULTIFAMILY RESIDENTIAL RENTAL PROJECT [REVOKED]

OKLAHOMA HOUSING FINANCE AGENCY

APPLICATION FOR FINANCING OF MULTIFAMILY RESIDENTIAL RENTAL PROJECT

I. Project

A. Type

New Construction _____ Acquisition/Rehabilitation _____

B. Proposed Project Name: _____

C. Address of Project: _____

D. Site Location

Presently owned by applicant _____ Yes* _____ No
*Attach Proof of Ownership
Site under Option _____ Yes* _____ No
*Attach Copy of Contract
Site already zoned for Multifamily _____ Yes* _____ No
*Attach Proof of Zoning

E. Project Data

- 1. Size of Site _____ (acres)
2. Total number of units _____
3. Total Number of units by bedroom size:
OBR _____ 1BR _____ 2BR _____ 3BR _____ 4BR _____
4. Square footage of units by bedroom size:
OBR _____ 1BR _____ 2BR _____ 3BR _____ 4BR _____
5. Number of non-revenue producing units: (i.e., manager's unit, maintenance unit) _____
6. If Acquisition/Rehab:
a. Estimated date of purchase _____

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- b. Estimated dates of beginning and completion of rehab _____
- c. Estimated amount of rehab to total units _____
- d. Sale price of project _____ *

*Attach contract for sale or option contract.

- e. Attach a copy of the following:

- (i) present rent structure by bedroom size
- (ii) name the principals of the seller
- (iii) percentage of tenants that already meet income requirements

7. List directly related and essential facilities which will be financed with bond proceeds:

8. Percentage of the portion of project which will not house residential units _____

9. Election of set aside units for low-moderate income families

_____ 25%/75%

_____ 20%/80%

_____ 40%/60%

_____ other (explain) _____

II. Applicant:

A. Name: _____

B. Type of Entity:*

Partnership _____ Non-Profit _____ Yes _____ No

Corporation _____ Non-Profit _____ Yes _____ No

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Other _____

State of Formation _____

State of Incorporation _____

*Attach Articles of Incorporation or Partnership Agreement of the Developer and project owner.

C. Address of Applicant: _____

Telephone Number: _____

D. Representative for Applicant: _____

Address: _____

Telephone Number: _____

E. Name of Parent or Affiliate of Applicant: _____

F. Attach financial statements of the Developer and/or the General Partner covering the preceding three (3) years, if available, and interim financial statement(s) of the Developer(s) covering from the close of the last fiscal year through the period not earlier than sixty (60) days prior to the date of the application to OHFA, and any additional financial information requested by OHFA.

G. Attach names and addresses of the applicant's officers, directors, principal stockholders/partners (and % of ownership), and managing general partner. (See Multifamily Rules and Regulations, 330:20-3-1(a)(4), 330:20-3-2(a)(4) for more detail).

III. Financing

A. Total Project Cost: _____

B. Costs financed by Bond proceeds:

1. Land _____

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2. Construction (buildings) _____
3. Architecture, Engineering, Appraisal _____
4. Site preparation, utilities _____
5. Financing Fee _____
6. Construction Interest _____
7. Furniture, Equipment _____
8. Legal _____
9. Developer's Overhead _____
10. Other (Explain) _____

Total Request for OHFA Bond Issue \$ _____

C. Terms:

1. Private Placement Yes No
If yes, name of Purchaser _____
2. Public Offering Yes No
3. Interest Rate _____ Term _____
4. Security: (Explain)

D. If less than 100% financing is requested, how is the remainder to be provided or financed? _____

IV. General:

A. Developer's Counsel:

Name of Contact: _____

Firm: _____

Address: _____

Telephone Number _____

B. Investment Banker/Underwriter:

Name of Contact: _____

Firm: _____

Address: _____

C. Lender:

Name of Contact: _____

Institution: _____

Address: _____

Telephone Number _____

D. Has the Applicant/Developer been involved in any bankruptcy, receivership, reorganization, liquidation, or compromise with creditors? If yes, explain:

V. Describe the Project in Detail: (Attach Extra Sheet)

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APPENDIX B. INITIAL RESOLUTION [REVOKED]

RESOLUTION NO. _____

THE OKLAHOMA HOUSING FINANCE AGENCY, A PUBLIC TRUST, MET IN SPECIAL CALLED SESSION AFTER NOTICE OF SUCH MEETING HAD BEEN GIVEN IN ACCORDANCE WITH THE PROVISIONS OF THE OKLAHOMA OPEN MEETING LAW, AT 1140 N.W. 63RD, OKLAHOMA CITY, OKLAHOMA, ON THE _____ DAY OF _____, 19____, AT _____ O'CLOCK (:00) ____ .M.

PRESENT:

ABSENT:

THEREUPON, a Resolution was introduced, read in full, and upon motion by Trustee _____, seconded by Trustee _____, was adopted by the following vote:

AYE:

NAY:

Said Resolution is as follows:

INITIAL RESOLUTION

A RESOLUTION DIRECTING THE STAFF OF THE OKLAHOMA HOUSING FINANCE AGENCY TO CONDUCT A PUBLIC HEARING ON THE ISSUANCE OF THE AGENCY'S MULTIFAMILY HOUSING REVENUE BONDS (_____ PROJECT) (THE "BONDS") IN A PRINCIPAL AMOUNT OF NOT TO EXCEED \$_____ FOR THE PURPOSE OF FINANCING A MULTIFAMILY RESIDENTIAL RENTAL HOUSING PROJECT.

WHEREAS, the Oklahoma Housing Finance Agency ("OHFA") was created pursuant to the terms of the Public Trust Act, Title 60, Oklahoma Statutes, Section 176 et seq. (the "Act") and a Trust Indenture, as amended, (the "Indenture") with the State of Oklahoma (the "State") as the named beneficiary thereof; and

WHEREAS, OHFA is authorized under the Indenture to issue its bonds, notes or other evidences of indebtedness for the purpose of making mortgage loans for the construction, development, purchase or financing of residential housing; and

WHEREAS, _____, (the "Developer") has applied for assistance from OHFA and OHFA is desirous of assisting in the financing of the multifamily project

described in Exhibit "A" attached hereto (the "Project") through the issuance of the Bonds, and

WHEREAS, pursuant to the Internal Revenue Code of 1954, as amended, and OHFA policy, OHFA must conduct a public hearing in respect to the Bonds and the Project before the issuance of bonds; and

WHEREAS, OHFA is desirous of adopting a resolution authorizing the staff of OHFA to conduct a public hearing in respect to the Bonds and the Project; and

WHEREAS, it is to be understood by all parties and the public that OHFA is not bound to issue the Bonds or any Bonds by reason of this resolution:

NOW, THEREFORE, BE IT RESOLVED BY THE TRUSTEES OF THE OKLAHOMA HOUSING FINANCE AGENCY AS FOLLOWS:

Section 1. Public Hearing. OHFA hereby appoints the Executive Director, or at his/her discretion an employee of OHFA designated by him/her, as Hearing Officer for the purpose of conducting a public hearing upon the acceptability of the Project set forth in Exhibit "A", attached hereto, all in accordance with the provisions of the Internal Revenue Code of 1954, as amended, and OHFA policy. The Hearing Officer shall: (i) provide for the publication of an appropriate Public Notice; (ii) conduct the public hearing in accordance with the Public Notice so as to adduce the statements of all those appearing and desiring to be heard; and (iii) prepare a record of the results of such hearing and submit same to the Trustees.

Section 2. Official Action. This Resolution is intended to evidence initial official action of the Trustees of OHFA with respect to the financing of the Project, and to that end the Trustees hereby determine to issue the Bonds to finance the Project, subject, however, at all times to the acceptability to the Trustees of the Project and its financing, in their sole and unconditional authority.

Section 3. No Final Decision to Issue Bonds. All parties named in this Resolution are, and the general public is, to take notice that this Resolution is preliminary and conditional and is not final approval of the Project or the Developer, nor is it authority for the issuance or sale of bonds, which authority remains with the Trustees to be exercised without limitation or condition, notwithstanding the other provisions of this Resolution. The Developer, by executing the acceptance to be appended hereto, which acceptance is a condition to the effectiveness hereof, agrees to all of the conditions and limitations set forth in this Resolution. In addition, various aspects of the financing requested by the

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Developer may be subject to satisfaction of requirements of State and Federal laws applicable to such transaction.

Section 4. Incidental Action. The Chairperson of OHFA, or in his/her absence the Vice-Chairperson, is hereby authorized and directed to execute and deliver such documents and to take such other and further action as may be necessary or appropriate in order to pursue the application and request of the Developer to provide financing for the Project and the finalization of such documents and information in regard to the Project and Developer and to provide for the final consideration by the Trustees as to the issuance and delivery of the Bonds.

Section 5. Termination of Initial Resolution. This Initial Resolution may be terminated and of no further force or effect any time after six (6) months from the date hereof by adoption of a Resolution of OHFA Trustees after prior notice to the Developer. In the event of such termination, the developer shall have no recourse, right of recovery, or claim against OHFA, its Trustees, Officers, employees, agents or counsel, for any losses, damages, recovery of expenses or any other claims whatsoever which might result directly or indirectly by reason of such termination.

Section 6. Issuing tax-exempt bonds subject to pending legislation [Tax Reform Act of 1985 (H.R. 3838)]. If enacted in its current form, the Tax Reform Act of 1985 (H.R. 3838) would make several changes in the laws regulating the issuance of tax-exempt bonds for multifamily housing. The approval of this Resolution by the Trustees and acceptance of this Resolution by the Developer is conditional upon the Project and issuance of the bonds being in compliance with the limitations imposed in the Tax Reform Act of 1985 (H.R. 3838) or any subsequent revision of that act or change in Federal or State laws.

PASSED AND ADOPTED THIS ____ DAY OF _____, 19__.

OKLAHOMA HOUSING FINANCE AGENCY

ATTEST:

Chairperson

Secretary

(SEAL)

ACCEPTED AND AGREED TO THIS ____ DAY OF _____, 19__, BY

Developer

EXHIBIT A

NAME OF PROJECT:

DEVELOPER:

ESTIMATED AMOUNT OF ISSUE:

NUMBER OF UNITS:

ESTIMATED COST OF PROJECT:

PARTICIPATING LENDING INSTITUTION:

PROJECT SITE:

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STATE OF OKLAHOMA)
) ss:
COUNTY OF OKLAHOMA)

I, the undersigned, Secretary of the Oklahoma Housing Finance Agency ("OHFA"), hereby certify that the above Resolution is a true and complete copy of a Resolution adopted at a meeting of the OHFA Trustees on the date therein set out and recorded. I further certify that attached hereto is a true and complete copy of the public notice, filed with the Secretary of State of the State of Oklahoma at least seventy-two (72) hours prior, and the agenda posted at the place of said meeting at least twenty-four (24) hours prior to such meeting wherein said Resolution was adopted.

WITNESS my hand and seal of OHFA this day of , 19__.

Secretary

(SEAL)

APPENDIX C. SECOND RESOLUTION [REVOKED]

RESOLUTION NO. _____

THE OKLAHOMA HOUSING FINANCE AGENCY, A PUBLIC TRUST, MET IN SPECIAL CALLED SESSION AFTER NOTICE OF SUCH MEETING HAD BEEN GIVEN IN ACCORDANCE WITH THE PROVISIONS OF THE OKLAHOMA OPEN MEETING LAW, AT 1140 N.W. 63RD, OKLAHOMA CITY, OKLAHOMA, ON THE _____ DAY OF _____, 19____, AT _____ O'CLOCK (:00) ____M.

PRESENT:

ABSENT:

THEREUPON, a Resolution was introduced, read in full, and upon motion by Trustee _____, seconded by Trustee _____, was adopted by the following vote:

AYE:

NAY:

Said Resolution is as follows:

SECOND RESOLUTION

A RESOLUTION GRANTING PRELIMINARY APPROVAL OF THE OKLAHOMA HOUSING FINANCE AGENCY'S MULTIFAMILY REVENUE BONDS _____ PROJECT) IN A PRINCIPAL AMOUNT OF NOT TO EXCEED \$ _____; GRANTING PRELIMINARY APPROVAL FOR THE ELEMENTS OF A TRANSACTION WHEREBY THE AGENCY LOANS BOND PROCEEDS TO THE DEVELOPER(S) FOR THE PURPOSE OF FINANCING A MULTIFAMILY RESIDENTIAL RENTAL HOUSING PROJECT.

WHEREAS, the Oklahoma Housing Finance Agency ("OHFA") was created pursuant to the terms of the Public Trust Act, Title 60, Oklahoma Statutes, Section 176 et seq. (the "Act") and a Trust Indenture, as amended, (the "Indenture") with the State of Oklahoma (the "State") as the named beneficiary thereof; and

WHEREAS, OHFA is authorized under the Indenture to issue its bonds, notes or other evidences of indebtedness for the purpose of making mortgage loans for the construction, development, purchase or financing of residential housing; and

WHEREAS, _____ (the "Developer") has applied for assistance from OHFA in the OAC

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financing of the multifamily rental project described in Exhibit "A" (the "Project") through the issuance of bonds; and

WHEREAS, pursuant to Resolution No. _____ the staff of OHFA has conducted a public hearing, pursuant to the appropriate Public Notice, in respect to the Project; and

WHEREAS, the Developer's application sets forth certain information with respect to the Project establishing that the issuance of bonds for the purpose of financing the Project is in furtherance of the purpose of OHFA to promote the development of adequate housing within the State;

NOW, THEREFORE, BE IT RESOLVED BY THE TRUSTEES OF THE OKLAHOMA HOUSING FINANCE AGENCY AS FOLLOWS:

Section 1. Preliminary Approval of Project and Bonds. Subject to approval of all documentation and final approval of the Project, OHFA hereby grants its preliminary approval of the Project and the Developer's application and request for assistance in financing the Project and of the proposal to issue its Revenue Bonds (the "Bonds") in the aggregate amount of not to exceed \$ _____. The description of the Project, the Project site, and the maximum principal amount of the Bonds are hereby determined as set forth in Exhibit "A" attached hereto. OHFA staff is hereby directed to assist in the preparation of documentation for the Bonds, subject to agreement among OHFA, the Developer, and the Purchaser of the Bonds as to terms in all agreements to be entered into with respect to the Project.

Section 2. OHFA Expenses. Any expenses incurred by OHFA with respect to the Project and the issuance of the Bonds shall be reimbursed out of the proceeds of the Bonds, or, in the event such proceeds are insufficient, taking into account other costs of the Project, or in the event Bonds are not issued by OHFA due to inability of the parties to consummate the transaction herein contemplated, shall be paid by the Developer. By acceptance hereof, which acceptance is a condition to the effectiveness hereof, the Developer agrees: (i) to pay such expenses; and (ii) further agrees in consideration of the benefits accruing to the Developer by reason of the adoption of this Resolution, to indemnify OHFA, its Trustees, Officers, employees, agents or counsel and hold OHFA and such persons harmless against claims for losses, damage or injury or any expenses or damage incurred as a result of action taken by or on behalf of OHFA with respect to the Project and the financing thereof; and (iii) specifically acknowledges that the determination to issue the Bonds or any Bonds or other evidences of indebtedness of OHFA is subject to the approval of the Trustees of OHFA to exercise without limitation or condition.

Section 3. Termination of Second Resolution. This Second Resolution may be terminated and of no further force or effect any time after six (6) months from the date hereof by adoption of a resolution of OHFA Trustees after prior notice to the Developer. In the event of such termination, the developer shall have no recourse, right of recovery, or claim against OHFA, its Trustees, Officers, employees, agents or counsel, for any losses, damages, recovery of expenses or any other claims whatsoever which might result directly or indirectly by reason of such termination.

Section 4. Issuing tax-exempt bonds subject to pending legislation [Tax Reform Act of 1985 (H.R. 3838)]. If enacted in its current form, the Tax Reform Act of 1985 (H.R. 3838) would make several changes in the laws regulating the issuance of tax-exempt bonds for multifamily housing. The approval of this Resolution by the Trustees and acceptance of this Resolution by the Developer is conditional upon the Project and issuance of the bonds being in compliance with the limitations imposed in the Tax Reform Act of 1985 (H.R. 3838) or any subsequent revision of that act or change in Federal or State laws.

PASSED AND ADOPTED THIS ____ DAY OF _____, 19__.

OKLAHOMA HOUSING FINANCE AGENCY

ATTEST:

Chairperson

Secretary

(SEAL)

ACCEPTED AND AGREED TO THIS ____ DAY OF _____, 19__, BY

Developer

EXHIBIT A

PROJECT NAME:

DEVELOPER:

ESTIMATED LOAN AMOUNT:

NUMBER OF UNITS:

ESTIMATED COST OF PROJECT:

PARTICIPATING LENDING INSTITUTION:

PROJECT SITE:

STATE OF OKLAHOMA)
) ss:
COUNTY OF OKLAHOMA)

I, the undersigned, Secretary of the Oklahoma Housing Finance Agency ("OHFA"), hereby certify that the above Resolution is a true and complete copy of a Resolution adopted at a meeting of the OHFA Trustees on the date therein set out and recorded. I further certify that attached hereto is a true and complete copy of the public notice, filed with the Secretary of State of the State of Oklahoma at least seventy-two (72) hours prior, and the agenda posted at the place of said meeting at least twenty-four (24) hours prior to such meeting wherein said Resolution was adopted.

WITNESS my hand and seal of OHFA this ___ day of _____, 19__.

Secretary

(SEAL)

[OAR Docket #17-555; filed 6-30-17]

TITLE 330. OKLAHOMA HOUSING FINANCE AGENCY CHAPTER 35. LOW-INCOME HOUSING TAX CREDIT PROGRAM RULES [REVOKED]

[OAR Docket #17-554]

RULEMAKING ACTION: PERMANENT final adoption RULES:

- Subchapter 1. General Provisions [REVOKED] 330:35-1-1 [REVOKED] 330:35-1-2 [REVOKED] 330:35-1-3 [REVOKED] 330:35-1-4 [REVOKED] Subchapter 3. Low Income Housing Tax Credits [REVOKED] 330:35-3-1 [REVOKED] 330:35-3-2 [REVOKED] 330:35-3-3 [REVOKED] 330:35-3-4 [REVOKED] 330:35-3-5 [REVOKED]

- 330:35-3-6 [REVOKED] 330:35-3-7 [REVOKED] 330:35-3-8 [REVOKED] 330:35-3-9 [REVOKED] 330:35-3-10 [REVOKED] 330:35-3-11 [REVOKED] 330:35-3-12 [REVOKED] 330:35-3-13 [REVOKED] Subchapter 5. Allocation Procedure [REVOKED] 330:35-5-1 [REVOKED] 330:35-5-2 [REVOKED] 330:35-5-3 [REVOKED] 330:35-5-4 [REVOKED] 330:35-5-5 [REVOKED] 330:35-5-6 [REVOKED] 330:35-5-7 [REVOKED] APPENDIX A. [REVOKED] APPENDIX B. [REVOKED]

AUTHORITY:

These Chapter 35 Rules are authorized by 75 O.S., Section 302; 60 O.S., Sections 176 through 180.3; the Board of Trustees of Oklahoma Housing Finance Agency (OHFA), the Amended Trust Indenture, and the Bylaws of OHFA as established by the OHFA Board of Trustees.

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SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

December 15, 2016

COMMENT PERIOD:

January 17, 2017 through March 3, 2017

PUBLIC HEARING:

n/a

ADOPTION:

March 22, 2017

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

March 23, 2017

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 13, 2017

FINAL ADOPTION:

June 13, 2017

EFFECTIVE:

September 11, 2017

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

Revocation of this Chapter 35 because a more current and updated Title 330, Chapter 36 covers same program.

The rules of this Chapter have been adopted for the purpose of complying with the provisions of the Administrative Procedures Act, 75 O.S., Section 250 et seq. The Internal Revenue Code of 1986, as amended (the "Code") provides for the allocation of housing tax credits to eligible owners of residential rental property used for low-income housing (the "Credits"). OHFA administers the State of Oklahoma's Affordable Housing Tax Credit Program (the "Credit Program") and pursuant thereto reallocates Credits allocated to the State of Oklahoma by the U.S. Congress. OHFA, as the state housing credit agency, also must develop a qualified allocation plan ("QAP") to provide for the evaluation of applications for Credits, the monitoring for noncompliance with the provisions of the Code and reporting noncompliance to the Internal Revenue Service (the "IRS").

Chapter 35, Low-Income Housing Tax Credit Program Rules (Rules) have not been updated since 1993. Title 330, Chapter 36, Affordable Housing Tax Credit Program is current and governs the same type of activity. In an effort to achieve simplicity and clarity, OHFA is recommending revocation of these Chapter 35 Rules. All information contained in Rules is now part of and included in Title 330, Chapter 36.

CONTACT PERSON:

Pamela Miller, Agency Liaison, 100 Northwest 63rd, Suite 200, Oklahoma City, Oklahoma 73116, 405-419-8134, pamelamiller@ohfa.org.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 1. GENERAL PROVISIONS [REVOKED]

330:35-1-1. Purpose [REVOKED]

The rules of this Chapter have been adopted for the purpose of complying with the provisions of the Administrative Procedures Act, 75 O.S., Sections 250, et seq. These rules were adopted to provide guidelines for the allocation and administration of low income housing tax credits for owners of residential rental property used for low income housing.

330:35-1-2. Overview [REVOKED]

The Internal Revenue Code of 1986 (the "Code"), as enacted by the Tax Reform Act of 1986 (the "Act"), provides a tax credit that may be claimed by owners of residential rental property used for low income housing (the "Tax Credit"). The Tax Credit is claimed annually. The credit amount is based on the qualified basis of the housing units serving the low income tenants. "Low income tenants" for purposes of the Tax Credit is defined by the Code and Temporary Treasury Regulations. To qualify for the Tax Credit, residential property must comply with all requirements of the Code throughout the compliance period. A credit allocation from the appropriate state credit authority must be received by the owner of property eligible for low income housing Tax Credit, unless the property is substantially financed with the proceeds of tax exempt bonds subject to private activity bond volume limitations.

330:35-1-3. Authority [REVOKED]

Authority to establish low income housing tax credit program rules:

- (1) Authority Provided in Statutes and Trust Indenture.
 - (A) Oklahoma Housing Finance Agency ("OHFA") was created by a Trust Indenture established under the provisions of Title 60, Oklahoma Statutes, 1981, as amended, Sections 176, et seq.
 - (B) OHFA is authorized by its Trust Indenture, Article IV, to plan and implement programs such as the Low Income Housing Tax Credit Program ("LIHTC"). Specific reference should be made to OHFA's current Trust Indenture for the exact provisions for the specific scope of authorization.
- (2) ~~Gubernatorial Approval of Allocation Plan/Rules. Under applicable provisions of the United States Internal Revenue Code of 1986, as amended and supplemented, and any rules or regulations promulgated or adopted by reference thereunder. Section 42 of the Code, as amended, and as may be amended from time to time, and such other relevant sections of the Code, and the rules and regulations promulgated thereunder, are incorporated herein by reference, the Governor of the State must approve the Allocation Plan as contained in these Rules.~~

330:35-1-4. Definitions [REVOKED]

For the purposes of this chapter of rules, the following definitions shall apply. Additional terms capitalized in this Chapter are defined in the Code. When a conflict exists between these definitions and those which are reflected in the Code, the Code definition shall be used.

"Act" means Title 60, Oklahoma Statutes, 1981, Sections 175.1 through 175.54 and 176, et seq., as amended and supplemented.

"Allocation" means, with respect to the Low Income Housing Tax Credit, the amount of such credit awarded or committed to a specific building/project.

"Allocation plan" means Chapter Three of OHFA's LIHTC Rules, which set forth the selection criteria priorities and preferences for selection of buildings/projects for allocations

and set forth the procedures for notifying the IRS of non-compliance.

"~~APA~~" means the Administrative Procedures Act as adopted in Oklahoma, codified at Title 75, Oklahoma Statutes, 1981, Sections 250, et seq., as amended and supplemented.

"~~Applicant~~" means a person or entity who applied for an Allocation of Low Income Housing Tax Credits.

"~~Application~~" means all agreements, certificates, affidavits and exhibits or similar instruments utilized in connection with applying to OHFA for an Allocation of LIHTC.

"~~Code~~" means the United States Internal Revenue Code of 1986, as amended and supplemented, and any rules or regulations promulgated or adopted by reference thereunder. Section 42 of the Code, as amended, and as may be amended from time to time, and such other relevant sections of the Code, and the rules and regulations promulgated thereunder, are incorporated herein by reference.

"~~Credit Authority Limit~~" means the maximum amount of LIHTCs that can be allocated within each state, based upon a formula established by the IRS and the Code.

"~~Credit Ceiling~~" means "Credit Authority Limit."

"~~Developer~~" means the owner of the Project for which an allocation is made.

"~~IRS~~" means the Internal Revenue Service of the United States Department of the Treasury.

"~~LIHTC~~" means Low Income Housing Tax Credit within the meaning of the Code and these Rules.

"~~OHFA~~" means Oklahoma Housing Finance Agency.

"~~Program~~" or "~~LIHTC Program~~" means the program established by these Rules and instituted for the purpose of establishing an application process for, and awarding of, Allocations of Low Income Housing Tax Credits.

"~~Project~~" means the multi-family rental unit(s) for which an application for LIHTC is submitted to OHFA.

"~~Qualified Project~~" means any low income residential rental property that meets the requirements for low income tenant occupancy, gross rent restrictions, state credit authority, and Internal Revenue Service certification. Such Project must continue to meet these requirements for the Compliance Period, plus 15 years, or a recapture of a portion of the credit may occur.

"~~Regulatory Agreement~~" means the binding agreement between OHFA and the Developer of a Project approved for an Allocation. The Regulatory Agreement shall be approved and authorized by the Trustees and shall be in a form suitable for filing in the county in which the Project is located.

"~~Resolution~~" means the resolution, motion, or other official action of OHFA duly taken by not less than a majority vote of its Board of Trustees at an open public meeting of such Board of Trustees.

"~~Scattered Site Project~~" means a Project located on multiple Sites.

"~~Site~~" means the address or physical location of the Units within the Project.

"~~Staff~~" means the staff of OHFA.

"~~State~~" means the State of Oklahoma.

"~~Trustees~~" means the Board of Trustees of OHFA.

"~~Trust Indenture~~" means the Trust Indenture dated as of May 1, 1975, as amended, creating OHFA.

"~~Unit~~" means a dwelling intended for use by a single family or individual.

SUBCHAPTER 3. LOW INCOME HOUSING TAX CREDITS [REVOKED]

330:35-3-1. General [REVOKED]

(a) ~~LIHTC may be claimed by owners of Qualified Projects for construction, or substantial rehabilitation expenditures or acquisition costs. The LIHTC for a qualified project is computed pursuant to the provisions of Section 42 of the Code, and is claimed as a component of the general business credit. LIHTCs are subject to the limitation of Code Section 38, and the carryback and carryforward rules of Code Section 39, which Code sections are incorporated herein by reference.~~

(b) ~~For qualified buildings placed in service after 1987, the applicable credit rates are the appropriate percentages issued by the Internal Revenue Service for the month in which the building is placed in service.~~

(c) ~~For newly constructed units or rehabilitation expenditures exceeding specified minimum amounts per low income unit that are not federally subsidized, the credit rate is computed so that the present value of the ten (10) annual credit amounts at the beginning of the credit period equals seventy percent (70%), thirty percent (30%) if they are federally subsidized, of the qualified basis of the low income units. The thirty percent (30%) rate is also used to determine the credit rate for the cost of acquisition of certain existing low income units, including rehabilitation expenditures below the minimum rehabilitation requirement for such units incurred before the close of the first year of the credit period.~~

(d) ~~The LIHTC is claimed over the credit period, which begins with the tax year in which the project is placed in service, or at the taxpayer's election, the next tax year, but only if the building is a qualified building as of the close of the first year of such period. The first year credit is reduced to reflect the time during the year that any low income units are unoccupied. If such reduction is made, a credit allowed in the eleventh year in an amount equal to the reduction.~~

(e) ~~The credit for rehabilitation expenses applies only if the total expenditures incurred during any 24 month period are at least \$3,000 per low income unit as of the close of the first tax year in the credit period for those expenditures.~~

(f) ~~For purposes of the passive activity credit limitation rules, the credit is treated as arising from rental real estate activities in which the taxpayer materially participates and is subject to the limitations imposed on tax credits from such activities. The basis for depreciation of a project is not reduced by the amount of low income credits claimed.~~

330:35-3-2. Eligible Projects [REVOKED]

Eligible Projects must:

- (1) be for residential rental purposes,
- (2) be suitable for occupancy,

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- (3) remain rental housing for at least a 15-year compliance period from the beginning of the first day of the taxable year in which the credit is claimed,
- (4) be available for use by the general public,
- (5) be used on a non-transient basis, with initial lease terms exceeding six (6) months (common eating, cooking and sanitation facilities are allowed),
- (6) be located in the State, on the same tract of land, owned by the same person for federal tax purposes, financed pursuant to a common financing plan, and have similarly constructed housing units if multiple buildings are involved, and
- (7) be permanently fixed to real property if factory built. **NOTE:** Part of a building in a Qualified Project may be used for purposes other than rental, however costs associated with such other uses cannot be considered in calculating the credit.

330:35-3-3. Ineligible Projects [REVOKED]

Ineligible Projects include:

- (1) a building with four or fewer units, if the building is owner-occupied or is owned by a party related to the tenant;
- (2) hospitals, nursing homes, sanitariums, certain life care facilities, retirement homes, or trailer parks.

330:35-3-4. State credit authority limit [REVOKED]

The total amount of LIHTC available for allocation may not exceed the limit for such year as determined under the provisions of the Code. The "State Credit Ceiling" is currently determined by multiplying \$1.25 times the most recent population estimate for the State.

330:35-3-5. Not-for-profit set-aside [REVOKED]

Ten percent (10%) of the State Credit Ceiling must be set aside for not for profit Project sponsors. This set aside may include projects of corporate subsidiaries wholly owned by the non-profit organization.

330:35-3-6. Unit set-aside [REVOKED]

Minimum set-aside requirements of low-income units in a Project are imposed:

- (1) A Project owner must set aside either
 - (A) 20% of the units for individuals whose income is 50% or less of area median gross income, or
 - (B) 40% of the units for individuals whose income is 60% or less of area median gross income.
- (2) Before an Allocation is made or a Project is placed in service, an owner must irrevocably choose to meet one of the two minimum set-aside requirements.
- (3) The minimum set-aside compliance period is 15 years, beginning the year the Project is placed in service or the owner elects to take the credit.
- (4) Any noncompliance must be corrected within a reasonable time. Evictions are not necessary. Penalties for

noncompliance will occur when a next available unit is rented to a market rate tenant while out of compliance.

330:35-3-7. Tenant income limitations [REVOKED]

The Code and Regulations provide detailed income limitations. In summary:

- (1) The tenant (person or family) must have an income of 50% or 60% or less of area median income, depending on the minimum set aside elected by the owner.
- (2) The income is adjusted for family size similar to adjustments under the provisions of Section 8 of the U.S. Housing Act of 1937. Tenants must qualify on initial occupancy and continuously thereafter. Tenant income may increase to no more than 40% of maximum qualifying income, adjusted for family size, and still comply.
- (3) An all-student household as defined in Code Section 151(e)(4) is not eligible.

330:35-3-8. Rent limitations on subsidized units [REVOKED]

(a) To determine a family's monthly rent, multiply 30% times the appropriate income limits level (using either the 50% or 60% schedule as appropriate) and divide this number by 12. Rent will be based on the number of bedrooms, rather than the actual number of tenants in the unit. For rent restricted units, gross rents may not exceed 30% of the applicable income limit for a family of its size. Where federal statutes (typically associated with a rental assistance program) require the owner to collect 30% of the tenant's gross income, regardless of whether the tenant's income increases beyond 50% or 60%, the full 30% must be collected.

(b) Gross rent includes the cost of any utilities, except telephones, and the maximum rent a tenant pays is then reduced according to the cost of utilities paid by the tenant.

(c) Gross rent does not include any payments under the provisions of Section 8 of the U.S. Housing Act of 1937 or comparable rental assistance payment (rent supplement, rental assistance payments, and certificate or voucher payments).

330:35-3-9. Credit rate [REVOKED]

The process for determining the appropriate LIHTC is provided for by the Code. General terms are as follows:

- (1) For buildings "placed in service" in 1987, the applicable credit rates are (were):
 - (A) New Construction: 9% of "Qualified Basis";
 - (B) Rehabilitation (more than \$2,000 per unit): 9% of "Qualified Basis";
 - (C) Acquisition and minor rehabilitation: 4% of "Qualified Basis";
 - (D) Subsidized new construction or rehabilitation: 4% of "Qualified Basis";
- (2) For Projects placed in service after 1987, the LIHTC is computed using the Applicable Federal Rate ("AFR") to yield a tax credit with a present value of either seventy percent (70%) or thirty percent (30%) of the qualified costs of the Project generally as follows:
 - (A) New construction: 70% of "Qualified Basis";

- (B) Rehabilitation (the greater of \$3,000 per unit or 10% of the adjusted basis): 70% of "Qualified Basis";
- (C) Acquisition and minor rehabilitation: 30% of "Qualified Basis".

(3) Projects may be eligible for both acquisition and rehabilitation credits in situations where a Project is acquired and rehabilitation costs incurred meet the rehabilitation (new construction) credit criteria. On projects having acquisition costs that are federally subsidized, but on which there are no federal subsidies in the rehabilitation, the 70% present value credit may be applied to the rehabilitation cost.

(4) The Code states that acquisition projects must have been held for ten (10) years. Certain waivers may be granted by the U.S. Department of the Treasury, to include foreclosures by governmental units, non-profit organizations, or by persons who subsequently dispose of the property in 12 months, where persons inherit the property. If ownership is transferred and the adjusted basis of the original owner determines that of the new owner, then the building will not be treated as newly placed in service for the purpose of meeting the 10 year requirement.

330:35-3-10. Carryover [REVOKED]

If a new construction or rehabilitation project for which costs exceeding 10% of the "reasonably expected basis" have been incurred after 1987, two (2) additional years are allowed in which the project may be placed in service.

330:35-3-11. Other provisions [REVOKED]

The Code provides numerous other provisions pertaining to applications, projects, eligible basis, determination of LIHTC, recapture, and related LIHTC matters. These are incorporated by reference.

330:35-3-12. Advice of professionals [REVOKED]

The LIHTC Program is complex. Applicants are urged to consult with their tax accountant(s) and/or attorney(s) concerning the requirements and restrictions contained herein and in the Code.

330:35-3-13. Responsibility for LIHTC calculations [REVOKED]

OHFA shall review calculations of LIHTC provided by applicants as a part of an application. The exact amount of LIHTC to be claimed on the applicable income tax returns is the responsibility of the taxpayer, and is not the responsibility of OHFA.

SUBCHAPTER 5. ALLOCATION PROCEDURE [REVOKED]

330:35-5-1. Provisions [REVOKED]

(a) **Lease Term.** OHFA shall have the right to require a lease term for applicable units of twelve (12) months.

(b) **Application.** An application is required to be completed by each applicant. The form of the application may be revised from time to time upon approval of the Trustees of OHFA upon advice of counsel, to reflect and incorporate changes in the Code.

(c) **Regulatory Agreement.** A developer receiving an allocation must enter into a binding Regulatory Agreement with OHFA in a form suitable for recording in the county in which the project is located.

(d) **Notice to local chief executive.** OHFA shall, prior to awarding an allocation to a project, notify, in writing, the chief executive of the town/city, or, as applicable, the county, within which the project is, or is to be, located, as to the application. OHFA shall provide to such chief executive a period of no less than ten (10) days to provide comments to OHFA concerning the project, or any other pertinent comments.

(e) **Procedure to notify Internal Revenue Service.** OHFA, within ten (10) days of becoming aware of a fact or situation concerning a project which indicates a possible impairment or limitation of such allocation, shall notify the Internal Revenue Service Center whose jurisdiction includes the State, of same.

330:35-5-2. Purpose [REVOKED]

The purpose of the LIHTC application and allocation process is to select low income rental housing projects to which the LIHTC shall be allocated. The goal of this competitive process has been established to ensure the selection of those projects which serve to reduce the most pressing of the State, in accordance with priorities established by OHFA's Board of Trustees, and in accordance with applicable provisions of the Code.

330:35-5-3. Application process [REVOKED]

(a) Application forms shall be provided to prospective applicants by OHFA upon request. The application forms shall incorporate the requirements of the Code and these Rules. Applications shall be submitted to OHFA in triplicate.

(b) Applicants must apply for one of four (4) annual eligibility competitions to receive a LIHTC allocation during the applicable year. The closing dates for applications for each eligibility cycle and the portion of the total LIHTC allocable to each cycle are as follows:

- (1) Eligibility cycle one:
 - (A) Closing date: March 16.
 - (B) Portion of total LIHTC allocable: twenty five percent (25%).
 - (C) Applications shall be accepted until March 16.
- (2) Eligibility cycle two:
 - (A) Closing date: June 30.
 - (B) Portion of total LIHTC allocable: twenty five percent (25%).
 - (C) Applications shall be accepted during the period May 1 - June 30.
- (3) Eligibility cycle three:

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- (A) Closing date: August 31.
- (B) Portion of total LIHTC allocable: twenty five percent (25%).
- (C) Applications shall be accepted during the period July 1 August 31.
- (4) Eligibility cycle four:
 - (A) Closing date: October 31.
 - (B) Portion of total LIHTC allocable: twenty five percent (25%).
 - (C) Applications shall be accepted during the period September 1 October 31. LIHTC NOT ALLOCATED IN A PARTICULAR ELIGIBILITY CYCLE

SHALL BE AVAILABLE FOR ALLOCATION IN THE NEXT SUCCEEDING CYCLE.

- (5) Special set aside:
 - (A) Not for profit sponsored projects. Ten percent (10%) of the allocable LIHTC are reserved for allocation to not for profit sponsored projects as set forth in Code Section 42(h)(5). One half this amount shall be made available in eligibility cycle one and two.
 - (B) Rural Farm Home Administration (FmHA) 515, 521 Projects. Ten percent (10%) of the allocable LIHTC are reserved for allocation to rural FmHA 515, 521 Projects. One half this amount shall be made available in eligibility cycle one and two.
- (6) Recap of total allocable LIHTC:

	FmHA Set-aside	Not For Profit Set-aside	Other	Total
CYCLE ONE	5%	5%	15%	25%
CYCLE TWO	5%	5%	15%	25%
CYCLE THREE	--	--	25%	25%
CYCLE FOUR	--	--	25%	25%
TOTALS	10%	10%	80%	100%

(7) Applications received in each cycle shall be evaluated and a determination made as to whether the project is eligible for Allocation. OHFA shall then rank the projects, based on criteria described herein, and OHFA's Board of Trustees shall award allocations based on these criteria and this ranking, in each eligibility cycle, to the extent that allocations of LIHTC are available for that eligibility cycle. Projects not selected for an award of an allocation for a particular eligibility cycle may, upon notification, choose to compete in the subsequent eligibility cycle OF THE SAME CALENDAR YEAR. APPLICATIONS PRESENTED TO OHFA IN ONE CALENDAR YEAR SHALL NOT BE CARRIED FORWARD TO THE SUBSEQUENT CALENDAR YEAR. OHFA RESERVES THE RIGHT TO LIMIT THE ALLOCATION FOR A PARTICULAR PROJECT AND/OR THE NUMBER OF PROJECTS APPROVED FOR ALLOCATIONS PER DEVELOPER CONSISTENT WITH THESE RULES AND THE CODE.

(8) Eligible projects shall be evaluated for the amount of allocation. OHFA shall conduct a minimum of three (3) evaluations:

- (A) Upon receipt of the application;
- (B) Prior to issuance of a commitment to award LIHTC to the applicant;
- (C) No earlier than thirty (30) days prior to awarding Internal Revenue Service Form 8609 evidencing the allocation.

(9) Applicants awarded an allocation but failing to place the project in service in the year in which the application is made may, at the discretion of OHFA, be awarded a carryover LIHTC if ten percent (10%) of the project costs have been incurred by the end of the year for which application is made for LIHTC. An applicant must request a carryover prior to November 15 of the applicable year, and must execute a Carryover Agreement with OHFA. The project must be placed in service within 24 months from the date of initial allocation. Applicant must notify OHFA within 30 days of the date the project is placed in service or be subject to loss of any LIHTC.

330:35-5-4. Selection criteria [REVOKED]

(a) **Rating.** Applications shall be rated according to selection criteria. Incorporated into these criteria are the following categories required under Code Section 42(m)(1)(C):

- (1) Project location;
- (2) Housing needs characteristics;
- (3) Project characteristics;
- (4) Applicant characteristics;
- (5) Participation of local tax exempt organizations;
- (6) Tenant populations with special needs;
- (7) Project financial feasibility and viability; and
- (8) Public housing waiting lists.

(b) **Selection criteria priorities.** Selection criteria priorities are those which are established by reference to the following:

- (1) Increase the supply of low income housing in certain rural areas (listed below):~~NOTE: THE CODE CONTEMPLATES THE DESIGNATION OF CERTAIN AREAS DEFINED AS "DIFFICULT DEVELOPMENT AREAS", DEFINED BY THE CODE. A "DIFFICULT DEVELOPMENT AREA" IS DEFINED AS ANY AREA DESIGNATED BY THE SECRETARY OF DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD) AS AN AREA WHICH HAS HIGH CONSTRUCTION, LAND, AND UTILITY COSTS RELATIVE TO AREA MEDIAN GROSS INCOME. Applications must include documentation (e.g., site maps) that the project is, or shall be, located in a "Difficult Development Area".~~
- (2) Increase the supply of low income housing in certain urban neighborhoods (listed below):~~THE NOTE APPEARING IN THE PRECEDING SUBPARAGRAPH IS APPLICABLE TO THIS SUBPARAGRAPH AS WELL.~~
- (3) Increase the supply of congregate homes for the elderly, handicapped and/or disabled.
- (4) Involve local government assistance.
- (5) Encourage rehabilitation of housing by not for profit sponsors.
- (6) Preserve assisted low income housing which, due to mortgage prepayments or expiring rental assistance, would convert to market rate use.
- (7) Increase not for profit development sponsors and not for profit participation as general partners.
- (8) Will be placed in service within the calendar year.
- (9) Involve development by an experienced sponsor.
- (10) Include fewer than 50 units per project.
- (11) Involve the use of Farm Home Administration (FmHA) 515 and 521 subsidies.
- (12) Involve new construction.

(c) **Selection criteria point system.**

- (1) **General.** Each project shall be awarded points according to the nature and character of the project. Projects in each cycle shall be ranked according to the score awarded. The maximum number of points which may be awarded for these criteria are as indicated below:
 - (A) Meets critical shortages of low income housing in rural areas: 20 points;
 - (B) Meets critical shortages of low income housing in certain urban neighborhoods: 20 points.~~NOTE: THIS CRITERIA, WITH APPLICABLE POINTS, SHALL NOT BE APPLIED UNLESS/UNTIL THE DESIGNATION OF "DIFFICULT DEVELOPMENT AREAS";~~
 - (C) Meets a critical shortage of housing for the elderly, handicapped and/or disabled: 20 points;
 - (D) Facilitates local government involvement: 10 points;
 - (E) Encourages rehabilitation of housing by not for profit sponsors: 10 points;

- (F) Preserves assisted low income housing which, due to mortgage prepayments or expiring rental assistance, would convert to market rate use: 10 points;
- (G) Increases not for profit project sponsors and not for profit participation as general partners: 10 points;
- (H) Will be placed in service within the calendar year: 10 points;
- (I) Involves development by an experienced sponsor: 10 points;
- (J) Includes fewer than 50 units: 10 points;
- (K) Involves the use of FmHA 515, 521 subsidies: 5 points;
- (L) Involves new construction in rural areas, difficult development areas, or for housing the elderly, handicapped and/or disabled: 5 points;
- (M) Demonstrably provides housing for persons on waiting lists for public housing: 5 points;
- (N) Provides for lower intermediary costs (intermediary costs may include, but are not necessarily limited to, attorney fees, engineering fees, architect fees): from 1 to 10 points;
- (O) Additional points may be given for Projects requiring extensive rehabilitation. To receive points for extensive rehabilitation, the Applicant must demonstrate an expenditure of \$4,000 or more per Unit. A maximum of 30 points will be awarded, based upon actual expenditures and number of units receiving extensive rehabilitation;

(2) **Legislated priorities.** Additional points shall be awarded any project which meets the following priority established by Congress by setting aside low income units for households with fifty percent (50%) of area median income or less: 15 points. The units so set aside for very low income households must be occupied by households within the income limits set forth in the Regulatory Agreement. The compliance period on the very low income units is established by the compliance period on the low income units. Rents are restricted on these units as provided by law.

330:35-5.5. Quality of applications [REVOKED]

The information required by the Code, these Rules and the application, is complex and quite extensive. Applications submitted to OHFA must be complete and must, by attachment or supplements, supply sufficient documentation to substantiate the representations made in the Application. Applications which are incomplete or fail to supply this information will be rejected.

330:35-5.6. Conflict of interest [REVOKED]

NO LIHTC ALLOCATED TO PARTIES WITH CONFLICTS OF INTEREST. In general, no LIHTC shall be allocated to applicants who have or may appear to have a conflict of interest. To this end, OHFA declares the following parties to be in conflict of interest and not eligible for an Allocation of LIHTC:

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(1) **OHFA Affiliates:**

- (A) OHFA Trustees;
- (B) Officers;
- (C) Employees;
- (D) Father, mother, sisters, brothers, father in law, mother in law, and sisters and brothers in law, lineal heirs and dependents of Trustees and/or officers;
- (E) Dependents of employees; and
- (F) General Counsel and attorneys of firm.

(2) **State Officials Affiliates:**

- (A) Governor;
- (B) Governor's staff;
- (C) Members of Executive or Legislative Bond Oversight Commissions; and
- (D) Father, mother, sisters, brothers, father in law, mother in law, and sisters and brothers in law, lineal heirs and dependents of Governor, Governor's staff, and members of Executive or Legislative Bond Oversight Commissions.

330:35-5-7. Fees [REVOKED]

The following fees shall apply to the LIHTC Program. For Scattered Site Projects, a separate Application must be filed for each Site. Each Application will be treated separately for all purposes, including payment of fees, reservation, commitment and carryover allocations.

(1) **Application fee.** An Application Fee, payable to "Oklahoma Housing Finance Agency", must accompany the Application submitted to OHFA. The Application Fee shall be 2.5 percent of the annual credit requested, but, in no event, less than \$200.00. The Application Fee is nonrefundable.

(2) **Reservation fees.** A Reservation Fee of 2.5 percent of the annual credit amount reserved is due within fourteen (14) days of notification from OHFA of a reservation of tax credits. This Reservation Fee is nonrefundable.

(3) **Allocation fee.** An Allocation Fee shall be paid in an amount equal to three (3) percent of the first year's tax credit allocation request, but in any event not less than \$1,000, nor, without regard to present value factoring, more than \$7,500. The Allocation Fee must accompany the Allocation request. For single Site or contiguous Site Projects of four (4) or less units, the Allocation Fee shall be calculated on a cost of \$200 per unit.

(4) **Annual certification fee.**

(A) An Annual Fee payable to OHFA must accompany the Annual Certification sent to OHFA. The amount of this fee is as follows:

- (i) For Projects with 50 or fewer Units: \$50;
- (ii) For Projects with greater than 50 Units: \$100.

(B) The initial compliance certification, income certification(s) and related fees must be submitted to OHFA within 30 days of initial occupancy. Subsequent certifications and fees are due no later than June 1 of each calendar year, or at such other time as may be specified by the Secretary of the U.S. Treasury.

(5) **Carryover Allocation fee.** Projects requesting carryover allocations shall pay a fee equal to one (1) percent of the carryover amount. This Carryover Allocation Fee is due at the time the carryover agreement is entered. This fee is nonrefundable.

(6) **Compliance Monitoring fees.** The Code requires OHFA to take such measures as OHFA deems necessary to ensure compliance with the Code. Such measures include, but are not necessarily limited to, visiting and inspecting the Project and its housing quality, reviewing books and records of the Project, and the Developer and interviewing tenants. Upon completion of such examination OHFA, shall be reimbursed, by the Project or Developer, its costs, including an hourly rate for the OHFA examiner, not to exceed \$20 per hour, plus any and all actual travel, lodging and per diem expenses of said examiner. In no case, however, shall the total examination cost per annum for a single or contiguous Site Project exceed \$500 plus actual out of pocket expenses (travel, lodging, per diem) of OHFA. With respect to Scattered Site Projects, each location will be examined and assessed a separate Compliance Monitoring Fee consistent with this section. Upon completion of the compliance inspection, OHFA shall provide a report to the Developer and an itemized Compliance Monitoring Fee assessment. The Compliance Monitoring Fee shall be paid to OHFA within ten (10) days of receipt of said assessment.

APPENDIX A. LOW-INCOME HOUSING TAX CREDIT APPLICATION [REVOKED]



Low-Income Housing Tax Credit Application
OKLAHOMA HOUSING FINANCE AGENCY
 P. O. BOX 26720
 OKLAHOMA CITY, OKLAHOMA 73126-0720

6-90

Application Type (Check one)

Initial Application

Date of Application _____

Are you requesting low-income housing tax credit from the non profit set-aside? Yes No

Project Name & Address (Complete the information listed below)

Name _____ Census Tract _____
 Address _____ County _____
 City _____ State _____ Zip Code _____

Project Located in an Metropolitan Statistical Area

Congressional District _____ State Senate District _____ State House District _____

Developer Information

For-Profit Not-For-Profit

(Not-For-Profits must complete not for profit developer information on page 15)

Name (s) _____ Address _____
 City _____ State _____ Zip Code _____
 Telephone _____ Fax _____

Primary Point(s) of Contact

Name(s) _____ Address _____
 State _____ Zip _____ Telephone _____ Fax _____

Legal Entity (Complete the applicable section)

1. Partnership

(Please note: OHFA reserves tax credits to the partnership & General Partners. Reservations are not transferrable. Any changes in General Partner status requires a new application.)

For-Profit Not-For-Profit (Complete information page 15)

Name _____ Federal ID Number _____

Name of General Partner(s)	Telephone	% Ownership	Fed. ID Number
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

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2. Sole Proprietor

List Name, Address, Phone Number and Fax Number if different from "Developer Information."

3. Corporation

For Profit Not For Profit (Not For Profits must complete
Information on page 15.)

Name _____ Federal ID Number _____

Stockholders owning 5% or more of stock:

<u>Name</u>	<u>% Ownership</u>	<u>Federal ID Number</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

4. Others:

List and describe principal owners/agents and provide their address, phone number, fax number and Federal ID number.

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Previous Participation of General Partner or Developer

List all projects in which the developer(s) or general partner(s) have requested an allocation of low-income housing tax credits or sold a project which received an allocation of low-income housing tax credits.

Name of Project/Location	Date of Application	Status of Project

Type of Low -Income Housing Tax Credit Requested

- New Construction without Federal Subsidies New Construction with Federal Subsidies
 Acquisition/Rehabilitation without Federal Subsidies Rehabilitation with Federal Subsidies
 Acquisition with 10 year waiver from Federal Agency

Is this project in a Qualified Census Tract or High Cost Area ? Yes No

If yes, location of project by qualified census tract: _____

Project Information

- New Construction Rehabilitation Acquisition and Rehabilitation

Total Number of Units: _____ Number of Low -Income Units _____

Percent of Units Low-Income _____ %

- Row House / Townhouse Detached Single Family Detached Two family
 Garden Apartments Elevator: Number of Stories _____
 Slab on Grade Crawl Space Partial Basement Full Basement

Accessory Buildings & Area _____

List Recreation Facilities _____

Commerical Facilities _____

Number of Buildings _____ Total Number of Parking Spaces _____

Gross Floor Area of all Buildings: _____
 (Square Feet) Non-residential Floor Area _____ Residential Floor Area _____
 (Square Feet) (Square Feet)

Scattered Sites: ___ Yes ___ No (If yes, documentation of common plan of financing must accompany this application)

Energy and Equipment Information

Energy Equipment	Type System (Forced Air, Hot Water Etc.)	Efficiency Rating
Heating		
Air Conditioner		
Domestic Hot Water		

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Equipment Included with Unit (Low -Income Units)

- Range Refrigerator Disposal Dishwasher
 Air Conditioner Kitchen Exhaust Fan Other _____
 Laundry Facilities (on site) Washer & Dryer Hook-up

Equipment Included with Unit (Market Rate Units)

- Range Refrigerator Disposal Dishwasher
 Air Conditioner Kitchen Exhaust Fan Other _____
 Laundry Facilities (on site) Washer & Dryer Hook-up

Type of Unit

- Multifamily Rental Residential Single Room Occupancy Housing
 Transient Housing Other _____

Targeting of Units

- Elderly, number of units _____ Family, number of units _____
 Handicapped, number of units _____ Other , number of units _____

Monthly Utility Allowance Calculations

Utilities	Type of Utility (Gas, Electric, Oil etc)	Utilities paid by:	Enter Allowances by Bedroom Size				
			0-Bdr	1-Bdr	2-Bdr	3-Bdr	___ Bdr
Heating		<input type="checkbox"/> Owner <input type="checkbox"/> Tenant					
Air Conditioning		<input type="checkbox"/> Owner <input type="checkbox"/> Tenant					
Cooking		<input type="checkbox"/> Owner <input type="checkbox"/> Tenant					
Lighting		<input type="checkbox"/> Owner <input type="checkbox"/> Tenant					
Hot Water		<input type="checkbox"/> Owner <input type="checkbox"/> Tenant					
Water		<input type="checkbox"/> Owner <input type="checkbox"/> Tenant					
Sewer		<input type="checkbox"/> Owner <input type="checkbox"/> Tenant					
Trash		<input type="checkbox"/> Owner <input type="checkbox"/> Tenant					
Total Utility Allowance for units							

Source of Utility Allowance Calculation

- State PHA Local PHA _____
 Utility Company Other _____

Documentation of utility calculations must be included with application

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Project Income Information

Do any low-income units receive or will receive Rental Assistance? Yes No

If yes, list the type of Rental Assistance:

<input type="checkbox"/> Section 8 New Construction Substantial Rehabilitation	<input type="checkbox"/> Section 8 Project Based Assistance	<input type="checkbox"/> State Assistance
<input type="checkbox"/> Section 8 Moderate Rehabilitation	<input type="checkbox"/> FmHA 515 Rental Assistance	<input type="checkbox"/> _____
<input type="checkbox"/> Section 8 Certificates	<input type="checkbox"/> Section 8 Vouchers	

Number of units receiving Assistance _____ Number of years Rental Assistance contract _____

Project Rents

List the Applicable Low-income Tax Credit Rents and the Actual Proposed Gross Rents for the Project.

	0-Bdr	1-Bdr	2-Bdr	3-Bdr	____ Bdr
Actual Gross Rents for Project					
50% of Area Median Income					
60% of Area Median Income					

Annual Expense Information

Annual Expenses Complete this section listing the annual operating expenses for all the units.

<p>Administrative</p> <p>1. Advertising _____</p> <p>2. Management _____</p> <p>3. Legal/Partnership _____</p> <p>4. Accounting /Audit _____</p> <p>5. Other _____</p> <p>Total Administrative Cost _____</p> <p>Maintenance</p> <p>1. Decorating _____</p> <p>2. Repairs _____</p> <p>3. Exterminating _____</p> <p>4. Ground Expense _____</p> <p>5. Other _____</p> <p>Total Maintenance Cost _____</p>	<p>Operating</p> <p>1. Elevator _____</p> <p>2. Fuel (Heating & Hot Water) _____</p> <p>3. Lighting & Misc. Power _____</p> <p>4. Water/Sewer _____</p> <p>5. Gas _____</p> <p>6. Trash Removal _____</p> <p>7. Payroll/Payroll Taxes _____</p> <p>8. Insurance _____</p> <p>Total Operating Cost _____</p> <p>Real Estate Taxes</p> <p>Real Estate Taxes _____</p> <p>Total Taxes _____</p>
--	--

Total Annual Operating Expenses _____

Annual Replacement Reserve for Units _____

What is the estimated annual percentage increase in annual expenses? _____ %

Permanent Final Adoptions

Site Information Provide information concerning the proposed site(s)

Is site currently under control for the project Yes No

If yes, control is in the form of: Deed Option Purchase Contract Other:

Expiration date of contract or option _____
month/year

_____ Total Cost of Land _____ Exact Area of Site _____
Acres or Square Feet
Circle one

Name of Seller _____

Address _____ City _____

State _____ Phone Number () _____

Is site properly zoned for your development: Yes No

If no, is site currently in the process of rezoning? Yes No

When is the zoning issue to be resolved? _____
month/year

Are all utilities presently available to the site? Yes No

If no, which utilities need to be brought to the site? _____

The following information must be included with the application: Site Control document, Documentation of proper zoning, or Sketch plan of site.

Acquisition of Existing Buildings

How many buildings will be acquired for the project? _____

Are all the buildings currently under control for the project? Yes No

If no, how many building are under control for the project? _____

When will the rest of the building be under control for acquisition? _____

	List Buildings Under Control Address(s) of building	Type of Control Ownership, Option, Purchase Contract	Expiration Date of Control Document	Number of Units	Acquisition Cost of Building
1.					
2.					
3.					
4.					
5.					
6.					
7.					

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Acquisition Information

Provide the information listed below concerning the acquisition of building(s) for the project.

Building(s) acquired or to be acquired from Related Party Unrelated Party

Building (s) acquired or to be acquired with Buyer's Basis Determined with reference to Seller's Basis
 Not Determined with reference to Seller's Basis

List below by Building Address, the date the building was placed-in-service , date the building was or is planned for acquisition, and the number of years between the date the building was placed-in-service and date of acquisition.

	Address(es) of building	Placed-in-Service Date of Building by the most recent owner	Proposed Date of Acquisition by Applicant	Number of years between PIS & Acquisition
1.				
2.				
3.				
4.				
5.				
6.				
7.				

Relocation Information

Provide information concerning any relocation on the project.

Does this project involve any relocation of tenants Yes No

If yes, please describe the proposed relocation assistance if any,

Minimum Set-Aside Election

The Owner irrevocably elects one of the Minimum Set-Aside Requirements (Check one Only)

- At Least 20% of the rental residential units in this development are rent-restricted and to be occupied by individuals whose income is 50% or less of area median income.
- At Least 40% of the rental residential units in this development are rent-restricted and to be occupied by individuals whose income is 60% or less of area median income.
- Deep Rent skewing Option as defined in Section 42.

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Source of Funds (Grants and Other Moneys)

Is any portion of the Source of Funds for the project financed directly or indirectly with Federal, State, or Local Government Funds? Yes No

If yes, then check the type and list the amount of the moneys involved.

- | | | | |
|--|----------|--------------------------------------|----------|
| <input type="checkbox"/> Tax-Exempt Financing | \$ _____ | | |
| <input type="checkbox"/> CDBG Financing | \$ _____ | <input type="checkbox"/> CDBG Grant | \$ _____ |
| <input type="checkbox"/> UDAG Financing | \$ _____ | <input type="checkbox"/> UDAG Grant | \$ _____ |
| <input type="checkbox"/> HODAG Financing | \$ _____ | <input type="checkbox"/> HODAG Grant | \$ _____ |
| <input type="checkbox"/> FmHA 515 Financing | \$ _____ | <input type="checkbox"/> State Grant | \$ _____ |
| <input type="checkbox"/> Rental Rehabilitation Grant Financing | \$ _____ | <input type="checkbox"/> Local Grant | \$ _____ |
| <input type="checkbox"/> Other | \$ _____ | <input type="checkbox"/> Other | \$ _____ |

If Tax-Exempt financing is used, list the percentage of the tax-exempt financing to the total cost of project _____ %

Is Taxable Bond Financing used? Indicate (X) \$ _____

Credit Enhancements

Will the permanent financing have any type of credit enhancement? Yes No

If yes, list type of enhancement _____

Existing Subsidies with Acquisition Projects

- Section 221(d)(3) BMIR
- Section 236
- Section 8 Rent Supplement or Rental Assistance payment

Is HUD Approval for Transfer of Physical Asset Required Yes No

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Project Income Information

Low-Income Units Only

List the estimated monthly income for the low-income units.				
Total number of Low-Income Units _____		Total Monthly Rent by Unit Type _____		
	Number of Units	Monthly Rent per Unit	by Unit Type	Average SF of Unit
___ Bedroom	_____	_____	_____	_____
___ Bedroom	_____	_____	_____	_____
___ Bedroom	_____	_____	_____	_____
___ Bedroom	_____	_____	_____	_____
___ Bedroom	_____	_____	_____	_____
Other Income Source: _____		_____		
		Less Vacancy Allowance _____%	(_____)	
		Total Monthly Income _____		
What is the estimated annual percentage increase in annual income? _____ %				

Market Rate Units Only

List the estimated monthly income for the market rate units.				
Total number of Market Rate Units _____		Total Monthly Rent by Unit Type _____		
	Number of Units	Monthly Rent per Unit	by Unit Type	Average SF of Unit
___ Bedroom	_____	_____	_____	_____
___ Bedroom	_____	_____	_____	_____
___ Bedroom	_____	_____	_____	_____
___ Bedroom	_____	_____	_____	_____
Other Income Source: _____		_____		
		Less Vacancy Allowance _____%	(_____)	
		Total Monthly Income _____		

Permanent Final Adoptions

Source of Funds (Construction and Permanent Financing)

Construction Financing List individually the source of construction financing.

Source of Funds	Amount of Funds	Name and Telephone Number of Contact Person.
1. _____	_____	_____
2. _____	_____	_____
3. _____	_____	_____
Total Source of Funds for Construction	_____	

Source of Funds List Total Source of Funds for the Project at Closing. (Do not include construction financing.)

Name of Lender or Source of Funds	Amount of Funds	Annual Debt Service Cost	Interest Rate of Loan	Amortization Period	Term of Loan
1. _____	_____	_____	_____	_____	_____
2. _____	_____	_____	_____	_____	_____
3. _____	_____	_____	_____	_____	_____
4. _____	_____	_____	_____	_____	_____
5. Proceeds from Low-Income Tax Credits	_____	_____	_____	_____	_____
6. Proceeds from Historic Tax Credits	_____	_____	_____	_____	_____
Total Source of Funds	_____	Total Annual Debt Service Cost	_____		

Source of Fund / Commitments List all Source of Funds provided for the project. Commitment letters must be included with application

Name of Lender or Source of Funds	Date of Commitment	Name & Telephone number of Contact Person
1.		
2.		
3.		
4.		
5.		
6.		

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Project Costs

List and Indicate Eligible Basis by Credit Type. (Residential Portion Only)

Itemized Cost	Actual Cost	Adjustment for High Cost Areas	Eligible Basis by Credit Type	
			30% PV Eligible Basis	70% PV Eligible Basis
To Purchase Land and Buildings				
Land	_____	_____	_____	_____
Existing Structures	_____	_____	_____	_____
Demolition	_____	_____	_____	_____
Other	_____	_____	_____	_____
For Site Work				
Site Work	_____	_____	_____	_____
Off Site Improvement	_____	_____	_____	_____
Other	_____	_____	_____	_____
For Rehabilitation and New Construction				
New Building	_____	_____	_____	_____
Rehabilitation	_____	_____	_____	_____
Accessory Building	_____	_____	_____	_____
General Requirements	_____	_____	_____	_____
Contractor Overhead	_____	_____	_____	_____
Contractor Profit	_____	_____	_____	_____
Other	_____	_____	_____	_____
For Contingency				
Construction Contingency	_____	_____	_____	_____
Other	_____	_____	_____	_____
For Architectural and Engineering Fees				
Architect Fee - Design	_____	_____	_____	_____
Architect Fee - Supervision	_____	_____	_____	_____
Real Estate Attorney	_____	_____	_____	_____
Consultant or Processing Agent	_____	_____	_____	_____
Other Fees	_____	_____	_____	_____
Other Fees	_____	_____	_____	_____
Other Fees	_____	_____	_____	_____
Other Fees	_____	_____	_____	_____
For Interim Costs				
Construction Insurance	_____	_____	_____	_____
Construction Interest	_____	_____	_____	_____
Constr Loan Origin Fee	_____	_____	_____	_____
Constr Loan Credit Enhancement	_____	_____	_____	_____
Taxes	_____	_____	_____	_____
For Financing Fees and Expenses				
Bond Premium	_____	_____	_____	_____
Credit Report	_____	_____	_____	_____
Permanent Loan Origin Fee	_____	_____	_____	_____
Perm Loan Credit Enhancement	_____	_____	_____	_____
Cost of Iss/Underwriters Discount	_____	_____	_____	_____
Title and Recording	_____	_____	_____	_____
Counsel's Fee	_____	_____	_____	_____
Other	_____	_____	_____	_____
Other	_____	_____	_____	_____
Subtotal	_____	_____	_____	_____

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List Total Project Costs and Identify Eligible Basis by Credit Type. (Continued)				
Itemized Cost	Actual Cost	Adjustment for High Cost Areas	Eligible Basis by Credit Type	
			30% PV Eligible Basis	70% PV Eligible Basis
For Soft Costs				
Property Appraisal (Feasibility)	_____	_____	_____	_____
Market Study	_____	_____	_____	_____
Environmental Report	_____	_____	_____	_____
Tax Credit Fees	_____	_____	_____	_____
Rent-up	_____	_____	_____	_____
Consultants	_____	_____	_____	_____
Other	_____	_____	_____	_____
For Syndication Costs				
Organizational (Partnership)	_____	_____	_____	_____
Bridge Loan Fees and Expenses	_____	_____	_____	_____
Tax Opinion	_____	_____	_____	_____
Other (e.g., BSPRA)	_____	_____	_____	_____
Other	_____	_____	_____	_____
For Developer's Fees				
Developer's Overhead	_____	_____	_____	_____
Developer's Fee	_____	_____	_____	_____
Other	_____	_____	_____	_____
For Project Reserves				
Rent-up Reserve	_____	_____	_____	_____
Rent-up Reserve	_____	_____	_____	_____
Operating Reserve	_____	_____	_____	_____
Other	_____	_____	_____	_____
Other	_____	_____	_____	_____
Subtotal	_____	_____	_____	_____
Subtotal from previous page	_____	_____	_____	_____
Total	_____	_____	_____	_____
Less portion of federal grant used to finance qualifying development costs. List Grants _____			(_____)	(_____)
Less amount of nonqualified nonrecourse financing			(_____)	(_____)
Less non-qualifying units of higher quality			(_____)	(_____)
Less non-qualifying excess portion of higher quality units			(_____)	(_____)
Less Historic Tax Credit (Residential Portion Only)			(_____)	(_____)
Total Eligible Basis			_____	_____
Multiplied by the Applicable Fraction			_____ %	_____ %
Total Qualified Basis			_____	_____
Multiplied by the Applicable Percentage			_____ %	_____ %
TOTAL AMOUNT OF TAX CREDIT REQUESTED:			_____	_____
<p><small>(PLEASE NOTE: If the project is eligible for Historic Tax Credit include a complete breakdown of the determination of eligible basis for the Historic Credit with the application.) If the Project's basis has been adjusted because it is in a high cost or qualified census tract, the actual deduction for the item(s) must be adjusted by multiplying the amount by 130%. This does not apply to Historic TaxCredits</small></p>				

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Syndication Information Provide information below concerning syndication and estimated proceeds from sale of tax credits.

Low Income Housing Tax Credits _____ Historic Rehabilitation Tax Credits _____

When are these funds paid? _____

Type of Offering Public Private

Type of Investors Individuals Corporations

Name of Fund _____

Name of Syndicator _____ Telephone (____) _____

Address _____ State _____ Zip _____

Development Team Information Each member of the development team must submit a resume which lists qualifications, address and telephone number.

Name of Developer _____

Name of General Partner _____

Name of Contractor _____

Name of Management Company _____

Name of Sponsoring Organization _____

Name of Consultant _____

Name of Tax Attorney and/or Accountant:

Please list any direct or indirect, financial or other interest a member of the development team may have with another member of the development team. List "none" if there are no identity of interests.

Permanent Final Adoptions

Project Schedule

Activity	Scheduled Date Month/Year
A. Site	
Option/Contract	
Site Acquisition	
Zoning Approval	
Site Analysis	
B. Financing	
1. Construction Loan	
Loan Application	
Conditional Commitment	
Firm Commitment	
2. Permanent Loan	
Loan Application	
Conditional Commitment	
Firm Commitment	
3. Other Loans & Grants	
Type & Source	
Application	
Award	
4. Other Loans & Grants	
Type & Source	
Application	
Award	
5. Other Loans & Grants	
Type & Source	
Application	
Award	
C. Plans and Specifications.	
Working Drawings	
D. Closing and Transfer of Property	
E. Construction Start	
F. Completion of Construction	
G. Lease-up	
H. Credit Placed In Service Date	

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Notification of Local Official

Provide the name of the local political jurisdiction in which the project shall be located, and include the name and address of the chief executive officer of the political jurisdiction.

Name of Political Jurisdiction _____
Name of Chief Executive Officer _____
Title _____
Address _____ City _____
Zip Code _____ Telephone () _____

Not for Profit Determination

If this project is to be considered for the not for profit set-aside, the following information must be completed.

Articles of Incorporation and IRS documentation of status must be attached with Application.

To qualify for the not for profit set-aside, the applicant must materially participate in the development and operation of the project throughout the compliance period. Within the meaning of IRC 469(h), "a (not-for-profit) shall be treated as materially participating in an activity only if the (not-for-profit) is involved in the operations of the activity on a basis which is regular, continuous, and substantial."

501 (c) (3) Organization 501 (c) (4) Organization Exempt purposes includes fostering of Low-income Housing
 Exempt from tax under Section 501 (a) Other: _____

Describe the non-profit's participation in the development and operation of the project.

List the names of Board Members for the non-profit organization.

Identify all paid, full time staff and sources of funds for annual operating expenses and current programs.

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Permanent Final Adoptions

Qualified basis must be determined on a building by building basis. Complete the section below. Building addresses are required.

Determining Qualified Basis on a building by building basis.

Address (must be complete)	Eligible Basis 30% PV		Applicable Fraction		Qualified Basis		Eligible Basis 70% PV		Applicable Fraction		Qualified Basis		High Cost Credit AIFCA		Place-in-Service Date
	Yes	No			Yes	No	Yes	No			Yes	No	Yes	No	
1.														<input type="checkbox"/> Yes <input type="checkbox"/> No	
2.														<input type="checkbox"/> Yes <input type="checkbox"/> No	
3.														<input type="checkbox"/> Yes <input type="checkbox"/> No	
4.														<input type="checkbox"/> Yes <input type="checkbox"/> No	
5.														<input type="checkbox"/> Yes <input type="checkbox"/> No	
6.														<input type="checkbox"/> Yes <input type="checkbox"/> No	
7.														<input type="checkbox"/> Yes <input type="checkbox"/> No	
8.														<input type="checkbox"/> Yes <input type="checkbox"/> No	
9.														<input type="checkbox"/> Yes <input type="checkbox"/> No	
10.														<input type="checkbox"/> Yes <input type="checkbox"/> No	
11.														<input type="checkbox"/> Yes <input type="checkbox"/> No	
12.														<input type="checkbox"/> Yes <input type="checkbox"/> No	
13.														<input type="checkbox"/> Yes <input type="checkbox"/> No	
Totals															

Determining Qualified Basis on a building by building basis. Qualified basis must be determined on a building by building basis. Complete the section below. Building addresses are required.

Address (must be complete)	Eligible Basis 30% PV		Qualified Basis		Eligible Basis 70% PV		Applicable Fraction		Qualified Basis		High Cost Credit Area		Place-in-Service Date
	Eligible Basis 30% PV	Applicable Fraction	Qualified Basis	Applicable Fraction	Eligible Basis 70% PV	Applicable Fraction	Qualified Basis	Applicable Fraction	Qualified Basis	High Cost Credit Area	High Cost Credit Area		
1.											<input type="checkbox"/> Yes <input type="checkbox"/> No		
2.											<input type="checkbox"/> Yes <input type="checkbox"/> No		
3.											<input type="checkbox"/> Yes <input type="checkbox"/> No		
4.											<input type="checkbox"/> Yes <input type="checkbox"/> No		
5.											<input type="checkbox"/> Yes <input type="checkbox"/> No		
6.											<input type="checkbox"/> Yes <input type="checkbox"/> No		
7.											<input type="checkbox"/> Yes <input type="checkbox"/> No		
8.											<input type="checkbox"/> Yes <input type="checkbox"/> No		
9.											<input type="checkbox"/> Yes <input type="checkbox"/> No		
10.											<input type="checkbox"/> Yes <input type="checkbox"/> No		
11.											<input type="checkbox"/> Yes <input type="checkbox"/> No		
12.											<input type="checkbox"/> Yes <input type="checkbox"/> No		
13.											<input type="checkbox"/> Yes <input type="checkbox"/> No		
Totals													

APPENDIX B. AFFIDAVIT [REVOKED]

AFFIDAVIT

STATE OF OKLAHOMA)
) SS:
COUNTY OF)

The undersigned, _____, of lawful age, being first duly sworn, on oath says that:

1. The undersigned is the duly authorized agent of _____, the Applicant submitting the Low Income Tax Credit Application which is attached to this statement, for the purpose of certifying the facts pertaining to the Application, facts pertaining to the existence of collusion among Applicants and between Applicants and state officials or employees, as well as facts pertaining to the giving or offering of things of value to governmental personnel in return for special consideration in the allocation of Low Income Housing Tax Credits pursuant to the Application to which this statement is attached;

2. The undersigned is fully aware of the facts and circumstances surrounding the making of the Application to which this statement is attached and has been personally and directly involved in the proceedings leading to the submission of such Application; and

3. Neither the Applicant nor anyone subject to the Applicant's direction or control has been a party (i) to any collusion among Applicants by agreement to refrain from making Application, (ii) to any discussions between Applicants and any state official concerning exchange of money or other things of value for special consideration in granting an Allocation of Low Income Housing Tax Credits, (iii) to paying, giving or donating or agreeing to pay, give or donate to any officer or employee of the State of Oklahoma or to any officer or employee of Oklahoma Housing Finance Agency, any money or other thing of value, either directly or indirectly, in procuring an Allocation of Low Income Housing Tax Credit pursuant to the Application to which this statement is attached; and

4. The undersigned is responsible (i) for ensuring that the project consists or will consist of a Qualified Building(s) as defined in the Code, and will satisfy all applicable requirements of federal tax law in the acquisition, rehabilitation, or construction and operation of the project to receive an Allocation of Low Income Housing Tax Credit, and (ii) for all calculations and figures relating to the determination of the Eligible Basis for the building(s) and understands and agrees that the amount of the Low Income Housing Tax Credit is calculated by reference to the figure submitted with this

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Application, as to the Eligible Basis and Qualified Basis of the project and individual buildings.

5. The undersigned agrees that Oklahoma Housing Finance Agency will at all times be indemnified and held harmless against all losses, costs, damages, expenses and liabilities whatsoever nature or kind (including, but not limited to attorney's fees, litigation and/or court costs, amounts paid in settlement, and amounts paid to discharge judgement, any loss from judgement from the Internal Revenue Service) directly or indirectly resulting from, arising out of, or related to acceptance, consideration and approval or disapproval of such Application.

6. The undersigned acknowledges and agrees that the Application, upon filing, becomes subject to the Oklahoma Open Records Act and as such becomes public record and further that all or a portion of the Application may be provided to the Internal Revenue Service.

In witness whereof, the undersigned has caused this Affidavit to be duly executed in the name of the Applicant this ____ day of _____, 199 ____.

Applicant

By: _____

Title: _____

Subscribed and sworn to before me this ____ day of _____, 199__

Notary Public

My Commission Expires:

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[OAR Docket #17-554; filed 6-30-17]

TITLE 330. OKLAHOMA HOUSING FINANCE AGENCY CHAPTER 36. AFFORDABLE HOUSING TAX CREDIT PROGRAM

[OAR Docket #17-552]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions
330:36-1-4 [AMENDED]
330:36-1-9 [AMENDED]
Subchapter 2. Allocation Procedures
330:36-2-1 [AMENDED]
330:36-2-2 [AMENDED]
330:36-2-3 [AMENDED]
330:36-2-5 [AMENDED]
330:36-2-9 [AMENDED]
330:36-2-11 [AMENDED]
330:36-2-16 [AMENDED]
330:36-2-17 [AMENDED]
Subchapter 4. Development Application and Selection
330:36-4-1 [AMENDED]
330:36-4-2 [AMENDED]
330:36-4-2.1 [AMENDED]
330:36-4-3 [AMENDED]
Subchapter 6. Program Administration
330:36-6-1 [AMENDED]
330:36-6-3 [AMENDED]
330:36-6-5 [AMENDED]
Subchapter 10. Credit Assistance/Stimulus Legislation
330:36-10-15 [AMENDED]

AUTHORITY:

These Chapter 36 Rules are authorized by 75 O.S., Section 302; 60 O.S., Sections 176 through 180.3; the Board of Trustees of Oklahoma Housing Finance Agency (OHFA), the Amended Trust Indenture, and the Bylaws of OHFA as established by the OHFA Board of Trustees.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

January 4, 2017

COMMENT PERIOD:

February 1, 2017 through March 3, 2017

PUBLIC HEARING:

March 6, 2017

ADOPTION:

March 22, 2017

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

March 23, 2017

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration On June 13, 2017

FINAL ADOPTION:

June 13, 2017

EFFECTIVE:

January 1, 2018

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

Modifications to these Chapter 36 Rules are adopted in response to comments and program changes.

Section 42 of the Internal Revenue Code of 1986, as amended (Code), provides that a federal tax credit (Credit) may be claimed for a period of ten years by qualified owners (as defined by the Code) of residential property rented to qualified low-income tenants at restricted rates, if said owner has been approved for an allocation of Credits by the state housing credit allocating agency. Oklahoma Housing Finance Agency (OHFA) is Oklahoma's allocating agency. The Code further provides that each state's annual Credit authority is to be allocated by that state's allocating agency pursuant to a Qualified Allocation Plan (QAP). Chapter 36 Affordable Housing Tax Credit

Program (Rules) is part of Oklahoma's QAP. The purpose of said Rules is to comply with the Code, the Oklahoma Administrative Procedures Act (APA), and to provide guidelines for administering the allocations of Oklahoma's annual Credit authority and OHFA's Affordable Housing Tax Credit Program (Program). The Board of Trustees are also required to administer the Program in a manner consistent with Oklahoma's Housing Antidiscrimination Act, 15 O.S., § 1451-1453 and all federal laws prohibiting discrimination, including 42 U.S.C., § 1983 and the Fair Housing Act, as amended 42 U.S.C., § 3601 et seq.

CONTACT PERSON:

Pamela Miller, Agency Liaison, 100 Northwest 63rd, Suite 200, Oklahoma City, Oklahoma 73116, 405-419-8134, pamelamiller@ohfa.org.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF JANUARY 1, 2018:

SUBCHAPTER 1. GENERAL PROVISIONS

330:36-1-4. Definitions

The following words and terms, when used in this Chapter, shall have the following meanings unless the context clearly indicates otherwise. Additional capitalized terms used in these Chapter 36 Rules are defined in the Code and these Chapter 36 Rules. When a conflict exists between the following definitions and the Code the more restrictive meaning shall be applied.

"Affiliate" means any Person that directly or indirectly through one (1) or more intermediaries, Controls, is Controlled By, or is Under Common Control With any other Person.

"Allocation" means the maximum amount of TCAs available to the Development as a result of the approval of an award by the Trustees. The Credit shall be apportioned to each Qualified Building at the time such Qualified Building is Placed-In-Service.

"Applicable Fraction" means the fraction used to determine the qualified basis of a qualified low-income Building which is the smaller of the Unit Fraction or the Floor Space Fraction.

"Applicant" means any individual, Nonprofit Sponsored Development, Nonprofit organization or profit-motivated individual, corporation, general or limited partnership, limited liability company or other legal entity which has submitted an Application to OHFA for a Credit Reservation and Allocation, and its successors in interest. "Applicant" includes the Owner and Owner's predecessor in interest, if any, and includes any successor in interest, Transferee of all or any portion of the Development, and the heirs, executors, administrators, devisees, successors and assigns of any purchaser, grantee, Transferee, Owner or lessee (other than a Resident) of all or any portion of the Development, and any other Person or entity having any right, title, or interest in the Development.

"Application" means an Application in the form prescribed by OHFA, from time to time, in the Application Packet (AP), including all exhibits and other materials filed by an Applicant with OHFA in support of or in connection with the formal request by the Applicant requesting a TCA.

"Application Packet" (referred to in these Rules as the "AP") means the Application in the form prescribed by OHFA at least annually, together with instructions and such other materials provided by OHFA to any Person requesting the same for the purpose of seeking to obtain from OHFA a TCA. OHFA will solicit formal public input on the Application Packet, and provide explanation of any significant changes. Staff will present the ~~following year's~~ proposed AP to the Trustees for approval at a Trustees meeting. The AP may include definitive statements of what shall constitute Threshold Criteria, Selection Criteria, priorities, preferences, and compliance and monitoring requirements as may be authorized by or provided for in the Code and these Rules, and may include the necessary forms, instructions and requirements for Applications, market studies, Commitments, Agreements, Elections, set-asides, OHFA staff evaluation criteria for Threshold Criteria and Selection Criteria, final ranking, Credit amounts, tax-exempt bond financed projects, compliance monitoring, and other matters deemed by Trustees, in their complete discretion, to be relevant to the process of evaluation of Applications and the Applicants in connection with the award or denial of TCAs.

"Area Median Gross Income" means the median Gross Income adjusted for household size, for the county or counties where each Building in a Development is located as determined and published annually by HUD.

"Building" means a property containing residential Housing Units located on the Land and included in the Development. For purposes of the Credit Program, each Building is identified by its Building Identification Number (BIN) assigned by OHFA and its street address assigned by the United States Postal Service. The BIN shall control for Tax Credit purposes. In the event more than one Building is located on the Land, each Building must be identified in the manner required by Code Section 42(g) to be treated as part of the Development. Any Allocation of Credit shall be effective only for the Building(s) identified in a Carryover Allocation Agreement, if applicable, or in Exhibit "A" to the Regulatory Agreement.

"Capital Needs Assessment" (CNA) means a qualified professional's opinion of a property's current physical condition determined after a physical inspection of the interior and exterior of the units and structures as set out in the ~~annual~~ AP.

"Carryover Allocation" means, an Allocation which is made with respect to a Building or Development pursuant to Code Section 42(h)(1)(E) and/or Code Section 42(h)(1)(F), as the case may be, and in conformance with IRS Notice 89-1 and Treasury Regulation Section 1.42-6.

"Carryover Allocation Agreement" means the contract between Owner and OHFA, authorized and approved by the Trustees. A Carryover Allocation is made pursuant to Code Section 42(h)(1)(E) and/or Code Section 42(h)(1)(F), IRS Notice 89-1 and Treasury Regulation Section 1.42-6.

"Certifications" means the representations made under penalties of perjury by the Applicant, Owner, each Developer, each partner or general partner, party to a joint venture, and/or Resident, as applicable, including but not limited to those representations and Certifications set forth in the Applications and the Regulatory Agreement and Exhibits. Certifications also mean any and all representations made under penalties

of perjury with respect to the Development at any time from the date of submission of the Application and throughout the Extended Use Period.

"Code" means the Internal Revenue Code of 1986, as amended, together with applicable rules and regulations, revenue rulings, guidelines, releases, pronouncements, notices or procedures promulgated thereunder or referred to therein or in the applicable rules and regulations.

"Commitment" means a representation or agreement of the Owner/Applicant contained in the Application, or otherwise, which in all cases shall be irrevocable and binding upon Owner/Applicant and its Transferees and successors in interest throughout the Development Compliance Period, unless otherwise noted in the Regulatory Agreement, these Rules, the Application, or any other agreements entered into by Owner/Applicant with OHFA in connection with the Credit Program.

"Compliance Period" means with respect to any Qualified Building, the continuous fifteen (15) year period over which the Qualified Building must satisfy all requirements of the Code and the Credit Program. The Compliance Period begins with the first year of the Credit Period.

"Consultant" means any Person (which is not an Affiliate of an Owner of the Development) that provides professional or expert services relating to an Application, a Development, or any activities pertaining to the filing of an Application, the award of a TCA, the Carryover Allocation, or cost Certification documents filings with OHFA.

"Control" (including the terms "Controls", "Controlling", "Controlled By", and/or "Under Common Control With") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of any other Person, whether through an ownership interest in the other Person, by contract, agreement, understanding, designation, office or position held in or with the other Person or in or with any other Person, or by coercion, or otherwise.

"Credit" (including the terms Tax Credit and Low-Income Housing Tax Credit) means the Low-Income Housing Tax Credit available for federal income tax purposes under Code Section 42 for a Qualified Building.

"Credit Period" means the ten (10) year period over which the Credit may be claimed for a Building. The Credit Period begins when the Building is Placed-In-Service, for Credit purposes, or if the Owner makes an election under Section 42(f)(1)(B) of the Code, the next year; but only if the Building is a qualified low-income Building within the meaning of Code Section 42(c)(2), by the end of the first year of that period. For an existing Building with Rehabilitation Expenditures, the Credit Period shall not begin before the year that the rehabilitation Credit is allowed under Code Section 42(f)(5).

"Credit Program" means OHFA's program for approving Allocations and includes, without limitation, adopting the Qualified Allocation Plan and OHFA's Credit Program Rules, the AP, and all things contemplated therein or appurtenant thereto, including without limitations, monitoring Developments throughout the Extended Use Period and notifying the

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IRS of the Building's or a Development's failure to comply with Code requirements.

"Credit Reservation" means the reservation of a maximum amount available for Allocation to such Development and apportioned to each Qualified Building therein upon meeting the requirements of the Credit Program and Code Section 42.

"Developer" means the Person or entity with the responsibility of ensuring the effective construction or rehabilitation of the Development, including any and all responsibilities as outlined in the Development Agreement, which may also be the Applicant and/or Owner of the Development. Developer also includes any other Person or organization affiliated with, Controlled by, in Control of or a related party to, the Developer, as determined by OHFA.

"Development" means the Land and one (1) or more Buildings, structures, or other improvements now or hereafter constructed or located upon the Land. If more than one (1) Building is to be part of the Development, each Building must be financed under a common plan and identified in the manner required under Code Section 42(g).

"Development Compliance Period" means the period beginning with the first day the first Building of the Development is Placed-In-Service and continuing thereafter until the latest to end of the following periods for each Building in the Development: (i) the Compliance Period; (ii) the Extended Use Period; or (iii) the "Three Year Period."

"Development Team" means the Applicant, architect, attorney, Consultant, Developer, general contractor, market analyst and/or appraiser, property management company, Owner, tax professional, and the principals of each.

"Drug" for purposes of these OAHTC Program Rules, means "a controlled substance" as that term is defined in Section 102 of the Controlled Substances Act, 21 U.S.C., Section 802.

"Drug-Related Criminal Activity" means the illegal manufacture, sale, distribution, or use of a Drug, or the possession of a Drug with intent to manufacture, sell, distribute or use the Drug.

"Due Date" if a Due Date for submission of documents or fees falls on a weekend or a designated Federal holiday, then the Due Date becomes the next business day.

"Elderly" means housing that meets the Elderly exemptions from Fair Housing. For Credit Program purposes these exemptions only apply to household members. Definitions also only apply to Developments Allocated after the effective date of these Chapter 36 Rules.

(A) Provided under any State or Federal program that HUD has determined to be specifically designed and operated to assist elderly persons (as defined in the State or Federal program); or

(B) Intended for and solely occupied by persons 62 years of age or older; or

(C) Intended and operated for occupancy by persons 55 years of age or older. In order to qualify for this definition, a facility or community must satisfy each of the following requirements:

(i) At least 80 percent of the units must have at least one occupant who is 55 years of age or older; and

(ii) The facility or community must publish and adhere to policies and procedures that demonstrate the intent to operate as 55 or older housing; and

(iii) The facility or community must comply with HUD's regulatory requirements for age verification of residents, all occupant's must be sixty two (62) years of age or older. This definition is for consideration for the Elderly set aside in which one hundred percent (100%) of units are for Elderly as defined in the annual AP and these Chapter 36 Rules. This definition is not superseded by Federal or State definitions.

"Eligible Basis" means generally the depreciable basis in the property.

"Extended Use Period" means the continuous period, a minimum of fifteen (15) years, following the close of the Compliance Period during which a Qualifying Building must satisfy all requirements of the Code and the Credit Program. The Extended Use Period for the Development is set forth on Exhibit "A" to the Regulatory Agreement and may not be revoked or terminated prior to said date except as provided in the Code, these Chapter 36 Rules or in the Regulatory Agreement.

"Floor Space Fraction" means the total floor space of the Low-Income Unit in the Building divided by the total floor space of all residential units in the Building (whether occupied or not).

"Gross Rent" means the rent received for a Low-Income Housing Unit, including utility allowances but excluding (i) any payments under Section 8 or any comparable rental assistance program; (ii) any fees or supportive services (within the meaning of Code Section 42(g)(2)(B)); (iii) paid to Owner (on the basis of the low-income status of the qualified Resident of the Low-Income Unit) by a governmental assistance program or an organization exempt from federal income tax under Code Section 501(c)(3), if such program or organization provides assistance for rent and the amount of assistance provided for rent is not separable from the amount of assistance provided for supportive services; and (iv) rental payments to Owner to the extent an equivalent amount is paid to the Rural Housing Service (RHS) under Section 515 of the Housing Act of 1949. Gross Rent includes the minimum amounts paid toward purchase of a Housing Unit as described in Code Section 42(g)(6). The amount of Gross Rent is determined annually based upon the Area Median Gross Income for the locality in which the Development is located. The annual amount may decrease but such amount will not be reduced below the amount of Gross Rent established in the first year of the Credit Period.

"Hard Construction Costs" means the following types of activities, but not limited to, earthwork/site work, on-site utilities, roads and walks, concrete, masonry, metals, carpentry (rough and finish), moisture protection, doors/windows/glass, insulation, roofing, sheet metal, drywall, tile work, acoustical, flooring, electrical, plumbing, elevators, blinds and shades, appliances, lawns & planting, fence, cabinets, carpets, and heat

& ventilation. For calculations of contractor fees, a reasonable contingency can be included.

"Homeless" means (1) lacking a fixed, regular and adequate nighttime residence; and has a primary nighttime residence that is a supervised public or private shelter providing temporary accommodations or a public or private place not ordinarily used as sleeping accommodations for human beings, OR (2) displaced as a result of fleeing violence in the home; and has a temporary residence that is a supervised public or private shelter OR (3) certified by an agency involved in regularly determining Homeless status. OR (4) displaced as a result of a major disaster and receiving FEMA assistance. Homeless individuals are considered Homeless for a period of twenty-four (24) months from the date of move-in, according to Section 103 of the Stewart B. McKinney Homeless Assistance Act and 42(i)(3)(B)(iii)(I) of the Code.

"Housing Unit" means a Low-Income Unit and/or Market Rate Unit located in a Building which is available for rent or is rented by Residents. Common area units are not included.

"HUD" means the U.S. Department of Housing and Urban Development.

"Income" means the Income of one or more qualified Residents, as determined in a manner consistent with the methods under HUD's Section 8 Program.

"IRS" means the Internal Revenue Service of the Treasury.

"IRS Form 8609" means the IRS Form entitled "Low Income Housing Credit Certification". The IRS Form 8609 establishes the maximum Credit for a Building.

"IRS Form 8823" means the IRS form entitled "Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition" issued or to be issued by OHFA with respect to issues of noncompliance with the laws of the IRS and/or the sale or disposition of the Development.

"Land" means the site(s) for each Building in the Development and having the legal description set forth described in the Carryover Allocation Agreement and Exhibit "A" to the Regulatory Agreement.

"Large Development" means a Development with more than sixty (60) units.

"LIHTC Program" means the Credit Program. "LIHTC Program" may be used interchangeably with the term "Credit Program" or "OAHTC Program".

"Low-Income Unit" means a Housing Unit that is both Rent-Restricted and occupied by qualified Residents, provided that: (i) Housing Unit shall constitute a Low-Income Unit only if it is suitable for occupancy taking into account local health, safety and building codes and it is used other than on a transient basis except in the case of Transitional Housing, all as determined under Code Section 42(i)(3); and (ii) Housing Unit in any Building which has four (4) or fewer total Housing Units shall not constitute a Low-Income Unit if any Housing Unit in the Building is occupied by an Owner or a related Person [within the meaning of Code Section 42(i)(3)(C)] unless such Building is described in Code Section 42(i)(3)(E).

"Market Rate Unit" means a Housing Unit that does not meet the definition of a Low-Income Unit.

"Minimum Low-Income Housing Set-Aside" means the minimum percent required under Code Section 42(g) of Housing Units in the Development to be both Rent-Restricted and occupied by qualified Residents, i.e., Residents whose Income is at or below a certain percentage of Area Median Gross Income. For purposes of Code Section 42(g), Owner must have selected either: (i) twenty percent (20%) or more of the total Housing Units to be Rent-Restricted and occupied by Residents whose Income is at or below fifty percent (50%) percent of the Area Median Gross Income; or (ii) forty percent (40%) or more of the total Housing Units to be Rent-Restricted and occupied by Residents whose Income is at or below sixty percent (60%) of the Area Median Gross Income as the Minimum Low-Income Housing Set-Aside. The Applicant may, however, have made a Commitment to provide greater percentages of Housing Units that are both Rent-Restricted and occupied by Residents meeting the above Income limitations and/or making Housing Units available to Residents with Income below the above limitations, i.e., an Additional Low-Income Housing Set-Aside. Owner and all Transferees, and successors in interest shall be bound by all Commitments, including the Minimum Low-Income Housing Set-Aside, or Additional Low-Income Housing Set-Aside made in the Regulatory Agreement, or included in the Carryover Agreement or any of the Resolutions of the Trustees respecting the Application, the Development, or Owner.

"National Non-Metro Area Median Income" means as determined and published annually by HUD.

"Nonprofit" means a private Nonprofit organization that is organized under State or local laws; has no part of its net earnings inuring to the benefit of any member, founder, contributor, or individual; is neither Controlled By, nor under the direction of, individuals or entities seeking to derive profit or gain from the organization; has a tax exemption from the Internal Revenue Service under section 501(c) (3) or (4) of the Internal Revenue Code of 1986; does not include a public body; has among its purposes the provision of decent housing that is affordable to low-income persons, as evidenced in its charter, articles of incorporation, resolutions or by-laws; and, has at least a one year history of providing affordable housing, and is duly qualified to do business within the State.

"Nonprofit Sponsored Development" means and refers to a proposed Development that has or will have a Nonprofit that has a Controlling interest by reason of an ownership interest in a Person that is or will be the Owner of the subject Development, and has materially participated, or will materially participate (within the meaning of the Code) in the Development and operation of the Development throughout the Compliance Period.

"OAHTC Program" means the Credit Program. "OAHTC Program" may be used interchangeably with the term "LIHTC Program" or "Credit Program".

"OHFA" means Oklahoma Housing Finance Agency a State-beneficiary public trust. OHFA is the allocating agency for the State for purposes of the Credit Program.

"One Year Period (1YP)" means period commencing on the date on which OHFA and the Owner agree to the Qualified

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Contract Price in writing and lasting twelve (12) calendar months.

"Owner" means the legal Owner of record of the Development, as set forth on page one of the Regulatory Agreement, and any and all successor(s) in interest. Owner also means any other Person or entity having or acquiring any right, title, or interest in the Development.

"Person" means, without limitation, any natural person, corporation, partnership, limited partnership, joint venture, limited liability company, limited liability partnership, trust, estate, association, cooperative, government, political subdivision, agency or instrumentality, Community Housing Development Organization (CHDO), interlocal cooperative, or other organization of any nature whatsoever, and shall include any two or more Persons acting in concert toward a common goal.

"Placed-In-Service" means: (i) the date on which a new Building or existing Building used as residential rental property is ready and available for its specifically assigned function as evidenced by a certificate of occupancy or the equivalent; or (ii) for Rehabilitation Expenditures that are treated as a separate new Building, any twenty-four (24) month period over which such Rehabilitation Expenditures are aggregated.

"Program Rules" means the various written criteria, requirement, rules, and policies adopted from time to time by the Trustees as the State's Qualified Allocation Plan to administer the Credit Program and to provide for Allocations. The Program Rules must be followed by any participant in the Program. The Program Rules may include requirements that are more stringent than those under Code Section 42.

"Qualified Allocation Plan (QAP)" means these Chapter 36 Rules plus the Application Packet (AP) as defined and other materials provided by OHFA. The deadline for all informal input sessions and the formal public hearing for changes in the QAP will be published by OHFA Staff.

"Qualified Building" means a Building which meets the terms, conditions, obligations, and restrictions of the Program Rules, Carryover Allocation Agreement, Regulatory Agreement, Resolutions of the Trustees respecting Owner or the Development, and Code Section 42(c)(2) for an Allocation and the issuance by OHFA of IRS Form 8609.

"Qualified Contract" means a bona fide contract to acquire the portion of a Building which is not Rent-Restricted for fair market value and the portion of the Building which is Rent-Restricted for an amount not less than the Applicable Fraction for the Building or the sum of: (i) the portion of outstanding indebtedness secured by, or with respect to the Building which is allocable to such Building; (ii) adjusted investor equity in the Building; and (iii) other capital contributions invested in the Building but not reflected in the amounts described in (i) or (ii) above; reduced by cash distributed from the Development or available for distribution from the Development; provided that in all cases, the purchase price for the Building required for a contract to be a Qualified Contract shall be determined in a manner consistent with the requirements of Code Section 42(h)(6)(F), or such other regulations as prescribed by the Code to carry out this section.

"Qualified Contract Application (QCA)" means an Application containing all information and items required by the OHFA to process a request for a Qualified Contract.

"Qualified Contract Preliminary Application (QCPA)" means a request containing all information and items necessary for OHFA to determine the eligibility of an Owner to submit a Qualified Contract Application.

"Qualified Contract Price (QCP)" means calculated purchase price of the Development as defined within §42(h)(6)(F) of the Code and as further delineated in Chapter 36 Rules.

"Qualified Development" means a Development where the Housing Units are both Rent-Restricted and occupied by Residents whose Income is at or below the level selected as the Minimum Low-Income Housing Set-Aside.

"Qualifying Households" means households whose annual Incomes do not exceed the elected area median family income set-aside required in the Code.

"Regulatory Agreement" means the written and recorded agreement between a recipient of a TCA and the allocating agency, OHFA, placing restrictive covenants upon the Development and the underlying Land for a term of not less than thirty years (30) years, or such other term as may be required from time to time by provisions of the AP, these OAHTC Rules and Section 42 of the Code and the federal rules and regulations promulgated thereunder and containing other restrictions, covenants, warranties and agreements required by State, federal or local law and these OAHTC Rules.

"Rehabilitation Expenditures" means amounts that are capitalized and incurred for the addition to or improvement of an existing Building of a character subject to the allowance for depreciation under Section 167 of the Code. However, it does not include the costs of acquiring a Building or an interest in it, for example, any Developer Fee properly allocated in acquiring a Building or any other soft costs or any amount not permitted to be taken into account under Section 42(d)(3) or Section 42(d)(4) of the Code.

"Rent-Restricted" means that the Gross Rent with respect to a Low-Income Unit does not exceed thirty percent (30%) of the Income limitations for qualified Residents adjusted by the Imputed Household Size, subject to the exception set forth in Code Section 42(g)(2)(E) (relating to certain Housing Units for which federal rental assistance decreases as Resident Income increases).

"Resident" means an individual or group of individuals (other than an Owner) residing in a Housing Unit.

"Resolution" means an official action of the Trustees and may include all Resolutions adopted by the Trustees with respect to a Development.

"Review Report" means the Threshold Criteria Review and Selection Criteria Review containing the results of OHFA's review of the Application and scoring of the Application. There are preliminary and final versions of the Review Report for each Application.

"Rural Area" means any city, town, village, area or place generally considered rural by the Secretary of Agriculture (RHS) for rural housing programs. Verification will be obtained by OHFA staff.

"Rural Development" means a Development that is, or will be located within a Rural Area. RHS 538 only projects are not eligible for the Rural 515 set-aside, but may qualify under other set-asides.

"Section 8" means Section 8(c)(2)(A) of the United States Housing Act of 1937, as amended.

"Selection Criteria" means the evaluation criteria, over and above the Threshold Criteria, set out in the ~~annual~~—AP, which shall be established and may be changed by OHFA from time to time in the ~~annual~~ AP (using the priorities for the State as they are established from time to time under and pursuant to these Rules and the ~~annual~~ AP), to determine the Development's qualifications, and which are the basis for ranking Applications and establishing a relative level of acceptability for consideration under the Rules and the ~~annual~~ AP for the possibility of the award of a TCA by OHFA. Although the Selection Criteria may be given substantial weight by the Trustees in deciding whether or not a particular Application and Applicant shall be awarded a TCA, the Trustees reserve the right to take into consideration such other factors as they, in their complete discretion, deem appropriate.

"Site Control" means the exercise of dominion or Control over the property through the execution of a purchase, sale, or long-term lease agreement (with a lease term that exceeds the Extended Use Period), receipt of a deed or conveyance of the Land where the Development will be located, or an option to purchase the property (where the option is not revocable on the part of the seller). OHFA alone will decide if an Applicant or Owner has obtained Site Control.

"State" means the State of Oklahoma.

"Targeted Populations" means such populations as may be designated from time to time in the ~~annual~~ AP by official action of the Trustees, which designations may include, but are not necessarily limited to, the Homeless, the Elderly, Veterans, Youth aging out of Foster Care, persons with mental and physical disabilities and/or disabled persons.

"Tax Credit Allocation (TCA)" means a federal Low-Income Tax Credit Allocation by OHFA to a Development Owner pursuant to Section 42 of the Code, QAP, and formal action by the Trustees.

"Three-Year Period" for a Building means the three (3) year period following: (a) the date of acquisition of such Building by foreclosure or forfeiture under a deed of trust, mortgage or real estate contract or by deed in lieu of foreclosure; or (b) the end of the Extended Use Period, or (c) in the case of the release of the affordability restriction due to the failure of OHFA to present a QC before the expiration of the One Year Period, the recording of a Release of Regulatory Agreement by OHFA. During the Three-Year Period the Owner may not evict or terminate a tenancy of an existing tenant of any Low-Income Unit except for good cause. During the Three-Year Period the Owner may not increase the Gross Rent with respect to any Low-Income Unit except as permitted under Section 42 of the Code.

"Threshold Criteria" means the criteria set out herein and in the ~~annual~~ AP, which shall be established and may be changed by OHFA from time to time in the ~~annual~~ AP, to determine the qualifications of the Applicant and the Owner and

the proposed Development, presented in each Application that are the minimum level of acceptability for consideration under the Rules and the ~~annual~~ AP for the possibility of the award of a TCA by OHFA. Failure to satisfy all Threshold Criteria set out in the ~~annual~~ AP may result in the disqualification of the Application for further consideration, and may require no further action by OHFA Staff except to notify the Applicant of the disqualification.

"Total Development Costs" means the total costs incurred in acquiring and developing the Development as set forth in the proposed budget for the Development included in the Application. Total Development Costs will be certified by an independent certified public accountant's Certification of sources and uses of funds at times prescribed by OHFA.

"Transfer" means any sale, Transfer, merger, consolidation, liquidation, contribution, assignment, exchange or other change in all or part of the Ownership of the Land and/or Development or any Building which is a part thereof, whether voluntary or involuntary, and also includes: a Transfer, sale, contribution or assignment by the Applicant, Owner or Developer of all or any part of its rights, title or interest in the Application, Carryover Allocation Agreement, Credit, Land, Building and/or Development to another party; or a withdrawal, change or addition of any partner to a general partnership, general partner of a limited partnership, any party to a joint venture or the manager of a limited liability company.

"Transferee" means any and all successor(s) in interest of Owner and any other Person or entity having or acquiring any right, title, or interest in the Development.

"Transitional Housing" for purposes of these OAHTC Program Rules means Transitional Housing for the Homeless which meets the requirements of Code Section 42(i)(3)(B)(iii)

"Treasury" means the United States Department of the Treasury.

"Trustees" means the Board of Trustees of OHFA.

"Unit Fraction" means the fraction of a Building devoted to low-income housing, the numerator of which is the number of Low-Income Housing Units in the Building, and the denominator of which is the number of total Housing Units, whether or not occupied, in the Building.

"Violent Criminal Activity" means any criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force substantial enough to cause, or be reasonably likely to cause, serious bodily injury or property damage.

330:36-1-9. Regulatory Agreement/Compliance Manual/Compliance with Applicable Laws

(a) **Regulatory Agreement.** TCA recipients must enter into a written Regulatory Agreement with OHFA. Requirements, procedures, and processes provided in the applicable Regulatory Agreement and amendments to it shall apply to Developments and the Owner(s) thereof.

(b) **Compliance Manual.** OHFA shall provide each Owner, upon request, with a Compliance Manual, at a cost sufficient to defray the cost of production. The Compliance Manual will also be available on OHFA's website at www.ohfa.org.

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(c) **Compliance with Applicable Laws.** The Applicant, the Development, the Owner(s) of the Development, the Development Team and the Affiliates of each must comply with all applicable federal, State and local laws, rules, regulations and ordinances, including but not limited to, Code Section 42, and regulations promulgated thereunder, the Oklahoma Landlord Tenant Act, the Titles VI and VII of the Civil Rights Act of 1964, as amended and Title VIII of the Civil Rights Act of 1968, as amended. Neither the Applicant, the Owner(s) of a Development, the Development Team nor the Affiliates of each shall discriminate on the basis of race, creed, religion, national origin, ethnic background, age, sex, familial status or disability in the lease, use or occupancy of the Development or in connection with the employment or application for employment of Persons for the operation and/or management of any Development. The Owner(s) of a Development will be required to covenant and agree in the Regulatory Agreement to comply fully with the requirements of the Fair Housing Act as it may from time to time be amended, for the time period as promised in the Application.

SUBCHAPTER 2. ALLOCATION PROCEDURES

330:36-2-1. TCAs distribution

- (a) OAHTCs allocated annually to the State by the IRS shall be awarded to Applicants selected through a formal Application process governed by the Qualified Allocation Plan (QAP).
- (b) TCAs will be awarded according to the Act, Code, these Chapter 36 Rules, the ~~annual~~ AP, and at the discretion of the Trustees, by their formal action, giving consideration to Staff recommendation following a thorough review and financial feasibility analysis.
- (c) The Trustees reserve the right, to consider and make an award of TCAs at any time as the Trustees, in their sole discretion, deem such award appropriate under the circumstances and facts presented to them. Approval of such an award shall be at a regularly scheduled or special meeting of the Trustees and shall be made by formal action, giving consideration to Staff review and recommendations.
- (d) The AP shall be made available to parties considering the filing of an Application and interested parties upon request. The AP can be accessed at OHFA's website, www.ohfa.org.

330:36-2-2. Additional Credits

- (a) Guidelines for Applications for additional Credits ~~may will~~ be established in the ~~annual~~ AP. Limitations may be placed on types of Developments, amount of additional Credits, or type of Applications.
- (b) The timing of acceptance of Applications for additional Credits ~~may will~~ also be established in the ~~annual~~ AP.

330:36-2-3. Set-aside categories for TCAs

- (a) The annual allocation of OAHTC Program tax Credits made available to the State may be divided into various set-aside categories, including but not necessarily limited to, Nonprofits, New Construction, Rehabilitation, Rural ~~515,~~

~~Other Rural, Elderly,~~ and such other categories as the Trustees, in their complete discretion, may adopt from time to time for inclusion in the ~~annual~~ AP. Nonprofits competing in the Nonprofit set-aside must comply with the definition of Nonprofit Sponsored Development in these Chapter 36 Rules.

(b) Specific set-aside categories and amounts for each category may be determined from time to time by formal action of the Trustees and shall be set out in the ~~annual~~ AP. The Trustees may, in their sole discretion, modify the amount of the State's annual allocation of Credits devoted to any set-aside, if they determine that the housing needs of the State so warrant, except for the maximum ninety percent (90%) allocation limitation to those other than Nonprofits as required by the Code.

330:36-2-5. Geographic Allocation of TCAs

OHFA's jurisdiction for location of Developments shall be the entire State of Oklahoma, and, subject to the priorities established from time to time in the ~~annual~~ AP, OHFA may make awards of TCAs throughout the State.

330:36-2-9. Reallocation of additional tax Credits

- (a) ~~Annually, additional~~ Additional tax Credits may become available for the award of TCAs as the result of:
- (1) Development cancellations;
 - (2) Developments completed under original cost estimates;
 - (3) Credits Allocated but not utilized; or,
 - (4) Other circumstances.
- (b) In keeping with the ~~annual~~ AP, OHFA may award TCAs based on the amount of Credits available, in the calendar year any such Credits first become available.
- (c) The Trustees reserve the right, to consider Allocations of TCAs outside the established reservation period(s) for a given calendar year. The Trustees, in their sole discretion, reserve the right to approve such an Allocation of TCAs, provided the facts presented to them demonstrate a special circumstance or need and said Allocation promotes the development of residential use housing within the State. Provided however, the Trustees also reserve the right to deny any request for an Allocation of TCAs made outside the established reservation period(s) for a given calendar year. Consideration of all Allocations of TCAs shall be made at a regularly scheduled or special meeting of the Trustees and shall be made by formal action, giving consideration to Staff review and recommendations.
- (d) All Credits not awarded in any calendar year shall be carried over for use in the next calendar year, in accordance with the provisions of the Code, these Rules, the ~~annual~~ AP and/or the formal action of the Trustees.

330:36-2-11. OHFA Development notification

- (a) OHFA shall, within fifteen (15) business days of receipt of an Application, ~~and not less than thirty (30) calendar days prior to the Trustees consideration thereof,~~ notify, in writing, by certified mail or other form of traceable delivery system to provide proof of transmission and receipt, the Mayor or highest elected official, or if neither of the aforementioned exist, the Chief Executive Officer of each Local Governing Body of the

jurisdiction within which the proposed Development is located at the time of Application and the legislators who are entitled to such Notice, regarding the characteristics of the proposed Development located within their jurisdiction/district. All comments received from said Mayor or highest elected official, or if neither of the aforementioned exists, the Chief Executive Officer and/or legislator(s) ~~during this thirty (30) day comment period~~ will be presented to the Trustees for their consideration when reviewing a request for an Allocation of Credits.

(b) If the Application is considered at a different Trustees meeting than in the notice, this notification requirement is considered to be met.

330:36-2-16. Carryover Allocations

(a) **Code reference.** Code Section 42(h)(1)(E) provides that an Allocation may be made to a Qualified Building, as defined by Section 42(h)(1)(E)(ii), which has not yet been Placed-In-Service, provided the Qualified Building is Placed-In-Service not later than the close of the second calendar year following the calendar year of the Allocation.

(b) **Carryover Allocation applications.** Owners must submit a carryover application and required documents at a date specified by OHFA staff. The Owner must satisfy all requirements of the Code and OHFA staff.

(c) **Carryover Allocation basis.** To qualify for a Carryover Allocation, the Owner must demonstrate that the Owner's basis in the Development, at one (1) calendar year after the date of Allocation, is more than ten percent (10%) of the Owner's reasonably expected basis in the Development. Developments that fail to meet the ten percent (10%) test will not have a valid Carryover Allocation. The ten percent (10%) test must be certified by the Owner's certified public accountant, in a form acceptable to OHFA. OHFA's determination as to the satisfaction of the ten percent (10%) requirement is not binding upon the IRS and does not constitute a representation by OHFA to the taxpayer or any other party to that effect.

(d) **Carryover Allocation Agreement.** The Owner must submit to OHFA an executed Carryover Allocation Agreement, in a form and at a date specified by OHFA.

(e) **Notification of Placed-In-Service date.** Applicant must notify OHFA within thirty (30) calendar days of the date the Building(s) is/are Placed-In-Service ~~or be subject to loss of any Allocation.~~ Notice will consist of submission of copies of the Certificates of Occupancy for each Building and completion of any and all forms as may be required in the AP.

(f) **Development based Allocation.** An Allocation pursuant to Code Section 42(h)(1)(F) must meet the requirements of Code Section 42(h)(1)(F), all applicable Treasury Regulations, and these Chapter 36 Rules.

330:36-2-17. Final Allocations

(a) **Prior approval.** ~~Applicants must have previously been approved for a Credit Reservation, either in a prior year or previously in the calendar year in which the request is made.~~

(b) **Deadline for filing.** Owner's request for approval of the Final Allocation must be received by OHFA at such date as OHFA may specify in writing to the Owner. Failure to

file a timely Final Allocation accompanied by all required documentation may result in the denial of the Final Allocation and a determination by the Trustees that the Credits have been returned by the Applicant.

(eb) **Complete filing.** The Final Allocation must be accompanied by all evidence or documentation required by the Program Rules then in effect, and such other information or documentation which may be requested by OHFA, in its sole discretion, to verify compliance with the Code, the Program Rules and the Resolutions, and to verify the amount of the Final Allocation. A complete and executed Regulatory Agreement in the form provided by OHFA and ready for filing, together with the appropriate fees, including without limitation applicable filing, must be filed with the Final Allocation. The Regulatory Agreement shall contain provisions for regulation and enforcement by OHFA and such additional provisions as may be necessary to assure compliance with Section 42 of the Code or to give effect to the requirements of OHFA.

(ec) **Additional requirements.** In addition to the opinions and Certifications of professionals which may be required to be filed with OHFA pursuant to 330:36-2-16 in connection with a request for a Carryover Allocation, prior to making a Final Allocation, OHFA will require:

(1) An audited Certification of the Total Development Costs, and the Eligible Basis and qualified basis of each Building in the Development and the sources and uses of funds for the Development prepared ~~from~~by an independent certified public accountant.

(2) All opinions must be in a form satisfactory to OHFA and must indicate that the professional has made an independent inquiry into the matters contained therein.

(ed) **Approval.** Upon receipt of a completed Final Allocation, OHFA will conduct a final feasibility analysis. Approval of the Final Allocation is subject to Owner's continued compliance with the Code, the Program Rules, the Resolutions, all terms and conditions of this Agreement, and Owner's payment of all fees required by the Program Rule.

(fe) **Issuance of Form 8609(s).** OHFA will issue IRS Form 8609(s) respecting each such Development (or each Building therein) to the extent required by, and in accordance with, the Code and the Program Rules. No Form 8609(s) shall be issued if OHFA has not received an executed Regulatory Agreement and all Exhibits thereto, applicable fees, and resolution of any issues to OHFA's satisfaction.

SUBCHAPTER 4. DEVELOPMENT APPLICATIONS AND SELECTION

330:36-4-1. Development Applications

For the purpose of selecting Applicants and Developments for awards of TCAs all Applicants must submit an Application in the form prescribed in the ~~annual~~ AP. The Application shall set forth, in a clear and concise manner, Threshold and Selection Criteria that conform to the Code, these Chapter 36 Rules, QAP, and the ~~annual~~ AP. All Applications submitted to OHFA must contain sufficient information to permit OHFA staff to:

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- (1) Make a factual determination as to whether, on its face, the Application satisfies each of the applicable Threshold Criteria, including underwriting standards set forth in the ~~annual~~ AP; and
- (2) Make a factual determination as to whether, on its face, the Application is to be evaluated under any set-aside category established by the AP; and
- (3) Conduct a review, assessment, and evaluation for selection as described in the ~~annual~~ AP.

330:36-4-2. Selection of Applications for award of TCAs

(a) **General.** For the purpose of selecting Applications for awards of TCAs, OHFA ~~shall may annually~~ develop Threshold and Selection Criteria that conform to the Code, the OAHTC Program purposes and these Chapter 36 Rules for inclusion in the next ~~year's~~ AP. The number, severity, or value of any one or more of the Threshold or Selection Criteria items may be increased by adoption of an AP for a given year that contains such increased Threshold or Selection Criteria items. However, each AP must contain for any ~~annual~~ AP, criteria to evaluate set-asides and all Threshold and Selection Criteria.

(b) **Minimum Threshold Criteria.** Failure to meet all Threshold Requirements set forth in the AP upon initial submission of the Application may result in the Application being rejected without further review. The Threshold Criteria may include, but are not necessarily limited to the following:

(1) **Notice Requirements.** The provisions of this subsection apply to all Applicants for a TCA. All notice requirements must be satisfied not less than thirty (30) and no more than ninety (90) calendar days prior to submission of an Application. Each Application requires notice. If the Application is considered at a different Trustees meeting than in the notice, this notification requirement is considered to be met.

~~(A) **Written Notices.** The Applicant must notify, in writing and by a form of traceable delivery, the local Mayor or highest elected official, or if neither of the aforementioned exist, the Chief Executive Officer of the Local Governing Body, Chairman of the appropriate county commissioners, and state legislators (or their successor) within whose district the Development is located at the time of Application regarding their intent to submit an Application. This written notice shall serve to provide a reasonable opportunity to comment on the Application.~~

~~(B) **Additional notice requirements.** If the site for the Development is not located within the specific corporate limits of an incorporated town or city, but is within two (2) miles of an incorporated town(s) or city (ies) limits, Applicant must provide the same notice to each such town(s) and city (ies) as if the site was located within the corporate limits of each such town(s) and city (ies).~~

~~(C) **Publication notice.** Notice of an Applicant's intent to file an Application shall also be published~~

in the local newspaper of the area wherein the Development will be located. The requirements for the publication notice will be in the ~~annual~~ AP.

(2) **Market analysis.** All Applicants must submit a third party, independent housing market analysis conforming to the Threshold Criteria set forth in the ~~annual~~ AP, demonstrating and documenting the status of the market demand for the type and number of Housing Units proposed to be developed. ~~The market analysis must be prepared no more than twelve (12) months prior to the date Application is filed with OHFA.~~

(3) **Nonprofit Owners.** Applicants proposing Developments under the Nonprofit set-aside must demonstrate and document that the Nonprofit Owner and/or Nonprofit ownership participant meet the definition of a Nonprofit Sponsored Development as defined in Section 42h(5)(C) of the Code and these Chapter 36 rules at 330:36-1-4. Applicants for Nonprofit set-aside TCAs must demonstrate that the Nonprofit participant:

(A) ~~demonstrates more than fifty percent (50%) Ownership in the general partner or managing member; is at least a minimum of fifty one percent (51%) co-general partner, co-managing member, or a Controlling stockholder, or can otherwise demonstrate ownership;~~

(B) will materially participate, on a regular basis, in the planning and construction of the Development, and in the operation and management of the Development throughout the entire Compliance Period pursuant to 26 CFR § 1.469;

(C) has a Board of Directors and Officers that are independent from any for-profit Development partner; and

(D) is duly authorized to do business within the State; and

(E) has at least one ~~demonstrable~~ year of affordable housing experience.

~~(4) **Resolution of local support.** Applicants must provide documentation of official local support for the Development by the jurisdiction within which the proposed Development is located at the time of Application, i.e. the Local Governing Body. The required documentation must be in the form of a resolution duly adopted by the Local Governing Body, and must be in a form that shall be subject to approval by OHFA. If there are any conditions set forth in the resolution of support, OHFA may exercise its discretion to contact the governing body to ascertain the potential impact of the conditions. If a conditional resolution of support is submitted, it may result in a determination that the Application has not met Threshold Criteria.~~

~~(5) **Capacity and prior performance.** Each Applicant must demonstrate and document the degree of expertise of Applicant and Owner, the Development Team, general partner, management, and principals thereof in the use of TCAs in the development, rehabilitation and/or conversion, management and operation of properties related to the type of the proposed Development. ~~Applicants, Owners, Development Team members, general partners,~~~~

~~their Affiliates, and principals thereof shall be examined in regard to their Placed In Service Developments, and the record of compliance performance within Oklahoma and other states in which the Applicants, Owners, Development Team members, general partners, their Affiliates, and principals thereof have developed or are developing affordable housing. Applicants, Owners, Development Team members, general partners, their Affiliates, and principals thereof with existing Developments may be ineligible for a TCA where OHFA has or receives notice of uncorrected or repeated instance of nonperformance by Applicant, Owner, the Development Team, general partners, their Affiliates, or principals thereof. Instances of nonperformance include, but are not limited to:~~

- ~~(A) failure to meet and maintain minimum property standards;~~
- ~~(B) failure to meet and maintain any material aspect of a Development as represented in a Development Application;~~
- ~~(C) having been involved in uncured financing defaults, foreclosures, or placement on HUD's list of debarred contractors;~~
- ~~(D) events of material uncorrected noncompliance with any Federal or State assisted housing programs within the prior seven (7) years;~~
- ~~(E) the appointment of a Receiver; conviction on a felony criminal charge; or bankruptcy within the prior seven (7) years;~~
- ~~(F) failure to comply with OHFA's requests for information or documentation on any Development funded or administered by OHFA;~~
- ~~(G) removal as a general partner/managing member; or~~
- ~~(H) failure to meet and maintain any material aspect of a Development as represented in a Development Application;~~
- ~~(I) failure to meet and maintain minimum property standards;~~
- ~~(J) failure to bring any Development back into compliance after receiving written notice from OHFA's Compliance Staff.~~
- ~~(K) failure to comply with OHFA's requests for information or documentation on any Development funded or administered by OHFA;~~
- ~~(L) Extension requests depending on number and severity; and/or~~
- ~~(M) excessive late or incomplete reports to OHFA.~~

~~(65) Acquisition Credits. Applicants requesting acquisition Credits must provide an opinion of independent counsel, in a form satisfactory to OHFA, that the requirements of Code Section 42(d)(2)(B) have been met or a waiver obtained from the IRS. If an existing waiver or waiver to be granted is claimed, a copy of the waiver letter or a copy of the letter indicating a waiver will be granted and is forthcoming must be included in the Applicant's Development proposal.~~

~~(76) Financial feasibility and viability. Applicants must demonstrate that there are Commitments to the~~

Development's financial feasibility and viability as a qualified low-income housing Development. Applicants must demonstrate to OHFA's satisfaction that the Applicant has financing Commitments for one hundred percent (100%) of the project's total estimated construction and permanent financing. Items required to be included in financing Commitments will be established in the annual AP. Requirements set out in 36-4-2.1 (b)(c) and (d) are part of the analysis for financial feasibility.

~~(87) Readiness to proceed. Applicants must demonstrate readiness to proceed in a timely manner should they be awarded a TCA. Factors that may be considered regarding Development readiness may include but not be limited to:~~

- ~~(A) Site Control;~~
- ~~(B) preliminary plans or specifications;~~
- ~~(C) proper zoning for the proposed Development; and~~
- ~~(D) others as established in the annual AP.~~

~~(9) Public Housing Wait Lists. Documents for this criterion will be established in the annual AP.~~

~~(108) Capital Needs Assessment. All Applications for rehabilitation will be accompanied by a Capital Needs Assessment as established in the annual AP.~~

~~(149) Development amenities. Each Application will be analyzed and evaluated as to Commitments made therein for the provision of amenities. Amenities and documentation requirements will be established in the annual AP.~~

~~(12) Family Developments including tenant populations of individuals with children. Each Application will be analyzed and evaluated as to the extent to which it is demonstrated the Development will provide amenities and a unit mix conducive to family Developments and tenant populations with children. Amenities and documentation requirements will be established in the annual AP.~~

~~(13) Tenant Populations of Elderly Individuals. Each Application will be analyzed and evaluated as to the extent to which it demonstrates the Development will provide amenities and a unit mix conducive to Elderly populations. Amenities and documentation requirements will be established in the annual AP.~~

~~(c) Selection Criteria. The Selection Criteria, documentation, and points shall be set forth in the annual AP. Selection and may include, but not necessarily be limited to the following:~~

~~(1) Income targeting. Each Application will be analyzed and evaluated as to the extent to which it is demonstrated therein a Commitment to target lower-income populations. Points will be established in the annual AP.~~

~~(2) Term of affordability. Each Application will be analyzed on its ability and evaluated as to any Commitments made therein in regard to serving qualified tenants for a period of time longer than the minimum required by the Code. Points will be established in the annual AP.~~

~~(3) Development location and housing characteristics. Each Application will be analyzed and evaluated as to~~

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the geographic location and prevailing market conditions for the proposed Development. ~~Locations and points will be established in the annual AP.~~

~~(4) **Development Leverage.** Each Application will be analyzed and evaluated as to the extent to which it results in tangible, cost-beneficial investments or contributions to the proposed Development. Points will be established in the annual AP.~~

~~(5) **Community Support.** The extent to which local governments and other community partners commit support for a proposed Development will be analyzed. Support must be directly related and of direct value to the proposed project. Eligible evidence of support and points will be established in the annual AP.~~

~~(6) **Development Team Experience.** Each Application will be analyzed and evaluated as to the experience of the Applicant and/or the Development Team in owning and successfully operating Developments in the LIHTC Program. Points will be established in the annual AP.~~

~~(7) **Management Experience.** Each Application will be analyzed and evaluated as to managing or providing management for Developments in the LIHTC Program. This evaluation will be based on the experience of the management team members. Changes in management may not occur after the Reservation without the prior written approval of OHFA and the payment of the management Transfer fee. Points will be established in the annual AP.~~

~~(84) **Tenant/Targeted Populations.** Each Application will be analyzed and evaluated as to the extent to which Commitments are made therein to serve such Targeted Populations as are designated in the annual AP. Points will be established in the annual AP.~~

~~(5) **Tenant Populations of Individuals with Children.** Each Application will be analyzed and evaluated as to the extent to which it serves tenant populations with children.~~

~~(96) **Tenant ownership.** Applicants proposing single family home ownership after the Compliance Period must submit a detailed plan which includes projections on maintenance, tenant reserve funds, etc., which will be evaluated for feasibility. Points will be established in the annual AP.~~

~~(107) **Preservation of 15-year-old affordable housing.** Each Application will be analyzed and evaluated to how an Application is preserving affordable housing. Points and criteria may be established in the annual AP for the preservation of affordable housing.~~

~~(118) **Energy Efficiency/Green Building of a Development.** Applicants are encouraged to provide energy efficient Developments and to utilize green building. This may be a separate point category, or it may be combined within another Threshold or Selection category. Points will be established in the annual AP.~~

~~(129) **Historic Nature of a Development.** Points will be established in the annual AP regarding the historic nature of Developments.—This may be a separate point category, or it may be combined within another Threshold or Selection category.~~

~~(1310) **Negative Points.** OHFA Staff may deduct points for records of poor performance. Point deductions will be established in the annual AP.~~

~~(1411) **Tie-breaker.** In case there are Applications with the same final score in any set-aside that will affect funding, the tie-breaker procedure will be established in the annual AP.~~

(d) **OHFA Trustee discretion.** Notwithstanding the point ranking under the Selection Criteria set forth above under 330:36-4-2(c), the Trustees may in their sole discretion allocate Credits to a project irrespective of its point ranking, if Allocation is:

- (1) in compliance with Code Section 42;
- (2) in furtherance of the housing goals set forth herein, in the AP or any formally adopted Resolution of the Trustees; and
- (3) determined by the Trustees to be in the interests of the citizens of the State.

330:36-4-2.1. General program requirements and limitations

(a) **General.**

[RESERVED]

(b) **Developer Fee limitations.** The amount of allowable Developer Fees shall be established in the annual AP.

(c) **Contractor Fee limitation.** Allowable contractor fees shall be established in the annual AP.

(d) **Underwriting standards.**

(1) **Total reserves.**

(A) Minimum reserves must equal the sum of six months of each:

- (i) projected operating expenses
- (ii) debt service payments and
- (iii) ~~annual~~ replacement reserve payments.

(B) Minimum replacement reserves will be established in the AP. ~~should equal \$250.00 per unit annually for new construction and \$300.00 for rehabilitation Developments.~~

(C) Developer guarantees or letters of credit may be accepted in lieu of operating reserves, at the discretion of OHFA. The Developer must demonstrate financial capacity and liquidity. OHFA will also consider the Developer's performance record and the number of other guarantees outstanding.

(2) **Debt service coverage.**

(A) Debt service coverage means the ratio of a property's net operating income to debt service obligations.

(B) The minimum acceptable debt service coverage ratio will be established in the AP.

(3) **Projections.** All projections and pro-formas must contain realistic operating expense and vacancy rate projections consistent with prevailing market conditions.

(4) **Cost limits.** Costs per unit must be realistic. Specific cost per unit criteria will be established in the annual AP. OHFA encourages cost efficient production, but will not give a preference solely for lowest construction costs.

(5) **Minimum Hard Construction Costs per unit for rehabilitations.** Minimum Hard Construction Costs will be established in the AP. No Allocations for rehabilitation will be made unless a minimum of \$20,000 in Hard Construction Costs per unit will be expended or at least twenty percent (20%) of Eligible Basis, whichever is greater.

(6) **Buildings designated by OHFA to receive increase in Credit.** OHFA will allow up to one hundred thirty percent (130%) boost for reasons determined and identified in the annual AP.

(e) **Progress reports.**

(1) Progress reports must be filed by the Owner beginning with the calendar quarter following the approval of a ~~Reservation~~Reservation of Credits until the Final Allocation Application is submitted to OHFA. Due Dates are January 10, April 10, July 10 and October 10. The report must contain, at a minimum, the status of site preparation and/or construction, including the percentage of completion of each Building, and costs incurred to date. The report must address any other requirements set forth in a Resolution of the Trustees and/or the Carryover Agreement, or as OHFA may designate. Within thirty (30) calendar days after the Certificate of Occupancy is issued for each Building in the project, the Owner must submit a copy of the Certificate of Occupancy and the Placed-In-Service Acknowledgement for that Building. Remedies for violation of these provisions include those denoted at 330:36-6-3, including but not limited to return of Credits.

(2) Compliance progress reports are required as outlined in the compliance manual.

(f) **Construction time period.** Construction must begin within nine (9) months of the last calendar day of the month of the Credit Reservation, unless extended for cause by OHFA. Remedies for violation of these provisions include those denoted at 330:36-6-3, including but not limited to return of Credits.

(g) **Additional requirements.** OHFA may, as it deems necessary in its sole discretion, impose additional requirements or Program limitations on any Applicant, Owner, or Development. Said requirements or limitations may be set forth in a Resolution of the Trustees, in any contract between the Applicant or Owner and OHFA, or in any other document deemed acceptable in OHFA's sole discretion.

(h) **Timeliness and completeness of filings.** Deadlines for filing Applications will be established in the AP. Should OHFA request additional information, the deadline for filing same with OHFA will be set forth in the letter requesting same. Applicants/Owners must strictly comply with all deadlines and all filings must be complete when filed.

330:36-4-3. Fees

(a) **General.** Application and TCA Fees will be used to support overall OAHTC Program delivery and operation activities. Fees are nonrefundable. Application fees shall be calculated as follows:

(1) **Application fees.** All Applications will pay a \$2,000 fee with each submission of an Application.

(A) for single site or contiguous site Developments consisting of one to four Units, the Application fee shall be \$500.00;

(B) for single site or contiguous site Developments consisting of five to fifty Units, the Application fee shall be \$1,000.00;

(C) for single site or contiguous site Developments consisting of fifty one to one hundred units, the Application fee shall be \$2,000.00;

(D) for single site or contiguous site Developments consisting of over one hundred units, the Application fee shall be \$3,000.00;

(E) for scattered sites, the Application fee shall be \$500.00 per site, up to a maximum of \$3,000.00.

(F) For Nonprofit Sponsored Developments the Application fee shall be \$500.00.

(2) **Allocation fee.** A nonrefundable Allocation fee shall be paid in an amount equal to eleven percent (11%) of the total TCA, but in any event not less than \$1,000.00. The Allocation fee is due within fourteen (14) calendar days of notification from OHFA of the approval of a TCA. A Carryover Allocation Agreement will not be executed, nor will Form 8609(s) be issued unless this fee has been received by OHFA. Nonpayment may result in revocation of Credits.

(3) **Processing fee.** A nonrefundable processing fee of one percent (1%) of the TCA must accompany the request for a Final Allocation. ~~A service fee of \$100.00 must accompany the Request for Final Allocation of Credit.~~ Form 8609(s) will not be issued unless this fee has been received by OHFA.

(4) **Regulatory Agreement filing fee.** An executed Regulatory Agreement must be submitted to OHFA, as part of the request for Final Allocation, and be accompanied by a check payable to the County Clerk of the county or counties in which the Development is located. The check or checks shall be in an amount sufficient to cover the filing fees of the county or counties.

(5) **Compliance monitoring fees.** In addition to the documentation required by OHFA, an annual compliance monitoring fee shall be paid to OHFA. The compliance fee is payable on or before January 28th for each year during the Compliance Period and Extended Use Period subject to annual adjustment. If the Development includes scattered sites, a compliance monitoring fee for each site shall be paid to OHFA. If the compliance fee is not paid within thirty (30) calendar days of the Due Date, then a Late Fee will be assessed. The Late Fee is equal to twenty five percent (25%) of the compliance fee. Failure to remit timely payment of compliance monitoring fees may result in the filing by OHFA of a lien against the Development. The compliance monitoring fee shall be computed as follows:

(A) For Developments financed by RHS under the Section 515 (and otherwise qualify under the Code) receiving a TCA in 2011 or before where an agreement has been entered into between OHFA and RHS wherein the RHS agrees to provide OHFA with the required information respecting the Income and rent

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of the tenants in the Development, the fee shall be \$240.00 per Development per year, plus 12.00 per OAHTC unit per year within any Building within the Development;

(B) For single site or contiguous site Developments of four units or less, the fee shall be \$275.00 per Development per year.

(C) For all other Developments including those financed by RHS under Section 515 receiving a TCA in 2012 or later the fee shall be \$375.00 per Development, plus \$21.00 per OAHTC unit per year within any Building within the Development.

(6) **Additional monitoring fees.** In the event of non-compliance with the Code or Regulatory Agreement or these Chapter 36 Rules requiring OHFA to conduct an examination of the Owner, any Building within the Development or any documentation to verify correction of said noncompliance, OHFA shall be reimbursed its costs by the Development or Owner for such an examination, including an hourly rate for the OHFA examiner, not to exceed \$35.00 per hour, plus any and all actual travel, lodging and per diem expenses of such examiner. Such reimbursement of expenses and costs shall be paid to OHFA within ten (10) calendar days of receipt of OHFA's statement of same.

(7) **Ownership/General Partner Transfer fee.** In the event that the Owner submits a request for approval of a Transfer of Ownership/general partner of the Development or any of the Buildings therein, a nonrefundable fee of ~~three percent (3%) of the amount of original Tax Credit Allocation, but no less than \$2,500.00~~ \$7,500.00, shall be imposed to cover OHFA's costs of handling the request. This fee shall accompany the request ~~and shall be nonrefundable.~~ If additional transfers are submitted at the same time and are essentially the same parties involved, then each additional transfer will be \$4,000.

(8) **Management Transfer fees.** In the event that the Owner submits a request for approval of a Transfer of the management company of the Development, a \$500.00 fee per Development shall be imposed to cover OHFA's costs of handling the request. This fee shall accompany the request and shall be nonrefundable.

~~(9) **Notice costs.** All costs of copies and postage costs incurred by OHFA in connection with the notification provisions contained in these Chapter 36 Rules at 330:36-2-11, Review Report at 330:36-2-13, and any occasion when OHFA incurs extra postage costs to accommodate the Applicant, must be paid by the Owner/Applicant as prescribed in the annual AP. Failure to do so may result in the rejection of consideration of the Application.~~

~~(10) **Copies of Rules.** Copies of these Chapter 36 Rules will be provided at a cost of \$10.00 per copy, but can be accessed via OHFA's website, www.ohfa.org. If a copy is requested, then a charge to defray production will be charged.~~

~~(10) **Compliance Workshops.** A cost sufficient to defray the total cost of the presentation will be charged for attendance at the Compliance Workshop.~~

~~(11) **Qualified Contract fees.** Submission deadlines for these fees will be established in the Qualified Contract Application (QCA) materials. Qualified Contract Preliminary Application (QCPA) fee shall be \$1,500.00 and is nonrefundable. Additionally, the nonrefundable Qualified Contract Application fee shall be \$12,500.00 plus any third party fees and expenses incurred by OHFA and not paid directly by the Applicant. Third party fees and expenses include but are not limited to appraisals for the entire property, market study, title reports, environmental reports, accountants review and reports, and legal services. This is not an all-inclusive listing. Any third party fees and expenses incurred by OHFA will be identified and Applicants will receive notice of the charge and reason.~~

~~(12) **Late fees.** The Form 8609(s) will not be issued unless these fees have been received by OHFA.~~

(A) **Progress reports.** Progress reports as required in 36-4-2.1 when filed late will be assessed a late fee of \$10.00 per calendar day, per each late report.

(B) **Carryover Allocations.** Owners who fail to timely file all requirements in the AP as to Agreement, Application, ten percent (10%) cost Certifications, opinions and documents shall incur \$100.00 late fee per calendar day.

(C) **Final Allocations.** Owners who fail to timely file all requirements in the AP as to the Regulatory Agreement, Application, cost Certifications, opinions and documents shall incur \$100.00 late fee per calendar day.

(D) **Transfer Documents.** Owners who fail to timely file all requirements in regard to the Transfer of Ownership or general partnership interest (or other type of entity) may incur \$25.00 late fee per calendar day.

(E) **Acknowledgment of Placed-In-Service Form.** Owners who fail to timely file an Acknowledgment of Placed-In-Service Form in accordance to timelines established in the AP shall incur \$10 late fee per calendar day.

(F) **Annual Owner Certifications.** Owners who fail to file a complete Annual Owner Certification as required in 36-6-7(c)(4) within thirty (30) days of the Due Date shall incur a \$50 per Development late fee per calendar day for the signed certification and a \$150 per unit late fee for failure to file in the electronic format prescribed by OHFA.

SUBCHAPTER 6. PROGRAM ADMINISTRATION

330:36-6-1. Program violations and revocation-

(a) The following are violations of OAHTC Program policies and procedures and these OAHTC Program Rules:

- (1) The filing of false information in an Application and/or a Development report;
- (2) Failure of an Applicant or Owner, as the case may be, to satisfy any of the requirements of the Code, applicable State or federal statutes, rules or regulations, these OAHTC Program Rules, or any requirements contained in the ~~annual~~ AP, or any Commitments made in the Application upon which the award of a TCA was based;
- (3) Breach of any of the terms, conditions, obligations, covenants, warranties, or representations of the Owner or Applicant contained in the Regulatory Agreement and/or the Carryover Allocation Agreement or the breach of any terms conditions, obligations or requirements set forth in any Resolution of the Trustees pertaining to the Applicant/Owner or the Development;
- (4) Notice by OHFA to the Owner that significant corrective actions are necessary to protect the integrity of the Development and that such corrective actions have not been, or cannot be, effected within a reasonable time, in the judgment of OHFA staff;
- (5) An administrative or judicial determination that the Applicant or Owner has committed fraud, waste, or mismanagement in any current or prior State or federally funded project;
- (6) The housing of a person(s) convicted of a felony or engaged in any illegal or criminal activities as set forth in this subsection, if the Owner, or managers of the Development, or any of their Affiliates, have knowledge of or about, or by reasonable inquiry should have known of same. The prohibition on housing shall apply to any person who:
 - (A) is currently engaged in, has been convicted of using, distributing, or manufacturing methamphetamine. Housing of such person shall be prohibited for a period of ten (10) years from the date of the conviction, or end of the incarceration, whichever is most recent.
 - (B) is currently engaged in, has been convicted of Violent Criminal Activity or Drug Related Criminal Activity. Housing of such person shall be prohibited for a period of three (3) years from the date of the conviction, or end of the incarceration, whichever is most recent.
 - (C) has been convicted of any other felonious activities other than Drug Related Criminal Activity or Violent Criminal Activity. Housing of such person shall be prohibited for a period of three (3) years from the date of the conviction or end of the incarceration, whichever is most recent.
 - (D) is subject to a lifetime registration requirement under a Federal or State sex offender registration program.
 - (E) is a sex offender, not subject to lifetime registration. Housing of such person shall be prohibited for a period of ten (10) years from the date of the arrest, conviction, or end of incarceration (whichever is later) or the period of required registration as a sex offender, whichever is greater.

- (7) The prohibition on the housing of a convicted felon shall not apply to qualified tenants of Transitional Housing or Permanent Supportive Housing, except that the housing of a person in any Transitional Housing or Permanent Supportive Housing shall be prohibited if said person:

- (A) is subject to a lifetime registration requirement under a Federal or State sex offender registration program, or
 - (B) is currently engaged in or has been convicted of a violent felony in the last three (3) years.
- (8) From and after the date of the filing of the Application, failure to notify OHFA of any material changes effecting the proposed Development, including, but not limited to, modifications to any representations contained in the Application, any amendments or modifications of the financing plan, syndicators or equity partners or any other Threshold requirement and/or changes in Development Team Members, contractors, property managers, ~~etc and the like~~. Notification must be filed with OHFA not less than sixty (60) calendar days prior to the proposed change. Approval by the Trustees is required for any changes or amendments involving the ownership or Control of the Development or the Owner after the Application is filed. This would include, but not be limited to, changes or Transfers of the Development, changes or modifications of the ownership or composition of the general partner entity (i.e. addition or removal of members, partners, stockholders, etc.), any addition, substitution, withdrawal or removal of any general partner. Other amendments may be handled administratively by staff, although staff reserves the right to refer any amendments to the Trustees for their consideration; or
 - (9) Failure to submit reports including but not limited to the timely filing of progress reports, updates, compliance reports, etc., and failure to provide OHFA with any additional information requested by OHFA within the period set forth in any request for information. Failure to pay fees when due. If payment is returned for insufficient funds, it will be deemed nonpayment and the amount to defray bank costs will be due.
 - (10) Little or no progress has been achieved with previous Tax Credit Reservations approved for the Applicant or Developer or any of the Principals of either. This would include, but not be limited to: failure to meet the minimum Carryover Allocation requirements resulting in the return of Credits; failure to have all Buildings Placed-In-Service no later than the close of the second calendar year following the calendar year in which the Allocation is made; or involvement of a foreclosure or deed-in-lieu of foreclosure within the past seven (7) years.
- (b) Failure to follow all required procedures throughout the Allocation process could jeopardize the final Allocation or result in housing Credits being revoked.

330:36-6-3. Corrective and remedial actions

- (a) Upon a determination by OHFA staff that a violation has occurred during the Application stages or prior to the filing of the Regulatory Agreement, OHFA may take any one or

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more of the following actions when the cited violations are not corrected in a timely manner:

- (1) Condition Regulatory Agreements;
 - (2) Withhold Allocations of tax Credits;
 - (3) Reduce the total amount of the tax Credit award;
 - (4) Require the return of unused tax Credits;
 - (5) Deny future program Applications and participation for a specified period of time as determined by OHFA;
 - (6) Indefinitely suspend from program participation;
 - (7) File an action for specific performance; and/or
 - (8) Notify the IRS.
- (b) Additionally, OHFA shall have the right, upon discovery of facts or statements indicating possible program violations by an Applicant or Owner in regard to a Development, or a proposed Development or a pending Application, or a pending TCA, to request and obtain information regarding:
- (1) The administrative, planning, budgeting, management and evaluation functions, actions being taken to correct or remove the cause of the program violation(s);
 - (2) Any activities by an Applicant and/or Owner, or by an Affiliate of either of them that are, or might be in violation or breach of the Commitments made in the Application or that are, or might be, in violation of applicable laws, these Rules, the ~~annual~~ AP, and/or the applicable Carryover Agreement and/or the applicable Regulatory Agreement;
 - (3) The ability of the Applicant and/or Owner to fulfill the Commitments made to OHFA in the Application and/or the applicable Carryover Agreement and/or the applicable Regulatory Agreement, in a timely manner; and
 - (4) Progress schedules for completing and/or performing the Commitments made to OHFA in the Application and/or the applicable Carryover Agreement and/or the Regulatory Agreement in a timely manner.
- (c) Prior to OHFA taking any corrective and/or remedial actions, OHFA, may, in its sole discretion, issue a notice of a show cause hearing. The Applicant and/or Owner shall have thirty (30) business days to appear and show cause as to why corrective and/or remedial actions should not be taken. This language shall not be construed as a limitation on the compliance monitoring and reporting requirements of the Code and these Chapter 36 Rules.

330:36-6-5. Applicant and/or Owner responsibilities

- (a) An Applicant and/or Owner under the OAHTC Program shall be responsible for:
- (1) Taking all action necessary to enforce the terms of the Regulatory Agreement against any private or public Owner that fails to comply with applicable provisions of the Regulatory Agreement or any subcontract or documents resulting from it, and to recover on behalf of OHFA, all costs and expenses incurred by or on behalf of OHFA. Nothing in this subsection shall restrict OHFA's right to independently enforce the terms of the Commitments made to OHFA in the Application and/or the Regulatory Agreement or in any subcontracts or documents resulting

from either of them, or to recover any sums that may become due to OHFA as the result of a breach of any of the Commitments made to OHFA in the Application and/or the Regulatory Agreement, or in any such subcontracts or documents.

- (2) Complying with all applicable provisions of the Code, State and federal regulations, guidelines, circulars, rulings and notices, these Rules, the ~~annual~~ AP, the Application, the Regulatory Agreement between the Applicant and/or Owner, and/or in any subcontracts or documents resulting from either of them, and OHFA or other Program requirements that may be released by the Internal Revenue Service or OHFA from time to time.
 - (3) Maintaining records and accounts, including, but not limited to, property, personnel, financial and tenant records that properly document and account for all Development funds and compliance with the tenant Income Certification requirements of the Code, these Rules, the ~~annual~~ AP, and the application and the Regulatory Agreement. All records required by the Code or 26 CFR 1.42-5, as presently effective or as may be amended in the future, must be kept and retained by the Owner. Additional requirements of OHFA respecting said records may be included in the Regulatory Agreement. OHFA may require specific types and forms of records. All such records and accounts shall be made available upon request by OHFA for the purpose of inspection and use in carrying out its responsibilities for administration of the tax Credits.
 - (4) Retaining all books, documents, papers, records, and other materials involving all activities and transactions related to the Owner's Commitments to OHFA found in the Application and in the Regulatory Agreement, as required by the Code, State and federal regulations, the AP, the Application and the Regulatory Agreement.
- (b) OHFA may require the Applicant and/or Owner to provide special narrative and financial reports related to the elements of a written agreement in the forms and at such times as may be necessary or required by OHFA.
- (c) OHFA shall have the right to perform as many audits and/or compliance inspections of any Development, from time to time, in the complete discretion of OHFA, as OHFA deems necessary or appropriate to discharge its compliance duties to the IRS in regard to each Development for which TCAs have been awarded, at least through the end of the Compliance Period and Extended Use Period of the Buildings and units in the Development. Audits and compliance inspections may include physical inspection of any Building in the Development, as well as a review of the records described in this subchapter. The cost of any such audit shall be borne by the Applicant and/or Owner. The audit and inspection provisions of this subsection are in addition to any inspection of OAHTC Certifications, supporting documentation, or inspection of records performed pursuant to annual compliance review.

SUBCHAPTER 10. CREDIT ASSISTANCE/STIMULUS LEGISLATION

330:36-10-15. Other Enactments of Law

In the event additional federal or State assistance/stimulus programs benefiting the OAHTC Program become available to the State through OHFA, OHFA shall immediately implement such procedures as OHFA deems necessary, in its sole discretion, to access these funds for the purpose of Allocating, granting, awarding, etc. to Qualified Owners of Tax Credit Developments. The process developed for the current economic stimulus programs available and future enactments of law will be consistent with the goals of the Qualified Allocation Plan (QAP), the Chapter 36 Rules, Section 42 of the Code and any relevant rules, regulations, rulings or other guidance issued by the IRS and, as relevant the regulations of the HOME Program and guidance from HUD. The Application process and procedures developed will be reviewed ~~annually~~ by OHFA through normal procedures.

[OAR Docket #17-552; filed 6-30-17]

**TITLE 330. OKLAHOMA HOUSING
FINANCE AGENCY
CHAPTER 60. HOUSING TRUST FUND
PROGRAM**

[OAR Docket #17-553]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions

330:60-1-1 [AMENDED]

330:60-1-3 [AMENDED]

330:60-1-4 [AMENDED]

330:60-1-7 [AMENDED]

Subchapter 3. Funds

330:60-3-1 [AMENDED]

330:60-3-2 [AMENDED]

330:60-3-3 [AMENDED]

330:60-3-4 [AMENDED]

330:60-3-5 [AMENDED]

330:60-3-6 [AMENDED]

330:60-3-7 [AMENDED]

330:60-3-8 [AMENDED]

Subchapter 5. Applications and Selection

330:60-5-1 [AMENDED]

330:60-5-2 [AMENDED]

330:60-5-3 [AMENDED]

330:60-5-4 [AMENDED]

Subchapter 7. Program Administration

330:60-7-1 [AMENDED]

330:60-7-2 [AMENDED]

330:60-7-3 [AMENDED]

330:60-7-4 [AMENDED]

330:60-7-5 [AMENDED]

AUTHORITY:

These Chapter 60 Rules are authorized by 75 O.S., Section 302; 60 O.S., Sections 176 through 180.3; the Board of Trustees of Oklahoma Housing Finance Agency (OHFA), the Amended Trust Indenture, and the Bylaws of OHFA as established by the OHFA Board of Trustees.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

December 23, 2016

COMMENT PERIOD:

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APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 13, 2017

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June 13, 2017

EFFECTIVE:

September 11, 2017

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

Modifications to these Chapter 60 Rules are adopted in response to comments and program changes.

The rules of this Chapter have been proposed for the purpose of complying with the provisions of the Administrative Procedures Act, 75 O.S., Section 250 et seq. This Chapter shall be applicable to Oklahoma Housing Finance Agency (OHFA) programs, transactions and activities relating to the Oklahoma Housing Trust Fund (OHTF) Program. The Trustees reserve the right to adopt, from time-to-time, priorities for financing Projects pursuant to this Chapter, and to establish additional criteria for evaluating proposed Projects and Awardees in regard to such priorities. Any such priorities and/or criteria shall be provided to each party inquiring about OHFA financing pursuant to this Chapter and will be posted on the website of OHFA. The Trustees are also required to administer the Program in a manner consistent with Oklahoma's Housing Antidiscrimination Act, 15 O.S., Sections 1451-1453 and all federal laws prohibiting discrimination, including 42 U.S.C., Section 1983 and the Fair Housing Act, as amended 42 U.S.C., Sections 3601 et seq.

CONTACT PERSON:

Pamela Miller, Agency Liaison, 100 Northwest 63rd, Suite 200, Oklahoma City, Oklahoma 73116, 405-419-8134, pamelamiller@ohfa.org.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308 (E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 1. GENERAL PROVISIONS

330:60-1-1. Purpose

The purpose of the Oklahoma Housing Trust Fund ("OHTF") is to ~~address declining affordable housing resources at the federal, state, and local levels, which act as an impediment to economic development and business expansion within the state. The intent of the OHTF is to assist moderate and low-income people in obtaining safe, decent and affordable housing with priority for such housing being given to low-income households.~~

330:60-1-3. Scope

During each year, ~~Funding~~ funding will be made available to eligible Applicants for the purpose of implementing specific Activities that further the purpose of the Program. ~~Persons which Apply to Oklahoma Housing Finance Agency.~~

330:60-1-4. Definitions

Masculine words, whenever used in this Chapter, shall include the feminine and neuter, and the singular includes

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the plural, unless otherwise specified. The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

"Activity" means any Development or eligible ~~Funding~~ Activity allowed under this Chapter's Rules.

"Affiliate" means any Person that directly or indirectly through one (1) or more intermediaries, Controls, is Controlled By, or is Under Common Control With any other Person.

"Applicant" means any Person and each Affiliate of such Person, which has submitted an Application to OHFA seeking ~~Funding~~ funding under this Chapter. Applicant includes the Owner, any other Person or entity having any right, title, or interest in the Development or Activity, and any other successors in interest.

"Application" means an Application, in the form prescribed by OHFA, from time to time, including all exhibits and other materials filed by an Applicant with OHFA in support, or in connection with ~~Funding~~ funding under this Chapter. OHFA will solicit formal public input on the Application, and provide explanation of any significant changes. Staff will present the proposed Application to the Trustees for approval at a Trustee's meeting. ~~An advisory committee shall be established by the Executive Director to assist in policy development for administration of the OHTF.~~

"Awardee" means any Person receiving OHTF ~~Funding~~ funding through OHFA.

"Control" (including the terms "Controls", "Controlling", "Controlled By", and/or "Under Common Control With") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of any other Person, whether through an ownership interest in the other Person, by contract, agreement, understanding, designation, office or position held in or with the other Person or in or with any other Person, or by coercion, or otherwise.

"Development" means the Land and one (1) or more buildings, structures, or other improvements now or hereafter constructed or located upon the Land. If more than one (1) building is to be part of the Development, each building must be financed under a common plan.

"Extremely low-income" means a household whose total annual income does not exceed thirty percent (30%) of median household income for the area as determined by HUD, with adjustments for household size.

"Homeless and Chronically Homeless" means the definition(s) as set by HUD and which may be updated from time to time.

"Housing Trust Fund Documents" (including the terms "Documents", and "OHTF Documents") means and may include, but is not limited to, the written agreement, loan agreement, promissory note, and OHTF Application Packet.

"HUD" means the United States Department of Housing and Urban Development.

"Land" means the site(s) for each building in the Development.

"Low-income" means a household whose total annual income does not exceed eighty percent 80% of the median

household income for the area as determined by HUD, with adjustments for household size.

"Moderate-income" means a household whose total annual income does not exceed ~~one hundred percent 100%~~ one hundred twenty percent (120%) of the median household income for the area as determined by HUD, with adjustments for household size.

"OHFA" means Oklahoma Housing Finance Agency, a State beneficiary public trust.

"OHTF Application Packet" means the ~~annual Application application~~ and accompanying forms developed ~~annually~~ periodically by OHFA staff.

"OHTF Funds" (including the term "Funds" or "Funding") means any monies for the OHTF Program.

"OHTF Program" (including the term "Program") means the Oklahoma Housing Trust Fund Program.

"Person" means, without limitation, any natural person, corporation, partnership, limited partnership, joint venture, limited liability company, limited liability partnership, trust, estate, association, cooperative, government, political subdivision (including, but not limited to, incorporated towns, cities, and counties, their trusts and authorities, and state trusts), agency or instrumentality, Community Housing Development Organization (CHDO), interlocal cooperative, nonprofit and for-profit organizations, Native American Tribes (including, but not limited to, housing authorities and trusts) or other organization of any nature whatsoever, and shall include any two or more Persons acting in concert toward a common goal, or any other legally recognized entity, or any combination of the foregoing acting in concert.

"State" means the State of Oklahoma.

"State Statute" means 74 O.S. Supp 1997, Sections 2901.1-2901.4, as amended.

"Term of Affordability" means the length of time a Development or Activity must satisfy the OHTF requirements as determined in the ~~annual~~ OHTF Application Packet.

"Trustees" means the Board of Trustees of OHFA.

"Very low-income" means a household whose total annual income does not exceed fifty percent (50%) of median household income for the area as determined by HUD, with adjustments for household size.

330:60-1-7. Compliance with applicable laws

~~All Persons, and the Affiliate of each must comply with all OHTF Documents, federal, State, and local laws, rules, regulations and ordinances, including but not limited to, State Statute, regulations promulgated there under, the Oklahoma Landlord Tenant Act, the Fair Housing Act, Titles VI and VII of the Civil Rights Act of 1964 as amended, and Title VIII of the Civil Rights Act of 1968 as amended.~~

(a) The Applicant, the Development, the Owner(s), Development Team and the Affiliates of each, must comply with all applicable federal, State and local laws, rules, regulations and ordinances, including but not limited to, the Oklahoma Landlord Tenant Act, Titles VI and VII of the Civil Rights Act of 1964, as amended and Title VIII of the Civil Rights Act of 1968, as amended. Neither the Applicant, the Owners(s), the

Development Team nor the Affiliates of each shall discriminate on the basis of race, creed, religion, national origin, ethnic background, age, sex, familial status, or disability in the lease, use or occupancy of the Development or in connection with the employment or application for employment of Persons for the operation and/or management of any Development. Owners(s) of a Development will be required to covenant and agree in the regulatory agreement to comply fully with the requirements of the Fair Housing Act as it may from time to time be amended, for the time period promised in the Application.

(b) Any awards by OHFA are subject to compliance with all applicable federal and State laws and all rules and regulations promulgated thereunder and all local ordinances, rules and regulations applicable to the Development, its financing, or any portion or aspect thereof.

(c) The Applicant and all members of the Development team and the Affiliates of each must be in compliance with, and good standing under, any OHFA program in which any may participate.

SUBCHAPTER 3. FUNDS

330:60-3-1. Funds distribution

(a) OHFA shall award ~~Funds~~funds through a formal Application process. Submission requirements for Applications will be developed ~~annually~~periodically by OHFA and described in the published OHTF Application Packet.

(b) OHTF ~~Funds~~funds will be awarded according to the State Statute, this Chapter's Rules, and the OHTF Application Packet.

330:60-3-2. Funding activities

Eligible ~~Funding~~funding Activities may include, but ~~is~~are not limited to:

- (1) New construction of rental and homeownership units.
- (2) Conversion of non-residential buildings or structures into rental or homeownership units.
- (3) Acquisition and/or rehabilitation of rental and homeownership units.
- (4) Infrastructure development, when it is part of an affordable housing development.
- (5) Rental assistance.
- (6) Supportive services directly related to providing housing.
- (7) Activities which make housing more accessible for Persons with disabilities.
- (8) Down payment and/or closing costs assistance for eligible first time homebuyers.
- (9) Other activities related to affordable housing.

330:60-3-3. Award of ~~Funds~~funds

OHFA will make awards of OHTF Program ~~Funds~~funds to Activities located throughout the State. A minimum of sixty-five percent (65%), but not more than seventy-five percent (75%) of all awards shall be made to Activities located

in counties with populations of less than four hundred ninety thousand (490,000) according to the most recent U.S. Census.

330:60-3-4. Application fees

All Applicants shall be charged a non-refundable fee of ~~\$500.00~~\$250.00. All Application fees will be used by OHFA to pay for overall ~~Program~~program delivery and operation activities.

330:60-3-5. Forms of assistance

Funding may be in the form of either grants or collateralized below market rate loans. The maximum amounts will be established in the OHTF Application Packet. OHFA staff reserves the right to adjust loan maximums and terms based on the availability of ~~Funds~~funds and the most efficient and practical utilization of available resources.

330:60-3-6. Terms and Conditions

The terms for all awards made shall be subject to the specific requirements of any given Application. The terms will be established in the OHTF Application Packet. Requests for extensions and/or modifications ~~may~~shall be subject to a fee established at three percent (3%) of the award at the time of request.

330:60-3-7. Affordability for OHTF ~~Funding~~funding

OHTF ~~Funding~~funding must remain affordable to for a period established in the Application. Affordability periods must be secured by deed restrictions, covenants running with the land, or other forms.

330:60-3-8. Reallocation of OHTF ~~Program~~Program~~Funds~~funds

(a) From time to time ~~Funds~~funds may become available as the result of:

- (1) Activity cancellations;
- (2) Activities completed under original cost estimates
- (3) Loan pay-offs;
- (4) Other circumstances;

(b) In keeping with the State Statute, this Chapter's rules, and the OHTF Application Packet, OHFA shall reallocate these ~~Funds~~funds to eligible Activity proposals.

SUBCHAPTER 5. APPLICATIONS AND SELECTION

330:60-5-1. Application timing

Applications for ~~Funding~~funding shall be accepted based on deadlines or processes in the Application Packet. ~~on a continuous basis.~~ Awards will be subject to ~~Funds~~funds availability, and the full satisfaction of ~~fully satisfying~~ all key Application requirements. ~~The OHTF Program~~OHFA reserves the right to suspend acceptance of Applications at any time.

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330:60-5-2. Applications

Eligible Applicants seeking OHTF ~~Funds~~ must submit an Application in the form prescribed in the OHTF Application Packet. Certain types of Persons may not be eligible for all Activities. All Applications will be required to contain sufficient information to permit OHFA to conduct a review, assessment, and selection as described in the OHTF Application Packet.

330:60-5-3. OHTF Application ~~packets~~ Packets

~~(a) OHFA will make available upon request, OHTF Application Packets, which shall comply with the current State Statute and these Chapter 60 Rules.~~

~~(b) The OHTF Application Packets shall provide information to assist Persons in the preparation of Application submissions.~~

~~(e)~~ OHTF Application Packets ~~shall~~ may include, but not be limited to, information such as Activity descriptions, timelines and schedules, Activity evaluation criteria, and Activity budgets.

~~(d)~~ Applications shall be required for all Funding ~~funding~~ requests.

330:60-5-4. Application selection

For the purpose of selecting Applications for assistance, OHFA shall use ~~evaluation~~ criteria established in the OHTF Application Packet. These ~~evaluation~~ criteria may include, but are not necessarily limited to the following:

- ~~(1) Activity~~ Development description.
- (2) Organizational Structure and Capacity.
- (3) Financial Management.
- (4) Market Analysis/Study.
- ~~(5) Activity~~ Development Management Control.
- (6) Financial Feasibility and Viability.
- (7) Partnerships.
- (8) Development Readiness.
- ~~(9) Prior Performance.~~

SUBCHAPTER 7. PROGRAM ADMINISTRATION

330:60-7-1. Program violations

The following are violations of the Housing Trust Fund Program policies and procedures:

- (1) The filing of false information in an Application and/or any report;
- (2) Failure of an Applicant and/or Awardee to meet requirements of the State Statute, and/or Chapter 60 Rules and/or the Application Packet;
- (3) Deviation from any OHTF Documents;
- (4) Notice by OHFA that significant corrective actions are necessary and that those corrective actions are not or cannot be affected within a reasonable time, in the judgment of OHFA staff;
- (5) An administrative or judicial determination that an Applicant and/or Awardee has committed fraud, waste, or

mismangement in any current or prior ~~activity~~ Activity, or federal or State program.

330:60-7-2. Corrective and remedial actions

(a) Under any of the circumstances previously described as violations during any stage in the process OHFA may, but is not limited to, take the following actions:

- (1) Condition OHTF Documents;
- (2) Withhold Funds ~~funds~~;
- (3) Reduce the total amount of the award;
- (4) Require immediate return of unexpended Funds ~~funds~~;
- (5) Require immediate repayment of all Fund-ing ~~funding~~ provided by the OHTF Program;
- (6) Cancel an award and recover all Funds ~~funds~~ expended in an ineligible manner prior to the date of notice of cancellation;
- (7) Deny future Program ~~program~~ Applications and participation for a specified period of time as determined by OHFA;
- (8) Debarment from Program ~~program~~;

(b) Additionally, OHFA reserves the right under circumstances of possible Program ~~program~~ violations to request information regarding:

- (1) The administrative, planning, budgeting, management, and evaluation function actions being taken to correct or remove the cause of the Program ~~program~~ violation(s);
- (2) Any activities undertaken that were not in conformance with the approved Program ~~program~~ or Application process, or that are in non-compliance with applicable laws or rules;
- (3) The Applicant and/or Awardee capacity to carry out the approved or proposed Program ~~program~~ in a timely manner; and,
- (4) Progress schedules for completing approved or proposed activities.

(c) Prior to OHFA taking any corrective and/or remedial actions, OHFA, may, in its sole discretion, issue a notice of show cause hearing. The Applicant and/or Awardee shall have thirty (30) business days to appear and show cause as to why the corrective and/or remedial actions should not be taken. This language shall not be construed as a limitation on the compliance monitoring and reporting requirements of the OHTF Program ~~program~~ and these Chapter 60 Rules.

330:60-7-3. Awardee responsibilities

(a) An Awardee under the OHTF Program shall be responsible to:

- (1) Take all actions necessary to enforce the terms of the OHTF Documents against any private or public participant that fails to comply with applicable provisions of the OHTF Documents, or any subcontract or documents resulting from them, and to recover on behalf of OHFA, any liabilities that may arise as a result of a breach of the OHTF Documents by any participant. Nothing in this subsection shall restrict OHFA's right to independently

enforce the terms of any OHTF Document or any subcontracts or documents resulting from it, or to recover any sums that may become due as the result of a breach of such document.

(2) Comply with all State Statutes, these OHTF rules, and ~~any~~ the OHTF Documents that may be released by OHFA from time to time.

(3) Maintain records and accounts, including, but not limited to property, personnel, and financial records that properly document and account for all ~~Funds~~ funds. OHFA may require specific types and forms of records. All such records and accounts shall be made available upon request by OHFA for the purpose of inspection and use in carrying out its responsibilities for administration of the ~~Funds~~ funds.

(4) Retain all books, documents, papers, records, and other materials involving all activities and transactions related to the award of the OHTF ~~Funds~~ funds for at least three (3) years from the date of the end of the Term Affordability Period, or until any audit findings have been resolved, whichever is later. As often as deemed necessary by OHFA, shall permit OHFA to have full access to and the right to fully examine all such materials.

(5) Promptly return to OHFA, any ~~Funds~~ funds received under its OHTF Documents that are not obligated as of the final date of the OHTF Documents. Funds shall be obligated only if goods and services have been received as of the final date of the OHTF Document period.

(6) Comply with all applicable State requirements.

(b) OHFA may require a special narrative and/or financial reports in the forms and at such times as may be necessary or required by OHFA. Also OHFA may require audits pertaining to Awardee as necessary.

330:60-7-4. Review and appeals process and Trustee discretion

(a) Applicants for OHTF funding may review their Applications and OHFA's review documents any time after OHFA has publicly released funding decisions.

(b) Appeals cannot introduce new documentation that would change the basis on which a funding decision was made. Additionally, requests for appeals shall be made within thirty (30) days after the Applicant has been notified that the Application was not funded.

(c) The Trustees may in their sole discretion allocate ~~Funds~~ funds to an Activity if the Activity is determined by the Trustees to be in the interests of the State.

(d) A decision by the Trustees will constitute a final order.

330:60-7-5. OHFA's responsibilities

OHFA will review and verify, but is not limited to, the following duties:

- (1) ~~Maintenance of records for each Activity and/or unit.~~ OHFA will verify the Awardee is maintaining records for each qualified affordable housing unit in the Development.
- (2) Possession of valid Certificate(s) of Occupancy.

(3) Physical inspection of 100% of the OHTF Developments/units according to HUD inspection standards as set forth in the Application. Owner must allow OHFA to perform inspections throughout the Term of Affordability for rental Developments. For homebuyer Developments, only an initial inspection may be performed.

(4) Correct income limits were used in selection and on-going compliance requirements for rental Developments. For homebuyer Developments, only an initial review may be performed.

(5) A copy of the deed restrictions, covenant running with land or other forms approved by OHFA ensuring the Term of Affordability.

(6) OHFA will notify in writing the Awardee if staff discovers that the Activity does not comply with the OHTF Rules. In such event, a correction period to supply missing documentation or to correct noncompliance may be allowed.

[OAR Docket #17-553; filed 6-30-17]

**TITLE 330. OKLAHOMA HOUSING FINANCE AGENCY
CHAPTER 75. NATIONAL HOUSING TRUST FUND PROGRAM**

[OAR Docket #17-556]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 1. General Provisions [NEW]
 - 330:75-1-1 [NEW]
 - 330:75-1-2 [NEW]
 - 330:75-1-3 [NEW]
 - 330:75-1-4 [NEW]
 - 330:75-1-5 [NEW]
 - 330:75-1-6 [NEW]
 - 330:75-1-7 [NEW]
 - 330:75-1-8 [NEW]
 - 330:75-1-9 [NEW]
- Subchapter 3. Funds [NEW]
 - 330:75-3-1 [NEW]
 - 330:75-3-2 [NEW]
 - 330:75-3-3 [NEW]
 - 330:75-3-4 [NEW]
 - 330:75-3-5 [NEW]
 - 330:75-3-6 [NEW]
- Subchapter 5. Project Application and Selection [NEW]
 - 330:75-5-1 [NEW]
 - 330:75-5-2 [NEW]
- Subchapter 7. Program Administration [NEW]
 - 330:75-7-1 [NEW]
 - 330:75-7-2 [NEW]
 - 330:75-7-3 [NEW]
 - 330:75-7-4 [NEW]
 - 330:75-7-5 [NEW]
 - 330:75-7-6 [NEW]

AUTHORITY:

These Chapter 75 Rules are authorized by 75 O.S., Section 302; 60 O.S., Sections 176 through 180.3; the Board of Trustees of Oklahoma Housing Finance Agency (OHFA), the Amended Trust Indenture, and the Bylaws of OHFA as established by the OHFA Board of Trustees.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

December 23, 2016

Permanent Final Adoptions

COMMENT PERIOD:

January 17, 2017 through March 3, 2017

PUBLIC HEARING:

March 6, 2017

ADOPTION:

March 22, 2017

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

March 23, 2017

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration On June 13, 2017

FINAL ADOPTION:

June 13, 2017

EFFECTIVE:

September 11, 2017

SUPERSEDED EMERGENCY ACTIONS:**Superseded rules:**

Subchapter 1. General Provisions [NEW]

330:75-1-1 [NEW]

330:75-1-2 [NEW]

330:75-1-3 [NEW]

330:75-1-4 [NEW]

330:75-1-5 [NEW]

330:75-1-6 [NEW]

330:75-1-7 [NEW]

330:75-1-8 [NEW]

330:75-1-9 [NEW]

Subchapter 3. Funds [NEW]

330:75-3-1 [NEW]

330:75-3-2 [NEW]

330:75-3-3 [NEW]

330:75-3-4 [NEW]

330:75-3-5 [NEW]

330:75-3-6 [NEW]

Subchapter 5. Project Application and Selection [NEW]

330:75-5-1 [NEW]

330:75-5-2 [NEW]

Subchapter 7. Program Administration [NEW]

330:75-7-1 [NEW]

330:75-7-2 [NEW]

330:75-7-3 [NEW]

330:75-7-4 [NEW]

Gubernatorial approval:

June 21, 2016

Register publication:

33 Ok Reg 559

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16-644

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

These permanent Chapter 75 Rules are adopted to replace the emergency rules adopted last year. Only minor changes were made between the emergency and permanent rules.

The rules of this Chapter have been proposed for the purpose of complying with the provisions of the Administrative Procedures Act, 75 O.S., Section 250 et seq. This Chapter shall be applicable to Oklahoma Housing Finance Agency (OHFA) programs, transactions and activities relating to the National Housing Trust Fund (NHTF) Program. The Trustees reserve the right to adopt, from time-to-time, priorities for financing Projects pursuant to this Chapter, and to establish additional criteria for evaluating proposed Projects and Awardees in regard to such priorities. Any such priorities and/or criteria shall be provided to each party inquiring about OHFA financing pursuant to this Chapter and will be posted on the website of OHFA. The Trustees are also required to administer the Program in a manner consistent with Oklahoma's Housing Antidiscrimination Act, 15 O.S., Sections 1451-1453 and all federal laws prohibiting discrimination, including 42 U.S.C., Section 1983 and the Fair Housing Act, as amended 42 U.S.C., Sections 3601 et seq.

CONTACT PERSON:

Pamela Miller, Agency Liaison, 100 Northwest 63rd, Suite 200, Oklahoma City, Oklahoma 73116, 405-419-8134, pamelamiller@ohfa.org.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 1. GENERAL PROVISIONS

330:75-1-1. Purpose

The intent of the National Housing Trust Fund Program is to complement existing federal, State and local efforts to increase and preserve the supply of decent, safe, and sanitary affordable Housing for Very Low-Income Families and Extremely Low-Income Families, including homeless families. As set forth in the Interim Rule, Very Low-Income Families may only be assisted if the total funding for the entire federal Program exceeds \$1 Billion. In all instances, at least seventy-five percent (75%) of the funding must assist Extremely Low-Income Families or families with incomes at or below the Poverty Line, whichever is greater. If less than \$1 Billion is available to fund the entire Program, one hundred percent (100%) of the funds must assist Extremely Low-Income Families or families with incomes at or below the Poverty Line, whichever is greater.

330:75-1-2. Authority

The National Housing Trust Fund Program was established under Title I of the Housing and Economic Recovery Act of 2008, Section 1131 (Public Law 110-289). The Oklahoma Housing Finance Agency (OHFA) has been designated as the State's administrative agency for purposes of administering the State's National Housing Trust Fund Program.

330:75-1-3. Scope

During each Program Year, financial assistance will be made available to eligible Applicants for the purpose of implementing specific activities that further the stated purpose of the National Housing Trust Fund Program. Financial assistance will be made available in the form of grants or loans as set forth in the Allocation Plan and the Application Packet.

330:75-1-4. Definitions

The following words and terms, when used in this Chapter, shall have the following meanings unless the context clearly indicates otherwise. Additional capitalized terms used in this Chapter 75 Rules may be defined in the Act. When a conflict exists between the following definitions and the Act, the Act shall control.

"Act" means Title I of the Housing and Economic Recovery Act of 2008, Section 1131 (Public Law 110-289).

"Allocation Plan" means the State's annual Program description for the Administration of National Housing Trust Fund Program Funds received by the State. The Allocation Plan is included in the Consolidated Plan and must be reviewed and approved by HUD.

"Applicant" means an eligible entity that has applied for or will apply for National Housing Trust Fund Program funding.

"Application" means an Application from an eligible entity for funding from the State's allocation of funds for the National Housing Trust Fund.

"Application Packet" means the required Program documents stating the National Housing Trust Fund Program objectives, the State-specific objectives for the National Housing Trust Fund, and method of distribution of National Housing Trust Fund Program Funds (including program income and recaptured funds), as well as the required forms for filing an Application for National Housing Trust Fund Program Funds.

"Consolidated Plan" means a plan prepared in accordance with the requirements of 24 CFR Part 91 which describes community needs, resources, priorities and proposed activities to be undertaken under certain HUD programs, including the National Housing Trust Fund Program.

"Extremely Low-Income Families" means low-income families whose annual incomes do not exceed thirty percent of the median family income for the area, as determined by HUD, with adjustments for family size.

"Housing" means manufactured housing and manufactured housing lots, permanent housing for disabled and homeless persons, single-room occupancy housing, and group homes. "Housing" does not include emergency shelters (including shelters for disaster victims) or facilities such as nursing homes, convalescent homes, hospitals, residential treatment facilities, halfway houses, housing for students, or dormitories (including farmworker dormitories).

"HUD" means the United States Department of Housing and Urban Development.

"Interim Rule" means the National Housing Trust Fund Program requirements as set forth in 24 CFR Part 93, Sections 93.1 et seq.

"National Housing Trust Fund Program" means the National Housing Trust Fund Program as established under Title I of the Housing and Economic Recovery Act of 2008, as set forth therein.

"National Housing Trust Fund Program Regulations" means the regulations pursuant to the Interim Rule at 24 CFR Part 93.

"OHFA" means the Oklahoma Housing Finance Agency. OHFA has been designated by the Governor to administer the State's National Housing Trust Fund Program on behalf of the State.

"Poverty Line" means the Poverty Line as defined in Section 673 of the Omnibus Budget Reconciliation Act of 1981 (42 U.S.C. 9902).

"Program Funds" means all appropriations for the National Housing Trust Fund Program, plus all Program Income and other returned and recaptured funds.

"Program Income" means gross income received by OHFA or the Recipient that is directly generated by the use of Program Funds, as further defined in the Interim Rule.

"Program Year" means the period selected by OHFA in which it shall administer its formula allocation for the National Housing Trust Fund Program.

"Project" means a site or sites, together with any building or buildings that are to be assisted with National Housing Trust Fund Program Funds as a single undertaking.

"Recipient" means any eligible Applicant or entity receiving National Housing Trust Fund Program Funds through OHFA. The use of the term "Recipient" instead of "Awardee" as used in most of OHFA's funding programs, is to maintain consistency with the Program terminology as used by HUD in the Interim Rule.

"State" means the State of Oklahoma.

"Very low-income families" means families whose annual incomes are in excess of 30 percent but not greater than 50 percent of the median family income for the area, as determined by HUD, with adjustments for family size.

"Written Agreement" means the contract between OHFA and an Recipient of Program Funds, setting forth the terms and conditions that must be met by the Recipient to satisfactorily complete a NHTF Program Project and comply with the Interim Rule and these Chapter 75 Rules.

330:75-1-5. National standards incorporated by reference

(a) The national standards for development of the Program description are hereby incorporated by reference. The standards are set forth in the regulations promulgated thereunder by HUD to implement the Program, as amended, published at 24 CFR Part 93 Sections 93.1 et seq.

(b) Copies of these federal laws and regulations may be obtained from OHFA, during regular business hours Monday through Friday 8:00 a.m. to 4:45 p.m., excluding legal holidays.

330:75-1-6. Recipients' implementation manual

(a) Recipients must enter into a Written Agreement with OHFA containing all requirements of the Interim Rule. OHFA shall provide each Recipient a Program implementation manual.

(b) Requirements, procedures, and processes provided in the Program implementation manual and amendments to same shall apply to all Program funded Projects.

330:75-1-7. Technical assistance

OHFA shall designate staff members who shall be available to provide general Program technical assistance regarding proposed Project concepts and Program implementation.

330:75-1-8. Process to establish funding priorities

The National Housing Trust Fund Program falls under the Community Planning and Development division of HUD, and must be included in the State's Consolidated Plan. Each Program year, OHFA will hold informal and formal public input sessions for the Program as part of the Consolidated Planning process. OHFA will take comments and suggestions from interested parties and consider possible changes to funding priorities for the Program. In addition, OHFA will consider data provided by HUD and obtained by other local and federal

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sources. Once the Consolidated Plan update has been submitted to HUD and has been approved, OHFA will draft an Application Packet for use by potential Applicants. OHFA will hold a public input session on the Application Packet and consider any public comments and suggestions. After a final version of the Application Packet has been drafted, it will be formally approved by OHFA's Board of Trustees before any Applications are accepted.

330:75-1-9. Compliance requirements

(a) The Applicant, the Development, the Owner(s), Development Team and the Affiliates of each, must comply with all applicable federal, State and local laws, rules, regulations and ordinances, including but not limited to, the Oklahoma Landlord Tenant Act, Titles VI and VII of the Civil Rights Act of 1964, as amended and Title VIII of the Civil Rights Act of 1968, as amended. Neither the Applicant, the Owners(s), the Development Team nor the Affiliates of each shall discriminate on the basis of race, creed, religion, national origin, ethnic background, age, sex, familial status, or disability in the lease, use or occupancy of the Development or in connection with the employment or application for employment of Persons for the operation and/or management of any Development. Owners(s) of a Development will be required to covenant and agree in the regulatory agreement to comply fully with the requirements of the Fair Housing Act as it may from time to time be amended, for the time period promised in the Application.

(b) Any awards by OHFA are subject to compliance with all applicable federal and State laws and all rules and regulations promulgated thereunder and all local ordinances, rules and regulations applicable to the Development, its financing, or any portion or aspect thereof.

(c) The Applicant and all members of the Development team and the Affiliates of each must be in compliance with, and good standing under, any OHFA program in which any may participate.

SUBCHAPTER 3. FUNDS

330:75-3-1. Funds distribution

(a) Program Funds allocated annually to the State by HUD shall be awarded to eligible Applicants through a formal Application process. Submission requirements for Project Applications will be developed periodically by OHFA in the Application Packet and described in Program Application materials.

(b) Program Funds will be awarded according to the Act, federal regulations and guidelines, the Consolidated Plan, the annual Allocation Plan, and the Application Packet.

(c) The Application Packet shall be made available to eligible Applicants and interested parties upon request. Requests for the Application Packet should be directed to OHFA. The Application Packet will be made available on OHFA's website, www.ohfa.org.

330:75-3-2. Funding activities

(a) The annual allocation of Program Funds made available to the State by HUD shall be divided into various eligible Program activities. The amount of the annual State allocation devoted to each eligible activity will be determined by OHFA and will be set out in the annual Allocation Plan and the Application Packet.

(b) OHFA will use Administrative funds as permitted by HUD, the Act, and the Interim Rule to support overall Program delivery and operation activities.

330:75-3-3. Geographic allocation of funds

OHFA will make awards of Program Funds throughout the State. Awards of Program Funds will be consistent with OHFA's mandate to affirmatively further fair housing choice, and any applicable Analysis of Impediments to Fair Housing Choice or Affirmatively Furthering Fair Housing Plan. An award of Program Funds for an Application proposing to newly construct rental housing will require a review of Site and Neighborhood Standards as required by HUD.

330:75-3-4. Award amounts

(a) Maximum award amounts for each eligible activity may be established periodically in the Application Packet, to insure maximum utilization of the State's allocation of Program Funds.

(b) Award maximums applicable to Program activities shall apply to all Applications and awards made in that Program Year.

330:75-3-5. Partial funding

OHFA reserves the right within its discretionary authority to adjust Program Application award maximums based on the most efficient, equitable and practicable utilization of the State's allocated funds.

330:75-3-6. Reallocation of additional Program funds

(a) Annually, additional funds for Program Projects may become available as the result of:

- (1) Project cancellations;
- (2) Projects completed under original cost estimates;
- (3) Funds awarded but not utilized; or,
- (4) Other circumstances.

(b) As set forth in the Application Packet, OHFA shall reallocate these funds based on the amount of funds available and the reallocation plan described in the Application Packet.

(c) Any reallocation of Program Funds will follow all the provisions of the Interim Rule, these Chapter 75 Rules, and the Application Packet.

SUBCHAPTER 5. PROJECT APPLICATION AND SELECTION

330:75-5-1. Project applications

- (a) Eligible Applicants seeking Program funding must submit a written Application in the form prescribed in Application Packet. All Applications will be required to contain sufficient information to permit OHFA to conduct a review and assessment, and selection as described in the Application Packet.
- (b) The documentation as set forth in the Application Packet will be required of all Applicants, and will contain all necessary information to assist potential Applicants in the preparation of Applications.

330:75-5-2. Applicant selection

- (a) For the purpose of selecting Program Applicants for funding award, OHFA shall periodically develop selection criteria, which conform to the Program objectives and method of distribution described in the annual Allocation Plan and the Application Packet. The selection criteria will be set forth in the Application Packet.
- (b) Some of the selection criteria are mandated by HUD in the Interim Rule.

SUBCHAPTER 7. PROGRAM ADMINISTRATION

330:75-7-1. Program income

OHFA and all recipients of Program Funds shall comply with all federal regulations regarding Program Income.

330:75-7-2. Program violations

Violations of Program policies include, but are not limited to, the following:

- (1) The filing of false information in an Application and/or Project report;
- (2) Failure of a Recipient to meet requirements of a federal statute, federal regulation, the Interim Rule, or these Title 330 Chapter 75 rules;
- (3) Deviation from the Written Agreement terms or failure to meet the Written Agreement terms;
- (4) Notice by HUD and/or OHFA that significant corrective actions are necessary to protect the integrity of the Project funds, and that these corrective actions are not or cannot be completed within a reasonable time, in the judgment of HUD and/or OHFA staff;
- (5) An administrative or judicial determination that the Recipient has committed fraud, waste, or mismanagement in any current or prior State or federally funded project.

330:75-7-3. Corrective and remedial actions

- (a) Under any of the circumstances previously described as violations during the Application stage or Written Agreement execution, OHFA may take the following actions, or other actions it deems necessary:
 - (1) Condition Written Agreements;
 - (2) Withhold funds;
 - (3) Reduce the total amount of the Program award;

- (4) Require the return of unexpended funds;
- (5) Cancel a Written Agreement and recover all funds expended in an ineligible manner prior to the date of notice of cancellation;
- (6) Deny future Program Applications and participation for a specified period of time as determined by OHFA.
- (7) Indefinitely suspend from Program participation.
- (b) Additionally, OHFA reserves the right under circumstances of possible Program violations to request information regarding the following, or other information it deems necessary:
 - (1) The administrative, planning, budgeting, management and evaluation functions, actions being taken to correct or remove the cause of the Program violation(s);
 - (2) Any activities undertaken that were not in conformance with the approved Program or Application process or that are in non-compliance with applicable laws or regulations;
 - (3) The Recipient's capacity to carry out the approved or proposed Project in a timely manner; and,
 - (4) Progress schedules for completing approved or proposed activities.

330:75-7-4. Recipient responsibilities

A Recipient under the National Housing Trust Fund Program shall be responsible for:

- (1) Taking all action necessary to enforce the terms of the Written Agreement against any private or public participant that fails to comply with applicable provisions of the Written Agreement or any subcontract or documents resulting from it, and to recover on behalf of OHFA, any liabilities that may arise as a result of a breach of the Written Agreement by any participant. Nothing in this subsection shall restrict OHFA's right to independently enforce the terms of any Written Agreement or any subcontracts or documents resulting from it, or to recover any sums that may become due as the result of a breach of such Written Agreement.
- (2) Complying with all state and federal regulations, guidelines, circulars and notices as set forth in the Interim Rule, these National Housing Trust Fund Program Rules, the Written Agreement between the Recipient and OHFA and/or the Implementation Manual, or other guidance, circulars and notices that may be released by HUD and/or OHFA from time to time.
- (3) Maintaining records and accounts, including, but not limited to, property, personnel, and financial records that properly document and account for all Project funds. OHFA may require specific types and forms of records. All such records and accounts shall be made available upon request by OHFA for the purpose of inspection and use in carrying out its responsibilities for administration of the funds.
- (4) OHFA may require the Recipient to provide special narrative and financial reports related to the elements of a Written Agreement in the forms and at such times as may be necessary or required by OHFA.

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(5) Retaining all books, documents, papers, records, and other materials involving all activities and transactions related to its Written Agreement for at least five years from the date of submission of the final expenditure report or until any audit findings have been resolved, whichever is later. Recipient shall, as often as deemed necessary by OHFA, permit authorized representatives of OHFA, HUD, and the Comptroller General to have full access to and the right to fully examine all such materials.

(6) Promptly returning to OHFA, any funds received under its Written Agreement that have not been obligated as of the final date of the Written Agreement period. Funds shall be obligated only if goods and services have been received as of the final date of the Written Agreement period.

(7) Complying with OHFA's audit policy as applicable to the Recipient.

(8) Providing OHFA timely copies of reports on any audits that include funds received from OHFA.

(A) Audits shall be performed by a by a public accountant or public accounting firm, or a certified public accountant or certified public accounting firm.

(B) The audit shall be performed in accordance with Government Auditing Standards; Compliance Supplement for Single Audits or State and Local Governments; generally accepted auditing standards established by the American Institute of Certified Public Accountants; and OHFA.

(9) Complying with all applicable federal requirements.

330:75-7-5. OHFA's responsibilities

OHFA's responsibilities include, but are not necessarily limited to, the following duties:

(1) OHFA will verify that the Recipient is maintaining records for each qualified affordable housing unit in the Project.

(2) Verification of whether Recipient is in possession of valid Certificate(s) of Occupancy.

(3) Physical inspection of the Project pursuant to HUD's Uniform Physical Condition Standards as set forth in the Interim Rule. Owner must allow OHFA to perform inspections throughout the affordability period as stated in the Written Agreement.

(4) Verification of Recipient's use of the correct and most current income limits and rent limits as established by HUD.

(5) Verify that the Recipient has filed the necessary deed restriction, covenants running with the land, or other approved forms of protection of the affordability period.

(6) OHFA will notify in writing the Recipient if staff discovers that the Activity does not comply with the NHTF Rules. In such event, a correction period to supply missing documentation or to correct noncompliance may be allowed.

330:75-7-6. Review and appeals process

(a) Applicants for Program Funds may review their Applications and OHFA's application review documents any time after OHFA Staff has publicly released its funding recommendations. Written notice must be given to OHFA, and OHFA will have at least three (3) working days to grant any such requests for review. Written notice may be in electronic form.

(b) OHFA's Board of Trustees makes the final decisions regarding awards of Program Funds. Therefore, appeals of the funding recommendations of OHFA Staff must be made at the Board of Trustees meeting at which the Applications are considered. Appeals cannot introduce new documentation that was not included with the original Application for Program Funds.

(c) The OHFA Board of Trustees will consider the Application, OHFA Staff's recommendations, the presentation of the Applicant, these NHTF Program Rules (OAC 330:75), the Consolidated Plan, the Allocation Plan, and the Application Packet. The procedures set forth in OAC 330:1 and Article II of the Oklahoma Administrative Procedures Act, 75 O.S., Sections 309, *et seq.* (the "OAPA") will be followed. The meeting will be considered an individual proceeding under the OAPA and the decision of the OHFA Board of Trustees will constitute a Final Order. No further appeals will be considered.

(d) The public may appear at any OHFA Board of Trustees meeting to speak on behalf of or in opposition to an award of Program Funds. Presentations by members of the public are subject to the limitations of time and scope imposed by the OHFA Board of Trustees pursuant to the procedures set forth in paragraph (c) above.

[OAR Docket #17-556; filed 6-30-17]

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

[OAR Docket #17-487]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 3. Office of Client Advocacy

Part 1. Administration

340:2-3-2 [AMENDED]

Part 3. Investigations

340:2-3-34 [AMENDED]

340:2-3-36 [AMENDED]

340:2-3-38 [AMENDED]

Part 5. Grievances

340:2-3-45 through 340:2-3-46 [AMENDED]

340:2-3-51 through 340:2-3-53 [AMENDED]

Part 9. Advocacy Programs

340:2-3-71 [AMENDED]

340:2-3-74 [AMENDED]

(Reference WF 17-07)

AUTHORITY:

Director of Human Services; Section 162 of Title 56 of the Oklahoma Statutes (O.S. 56 § 162); 10A O.S. § 162; 10A O.S. §§ 1-1-101 et seq.; 43A §§ 10-102 et seq.; and Section 5101 et seq. of Title 42 of the United States Code.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

January 6, 2017

COMMENT PERIOD:

February 1, 2017 through March 3, 2017

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March 9, 2017

ADOPTION:

March 14, 2017

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

March 16, 2017

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 13, 2017

FINAL ADOPTION:

June 13, 2017

EFFECTIVE:

September 15, 2017

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The proposed amendments to the rules ensure that Office of Client Advocacy policy is compliant with the Pinnacle Plan, Developmental Disabilities Services, and Child Welfare Services and in regards to vulnerable adult or child safety.

CONTACT PERSON:

Dena Thayer, Programs Administrator, Legal Services - Policy, Oklahoma Department of Human Services, PO Box 25352, Oklahoma City, Oklahoma 73125, 405-521-4326.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2017:

SUBCHAPTER 3. OFFICE OF CLIENT ADVOCACY

PART 1. ADMINISTRATION

340:2-3-2. Definitions

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

"Abandonment" means the willful intent by words, actions, or omissions of the person responsible for the ~~child~~ child's (PRFC) health, safety, or welfare not to return for a child ~~or as defined~~ per Oklahoma Administrative Code (OAC) 340:75-3-120 and Section 1-1-105 of Title 10A of the Oklahoma Statutes (10A O.S. § 1-1-105).

"Abuse" means, with regard to:

- (A) children, harm or threatened harm or failure to protect from harm or threatened harm to the health, safety, or welfare of a child by a ~~person responsible for the child's health, safety, or welfare, PRFC~~ including, but not limited to:

- (i) non-accidental physical ~~injury~~ or mental injury; or

- (ii) sexual abuse; or
- (iii) sexual exploitation; or
- (B) vulnerable adults, causing or permitting the:
 - (i) infliction of physical pain, injury, sexual abuse, sexual exploitation, unreasonable restraint or confinement, or mental anguish; or
 - (ii) deprivation of nutrition, clothing, shelter, health care, or other care or services by a caretaker or other person providing services to a vulnerable adult without which serious physical or mental injury is likely to occur ~~to a vulnerable adult~~.

"Administrator" or **"administrator's designee"** means, with regard to:

- (A) children in Oklahoma Department of Human Services (DHS) custody living in a private, residential facility, the facility's chief administrative officer ~~of the facility~~;
- (B) children in DHS custody living in a DHS-operated shelter or group home, the ~~director of the shelter~~ or group home director;
- (C) children in DHS custody ~~who live~~ living in any other setting, including any type of out-of-home placement, the applicable DHS district director;
- (D) foster care parents, the applicable DHS district director or deputy director;
- (E) children in residential care facilities operated by the Oklahoma Department of Rehabilitation Services (ODRS), facilities that contract with or are licensed by the Oklahoma Office of Juvenile Affairs (OJA), with the exception of OJA-operated secure facilities, the Oklahoma Department of Mental Health and Substance Abuse Services (ODMHSAS), the J.D. McCarty Center or DHS and other residential care facilities, the superintendent, director, chief administrative officer, or head of the facility regardless of the person's working title;
- (F) day treatment programs, the person charged with responsibility for ~~administering the program~~ administration;
- (G) adults and children who are in Developmental Disabilities Services (DDS) specialized foster care and DDS specialized foster care parents, the applicable DDS area manager;
- (H) residents of ~~Southern Oklahoma Resource Center (SORC), the Northern Oklahoma Resource Center of Enid (NORCE), or the Robert M. Greer Center (Greer),~~ the facility director;
- (I) providers of residential services, vocational services, or in-home paraprofessional supports to individuals with developmental disabilities living in the community, the provider's chief executive officer ~~of the provider~~; and
- (J) residents of group homes for persons with developmental disabilities, the ~~director of the group home~~ director.

"Adult Protective Services" or **"APS"** means the DHS ~~Adult Protective Services Unit~~.

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"Advocate" means an Office of Client Advocacy (OCA) employee who provides assistance to OCA clients in exercising their rights, listening to their concerns, encouraging them to speak for themselves, seeking to resolve their problems, helping protect their rights, and seeking to improve the quality of their lives and care.

"Advocate general" means the OCA chief administrative officer designated in ~~Section 1-9-112(A)(2) of Title 10A of the Oklahoma Statutes (10A O.S. § 1-9-112(A)(2)).~~

"Age-appropriate" or "developmentally-appropriate" means:

(A) activities or items that are generally accepted as suitable for children of the same age or level of maturity or that are determined to be developmentally-appropriate for a child, based on the development of cognitive, emotional, physical, and behavioral capacities that are typical for an age group; and

(B) in the case of a specific child, activities or items that are suitable for that child based on the developmental stages attained by the child with respect to the cognitive, emotional, physical, and behavioral capacities of the specific child per 10A O.S. § 1-1-105.

"Area(s) of Concern" or "AOC" means issues that do not rise to the level of a confirmed finding, but may constitute possible deficiencies, irregularities, or deviations from policies and best practices. AOCs are brought to the attention of the provider for informational purposes or for appropriate corrective action, if applicable.

"Authorized use of physical force" by a PRFC of a child residing outside the child's home, other than a child in foster care means:

(A) ~~the use of physical contact to control or contain a person when the PRFC reasonably considers that person to:~~

- (i) ~~pose a risk of inflicting harm to self or others; or~~
- (ii) ~~be in the process of leaving a facility without authorization; and~~

(B) ~~when the use of physical force is authorized, the least force necessary under the circumstances is employed. In determining whether excessive force has been used, all of the circumstances surrounding the incident are taken into consideration, including the:~~

- (i) ~~grounds for belief that force was necessary;~~
- (ii) ~~age, gender, and strength of the parties involved;~~
- (iii) ~~nature of the force employed;~~
- (iv) ~~availability of alternative means of force or control; and~~
- (v) ~~extent of the harm inflicted.~~

"Behavioral health" means mental health, substance use or abuse, or co-occurring mental health and substance use or abuse diagnoses, and the continuum of mental health, substance use or abuse, or co-occurring mental health and substance use or abuse treatment.

"Caretaker" means, with regard to vulnerable adults, a person who has:

(A) has the responsibility for the care of a vulnerable adult or the financial management of the resources of a vulnerable adult as a result of a family relationship;

(B) assumed the responsibility for the care of a vulnerable adult voluntarily, by contract, or as a result of the ties of friendship; or

(C) ~~been~~was appointed a guardian, limited guardian, or conservator ~~pursuant to~~per the Oklahoma Guardianship and Conservatorship Act.

"Caretaker misconduct" means:

(A) ~~an act or omission that:~~

(iA) ~~violates a statute, regulation, written rule, policy, procedure, directive, or accepted professional standards and practices;~~

(iiB) ~~is not found to be abuse or neglect; and~~

(iiiC) ~~results in, or creates the risk of harm to a child, or to a vulnerable adult residing at SORC, the NORCE, or Greer; and includes, but is not limited to:~~

(i) ~~acts or omissions that contribute to the delinquency of a child;~~

(ii) ~~unintentional~~unintentionally excessive or unauthorized use of force not rising to the level of abuse or neglect;

(iii) ~~unintentionally~~ causing mental anguish;

(iv) ~~other acts exposing a vulnerable adult residing at Greer or a child to harm or threatened harm to the his or her health, safety, or welfare of the client; or~~

(v) ~~use of abusive or professionally inappropriate language not rising to the level of verbal abuse.~~

"Case manager" means the person assigned by DDS who has responsibility for ensuring that services to an individual are planned and provided in a coordinated fashion.

"Child" means any unmarried person ~~under~~younger than 18 years of age, except any person convicted of a crime specified in 10A O.S. § 2-5-101 or any person certified as an adult ~~pursuant to~~per 10A O.S. § 2-2-403 and convicted of a felony.

"Child Care Restricted Registry" also known as **"Joshua's List"** means the Registry created in accordance with 10 O.S. § 405.3, for the purpose of recording individuals who have a:

(A) substantiated finding of abuse or neglect, per 10A O.S. § 1-1-105, by an individual when the abuse or neglect occurred to a child while in the care of a child care program licensed by DHS or by an adult in a family child care home when the adult's presence is incidental to the operation of the family child care home;

(B) denial or revocation of a child care program license; and

(C) specified criminal history of an individual, per OAC 340:110-1-10.1.

"Child -placing agency" means an agency that ~~provides social services to children and their families that supplement, support, or substitute parental care and supervision for the purpose of safeguarding and promoting the welfare of children. The agency may provide full time placement services~~

~~for children away from their own homes, such as adoptive homes, foster family homes, group homes, and transitional or independent living programs~~ arranges for or places a child in a foster family home, group home, adoptive home, or a successful adulthood program per 10 O.S. § 402.

"**Child with a disability**" means any child who has a physical or mental impairment that substantially limits one or more of the major life activities of the child; or who is regarded as having such impairment by a competent medical professional.

"**Client**" means, with regard to OCA:

- (A) ~~investigation~~ investigative services, ~~those~~ individuals listed in OAC 340:2-3-32(a)(2);
- (B) grievance services, ~~those~~ individuals listed in OAC 340:2-3-45(a)(2); and
- (C) advocacy program, ~~those~~ individuals listed in OAC 340:2-3-71(b).

"**Community-based services**" or "**community-based programs**" ~~means~~ mean services or programs that maintain community participation or supervision in planning, operation, and evaluation. Community-based services and community-based programs may include, but are not limited to:

- (A) case supervision;
- (B) consultation;
- (C) counseling;
- (D) crisis intervention;
- (E) early intervention and diversionary substance abuse treatment;
- (F) educational;
- (G) emergency shelters;
- (H) group work;
- (I) home-based services;
- (J) ~~independent living~~;
- ~~(K)~~ job placement;
- ~~(L)~~ (K) medical;
- ~~(M)~~ sexual abuse treatment;
- ~~(N)~~ (M) training;
- (N) transition to successful adulthood;
- (O) transitional living;
- (P) vocational, social, preventive, and psychological guidance;
- (Q) volunteer recruitment and training; and
- (R) other related services and programs.

"**Community services worker**" or "**CSW**" means any person:

- (A) other than a licensed health professional who is employed by or under contract with a community services provider to provide, for compensation or as a volunteer, health-related services, training, or supportive assistance per 56 O.S. § 1025.1, to persons with developmental disabilities; or
- (B) who contracts with the Oklahoma Health Care Authority to provide specialized foster care, habilitation training specialist services, or homemaker services to persons with developmental disabilities.

"**Community Services Worker Registry**" or "**CSW Registry**" means the ~~Community Services Worker Registry~~ established by DHS per 56 O.S. § 1025.3.

"**Complaint**" means a report communicating a grievance, concern, or perceived harm, submitted by phone, email, or in writing by the foster parent to the Office of Juvenile System Oversight (OJSO) of the Oklahoma Commission of Children and Youth (OCCY). If not submitted in writing, the complaint is entered into the written format established by OCA and OJSO.

"**Contractor's employee**" means an employee of a contractor, provider, or facility when the employee is the accused person responsible for the child of interest (PRFCI) or the vulnerable adult caretaker (VAC) in an investigation opened by OCA.

"**Custodian**" means an individual other than a parent, legal guardian, or Indian custodian, to whom legal custody of the child ~~has been~~ was awarded by the court. The term "custodian" does not mean DHS.

"**Day treatment program**" means a non-residential, partial hospitalization program, ~~day treatment program~~, or day hospital program where children are provided intensive services, such as psychiatric or psychological treatment.

~~"DDS" means DHS Developmental Disabilities Services.~~

"**DHS**" ~~or "Department"~~ means the Oklahoma Department of Human Services.

"**Discrimination**" means differential treatment, such as conduct, actions, or decisions based on race, color, national origin, sex, religion, age, or disability, unless authorized by law per OAC 340:1-11-1.1.

"**Disposition**" means with regard to OCA intake processes, the OCA intake unit action taken by the ~~OCA intake unit~~ in response to a referral received, per OAC 340:2-3-35.

"**DMHSAS**" or "**ODMHSAS**" means the Oklahoma Department of Mental Health and Substance Abuse Services.

"**DRS**" means the Oklahoma Department of Rehabilitation Services.

"**Educational employee**" means an employee of a school district, providing contract educational services on-site at a facility, who is either a witness or the accused PRFCI or VAC in an OCA investigation.

"**Email**" means:

- (A) ~~with regard to the advocate general, an email sent to oca.advocategeneral@okdhs.org;~~
- (B) ~~with regard to OCA grievance matters, an email sent to oca.advocategeneral@okdhs.org;~~
- (C) ~~with regard to OCA investigation matters, an email sent to oca.advocategeneral@okdhs.org; and~~
- (D) ~~with regard to OCA intake matters, oca.advocategeneral@okdhs.org.~~

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

"**Emergency custody**" means court-ordered custody of a child prior to adjudication of the child.

"**Excessive use of force**" by a PRFCI, ~~with regard to children residing outside their homes, other than children in foster care, means the failure to employ the least amount of physical force necessary under the circumstances, taking into consideration all of the circumstances surrounding the incident, including the:~~

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- (A) ~~grounds for belief that force was necessary;~~
- (B) ~~age, gender, and strength of the parties involved;~~
- (C) ~~nature of the force employed;~~
- (D) ~~availability of alternative means of force or control;~~
- (E) ~~extent of the harm inflicted; and~~
- (F) ~~method(s) of restraint and intervention approved for use with the person against whom the force was used.~~

"Exploitation" or "exploit" means **"Exploit" or "exploitation"** with regard to vulnerable adults means, an unjust or improper use of the resources of a vulnerable adult for the profit or advantage, pecuniary or otherwise, of a person other than the vulnerable adult through the use of undue influence, coercion, harassment, duress, deception, false representation, or false pretense.

"Facility" means:

- (A) a public or private agency, corporation, partnership, or other entity that:
 - (i) operates a residential child care center; or
 - (ii) contracts with, or is licensed or funded by DHS, the Oklahoma Office of Juvenile Affairs (OJA), or ODMHSAS for the physical custody, detention, or treatment of children;
- (B) a DHS-operated shelter;
- (C) a DHS-, ODMHSAS-, or DRS-operated residential child care center program;
- (D) a community-based youth services shelter or community intervention center;
- (E) the J.D. McCarty Center;
- (F) a day treatment program;
- (G) a private psychiatric facility for children;
- (H) sanctions programs certified by OJA to provide programming for children who are court ordered to participate in that program; or
- (I) ~~SORC, NORCE, and Greer.~~

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

- (A) squandering or negligently mismanaging the money, property, or accounts of a vulnerable adult;
- (B) refusing to pay for necessities or utilities in a timely manner; or
- (C) providing substandard care to a vulnerable adult despite the availability of adequate financial resources.

"Force" with regard to:

- (A) "authorized use of physical force" by a PRFC with regard to a child residing outside of his or her home, other than a child in foster care means:
 - (i) the use of physical contact to control or contain a child when the PRFC reasonably considers him or her to:

- (I) pose a risk of inflicting harm to himself or herself or others; or

- (II) be in the process of leaving a facility without authorization; and

- (ii) when the use of physical force is authorized, the least force necessary under the circumstances is employed;

(B) "excessive use of force" by a PRFCI with regard to a child residing outside of his or her home, other than a child in foster care, means the failure to employ the least amount of physical force necessary under the circumstances, taking into consideration all of the circumstances surrounding the incident, including the:

- (i) grounds for belief that force was necessary;

- (ii) ages, genders, and strengths of the parties involved;

- (iii) nature of the force employed;

- (iv) availability of alternative means of force or control;

- (v) extent of the inflicted harm; and

- (vi) provider's established method(s) of restraint and intervention for use with the child against whom the force was used, consistent with the child's individualized plan, protective intervention plan, or treatment plan; and

(C) "unauthorized use of force" by a PRFCI with regard to a child residing outside of his or her home, other than a child in foster care, means a use of force that is not an authorized use of physical force per this Section. Unauthorized use of force includes unacceptable physical handling of and contact with a child including, but not limited to, slapping, kicking, punching, poking, pulling hair or an ear, pinching, using a chokehold, smothering, spitting, head butting, and tugging.

"Foster care" or **"foster care services"** means continuous 24-hour care and supportive services provided for an individual in a foster placement including, but not limited to, the care, supervision, guidance, and rearing of a foster child by the foster parent.

"Foster child" means a child placed in a foster family placement.

"Foster parent" means any person maintaining a therapeutic, emergency, specialized community, tribal, kinship, or foster family home, responsible for providing care, supervision, guidance, rearing, and other foster care services to a child.

"GARC" means the Grievance and Abuse Review Committee per OAC 340:2-3-61.

"Group home for persons with developmental or physical disabilities" means ~~any establishment~~ a facility:

- (A) for not more than 12 residents who:

- (i) are 18 years of age or older; and

- (ii) have developmental or physical disabilities;

- (B) that offers or provides supervision, residential accommodations, food service, and training and skill

development opportunities designed to lead to residents' increased independence of the residents and supportive assistance to any of the residents requiring supportive assistance; and

- (C) that is not:
- (i) a residential care home;
 - (ii) a nursing facility;
 - (iii) an assisted living facility;
 - (iv) a home ~~in which~~ where agency companion services or specialized foster care is provided; or
 - (v) a home owned or leased by the service recipient or his or her legal guardian.

"Guardian" means a person appointed by a court to ensure the essential requirements for the health and safety of an incapacitated or partially incapacitated person, the ward, are met, to manage the estate or financial resources of the ward, or both. As used in this Subchapter, guardian includes: a general or limited guardian of the person; a general or limited guardian of the estate; a special guardian; and a temporary guardian. The term does not include a person appointed as guardian ad litem.

"Guardian ad litem" or "GAL" means a person appointed by a court, per ~~10 O.S. § 1415~~ 10A O.S. § 1-1-105, to represent the interests of an individual as specified in the court order.

"Harm or threatened harm to the health, safety, or welfare" means, with regard to ~~children~~ a child, any real or threatened physical, mental, or emotional injury or damage to the body or mind that is not accidental including, but not limited to, sexual abuse, sexual exploitation, neglect, or dependency.

"Heinous and shocking abuse" means any abuse that includes, but is not limited to, aggravated physical abuse that results in serious bodily, mental, or emotional injury. Serious bodily injury means, but is not limited to, injury that involves:

- (A) substantial risk of death;
- (B) extreme physical pain;
- (C) protracted disfigurement;
- (D) loss or impairment of a function of a body member, organ, or mental faculty;
- (E) an injury to an internal or external organ or the body;
- (F) bone ~~fractures~~ fracture;
- (G) sexual abuse or sexual exploitation;
- (H) chronic abuse including, but not limited to, physical, emotional, or sexual abuse, or sexual exploitation that is repeated or continuing;
- (I) torture including, but not limited to, inflicting, participating in or assisting in inflicting intense physical or emotional pain upon a child repeatedly over a period of time for the purpose of coercing or terrorizing a child or for the purpose of satisfying the craven, cruel, or prurient desires of the perpetrator or another person; or
- (J) any other similar aggravated circumstance.

"Heinous and shocking neglect" means neglect that includes, but is not limited to:

- (A) chronic neglect that includes, but is not limited to, a persistent pattern of family functioning in which the caregiver has not met or sustained the basic needs of a child that results in harm to the child;
- (B) neglect that has resulted in a diagnosis of the child as an inorganic failure to thrive;
- (C) an act or failure to act by a ~~person responsible for care~~ parent that results in:
 - (i) serious physical or emotional harm;
 - (ii) sexual abuse or sexual exploitation;
 - (iii) death or near death of a child or sibling; or
 - (iv) presents an imminent risk of serious harm to a child; or
- (D) any other similar aggravating circumstance.

"Hisson class member" means an individual certified by the United States District Court for the Northern District of Oklahoma as a member of the plaintiff class in *Homeward Bound, Inc., et al. vs. Hisson Memorial Center, et al.*, Case No. 85-CV-437-GKF.

"Hotline" means the statewide Oklahoma Abuse and Neglect Hotline, toll free ~~telephone~~ phone number, ~~1-800-522-3511~~, maintained by DHS for the purpose of receiving reports of abuse, neglect, or exploitation of children and vulnerable adults. The ~~hotline is in operation~~ Hotline operates 24 hours a day, seven days a week, 365 days a year.

"ICF/ID" or "Intermediate Care Facility for the Intellectually Disabled," also known as a "specialized facility for the intellectually disabled," means a private or public residential facility, licensed in accordance with state law and certified by the federal government as a provider of Medicaid services, for intellectually disabled persons as that term is defined in Title XIX rules and regulations of the Social Security Act.

"Incapacitated person" means a person:

- (A) ~~a person~~ 18 years of age or older who is impaired by reason of mental or physical illness or disability, dementia, or related disease, intellectual disability, developmental disability, or other cause, and whose ability to receive and evaluate information effectively or to make and communicate responsible decisions is impaired to such an extent the person lacks the capacity to manage financial resources or meet essential requirements for mental or physical health or safety without assistance from others; or
- (B) ~~a person~~ for whom a guardian, limited guardian, or ~~conservator~~ caretaker has been appointed ~~pursuant to~~ per the Oklahoma Guardianship and Conservatorship Act (~~Title 30 of the Oklahoma Statutes~~) per O.S. 30 § 1-111.

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

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

"Infant" means a child who is 12 months of age or younger, per 10A O.S. § 1-1-105(36).

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"In-home supports" or **"IHS"** means services funded through Medicaid Home and Community-Based Waivers (HCBW) per Section 1915(c) of the Social Security Act and administered by DHS DDS, provided in the service recipient's home, and are not residential services per OAC 340:100-5-22.1 or group home services per 10 O.S. § 1430.2.

"Injury" means any hurt, harm, appreciable physical pain, or mental anguish.

"Intermediate Care Facility for the Intellectually Disabled" or **"ICF/ID"** also known as a **"specialized facility for the intellectually disabled,"** means a private or public residential facility, licensed per state law and certified by the federal government as a provider of Medicaid services, for intellectually disabled persons as defined in Title XIX rules and regulations of the Social Security Act.

"Investigation" means, regarding a:

(A) child, per 10A O.S. § 1-1-105(38), a response to an allegation of abuse or neglect that involves a serious and immediate threat to the safety of a child or vulnerable adult, making it necessary to determine:

- (i) the current safety of the child and the risk of subsequent abuse or neglect; and
- (ii) whether abuse or neglect of the child occurred; or

(B) vulnerable adult, a response to an allegation of abuse, neglect, verbal abuse, financial neglect, or exploitation of a vulnerable adult, making it necessary to determine whether maltreatment of the vulnerable adult occurred.

"Investigative results" means a written response stating one of the following findings:

(A) regarding a child:

- (i) "substantiated" means OCA has determined, after an investigation of a report of child abuse or neglect of a child, and based upon some credible evidence, that child abuse or neglect occurred;
- (ii) "unsubstantiated" means OCA has determined, after an investigation of a report of child abuse or neglect of a child, that insufficient evidence exists to fully determine whether child abuse or neglect occurred; or
- (iii) "ruled out" means OCA has determined, after an investigation of a report of child abuse or neglect of a child that no child abuse or neglect occurred; or

(B) regarding a vulnerable adult:

- (i) "substantiated" means that the greater weight/preponderance of the available evidence establishes the alleged maltreatment occurred;
- (ii) "not substantiated" means the greater weight/preponderance of the available evidence indicates the alleged maltreatment did not occur; or
- (iii) "ruled out" means no evidence was discovered that indicates/indicating the alleged maltreatment occurred; or

(iv) "defer" means OCA will defer the completion of an investigation and the issuance of a finding upon reasonable request to do so by a law enforcement agency having investigative authority.

"Maltreatment" means abuse, verbal abuse, sexual abuse, neglect, financial neglect, or exploitation or sexual exploitation of vulnerable adults per 43A O.S. § 10-103; or abuse, neglect, sexual abuse or sexual exploitation of children as defined in per 10A O.S. § 1-1-105.

"Medicaid personal care assistant" or **"MPCA"** means a person who provides Medicaid services funded under Oklahoma's personal care program who and is not a certified nurse aide or a licensed professional.

"Mental anguish" means mental damage evidenced by distress, depression, withdrawal, severe anxiety, or unusually aggressive behavior toward one's self or others.

"Mental health facility" means a mental health or substance abuse treatment facility as defined by per the Inpatient Mental Health and Substance Abuse Treatment of Minors Act per 43A O.S. § 5-502(10).

"Minor physical injury" means a demonstrable injury reasonably expected to be treated with the administration of first aid, over the counter remedies, or both. A demonstrable injury includes damage to bodily tissue caused by non-therapeutic conduct, illness, a new or an increased impairment of physical or cognitive functioning, or evidence of a physical injury, such as a laceration, bruise, or burn, and/or an injury confirmed by a physician, dentist, nurse, or other licensed health care professional.

"Multidisciplinary child abuse team" means any team established per 10A O.S. § 1-9-102 of three or more persons who are trained in the prevention, identification, investigation, prosecution, and treatment of physical and sexual child abuse and who are qualified to facilitate a broad range of prevention and intervention-related services and services-related to child abuse. For purposes of this definition, "freestanding" means a team not used by a child advocacy center for accreditation.

"Near death" means a child is in serious or critical condition as verified by a physician, registered nurse, or other licensed health care provider/professional. Verification of medical condition of a child may be given in person or by telephone, phone, mail, email, or fax.

"Neglect" means, with regard to/in regard to:

(A) children is:

- (i) the failure or omission to provide any of the following:
 - (I) adequate nurturance and affection, food, clothing, shelter, sanitation, hygiene, or appropriate education;
 - (II) medical, dental, or behavioral health care;
 - (III) supervision or appropriate caretakers; or
 - (IV) special care made necessary by the physical or mental condition of the child;
- (ii) the failure or omission to protect a child from exposure to any of the following:

- (I) the use, possession, sale, or manufacture of illegal drugs;
- (II) illegal activities;
- (III) sexual acts or materials that are not age-appropriate; or
- (iii) abandonment; or
- (B) vulnerable adults:
 - (i) the failure to provide protection for a vulnerable adult who is unable to protect his or her own interest;
 - (ii) the failure to provide a vulnerable adult with adequate shelter, nutrition, health care, or clothing; or
 - (iii) negligent acts or omissions that result in harm or the unreasonable risk of harm to a vulnerable adult through the action, inaction, or lack of supervision by a caretaker providing direct services.

"OCA" means the DHS Office of Client Advocacy.

"OCA intake" means the OCA-maintained, centralized intake system ~~maintained by OCA~~ that receives referrals of alleged abuse, neglect, verbal abuse, financial neglect, and financial exploitation involving vulnerable adults.

"OJA" means the Oklahoma Office of Juvenile Affairs.

"Ombudsman" or "ombuds" means an "advocate," ~~as defined in this Section.~~

"Person responsible for the child's (PRFC) health, safety, or welfare (PRFC)" means an agent or employee of:

- (A) a public or private residential home, institution, or facility above the level of foster family care;
- (B) a day treatment program per 10 O.S. § 175.20; ~~or~~
- (C) an owner, operator, or employee of a child care ~~facility~~ program per 10 O.S. § 402; or
- (D) any other adult residing in the home of the child.

"Person responsible for the child of interest (PRFCI)" means a person responsible for the child who is the subject of an investigation involving allegations of abuse or neglect.

"Personal support team" or "team," formerly known as the "interdisciplinary team," means the decision-making body for service planning, implementation, and monitoring of the individual plan, ~~as more fully described in per~~ OAC 340:100-5-52.

"Plan for Immediate Safety" means the plan for actions taken to immediately control any significant and clearly observable condition that is present and is endangering or threatening to endanger a child or vulnerable adult.

"Preponderance of the evidence" means information or evidence ~~that~~ is of a greater weight or is more convincing than the information or evidence offered in opposition. ~~It is that~~ The degree of proof that is more probable than not.

"Problem resolution" means verbal or written communications that seek to resolve concerns, complaints, service inadequacies, or issues identified by the client or members of the client's team, including the client's guardian, the OCA advocate for the client, a volunteer advocate for the client, and/or other persons interested in the client's welfare ~~of the client.~~

"Protective custody" means custody of a child taken by law enforcement or designated employee of the court, without a court order.

"Provider" means a program, corporation, partnership, association, individual, or other entity that contracts with, or is licensed or funded by, DHS to provide community-based residential or vocational services to persons with intellectual or developmental disabilities; or contracts with the Oklahoma Health Care Authority to provide residential or vocational services or in-home supports to individuals with intellectual or developmental disabilities through the Home and Community-Based Waiver HBCW.

"Reasonable and prudent parent standard" means the standard characterized by careful and sensible parental decisions that maintain the health, safety, and best interests of a child while at the same time encouraging the emotional and developmental growth of the child. This standard is used by the child's caregiver when determining whether to allow a child to participate in extracurricular, enrichment, cultural, and social activities per 10A O.S. § 1-1-105. For purposes of this definition, the term "caregiver" means a foster parent with whom a child in foster care has been placed, a representative of a group home where a child in foster care has been placed, or a designated official for a residential child care program where a child in foster care has been placed.

"Referring party" means the individual who informs OCA, calls the Hotline, or reports in writing that an incident occurred.

"Reportable incident" means an incident that must be reported because the person reporting knows or has reasonable cause to believe or suspect that a child or vulnerable adult was subjected to abuse or neglect.

"Reporting party" means the individual who initially tells someone verbally or in writing that an incident occurred.

"Residential child care facility" means a 24-hour-a-day residential group care facility ~~at which~~ where a specified number of children, normally unrelated, reside with adults other than their parents.

"Risk" means the likelihood that an incident of child abuse or neglect will occur in the future.

"Safety analysis" means a DHS action taken by DHS in response to a report of alleged child abuse or neglect that may include an assessment or investigation based upon an analysis of the information received according to DHS adopted, priority guidelines and other criteria.

"Safety evaluation" means ~~an~~ a DHS evaluation of a child's situation using a structured, evidence-based tool to determine if the child is subject to a safety threat.

"Safety threat" means the threat of serious harm due to child abuse or neglect occurring in the present or in the very near future and without the intervention of another person, a child would likely or in all probability sustain severe or permanent disability or injury, illness, or death.

"Secure facility" means a facility that is designed and operated to ensure ~~that~~ all entrances and exits from the facility are subject to the exclusive control of the facility staff ~~of the facility~~, whether or ~~not~~ the juvenile child being detained has freedom of movement within the perimeter of the facility, or

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a facility that relies on locked rooms and buildings, fences, or physical restraint in order to control resident behavior. This definition excludes OJA-operated secure facilities.

"Self-neglect" means the action or inaction of a vulnerable adult that causes the person to fail to meet the essential requirements for physical or mental health and safety due to the vulnerable adult's lack of awareness, incompetence, or incapacity.

"Serious physical injury" means a physical injury to a person's body determined to be serious by a ~~physician, dentist, or nurse~~ licensed health care professional. It includes, but is not limited to, death, suicide attempt, fracture, dislocation of any major joint, internal injury, concussion, head injury with loss of consciousness, ingestion of foreign substances and objects that are harmful, near drowning, lacerations involving injuries to tendons or organs and those for which complications are present, lacerations requiring four or more stitches or staples to close, heat exhaustion or heatstroke, ~~an eye injury to an eye ball,~~ irreversible loss of mobility, permanent damage to or loss of a tooth, skin deterioration, ~~and a~~ or second or third degree ~~burns~~ burns and other burns for which complications are present. ~~It also includes~~ Also included are multiple abrasions, bruises, and minor physical injuries on the body of a person, identified around the same time or over a period of several weeks without a clear, known explanation.

"Sexual abuse" means, with regard to:

(A) children, ~~rape, incest, and lewd or indecent acts or proposals, as defined by state law, by a person; or conduct, which includes, but is not limited to, rape, incest, and lewd or indecent acts or proposals made to a child as defined by law, by a PRFC; or~~

(B) vulnerable adults:

- (i) oral, anal, or vaginal penetration of a vulnerable adult by or through the union with the sexual organ of a caretaker or other person providing services to the vulnerable adult, or the anal or vaginal penetration of a vulnerable adult by a caretaker or other person providing services to the vulnerable adult with any other object;
- (ii) for the purpose of sexual gratification, the touching, feeling or observation of the body or private parts of a vulnerable adult by a caretaker or other person providing services to the vulnerable adult; or
- (iii) indecent exposure by a caretaker or other person providing services to the vulnerable adult.

"Sexual exploitation" means with regard to:

(A) children, conduct that includes, but is not limited to, allowing, permitting, or encouraging a child to engage in:

- (i) prostitution, ~~as defined by~~ per state law, by a person responsible for the child's health, safety, or welfare PRFC; or
- (ii) the lewd, obscene, or pornographic, ~~as defined by law,~~ photographing, filming, or depicting of a child by a person responsible for the child's health, safety, or welfare PRFC per state law; or

(B) vulnerable adults, conduct that includes, but is not limited to, a caretaker's causing, allowing, permitting, or encouraging a vulnerable adult to engage in prostitution or in the lewd, obscene, or pornographic photographing, filming, or depiction of the vulnerable adult as those acts are defined by per state law.

"Specialized foster care" means foster care provided to a child or adult in a DDS certified and monitored specialized foster or agency-contracted home, funded through the DDS-administered ~~Home and Community Based Waiver Services~~ HCBW Program, per OAC 317:30-3-39.

"State office" means the DHS administrative offices in Oklahoma City, Oklahoma.

"State office administrator" ~~including the person designated by a state office administrator to act on the state office administrator's behalf,~~ means, with regard to grievances filed by a:

- (A) ~~grievances of children and foster parents regarding the substance or application of any policy, rule, or regulation, written or unwritten, of DHS or a DHS operated shelter or residential facility, or of an agent or DHS contractor or child placement agency, or the DHS Child Welfare Services (CWS) director;~~
- (B) grievances regarding a decision, behavior, or action by a DHS employee, agent, contractor, foster parent, or any person residing in the same placement setting foster parent, by a child in DHS custody, or by an individual filing on behalf of a child in DHS custody, the DHS CWS director, or his or her designee;
- (C) DDS clients and director client or by an individual filing on behalf of a DDS client, the DDS director, or the director's designee; and
- (D) ~~other DHS clients, and the appropriate chief officer, or director.~~

"Subpoena" means a ~~command~~ request to appear at a certain time and place to give testimony. A "subpoena duces tecum" is a ~~command requiring the person subpoenaed to bring~~ request for records or other designated items with them to be delivered.

"Suspicious injury" means an injury that:

- (A) includes, but is not limited to, an injury that:
 - (i) appears inconsistent with the offered explanation(s) for the injury;
 - (ii) is unusual;
 - (iii) cannot be explained as the result of an accident, self-injurious behavior, or normal activities of daily living;
 - (iv) is a minor injury located on or near a private part of the body or on a part of the body that makes it unlikely to have been the result of self-injury or an accident during ~~the course of~~ daily living activities; ~~and~~
 - (v) involves multiple abrasions, bruises, and minor injuries on the body of a person, identified around the same time or over a period of several weeks, but have no clear, known explanation; ~~and~~
- (B) The determination when evaluated for whether an injury is suspicious, the determination is made

from the point of view of an independent, skeptical reviewer, ~~with an injury is being deemed~~ suspicious ~~if when~~ there is no credible explanation for it consistent with the injury not being the result of maltreatment.

~~"Unauthorized use of force" means, with regard to children residing outside their homes, other than children in foster care, a use of force that is not an authorized use of physical force as defined in this Section. It includes, unacceptable physical handling of, and contact with clients including, but not limited to, slapping, kicking, punching, poking, pulling hair or an ear, pinching, using a chokehold, smothering, spitting, head butting, and tugging.~~

"Unexplained injury" means an injury for which there is no known credible origin or cause, even ~~though when~~ a possible explanation for the injury may be offered.

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

"Vulnerable adult" means an individual who is an incapacitated person or who, because of physical or mental disability, incapacity, or other disability, is substantially impaired in the ability to:

- (A) provide adequately for the care or custody of ~~him~~ himself or herself;
- (B) manage his or her property and financial affairs effectively;
- (C) meet essential requirements for mental or physical health or safety; or
- (D) protect ~~him~~ himself or herself from abuse, verbal abuse, neglect, or exploitation without assistance from others.

"Vulnerable adult caretaker" or "VAC" means a person responsible for the health, safety, or welfare of a vulnerable adult's health, safety, or welfare including:

- (A) Hissom class members;
- (B) ~~SORC, NORCE, and~~ Greer residents; and
- (C) vulnerable adults receiving services from a community services provider, community services worker, Medicaid personal care services provider, or Medicaid personal care assistant, ~~as those terms are defined per 56 O.S. § 1025.1.~~

"Ward" means a person over whom a guardianship has been given by the court.

PART 3. INVESTIGATIONS

340:2-3-34. Administrator's responsibilities regarding allegations reportable to Office of Client Advocacy (OCA)

(a) **Facility administrator's responsibility for protection, safety, health, and welfare of children and vulnerable adults.** When OCA intake receives an allegation of maltreatment by a vulnerable adult caretaker (VAC) or a person

responsible for the child of interest (PRFCI), from anyone other than the administrator or the administrator's designee, of the facility or provider responsible for the client, OCA intake promptly notifies the applicable administrator of the allegation.

(1) Upon becoming aware of an allegation of caretaker maltreatment involving an OCA client, an administrator or the administrator's designee ensures the safety, protection, and needed medical attention of any client named in the allegation and other clients receiving services from the facility or provider.

(2) When criminal activity is alleged regarding a child or vulnerable adult, the administrator or the administrator's designee immediately notifies the appropriate local law enforcement authority. The types of criminal activity reported to law enforcement include, but are not limited to, the use or possession of illegal drugs, domestic abuse, illegal sexual activity, illegal use of alcohol, theft of money, property, or medication that is a controlled substance, and when someone other than a caretaker is believed to have committed the allegation.

(3) The administrator or the administrator's designee takes necessary personnel actions to ensure the protection and safety of the alleged victim(s) and other clients. When necessary to ensure safety, ~~an Immediate Protective Action Plan (IPAP)~~ a Plan for Immediate Safety (PFIS) is completed with an OCA investigator. The creation of the ~~IPAP~~ PFIS may include consultation with: Oklahoma Department of Human Services (DHS) Developmental Disabilities Services (DDS), Child Welfare Services (CWS), Specialized Placements and Partnerships Unit (SPPU), Child Care Services (CCS), or the Oklahoma Office of Juvenile Affairs (OJA). OCA does not determine or approve personnel actions taken by an administrator or the administrator's designee in response to allegations reported to OCA.

(4) In the event of alleged abuse or neglect of a Hissom class member by a provider's employee or subcontractor, the administrator or the administrator's designee ensures the protection and medical attention for any class member named in an allegation or other individual served. In the event of alleged abuse or neglect by an individual serving as a provider, it is the responsibility of the class member's case manager to ensure protection, medical attention, or both for the class member. OCA intake notifies the applicable DDS area manager by email within one business day of receipt of a referral of abuse or neglect by an individual serving as provider for the class member.

(b) **Preliminary assessment.** Upon learning of an incident reportable to DHS, the administrator or the administrator's designee:

- (1) immediately ensures the safety of any client(s) named in the referral;
- (2) secures any physical evidence and gathers documents within the possession, custody, or control of the facility or provider relevant to the allegation;
- (3) immediately photographs injuries. Photographs are taken by a person uninvolved in the incident that is the subject of the allegation relating to the injuries; and

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- (4) coordinates activities with OCA and other agency or law enforcement authorities involved in investigating the referral.
- (c) **Collecting pertinent reports and documents.** The administrator ~~or the administrator's designee~~ determines which employees were present when the alleged incident occurred and requires each employee to submit a written account of the alleged incident. The administrator ~~or the administrator's designee~~ collects medical records, documents, reports, and other documentary evidence that pertains to the alleged incident, within the facility or provider's possession, custody, or control, and places them in a file for OCA investigative and other investigative authorities' use. The administrator ~~or designee~~ securely maintains documents collected during the preliminary assessment.
- (d) **OCA access to documents and evidence.** Upon request, an OCA investigator is provided a copy of and access to the original written statements, incident reports, relevant documents, records, reports, photos, and other evidence collected during the preliminary assessment.
- (e) **Prohibition from interviewing during preliminary assessment.** Facility or provider employees do not conduct an investigation of an alleged incident while the OCA decision to accept the referral for investigation is pending, or during an open OCA investigation. To avoid the consequences of over-interviewing parties involved in an alleged incident, the preliminary assessment is limited to inquiries regarding those involved, obtaining written statements, and clarifying information needed to take appropriate action to ensure client safety. Determining if a staff member engaged in maltreatment is not the goal of a preliminary assessment. Once there is reason to believe ~~abuse or neglect-maltreatment may have~~ occurred, the preliminary assessment ceases, and the incident is reported to the ~~OKDHS~~DHS Abuse and Neglect Hotline (Hotline), when it involves a juvenile; or to the OCA Intake Unit when the alleged victim is a vulnerable adult. Outside of regular business hours reports of abuse or neglect of a vulnerable adult are reported to the Hotline. This prohibition does not extend to interviews and investigations conducted by law enforcement when responding to a report of criminal activity. The assigned OCA investigator coordinates activities with local, state, and federal law enforcement entities to seek the most appropriate investigative response to the referral.
- (f) **Facility and provider contact person.** The facility or provider administrator is responsible for the care of each individual per Oklahoma Administrative Code (OAC) 340:2-3-32(a)(2) and designates a contact person for OCA. The administrator ~~or the administrator's designee~~ informs the advocate general of the name, phone number, and email address of the designated contact person and immediately notifies the advocate general ~~in writing of changes to the information by email or mail or email, of changes to the information.~~ The designated contact person is available by ~~telephone, phone,~~ telephone, phone, or email at all times. Form 15IV011E, Designation of Contact Person for Client Investigations, may be used for this purpose.
- (g) **Documentation provided by the Robert M. Greer Center (Greer).** Within one business day of Greer submitting

an incident report to the Oklahoma State Department of Health, a ~~five-day~~five-business day report, or a final report regarding an allegation reported to OCA intake, the facility sends OCA intake a copy by ~~email or fax or email attachment.~~

(h) **Ensuring confidentiality.** Administrators maintain information, files, and documents regarding referrals made to OCA intake ~~or to the Hotline~~, including OCA investigation reports distributed per ~~OAC~~Oklahoma Administrative Code 340:2-3-36, in a manner that protects information confidentiality.

340:2-3-36. Office of Client Advocacy investigation procedures

(a) Initiation of Office of Client Advocacy (OCA) investigation.

(1) Per Section 1-9-112 of Title 10A of the Oklahoma Statutes (10A O.S. § 1-9-112), Oklahoma Department of Human Services (DHS) OCA within its investigative scope and authority, conducts a prompt and thorough investigation upon receiving a report of abuse, neglect, sexual abuse, or sexual exploitation of a child within priority guidelines per 10A O.S. § 1-2-105 and Oklahoma Administrative Code (OAC) 340:75-3-130.

(2) Per 43A O.S. § 10-105 DHS OCA within its investigative scope and authority, conducts a prompt and thorough investigation upon receiving a report of abuse, neglect, verbal abuse, financial neglect, or exploitation of a vulnerable adult with intellectual disabilities who is a recipient of home and community based waiver services.

(A) An OCA investigator initiates an investigation by making face-to-face contact with the vulnerable adult, who is the alleged victim.

(B) The OCA investigator initiates the investigation, as soon as possible, but within five calendar days, and not to exceed 120 hours from the time of the receipt of the referral.

(C) In the case of an emergency when a priority response is required, an OCA investigator initiates the investigation, as soon as possible, but not to exceed 24 hours from the date of case assignment.

(D) ~~If during the course of~~During an investigation, ~~if~~ the OCA investigator has concerns that the vulnerable adult victim may be engaging in acts of self-neglect; or is in need of involuntary protective services or court intervention, the OCA investigator promptly makes a referral to Adult Protective Services (APS) and coordinates with APS to ensure the safety of the vulnerable adult per 43A O.S. § 10-106.

(b) Joint investigations with law enforcement are conducted during children and vulnerable adult investigations when possible. ~~Per~~In accordance with 10A O.S. § 1-9-102, the multidisciplinary team (MDT) approach is used:

(1) whenever feasible for investigations involving cases of child sexual abuse, ~~serious~~ physical abuse, and ~~serious~~ neglect;

(2) to enhance the investigative process and maximize services provided to affected children and families; and

- (3) to consult with other MDT team members, as appropriate.
- (c) **Notice of investigation provided to person responsible for the child of interest (PRFCI).** Per 10A O.S. § 1-2-106, at initial contact with a PRFCI who is the subject of an investigation pursuant to the Oklahoma Children's Code, DHS advises the PRFCI of the specific complaint or allegation made against him or her.
- (d) **Written description of the investigation process provided to PRFCI.** When DHS is unable to locate the PRFCI who is the subject of an investigation, DHS as soon as possible after initiating the investigation of the person, provides the person a brief and easily understood written description of the investigation process that includes information per 10A O.S. § 1-2-106.
- (e) **Reportable incident regarding vulnerable adult reported by DHS to law enforcement.** Per ~~43A O.S. § 10-104~~ 43A O.S. § 10-105(B)(1), the DHS investigation of a vulnerable adult ~~by DHS~~ includes notification of the allegation to the local law enforcement agency.
- (f) **Notice of investigation provided to vulnerable adult's caretaker (VAC), legal guardian, and next of kin.**
 - (1) Per 43A O.S. § 10-105.1, as soon as possible after initiating an investigation of a referral regarding a vulnerable adult, DHS provides the alleged victim's caretaker, legal guardian, and next of kin, notice that includes a brief oral summary and a written description of the investigation process, whether or not the caretaker, guardian, or next of kin is alleged to be the perpetrator of the abuse, neglect, or exploitation of the vulnerable adult.
 - (2) When the vulnerable adult retains capacity to consent to voluntary services and does not wish for a caretaker or next of kin to receive notification of the investigation, DHS abides by the vulnerable adult's wishes.
- (g) **Facility or provider responsibility to arrange document production, visits, and interviews.** The applicable facility administrator or the administrator's designee arranges document production, site visits, and interviews per OCA request.
 - (1) The facility or provider administrator or the administrator's designee who employed the accused PRFCI or VAC at the time of the alleged incident informs the employee of:
 - (A) the OCA investigator's name and ~~telephone~~ phone number;
 - (B) the investigative process described in this Section;
 - (C) except as stated in paragraph (2) of this subsection, the employee's rights and responsibilities relating to the investigation described in subsection (1) of this Section, using Form 15IV005E, Rights and Responsibilities of Accused Caretakers; Form 15IV006E, Investigations of Foster Parent Retaliation Complaints - Rights and Responsibilities of Accused DHS Employees; Form 15IV004E, Investigations of Client Maltreatment - Rights and Responsibilities of Accused DHS Employees; or a substantially similar provider or agency form, a copy of which is provided

- to the OCA investigator except as stated in paragraph (2) of this subsection; and
- (D) the allegation made against the PRFCI or VAC without divulging the identity of the reporting party or the substance of the evidence.
- (2) When the PRFCI or VAC is subject to the Community Services Worker (CSW) Registry maintained by DHS Legal Services, the rights and responsibilities of the accused community services worker and Medicaid personal care assistant ~~is~~ are found in OAC 340:100-3-39.
 - (A) The facility or provider administrator or the administrator's designee promptly completes Form 06PE059E, Rights and Responsibilities of Community Services Worker in an Investigation of Maltreatment, per OAC 340:100-3-39(e)(2)(C).
 - (B) The facility or provider administrator or the administrator's designee mails Form 06PE059E to the worker when it is not possible to hand-deliver it to the worker who is no longer employed by the provider.
- (h) **OCA access to victims, employees, clients, facilities, files, and other records.**
 - (1) The applicable facility or provider administrator or the administrator's designee arranges for the OCA investigator to have immediate and direct access to any alleged victim in the referral who is still a client of the facility or provider.
 - (2) During an OCA investigation, DHS, Office of Juvenile Affairs (OJA), Oklahoma Department of Rehabilitation Services (ODRS), Oklahoma Department of Mental Health and Substance Abuse Services (ODMH-SAS), the J.D. McCarty Center, providers, and facilities and persons who contract with them, provide OCA access to all employees, clients, facilities, locations, files, and records of any nature that may pertain to the investigation.
 - (3) Denial of access may be grounds for a contract termination between DHS and the contractor.
- (i) **Court order allowing entry to premises, access to and exam of the child, and access to child's medical, psychological, or psychiatric records.** Per 10A O.S. § 1-2-105:
 - (1) the investigation may include a medical, psychological, or psychiatric examination of any child in the home or in an out-of-home placement. When admission to the home, school, or any place where the child may be located cannot be obtained, the district court having jurisdiction, upon application by the district attorney and upon cause shown, orders the PRFCI, or the person in charge of any place where the child may be located, to allow entrance for the interview, examination, and investigation;
 - (2) when the PRFCI does not consent to the DHS requested medical, psychological, or psychiatric examination of the child, the district court having jurisdiction, upon application by the district attorney and upon cause shown, orders the examination to be made at the times and places designated by the court; and
 - (3) the investigation may include an inquiry into the possibility the child has a history of mental illness. When the PRFCI does not allow DHS access to requested behavioral health records or treatment plans that may be relevant

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to the alleged abuse or neglect, the district court having jurisdiction, upon application by the district attorney and upon good cause shown, allows DHS by order, access to the records pursuant to terms and conditions prescribed by the court.

(j) **Court order allowing entry to premises, private access to the vulnerable adult, or records and documentation.**

(1) Per 43A O.S. § 10-105, the DHS investigation includes:

- (A) a visit to the home or other place of residence of the person who is the subject of the report;
- (B) a private interview with the person who is the subject of the report; and
- (C) consultation with persons who have knowledge of the circumstances.

(2) When in the course of an investigation, DHS is denied entrance to the home or other place of residence of a person believed to be a vulnerable adult in need of protective services, or is denied a private interview with the vulnerable adult, DHS may petition the court for an order allowing entry to the premises or private access to the vulnerable adult per 43A O.S. § 10-105.

(3) The court makes a finding of probable cause of the vulnerability of the adult before issuing the order.

(4) When documentation, or access to records, or other information relating to the alleged vulnerable person is denied, DHS may petition the court for an order allowing entry or access. The petition states the name and address of the person who is the subject of the report and alleges specific facts sufficient to show the circumstances of the person are in need of investigation.

(5) When it is necessary to forcibly enter the premises, DHS enters, accompanied by a peace officer per 43A O.S. § 10-105.

(k) **Discrimination, retaliation, or interference in an OCA investigation prohibited.**

(1) ~~10A O.S. § 1-2-101(B)(4) prohibits discrimination or retaliation states that an employer, supervisor, or administrator shall not interfere, discriminate, or retaliate against a person who in good faith provides information about a reportable incident or testifies in any proceeding involving child abuse or neglect.~~

(2) ~~21 O.S. § 455 makes states it is a felony to interfere with a child abuse investigation or a vulnerable adult investigation:~~

~~(A) willfully prevent or attempt to prevent, threaten, cause, or procure physical harm through force or fear:~~

- ~~(i) with intent to prevent a witness from testifying or to alter his or her testimony;~~
- ~~(ii) from providing any record, document, or object in any proceeding; or~~
- ~~(iii) from making a report of child abuse or neglect or a report of abuse, neglect, or exploitation to a vulnerable adult; or~~

~~(B) harass, or cause a witness to be harassed because of:~~

~~(i) testimony given by that person in any proceeding; or~~

~~(ii) making a report of child abuse or neglect or a report of abuse, neglect, or exploitation to a vulnerable adult.~~

(3) A DHS employee who interferes with an OCA investigation may be subject to administrative action. Interference includes, but is not limited to:

- (A) intimidating, harassing, or threatening a party to the investigation;
- (B) retaliation against an employee for reporting an allegation; or
- (C) denial of access to clients, employees, facilities, witnesses, records, or evidence.

(34) 43A O.S. § 10-104(K) states an employer ~~shall~~ will not terminate the employment, prevent or impair the practice or occupation, or impose any other sanction on ~~any~~ an employee solely for the reason the employee made or caused to be made a report, or cooperated with an investigation pursuant to the Protective Services for Vulnerable Adults Act, 43A O.S. §§ 10-101 et seq.

(l) **Rights and responsibilities of accused PRFCI or VAC.** The rights and responsibilities of the accused PRFCI or VAC during an OCA investigation are outlined in this subsection, except when the accused is a community services worker, whose rights and responsibilities are found at OAC 340:100-3-39.

(1) **Rights.** During the investigation process, an accused PRFCI or VAC has the right to:

- (A) be advised of the nature of each allegation made against him or her;
- (B) be advised by OCA of the investigative process involving caretaker maltreatment;
- (C) be interviewed by the OCA investigator and allowed to give his or her position regarding the allegation;
- (D) be advised by the OCA investigator of the substance of the evidence against him or her, but not the identity of the person reporting the allegation;
- (E) submit or supplement a written statement relating to the allegations;
- (F) seek advice from other parties concerning a PRFCI's or VAC's rights and responsibilities in OCA investigations, including the right to seek counsel;
- (G) decline to answer any question when he or she reasonably believes the answer to the question may incriminate him or her in a criminal prosecution; ~~and~~
- (H) be notified in writing by his or her employer of the outcome of the investigation when the investigation involves a VAC; and
- (I) be notified in writing by OCA of the outcome of the investigation when the investigation involves a PRFCI.

(2) **Responsibilities.** During the investigative process, the accused PRFCI or VAC has the responsibility to:

- (A) prepare written statements and reports relevant to the investigation, upon request;
- (B) be available for interviews and accommodate the OCA investigator ~~in~~ with scheduling interviews;

(C) refrain from action that interferes with the investigation; including any action that intimidates, threatens, or harasses any person who has or may provide information relating to the allegation; and

(D) provide pertinent information and respond fully and truthfully to questions asked.

(m) **Educational employees.** This subsection applies to an employee of a school district providing contract educational services on-site at a facility per OAC 340:2-3-2, who is either a witness or the accused PRFCI or VAC in an OCA investigation.

(1) The facility administrator ~~of the facility~~ where the incident took place notifies the school principal ~~of the school~~ of the nature of the allegation and the ~~name of the assigned OCA investigator~~ investigator's name.

(2) The school principal ~~of the school~~ is responsible for notifying the school employee of the reason for the investigative interview, advising the employee of his or her rights and responsibilities relating to the OCA investigation, and arranging for the employee's appearance at an investigative interview. This requirement is for purposes of notification and coordination of the investigative process and does not extend to ensuring the protection of the alleged victim(s) or other clients at the facility where the educational services are provided. The facility administrator ~~of the facility~~ where the alleged incident took place is responsible for client protection.

(3) OCA investigates educational employees who meet the definition of a caretaker per OAC 340:2-3-2.

(n) **Contractor's employees.** This subsection applies to an employee of a contractor of a provider or facility when the employee is an accused PRFCI or VAC in an investigation opened by OCA.

(1) The facility or provider administrator where the incident took place notifies the contractor chief administrative officer of the nature of the allegation against the contractor's employee and the ~~name of the assigned OCA investigator~~ investigator's name.

(2) The contractor chief administrative officer is responsible for notifying the contract employee of the reason for the investigative interview, advising the employee of his or her rights and responsibilities relating to the OCA investigation, and arranging for the employee's appearance at an investigative interview. This requirement is for purposes of notification and coordination of the investigative process. The facility or provider administrator where the alleged incident took place is responsible for client protection.

(o) **Document collection and review.** The OCA investigator gathers and reviews relevant documents including, but not limited to:

- (1) incident reports and other written reports, accounts, and statements prepared during the preliminary assessment;
- (2) medical records;
- (3) photographs and/or video; and
- (4) facility or provider logs; and
- (5) activity and tracking documents.

(p) **Investigative interviews.** When an injury is alleged, the OCA investigator or other appropriate person observes, notes, and documents apparent injuries; and obtains pertinent medical documentation, including photographic evidence. Interviews are conducted in private. No person, other than the OCA investigator and the person interviewed, is allowed to attend an interview except for a person necessary to facilitate communication. An attorney or other representative of the person interviewed attends an interview only as a silent observer with prior permission of the advocate general or the advocate general's designee.

(q) **Interview protocols.** The OCA investigator conducts a separate private interview with each alleged victim, available witnesses to the alleged maltreatment, and persons who allegedly were directly or indirectly involved in the allegation, persons with knowledge of relevant information, and each caretaker accused of the maltreatment.

(r) **Conducting the investigation.** OCA investigators conduct investigations in a professional manner.

(s) **Recording investigation interviews.** OCA interviews are audio-recorded. To maintain information confidentiality provided in an interview, recording by the person interviewed or ~~by anyone else~~ in attendance is not permitted. Recordings of interviews remain with the OCA investigative file. OCA files and recordings are not public documents.

(t) **Immediate Protective Action Plan (IPAP) regarding children and vulnerable adults.** ~~The purpose of an IPAP is to address issues related to the present danger of children or vulnerable adults in order to ensure their continued safety. An IPAP involves communication by the investigator with the agency or facility to document the steps the agency or facility is taking to ensure the immediate safety of children or vulnerable adults until safety concerns are eliminated. "Plan for Immediate Safety" means the plan for actions taken to immediately control any significant and clearly observable condition that is present and is endangering or threatening to endanger a child or vulnerable adult.~~

(u) **Presentation of the allegation.** ~~If, during the course of~~ During an investigation, when a witness is identified as a potential accused caretaker, the OCA investigator interviews the witness again to inform the witness that he or she is a potential accused caretaker. At that time, the witness is informed of the substance of the evidence and relevant information learned during the investigation and provided an opportunity to respond. The OCA investigator informs the facility administrator or provider agency of the new allegation and of the potential, additional accused caretaker(s). The OCA investigator advises the accused caretaker of the substance of the new information and provides an opportunity to present a response.

(v) **Opportunity for accused caretakers to respond.** Following the initial interview of the accused caretaker, if the OCA investigator obtains information the accused caretaker did not have an opportunity to respond, the OCA investigator conducts another interview with the caretaker. The OCA investigator advises the accused caretaker of the substance of the new information and provides an opportunity to present a response.

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(w) **Interpreter services for persons who are deaf or hard of hearing.** When OCA interviews the person who is deaf or hard of hearing, the facility or provider agency that employed the person at the time of the alleged incident provides, ~~at no cost to OCA,~~ oral or sign language interpreter services by an independent and qualified interpreter, ~~at no cost to OCA.~~ Interpreter services for DHS employees and clients are provided per OAC 340:1-11-10.

(x) **Scheduling interviews.** To schedule an interview with an accused caretaker, the OCA investigator ~~contacts by phone, email, or regular mail, phones, emails, or mails~~ the facility administrator, the provider agency administrator, or the administrator's designee that employs the caretaker. After two documented attempts to schedule an interview, the OCA investigator in writing, ~~in writing,~~ the facility administrator, provider agency administrator, or the administrator's designee advising the administrator of ~~their~~ his or her responsibility to compel the employee to participate. The OCA investigator notifies Developmental Disabilities Services (DDS) Quality Assurance (QA) or Child Welfare Services Specialized Placements and Partnerships Unit (SPPU) to ensure compliance with contract provisions. If unsuccessful, the OCA investigator sends a letter by ~~regular~~ mail to the caretaker's last known address notifying the caretaker of the investigation, offering an opportunity to be interviewed, and setting a date and time for a response. The letter informs the caretaker of the consequence of failing to participate. The OCA investigative report is completed without the caretaker's statement, and a finding is made based on the available information. For other persons needing to be interviewed, the OCA investigator follows the same protocol for an accused caretaker, but the letter only requests his or her participation in an interview.

(y) **Area ~~Areas~~(s) of concern (AOC) notification.** During ~~the course of~~ the investigation, the assigned OCA investigator ~~contacts emails or phones~~ the applicable facility or provider administrator or the administrator's designee ~~by email or telephone~~ and informs the facility or provider agency administrator or the administrator's designee of ~~identified areas of concern~~ AOCs. Upon completion of the investigation, all identified ~~areas of concern~~ AOCs are provided in writing to the facility or agency provider administrator.

(z) **The written investigative report.** After completing the information-gathering portion of the investigative process, the OCA investigator prepares a written investigative report containing:

- (1) the referral allegation(s) investigated, including the date, time, and location of the alleged incident(s), the date the allegation was reported to OCA, and the assigned OCA case number;
- (2) a statement of any physical injuries sustained by the alleged victim(s);
- (3) information regarding ~~any~~ involved law enforcement entities;
- (4) a recommendation for the district attorney to consider further investigation;
- (5) the applicable definition(s) of caretaker misconduct or the type of maltreatment at issue, such as abuse, neglect, verbal abuse, exploitation, or caretaker misconduct;

(6) the finding(s) per ~~this (t) – (v) of this Section~~ (aa) and (cc);

(7) a list of the involved parties, ~~their~~ titles and roles in the matter, if they were interviewed and, ~~if when~~ interviewed, whether was the interview face-to-face or by ~~telephone~~ phone;

(8) the name, address, and ~~telephone~~ phone numbers of any interpreter employed during the investigation;

(9) an explanation of the basis for the finding(s);

(10) a summary of relevant information obtained during each interview conducted during the investigation;

(11) ~~areas of concern~~ AOCs relating to the referral identified during the investigation regarding facility, provider, or DHS practices or procedures that have implications for the safety, health, or welfare of clients; but do not rise to the level of abuse or neglect;

(12) a list of relevant documents and records reviewed during the investigation;

(13) a list of attachments to the report provided upon request; and

(14) an explanation for any delays in meeting the time requirements for completing the investigation report contained in this Section.

(aa) **OCA findings and completion time requirements regarding investigations involving a child in DHS custody.**

Per 10A O.S. § 1-9-112.1, the OCA investigation of a report of abuse or neglect of a child in DHS custody results in a written report within 30-calendar days from the date of the referral stating one of the findings in (1) through (3) ~~of this subsection.~~

(1) "Substantiated" means OCA determined, after an investigation of a report of child abuse or neglect of a child in DHS custody and based upon credible evidence, that child abuse or neglect occurred;

(2) "Unsubstantiated" means OCA determined, after an investigation of a report of child abuse or neglect of a child in DHS custody, that insufficient evidence exists to fully determine whether child abuse or neglect occurred; or

(3) "Ruled out" means OCA determined, after an investigation of a report of child abuse or neglect of a child in DHS custody, that no child abuse or neglect occurred.

(bb) **OCA findings and completion time requirements regarding investigations involving a child not in DHS custody.**

OCA investigations involving a child not in DHS custody results in a written report within 30-calendar days from the date of the referral stating one of the findings in (1) through (3) of this subsection.

(1) "Substantiated" means OCA determined, after an investigation of a report of child abuse or neglect of a child not in DHS custody and based upon credible evidence, that child abuse or neglect occurred;

(2) "Unsubstantiated" means OCA determined, after an investigation of a report of child abuse or neglect of a child not in DHS custody, that insufficient evidence exists to fully determine whether child abuse or neglect occurred; or

(3) "Ruled out" means OCA determined, after an investigation of a report of child abuse or neglect of a child not in DHS custody, that no child abuse or neglect occurred.

(cc) **OCA findings regarding investigations involving a vulnerable adult.** The OCA investigation of a report of abuse or neglect of a vulnerable adult results in a written response within 45-calendar days from the date of the referral stating one of the findings in (1) through (4)(3) of this subsection. ~~The OCA investigator determines the appropriate finding for each allegation contained in the referral investigated. Findings are made based on a greater weight of the evidence standard. The finding options are:~~

- (1) ~~"substantiated"~~ **"Substantiated"** means the ~~greater weight/preponderance~~ of the available evidence establishes the alleged maltreatment occurred;
- (2) ~~"not substantiated"~~ **"Unsubstantiated"** means the ~~greater weight/preponderance~~ of the available evidence indicates the alleged maltreatment did not occur; or
- (3) ~~"ruled out"~~ **"Ruled Out"** means no evidence was discovered that indicated the alleged maltreatment occurred;

(dd) **Identification of the responsible VAC.** Regarding investigations involving a vulnerable adult, when the evidence gathered during the investigation is sufficient to substantiate maltreatment of a vulnerable adult but the person responsible for the maltreatment cannot be identified, the substantiated finding is made on an unknown VAC. The administration may be named as responsible VAC when the policies, procedures, or practices adopted by the administration of a facility or provider are the primary factor resulting in the maltreatment of individual clients.

(ee) Notice of findings of abuse, neglect, sexual abuse, financial exploitation, or financial neglect to a vulnerable adult.

(1) After completion of the OCA investigation, a findings letter is mailed to the:

- (A) alleged VAC;
- (B) legal guardian and next of kin; and
- (C) facility administrator.

(2) When a facility administrator is named as an accused VAC, a findings letter is mailed to the facility's chair of the board of directors, or to the director of the state agency operating the facility, as applicable.

(eff) Notice of findings of child abuse or neglect to a child.

(1) After completion of the OCA investigation, a findings letter is mailed to the:

- (A) alleged PRFCI; and
- (B) facility administrator.

(2) When a facility administrator is named as an accused PRFCI, a findings letter is mailed to the facility's chair of the board of directors ~~of the facility~~, or to the director of the state agency operating the facility, as applicable.

(3) The OCA investigator verbally provides the findings to the child victim's parents or guardian.

(f) Appeal process for substantiated findings of child abuse or neglect. The 2010 Child Abuse Prevention and

Treatment Act (CAPTA), Section 5101 et seq. of Title 42 of the United States Code (42 U.S.C. § 5101, et. seq.), requires that DHS provide an appeal process for persons who disagree with a substantiated finding of child abuse or neglect per OAC 340:2-3-39.

~~(g)h~~ **Appeal process for substantiated findings of vulnerable adult abuse, neglect, financial exploitation, financial neglect, or verbal abuse.** The appeal process is provided for VACs who disagree with a substantiated finding of vulnerable adult abuse, neglect, financial exploitation, financial neglect, or verbal abuse per OAC 100-3-39.

~~(h)j~~ **OCA investigation report submitted to Child Welfare Services (CWS).** Per 10A O.S. § 1-9-112.1, in addition to the requirements of 10A O.S. § 1-9-112, the OCA investigation report concerning a report of abuse or neglect of the child in DHS legal custody ~~DHS~~ is submitted to the CWS director or the director's designee within 30-calendar days from the referral date.

~~(i)j~~ **Dissemination of OCA investigative reports involving PRFCIs and VACs not subject to the Community Services Worker (CSW) Registry.**

(1) Except as provided in subsection (aa) of this Section, a copy of the final OCA investigation report involving a vulnerable adult client is sent to the administrator of an affected facility or provider agency. The administrator is responsible for notifying the client of the OCA finding. OCA notifies the caretaker, legal guardian, and next of kin of a vulnerable adult of the OCA finding.

(2) When the referral alleges abuse, verbal abuse, sexual abuse, neglect, financial neglect, or exploitation, a copy is sent to the applicable district attorney.

(3) A copy is sent to the appropriate DHS State Office administrator, ~~OJA executive director, ODRS director, or ODMHSAS director, or the J.D. McCarty Center director,~~ as applicable.

(4) When a facility or provider administrator is named as an accused VAC in the allegation, OCA forwards the investigative report to the facility or provider agency chair of the board of directors or to the director of the state agency operating the facility.

(5) A copy of the OCA report is sent to the Oklahoma State Department of Health (OSDH) when the investigation ~~involved~~ involves a day treatment program.

~~(6) Form 04K1078E, Notification Concerning Finding(s) of Child Abuse/Neglect, is sent to the administrator of a DHS operated facility and applicable DHS director or designee. When an accused PRFCI is a DHS employee who does not work at a DHS operated facility, the applicable DHS director or designee is responsible for providing the employee with a letter summarizing the allegation and states the OCA finding.~~ The administrator provides the accused DHS employee who is a VAC, a letter summarizing the allegation and states the OCA finding.

(7) When client maltreatment by a licensed nurse is substantiated, a copy of the OCA report is submitted to the Oklahoma State Board of Nursing.

(8) When appropriate in cases involving a vulnerable adult, a copy of the OCA report is sent to any state agency

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with concurrent jurisdiction over persons or issues identified in the investigation including, but not limited to, OSDH and any appropriate state licensure or certification board, agency, or registry and includes sending OSDH a copy of any report when at least one of the accused ~~PRFCIs~~ or VACs is a certified nurse aide (CNA).

(9) When maltreatment by a guardian is substantiated, a copy of the OCA investigation report is submitted to the applicable guardianship court.

(10) OCA distributes the investigation report by ~~United States~~ mail, fax, or email, ~~as appropriate while maintaining confidentiality of materials.~~

(kk) Dissemination of OCA investigative reports involving PRFCIs not subject to the Child Care Restricted Registry.

- (1) A copy of the investigation report is sent to the:
 - (A) district attorney in the county where the suspected maltreatment occurred per 10A O.S. § 1-2-105(E);
 - (B) appropriate DHS State Office administrator, OJA executive director, or the J.D. McCarty Center director, as applicable; and
 - (C) Oklahoma State Board of Nursing, when client maltreatment by a licensed nurse is substantiated.

(2) Form 04K1078E, Notification Concerning Finding(s) of Child Abuse/Neglect, is sent to the DHS-operated facility administrator and applicable DHS director or the director's designee. When an accused PRFCI is a DHS employee who does not work at a DHS-operated facility, the applicable DHS director or the director's designee is responsible for providing the employee with a letter summarizing the allegation and stating the OCA finding.

(3) OCA distributes the investigation report by mail, fax, or email while maintaining confidentiality of materials.

(jll) Dissemination of reports involving Hissom class members, PRFCIs, and VACs subject to the CSW Registry or the Child Care Restricted Registry.

(1) All OCA investigations involving a substantiated finding against a community services worker, or Medicaid personal care assistant employed by a Medicaid personal care services provider, are processed for the CSW Registry per OAC 340:100-3-39 and 317:35-15.

(2) ~~All OCA investigations involving a substantiated finding against a PRFCI while the child is in the care of a child care facility are processed for the Child Care Restricted Registry per OAC 340:110-1-10.1.~~

~~(3) A copy of the investigation report is sent to the district attorney in the county where the suspected maltreatment occurred per 10A O.S. § 1-2-105(E) when the victim is a child, or 43A O.S. § 10-104(I) when the victim is a vulnerable adult.~~

~~(4) In addition to (aa) of this Section, when the victim is a child receiving DDS services, OCA sends a copy of the report to the DDS director or designee.~~

~~(5) When the OCA finding substantiates an allegation against a PRFCI when the abuse or neglect occurred to a child in the care of a child care facility, OCA submits a~~

~~copy of the report to Child Care Services (CCS) Licensing Records Office per OAC 340:110-1-10.1(f) for processing under the Child Care Restricted Registry.~~

~~(63) When the victim is a vulnerable adult, OCA sends the report to the facility or provider administrator, the DDS director or designee, the Aging Services director or designee, or the Oklahoma Health Care Authority (OHCA) director or designee as applicable.~~

~~(74) OCA notifies the caretaker, legal guardian, and next of kin of a vulnerable adult of the investigation finding. When the vulnerable adult is a Hissom class member, the class member's assigned OCA advocate notifies the class member and the class member's guardian or close family member of the investigation finding.~~

~~(85) When an investigation involves a vulnerable adult with a guardian, a copy of the completed investigation report must be filed with the court to which the guardian is accountable per 43A O.S. § 10-105 (D).~~

(mm) Dissemination of reports involving PRFCIs subject to the Child Care Restricted Registry.

(1) All OCA investigations involving a substantiated finding against a PRFCI while the child is in the care of a child care program are processed for the Child Care Restricted Registry per OAC 340:110-1-10.1; and OCA submits a copy of the report to the Child Care Services Licensing Records Office.

(2) A copy of the investigation report is sent to the district attorney in the county where the suspected maltreatment occurred per 10A O.S. § 1-2-105(E).

(3) In addition to (aa) of this Section, when the victim is a child receiving DDS services, OCA sends a copy of the report to the DDS director or the director's designee.

(kenn) Confidentiality of OCA investigative reports.

(1) Persons receiving copies of OCA investigative reports regarding a child are bound by the confidentiality provisions of 10A O.S. §§ 1-6-102 through 1-6-107.

(2) Persons receiving copies of OCA investigative reports regarding a vulnerable adult are bound by the confidentiality provisions of 43A O.S. § 10-110.

(A) ~~Pursuant to~~ Per 43A O.S. § 10-110(A) of the Protective Services for Vulnerable Adults Act, all reports, records, and working papers used or developed in an investigation of the circumstances of a vulnerable adult are confidential and can be disclosed only pursuant to rules promulgated by DHS, by court order, or as otherwise provided in the "Public Disclosure" provisions per 43A O.S. § 10-110.1 when a VAC is charged with committing a crime that resulted in the death or near death of the vulnerable adult.

(B) ~~Pursuant to~~ Per 43A O.S. § 10-110(B), all reports, records, and working papers may be disclosed without a court order, upon showing of proper credentials and pursuant to their lawful duties, to:

- (i) any district attorney and their staff upon presentation of proper credentials in the course of their official duties ~~pursuant to this Title~~ per 43A O.S. § 10-110 or in the prosecution of crimes against a vulnerable adult;

- (ii) the attorney representing a vulnerable adult in a proceeding ~~under~~per the Protective Services for Vulnerable Adults Act;
 - (iii) employees of a law enforcement agency of this or another state;
 - (iv) employees of adult protective services agencies of this or another state;
 - (v) ~~a physician examining or treating~~licensed health care professional who upon examination or treatment of a vulnerable adult who the physician suspects may have been the vulnerable adult ~~was~~ abused or neglected or any health care or mental health professional involved in the evaluation or treatment of the vulnerable adult;
 - (vi) a caretaker, legal guardian, custodian, or other family members of the vulnerable adult; provided, DHS may limit such disclosures to summaries or to information directly necessary for the purpose of such disclosure;
 - (vii) any public or private agency or person authorized by DHS to supervise or provide other services to a vulnerable adult who is the subject of a report or record of abuse or neglect; provided, DHS may limit such disclosures to summaries or to information directly necessary for the purpose of such disclosure; and
 - (viii) any person or agency for research purposes, when the conditions in (I) and (II) are met the person or agency conducting:
 - (I) such research is employed by the State of Oklahoma or is under contract with the State and is authorized by DHS to conduct such research; and
 - (II) the research ensures all documents containing identifying information are maintained in secure locations and access to such documents by unauthorized persons is prohibited; and that all identifying information is redacted from documents used in the research when the research is completed.
- (C) A summary disclosed per 43A O.S. § 10-110(B) excludes:
- (i) Social Security numbers and financial account numbers of the:
 - (I) alleged victim;
 - (II) alleged VAC;
 - (III) DHS caseworker;
 - (IV) ~~other~~ vulnerable adults identified in the investigation; and
 - (V) any other person identified in the record; and
 - (ii) all identifying information including, but not limited to, names, addresses, and phone numbers of the person(s) who reported the abuse, neglect, or exploitation, and all such identifying information of any other vulnerable adults in the home or facility.

- (D) The OCA investigation report may be provided in lieu of a separately created summary and the identifying information found in this subsection is redacted.
 - (E) All investigative records received by DHS and created by other local or state agencies, including law enforcement agencies, are obtained directly from those local or state entities.
 - (F) Persons seeking redacted identifying information listed in subparagraph (2)(C) contained in the OCA investigative report, in any summary, or other information contained in any other reports, records, or working papers used or developed in the investigation must obtain a court order authorizing release of such information.
 - (i) All reports, records, working papers, and all information contained therein remain confidential after the DHS release; and
 - (ii) it is unlawful and a misdemeanor for any person to furnish any record or disclose any information contained therein for any unauthorized purpose.
- ~~(H00)~~ **Substantiated findings involving DHS—operated facilities Greer.** The OCA investigation report findings involving client maltreatment at a DHS-operated facility are considered final when the time for requesting Grievance and Abuse Review Committee (GARC) review per OAC 340:2-3-62(b) ~~has~~ expired and a review was not requested, or the review was timely requested and concluded.
- (1) When CWS or DDS receives a copy of a final OCA investigative report or notice that a review per OAC 340:2-3-62 is concluded, within 30-calendar days, the applicable director notifies the advocate general in writing of:
 - (A) ~~the~~ personnel action taken or to be taken with regard to each accused PRFCI or VAC named in the report;
 - (B) ~~the~~ corrective action taken or to be taken regarding ~~areas of concern~~AOCs noted in the report; and
 - (C) ~~for each worker found to have engaged in maltreatment,~~ whether, ~~for each worker found to have engaged in maltreatment,~~ there were prior OCA or facility confirmations for client maltreatment by the worker and, when so, the basis for each such finding, and the personnel action taken in response.
 - (2) When a personnel action is or will be taken, the applicable director notifies the DHS Human Resource Management director. When the final OCA finding does not substantiate maltreatment, no information or material pertaining to the allegation or the investigation is placed in the personnel file of an accused PRFCI or VAC.
 - (3) OCA reports information regarding substantiated findings to the DHS Director.
- ~~(mapp)~~ **Findings involving a Hissom class member.** This subsection applies to the administrator of a provider that employed, or contracted with a contractor that employed an accused VAC named in an OCA investigation report. Within 60 calendar days of receipt of a final OCA investigation report, the

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DDS director or the director's designee notifies the advocate general in writing:

- (1) when personnel action was or will be taken with regard to each accused VAC named in the report; and
- (2) of corrective action taken or to be taken regarding areas of concern AOC noted in the report.

340:2-3-38. Investigation of foster parent complaints of retaliation, and discrimination, or harassment

(a) **Application.** This Section describes processes relating to allegations of retaliation, and discrimination, or harassment against a foster parent by an employee or agent of the Oklahoma Department of Human Services (DHS) or a child-placing agency. The Office of Client Advocacy (OCA) is designated by Sections 1-9-112 and 1-9-117 of Title 10A of the Oklahoma Statutes (O.S. 10A §§ 1-9-112 and 1-9-117) to conduct administrative investigations into these allegations.

(b) **Definitions.** The following words and terms when used in this Section shall have the following meanings unless the context clearly indicates otherwise:

(1) **"Administrator,"** with regard to a child-placing agency, means the chief administrative officer of the agency.

(2) **"Child-placing agency"** means a private agency licensed to place children in foster family homes, group homes, adoptive homes, transitional or independent living programs, or family child care homes or other out of home placements, and approves and monitors such placements and facilities per the licensing requirements established by the Oklahoma Child Care Facilities Licensing Act Sections 401 through 408 of Title 10 of the Oklahoma Statutes (10 O.S. §§ 401 through 418) an agency that arranges for or places a child in a foster family home, group home, adoptive home, or successful adulthood program per 10 O.S. §§ 401 through 418.

(3) **"Child Welfare Services"** means DHS Adult and Family Services.

(4) **"Developmental Disabilities Services (DDS)"** means DHS Developmental Disabilities Services.

(5) **"Discrimination"** means knowing and willful application of a different standard to a particular foster parent that negatively affects the foster parent actions taken by a DHS employee or child-placing agency against a foster parent that result in differential treatment, such as conduct, actions, or decisions based on race, color, national origin, sex, religion, age, or disability, unless authorized by law.

(6) **"Harassment"** means a knowing and willful course pattern of conduct, statements, or behaviors serving that serve no legitimate purpose, directed at a foster parent that a reasonable person in the same or similar circumstances would find intimidating or substantially distressing.

(7) **"OJSO"** means the Office of Juvenile Systems Oversight of the Oklahoma OCCY.

(8) **"Protected activity"** means a foster parent engaged in:

(A) filing a grievance with DHS, OJSO, or with a child-placing agency, per 10A O.S. § 1-9-120;

(B) providing information regarding foster care services to any state official or DHS employee; or

(C) testifying, assisting, or otherwise participating in an investigation, proceeding, or hearing against DHS or a child-placing agency.

(9) **"Retaliation"** means that, in reprisal for the foster parent engaging in a protected activity, an employee of DHS or a child-placing agency has:

(A) threatening threatened a foster parent with removal of a child from the foster parent's care, harassing a foster parent;

(B) refusing refused or failing failed to place a child in a licensed or certified foster home; or

(C) disrupting disrupted a child placement in reprisal for the foster parent engaging in a protected activity listed in (c)(2) of this Section.

(10) **"State Office administrator"** means the Child Welfare Services (CWS) and DDS directors, or their the directors' designees.

(c) **Scope.** A foster parent has the right, without fear of reprisal or discrimination, to lodge concerns and complaints with respect to the providing provision of foster care services to OJSO. OJSO forwards complaints to OCA. OCA determines if foster parent complaints meet criteria for a formal investigation. OCA initiates investigations of allegations that:

(1) initiates investigations, when a DHS employee or a child-placing agency has participated in:

(A) threatened a foster parent with removal of a child from the foster parent's care retaliation;

(B) harassed a foster parent discrimination; or

(C) refused or failed to place a child in a licensed or approved foster home; or harassment against a foster parent who engaged in a protected activity; and

(D) disrupted a child placement; and

(2) for the purpose of retaliation or discrimination against a foster parent who has:

(A) filed or attempted to file a grievance with DHS per OAC 340:2-3-45 or with a child-placing agency, as applicable;

(B) provided information regarding foster care services to any state official or DHS employee; or

(C) testified, assisted, or otherwise participated in an investigation, proceeding, or hearing against DHS or a child-placing agency forwards discrimination allegations to the Office for Civil Rights (OCR). When the alleged discrimination includes allegations of retaliation or harassment, OCA coordinates with OCR.

(d) **Exclusions.** The provisions of this Section do not apply to:

(1) a complaint by a foster parent regarding the result of a criminal, administrative, or civil proceeding for a violation by that foster parent of a law, rule, or contract provision, or an action taken by DHS or a child-placing agency in conformity with the result of such proceedings;

- (2) allegations of acts of retaliation, ~~or~~ discrimination, or harassment that occurred more than one year prior to the date of the foster parent complaint; or
- (3) allegations of a pattern of retaliation, ~~or~~ discrimination, or harassment, the last incident which occurred more than one year after the foster parent participated in a protected activity.
- (e) **Reportable allegations.** Section 1-9-117 of Title 10A of the Oklahoma Statutes provides that any foster parent who has reasonable cause to believe he or she ~~has been improperly treated~~ was threatened with removal of a foster child, refused placement of a child, or had a placement disrupted in retaliation, discrimination, or harassment by a DHS employee or a child-placing agency, as outlined in subsection (c) of this Section, may file a complaint with OCA/OJSO. The law provides that persons making a report in good faith under this Section may not be adversely affected solely on the basis of having made such report. The law also provides that any person who knowingly and willfully makes a false or frivolous report or complaint ~~or a report the person knows lacks factual foundation~~, may be subject to loss of foster parent approval or licensure status.
- (f) **Reporting procedure.** Foster parents may file complaints by ~~contacting:~~
- (1) ~~the Foster Parent Hotline, 1-800-376-9729; or~~
 - (2) ~~the OCA offices in Oklahoma City, 1-405-525-4850 or 1-800-522-8014 calling OJSO or using the OCCY website at okfosterparentvoices.org.~~
- (g) **Confidentiality.** ~~At the request of the reporter,~~ OCA maintains ~~confidential~~ confidentiality regarding the identity of the reporter. OCA ~~maintains~~ must prepare and maintain written records ~~regarding from the reporting source to provide information to the extent known at the time the report is received,~~ including the:
- (1) names and addresses of the foster child and the person(s) responsible for the child's welfare;
 - (2) nature of the complaint; and
 - (3) names of the persons ~~and/or~~ agencies responsible for the allegations contained in the complaint.
- (h) **~~Interference prohibition~~ Prohibition against interference.**
- (1) A DHS employee who interferes with a foster parent's grievance rights or an OCA investigation may be subject to administrative action for misconduct per the DHS personnel policy relating to cause for disciplinary action ~~when an employee attempts to intimidate a witness, foster parent, or other DHS employee, or threatens any of them with physical or mental harm.~~
 - (2) Interference includes, but is not limited to:
 - (A) intimidating, harassing, or threatening a party to the investigation;
 - (B) retaliation against an employee for cooperating during an OCA investigation;
 - (C) denial of access to clients, employees, facilities, witnesses, records, or evidence; and
 - (D) causing or influencing another person to provide false information during the investigation.
- (i) **Initiation of OCA investigation.** Upon ~~acceptance~~ disposition of a report of retaliation, ~~or~~ discrimination, or harassment against a foster parent, OCA assigns an OCA investigator to investigate the allegations per this Section. The OCA investigation does not duplicate and is separate from any investigation mandated by the Oklahoma Child Abuse Reporting and Prevention Act or other investigations having formal notice or hearing requirements.
- (j) **Rights and responsibilities of employees.** The rights and responsibilities of DHS employees or agents in an OCA foster parent investigation are listed in (1) through (7) of this subsection. DHS employees or agents:
- (1) ~~Employees~~ make themselves available for interviews and accommodate the OCA investigator in scheduling interviews;
 - (2) ~~Employees~~ provide pertinent information and respond fully and truthfully to questions asked;
 - (3) ~~In addition to being interviewed, employees~~ may submit written statements relating to the events in question in addition to being interviewed;
 - (4) ~~Employees~~ may seek advice concerning their rights and responsibilities from other parties within or outside of DHS;
 - (5) ~~Employees~~ prepare written statements or reports relevant to the investigation upon request;
 - (6) ~~Employees,~~ who reasonably believe answers to official inquiries regarding the events in question may incriminate them in a criminal prosecution, may decline to answer those questions; and
 - (7) ~~Employees when~~ interviewed do not discuss their interviews with anyone outside of OCA.
- (k) **Access.** OCA at all times is granted access to any foster home ~~that is~~ approved, authorized, or funded by DHS, or a child-placing agency.
- (l) **Investigation procedures.** Investigations are conducted per Oklahoma Administrative Code (OAC) 340:2-3-36 unless otherwise provided in this Subchapter.
- (1) **Notifying administrators and accused caretakers.** The assigned OCA investigator notifies the applicable administrator or ~~state office~~ State Office administrator of the investigation and arranges for document production, site visits, and interviews. The administrator or ~~state office~~ State Office administrator who employed ~~any an~~ accused employee at the time of an alleged incident promptly informs the accused employee of the:
 - (A) name and ~~telephone~~ phone number of the OCA investigator;
 - (B) investigative process;
 - (C) employee's rights and responsibilities relating to the investigation described in subsection (j) of this Section, using Form 15IV006E, Investigations of Foster Parent Retaliation Complaints - Rights and Responsibilities of Accused DHS Employees, a copy of which is provided ~~to by~~ the OCA investigator; and
 - (D) nature of the allegation(s) made against the employee; however, at this time the employee is not provided the details of the allegations or the substance of the evidence.

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(2) **OCA access to evidence.** Applicable administrators and ~~state office~~State Office administrators facilitate and cooperate with the OCA investigation by:

- (A) providing access to requested information;
- (B) producing relevant documents, files, and records;
- (C) accompanying the OCA investigator on foster home visits, when requested by OCA; and
- (~~E~~) providing access to accused employees and others who have knowledge of relevant information.

(3) **~~Document review and interviews~~OCA findings regarding foster parent retaliation, discrimination, or harassment and completion timeframes.** The OCA investigator conducts a prompt and thorough investigation per ~~OAC 340:2-3-36(h) through (j) unless otherwise provided in this Section~~within 60-calendar days from the date of the referral, stating one of the following findings.

(A) **"Substantiated"** means OCA determined, based on the preponderance of the evidence that foster parent retaliation, discrimination, or harassment occurred.

(B) **"Unsubstantiated"** means OCA determined, based on the preponderance of the evidence that foster parent retaliation, discrimination, or harassment did not occur.

(4) **Exit notice.** The OCA investigator provides an exit notice, via email, to the applicable administrator or state office administrator when the information-gathering portion of the investigative process is completed. The investigator informs the administrator or state office administrator a written report is forthcoming. Preliminary findings are not required.

(~~5~~) **The written investigation report.** After completing the information-gathering portion of the investigative process, the OCA investigator prepares a written report containing:

(A) the allegations investigated, including the date, time, and location of the alleged ~~incidents~~incident, the date the allegation was reported to OCA, and the assigned OCA case number, and the assigned OCA investigator;

(B) a list of the involved parties, their titles and roles in the matter, whether they were interviewed and, if so, when and where alleged incident;

(C) the applicable definition of the type of ~~misconduct~~conduct at issue, such as discrimination, retaliation, discrimination, or harassment, or both combinations thereof;

(D) ~~whether~~if the foster parent engaged in ~~an~~ a protected activity listed in (c)(2) in this Section and, if so, a description of the activity;

(E) the findings per ~~OAC 340:2-3-36(m)(1)(3) of this Section~~;

(F) an explanation of the basis for the finding;

(G) ~~in cases involving a confirmed finding, a summary, in cases involving a substantiated finding, of relevant information obtained during each interview~~

conducted during the investigation, including the date and location of the interview;

(H) ~~any areas of concern relating to the allegations~~AOCs identified during the investigation regarding DHS or child-placing agency practices or procedures of ~~DHS or the child-placing agency~~;

(I) a list of ~~relevant~~ documents and records reviewed during the investigation; and

(J) a list of attachments ~~to the report~~submitted with the final report.

(~~6~~) **Dissemination of the OCA investigative report.**

(A) In cases involving allegations against a DHS employee, the advocate general submits a copy of the final OCA investigation report to the DHS Director, and ~~state office~~applicable State Office administrators.

(B) In cases involving an employee of a child-placing agency, the advocate general sends a copy of the OCA report to the agency administrator, ~~of the agency~~ and the appropriate ~~state office~~State Office administrator. When the ~~administrator of the child-placing agency~~ administrator is the subject of the report, the report is sent to the agency's board of directors.

(C) OCA sends the foster parent and each accused DHS employee a letter summarizing the allegation and states the OCA finding.

(D) All parties receiving copies of the investigative reports are bound by the confidentiality provisions of Section 1-9-112 of Title 10A and Section 10-110 of Title 43A of the Oklahoma Statutes per O.S. 10A § 1-9-112 and O.S. 43A § 10-110.

(~~m~~) **Request for reconsideration by the advocate general.** Within 15-calendar days of receipt of the final OCA investigative report, the CWS State Office administrator or the administrator's designee, the child-placing agency administrator, or the employee may request reconsideration by the advocate general.

(~~nn~~) **DHS Director's request for review by the Grievance and Abuse Review Committee (GARC).** Within 20-30-calendar days of receipt of ~~at~~ the final OCA investigative report, the DHS Director may request that GARC review the allegations and submit a report of its findings per OAC 340:2-3-63.

(~~oo~~) **State ~~office~~Office administrator's response to a ~~confirmed~~substantiated finding.**

(1) When a ~~state office~~State Office administrator receives a copy of an OCA ~~investigation~~investigative report containing a substantiated finding that a DHS employee engaged in retaliation, discrimination, or discrimination harassment against a foster parent, within 30-calendar days of receipt of the OCA report, the ~~state office~~State Office administrator notifies the advocate general in writing of any personnel action taken or to be taken with regard to the employee, ~~and/or~~ any corrective action taken or to be taken regarding ~~areas of concern~~the AOCs noted in the OCA report.

(2) When the DHS Director refers the matter for GARC review per ~~subsection (1)(m)~~(m) of this Section, the ~~state of~~State Office administrator's response is due within

~~45-calendar days~~30-calendar days of GARC's written report to the DHS Director.

(3) When an administrator of a child-placing agency receives a copy of an OCA ~~investigation~~investigative report containing a substantiated finding that an employee of the child-placing agency engaged in retaliation, discrimination, or discrimination/harassment against a foster parent, ~~within 30-calendar days of receipt of the report~~ the administrator he or she notifies the advocate general in writing within 30-calendar days of the final report of any personnel action taken or to be taken with regard to each employee named in the report as having engaged in ~~misconduct~~retaliation, discrimination, or harassment against a foster parent, and the status of ~~any areas of concern~~AOCs noted in the OCA report.

PART 5. GRIEVANCES

340:2-3-45. Grievance system protocols

(a) **Legal authority, scope, and purpose.**

(1) **Legal authority.**

(A) ~~Section~~Sections 1-9-112 and 1-9-120 of Title 10A of the Oklahoma Statutes (10A O.S. §§ 1-9-112 and 1-9-120) ~~confers~~confer on the Office of Client Advocacy (OCA) the responsibility to establish and maintain a fair, simple, and expeditious grievance system for ~~complaints filed by or on behalf of children in Oklahoma Department of Human Services (DHS) custody~~resolution of grievances of:

(i) all children in Oklahoma Department of Human Services (DHS) custody regarding:

(I) the substance or application of any DHS policy or rule; or

(II) any decision or action by an employee or agent of DHS, or of any child in DHS custody;

(ii) foster parents, when related to the provision of foster care services, per 10A O.S. §§ 1-9-112 and 1-9-117; or

(iii) all persons receiving DHS Developmental Disabilities Services (DDS) services.

(B) 10 O.S. § 1415.1(A)(2) requires that DHS establish an ombudsman program for each institution and residential facility for the intellectually disabled operated by DHS, including an appeals procedure for the resolution of grievances and complaints of residents, their parents, and court-appointed guardians. DHS conferred this responsibility on OCA.

(C) DHS ~~also~~ conferred OCA with the responsibility for grievance systems for other clients listed in ~~paragraph~~ (2) of this subsection.

(2) **Scope.** OCA administers and monitors grievance programs for the individuals listed in (A) through (H) of this paragraph, ~~all of whom are~~ collectively referred to as the "client" throughout this Section and Oklahoma Administrative Code (OAC) 340:2-3-46. Further ~~detail about grievances~~grievance details for:

(A) children ~~who are~~ in DHS custody regardless of placement, ~~refer to~~are found at OAC 340:2-3-47 through 340:2-3-49;

(B) ~~children in DHS care, refer to~~ OAC 340:2-3-49;

(~~C~~) DHS approved foster parents, ~~refer to~~are found at OAC 340:2-3-50;

(~~DC~~) residents of the ~~Southern Oklahoma Resource Center (SORC), the Northern Oklahoma Resource Center of Enid (NORCE), or the Robert M. Greer Center (Greer), refer to~~are found at OAC 340:2-3-51;

(~~ED~~) Hissom class members, ~~refer to~~are found at OAC 340:2-3-52;

(~~FE~~) other clients receiving services in the community from DHS Developmental Disabilities Services (DDS), ~~refer to~~are found at OAC 340:2-3-53;

(~~GF~~) residents of group homes for persons with developmental or physical disabilities due to a developmental disability subject to 10 O.S. § 1430.1 et seq., ~~refer to~~ OAC 340:2-3-54; and

(~~HG~~) clients receiving DHS services who want to file a grievance about a problem, concern, or complaint for which another grievance system within DHS does not exist, ~~refer to~~are found at OAC 340:2-3-55.

(3) **Purpose.** The purpose of OCA grievance policies ~~and procedures~~ is to provide clients a fair, simple, effective, and timely system of problem resolution with access to procedures where clients may obtain a thorough review, fair consideration, and correction, when appropriate. These policies also ensure that persons filing grievances are free from restraint, ~~coercion~~, reprisal, or discrimination. To further this purpose, OCA independently reviews and monitors the implementation of grievance programs subject to this Section.

(4) **Informal problem resolution.** Clients have the right to file grievances; however, resolving problems and concerns informally before filing a grievance is encouraged. Not all client inquiries and requests for explanation are considered grievances. Most ~~can be~~are resolved within the ~~regular~~ relationship between clients and DHS, ~~provider~~providers, and facility staff. Efforts are made at the local level to resolve issues and reach a consensus with the client on a plan of action to resolve the problem informally unless the client ~~desires~~ chooses to proceed with the grievance process.

(b) **Definitions.** In addition to the definitions in OAC 340:2-3-2, the following words and terms when used in Part 5, OAC 340:2-3-45 through 340:2-3-55, shall have the following meanings, unless the context clearly indicates otherwise:

(1) **"Deputy director"** means, a director of one of the ~~five regional delivery areas designated by DHS Child Welfare Services (CWS).~~

(~~2~~) **"Area manager"** means a manager of one of the three service delivery areas, designated by DHS DDS.

(~~3~~) **"Business day" or "working day"** means Monday through Friday, not including federal or state holidays.

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(3) **"Child-placing agency"** means an agency that arranges for or places a child in a foster family home, group home, adoptive home, or successful adulthood program.

(4) **"CWS"** means, DHS Child Welfare Services.

(5) **"Client"** means any of the individuals listed in subsection (a) of this Section, on whose behalf OCA maintains a grievance system.

(5) **"Complaint"** means a report communicating a grievance, concern, or perceived harm, submitted by phone, email, or in writing by the foster parent to the Office of Juvenile System Oversight (OJSO) of the Oklahoma Commission of Children and Youth (OCCY). If not submitted in writing, the complaint is entered into the written format established by OCA and OJSO.

(6) **"Contested grievance"** means a grievance that was not resolved at the local level (first and second levels), and at the request of the grievant or decision-maker, is submitted to a higher authority for response.

(7) **"Decision-maker"** means the person with authority to decide whether to accept a proposed resolution at each level of the grievance process; typically, the client who filed the grievance or on whose behalf a grievance was filed. For clients unable to advocate for themselves, such as young children and persons with severe cognitive limitations, ~~the~~ the decision-maker is a person who speaks on the client's behalf, depending on the circumstances and the nature of the decision to be made.

(A) With regard to minors, the decision-maker may be a parent, guardian, guardian ad litem, foster parent, or a legal custodian appointed by a court.

(B) With regard to adult DDS clients ~~who are adults~~, the decision-maker may be a guardian or the individual client's personal support team for the client.

(C) When the grievant is not the decision-maker, the local grievance coordinator (LGC) does not inform the grievant when the proposed resolution is issued or ~~whether~~ if it was accepted or rejected. The decision-maker may share this information with the person grieving on behalf of the client.

(8) **"Deputy director"** means a director of one of the five regional delivery areas designated by DHS CWS.

(9) **"Discrimination"** means differential treatment, such as conduct, actions, or decisions based on race, color, national origin, sex, religion, age, or disability, unless authorized by law.

(10) **"District director"** means a director of a district within one of the regional delivery areas, designated by DHS CWS.

(11) **"Due date"** means the date ~~some~~ a response or action is required, such as the date a respondent must respond to a grievance. When calculating the due date, the first day of the period computed is not included and only business days are included. When the last day of the period computed is a Saturday, Sunday, or legal holiday, the period runs until the end of the next business day.

(12) **"Email"** communication with OCA or with the advocate general means; an email sent to the email address: oca.grievances@okdhs.org.

(11) **"Facility grievance"** means, a grievance that involves:

(A) the substance or application of policy, rule, or regulation, written or unwritten, of a facility per OAC 340:2-3-2; or

(B) a decision, act, or omission by an employee, agent, or contractor of a facility.

(12) **"Grievance"** is defined in subsection (e) of this Section.

(13) **"Grievant"** means; a client or the person who files a grievance on behalf of a client.

(14) **"Local grievance coordinator"** or **"LGC"** means, ~~with regard to~~ regarding:

(A) minors in DHS custody who live in a residential facility, the individual designated by the facility as its grievance coordinator;

(B) minors in DHS custody who do not live in a residential facility, including minors in foster care ~~and foster parents~~, the individual designated as grievance coordinator LGC in the DHS county office where the grievant resides;

(C) DDS Greer clients who are residents of SORC, NORCE, Greer, or the OCA advocate staff assigned to each the facility;

(D) DHS approved foster parents, the district director in the DHS county office where the grievant resides;

(E) DDS clients who are pursuing a grievance with a provider of residential, vocational, or in-home supports, the individual designated by the provider as its grievance coordinator; and

(F) other DDS clients, the applicable DDS area manager, or the area manager's designee.

(15) **"OCA grievance liaison"** means the individual(s) designated by the advocate general to coordinate and monitor contested grievances; and local grievance programs.

(16) **"DHS grievance"** means, a grievance that involves:

(A) the substance or application of DHS policy, rule, or regulation, written or unwritten, other than DHS policies, rules, and regulations of operated shelters and residential facilities for minors; or

(B) a decision, act, or omission of an DHS employee, including, but not limited to, a CWS specialist, case manager, and DHS district directors, but not including an employee of a DHS operated facility.

(17) **"Placement grievance"** means, a complaint about a present or proposed placement of a minor in DHS custody.

(18) **"Respondent"** means the person at each level in the grievance process, who has the responsibility for reviewing the grievance and proposing a resolution to resolve the grievance.

(c) **Grievance defined Grievances.**

(1) **"Grievance"** means a problem or concern ~~that with~~ which an individual needs assistance ~~resolving to resolve~~, including a complaint of unfair treatment. At the request of a client, an unresolved problem, concern, complaint,

or dispute is processed as a grievance. When a client verbally communicates a complaint to a DHS employee or a facility or provider employee that is not resolved, the client is informed of the right to have the problem or concern processed as a grievance. At the request of the client, the employee prepares a written statement of the client's complaint or refers the client to the local grievance coordinator for assistance.

(A) **Facility or provider grievances.** The subject of a facility grievance or a provider grievance includes:

- (i) the substance or application of policy, rule, or regulation, written or unwritten, of a DHS-operated shelter or residential facility for minors, a facility, agency, or provider that contracts with DHS, or a child-placing agency; or
- (ii) a decision, act, or omission of an employee, agent, or contractor of such a facility, or any client residing in the same placement setting.

(B) **DHS grievances.** The subject of a DHS grievance includes:

- (i) the substance or application of policy, rule, or regulation, ~~written or unwritten~~, of DHS, but does not include policies, rules, and regulations of DHS-operated shelters and residential facilities for minors;
- (ii) a decision, act, or omission of an employee in a DHS-operated facility; and includes case managers, a CW specialists, and county office employees; or
- (iii) a facility grievance filed by a ~~SORC, NORCE, or~~ Greer resident.

(C) **Placement grievances.** A placement grievance is defined in ~~subsection~~ (b) of this Section.

(2) **Summary dispositions.** When a grievance is submitted and it falls into subparagraphs (A) through (K) of this paragraph, when appropriate, the LGC contacts the client to provide assistance to the client, as needed, in rewriting the grievance to state the problem(s) or concern(s) the client wants to grieve. When it is determined the client is asking to grieve a problem or concern covered by any of the categories in (A) through (K) of this paragraph, the LGC informs the client why the grievance is not being processed, using ~~Form~~Forms 15GR012E, Notice of Summary Disposition of Grievance - DHS County Offices; 15GR013E, Notice of Summary Disposition of Facility Grievance; 15GR014E, Notice of Summary Disposition of Grievance - Developmental Disabilities Services (DDS) Clients; 15GR015E, Notice of Summary Disposition of Developmental Disabilities Services (DDS) Provider Grievance; or 15GR016E, Notice of Summary Disposition of Foster Parent Grievance; ~~whichever is~~ applicable. Notices of Summary Disposition for an approved Foster Parent are located at OAC 340:2-3-50. The LGC ~~also~~ writes the reason on the bottom of Form 15GR001P (paper version) or 15GR001E (electronic version), Grievance Form, and ~~then~~ dates and signs the form.

The grievance is logged on Form 15GR009E, Grievance Tracking Log. The form used to notify the grievant, ~~along~~ with a copy of the grievance form, is sent within three business days to the advocate general for review, and the original is filed in the ~~appropriate~~ grievance file. Within three business days of receipt, the OCA grievance coordinator reviews the grievance. ~~If~~When the OCA grievance liaison determines the grievance was improperly given a summary disposition, the OCA grievance liaison informs the LGC who immediately processes the grievance. ~~If~~When the OCA grievance liaison concurs with the summary disposition, the OCA grievance liaison informs the LGC in writing.

(A) **Untimely grievances.** A grievance ~~that is~~ not timely filed per OAC 340:2-3-45(g) may be accepted and processed when good cause exists for the delay in filing the grievance. There are no time limits for filing grievances on behalf of individuals served by DHS DDS.

(B) **Discrimination based on race, color, national origin, sex, age, religion, or disability, unless authorized by law.** When a grievance alleges discrimination or other civil rights matters, the client is referred to the DHS Office for Civil Rights (OCR) and the LGC immediately forwards the grievance to the DHS ~~civil rights~~OCR administrator and informs the grievant.

(C) **A moot problem ~~that is moot~~.** A moot problem is one that ~~has been~~was decided or settled or one that has no practical resolution, such as a placement grievance with regard to a child who is no longer in DHS custody or a grievance with regard to an event that was in the future but is now in the past, or when the dispute about the event is unlikely to occur again with regard to this client.

(D) **Duplicative grievances.** A grievance that duplicates another pending grievance in the same grievance system, by or on behalf of the client involving the same incident or problem is a duplicative grievance.

(E) **Requests that violate laws.** A grievance that requests an action, ~~which~~that violates federal or state ~~or federal~~ law.

(F) **Collateral complaint.** A collateral complaint does not involve a problem concerning the client who filed or on whose behalf the grievance was filed.

(G) **Remote grievances.** The grievance requires action by a ~~private or public~~an individual, or an entity ~~over which~~when DHS does not have authority or control, such as a grievance about the action of a public school teacher, a guardian, or a physician in private practice. In these situations, the LGC assists the grievant ~~in using~~with use of external grievance or complaint systems that may be available regarding the subject of the grievance.

(H) **Pending proceedings.** The grievance involves a matter that is the subject of a decision of a court or administrative hearing, pending civil, criminal, or

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administrative proceeding, ~~a decision of a court or administrative hearing~~, or the subject of a pending OCA, Office of Inspector General (OIG), or ~~Child Welfare Services~~ CWS investigation.

(I) **Investigative findings.** The results of an investigation regarding abuse, neglect, verbal abuse, caretaker misconduct, or exploitation cannot be grieved.

(J) **Fair hearing decisions.** The results of a fair hearing cannot be grieved.

(K) **Frivolous grievances.** A frivolous grievance does not state a complaint or problem of any substance. Before declining to process a grievance of this nature, the LGC contacts the grievant to inquire if the grievant needs assistance in submitting a substantive grievance.

(3) **Documenting exclusions.** When a grievance is submitted and it falls into an excluded category listed in ~~the preceding paragraph~~ (2)(k) of this subsection, the LGC dates and signs Form 15GR001P as received, and notes on the form the reason ~~the LGC~~ he or she does not process it. The grievant is informed of the reason and decision. The grievance is logged in ~~the grievance tracking log~~ on Form 15GR009E and ~~the form~~ is filed in the client's grievance file. The LGC sends ~~a copy~~ copies of the Form 15GR001P (paper version) or 15GR0014E (electronic version) and ~~a copy~~ of the applicable Notice of Summary Disposition to the advocate general or the advocate general's designee for review.

(4) **Who may file a grievance.** A grievance may be filed by any client listed in subsection (a) of this Section. A grievance may also be filed by, or on behalf of, a client, by any person who knows the client and is interested in the client's welfare, including, but not limited to, a parent, guardian, relative, foster parent, court appointed special advocate, guardian ad litem, case manager, personal support team member, job coach, ~~and~~ or others including DHS employees and employees of residential, in-home supports, and vocational providers.

(5) **Group grievances.** Grievants whose complaints address the same issue(s) may file a group grievance. At any time during the processing of a group grievance, an individual grievant may withdraw. When separate grievances are filed by two or more grievants, regarding an identical issue, the interests of each grievant are identical, and the grievants do not object, a LGC can combine ~~them~~ the grievances for processing as a group, provided this does not unduly delay the processing of a particular grievance. When multiple grievances are grouped for processing, the LGC informs each grievant of the action. When a group grievance is filed, the LGC may ask the grievants to designate a spokesperson for the group in writing, ~~a spokesperson for the group~~.

(6) **Grievances involving reportable incidents.** When a grievance alleges a reportable incident, including, but not limited to, facts that constitute abuse, neglect, exploitation, or caretaker misconduct, per OAC 340:2-3-2 the LGC immediately reports it to ~~OCA intake~~ per

~~OAC 340:2-3-33~~ the allegation to the State Abuse Hotline for children or to the OCA intake for vulnerable adults. A grievance involving a reportable incident may be processed during a pending investigation provided the grievance does not interfere with the investigation and as needed, is held in abeyance pending the conclusion of the investigation. When the grievance alleges additional facts that do not constitute abuse, neglect, exploitation, or caretaker misconduct, the grievance is processed as to those facts. The LGC contacts OCA and other law enforcement agencies investigating the matter to coordinate grievance processing.

(d) **Grievance policies required.** Every provider and facility providing services to a client listed ~~in~~ per OAC 340:2-3-45(a)(2) who is living in Oklahoma, is required to operate a system for grievance resolution by clients using policies and procedures meeting the requirements of this Part.

(1) **Designation of LGC.**

(A) Every public and private facility and provider subject to Part 5, OAC 340:2-3-45 through 340:2-3-55, every DHS county office, and every DDS area office designates an employee to serve as LGC to carry out the responsibilities described in this Section. Facilities and providers inform the advocate general of the name, phone number, mailing ~~address~~, and email ~~address~~ addresses of its LGC, and ~~inform the advocate general of any changes to the information~~ within 30-calendar days of the effective date of a change ~~by completing~~ on Form 15GR021E, Designation of Local Grievance Coordinator-Facilities and Provider Agencies, and ~~submitting~~ submit it to ~~the Office of Client Advocacy~~ OCA. ~~The OCA advocates~~ advocate assigned to ~~SORC, NORCE, and Greer~~ serve as the LGC ~~at those facilities for Greer~~. The LGC is an individual who:

- (i) implements grievance policies and procedures;
- (ii) has experience with the programs and functions of the facility, provider, county office, or DDS area office;
- (iii) functions impartially and independently in grievance processing;
- (iv) reports directly to the facility administrator with regard to the LGC grievance duties and functions;
- (v) within 60-calendar days of ~~being~~ designated LGC designation, completes the online OCA Grievance Course;
- (vi) ensures that client requests regarding how to file a grievance are responded to within two business days; and
- (vii) is accessible and available to meet with grievants in person.

(B) Each facility, provider, DHS county office, and each DDS area office subject to this Part, displays ~~in a place conspicuous to its clients~~ a poster notifying clients of its grievance system and the name of its ~~local grievance coordinator~~ LGC, in a conspicuous

place to clients, using Form 15GR017E, Grievance Poster - Child Welfare Services Contracted Facilities; Form 15GR018E, Grievance Poster - Oklahoma Department of Human Services (DHS) County Offices Child Welfare Services; Form 15GR019E, Grievance Poster - Developmental Disabilities Services (DDS) Providers; or 15GR020E, Grievance Poster - Oklahoma Department of Human Services (DHS) Developmental Disabilities Services (DDS) Offices, whichever is applicable.

(2) **Advocate general review of grievance programs.**

The grievance system operated by each facility and provider ~~subject to~~ Part 5, OAC 340:2-3-45 through 340:2-3-55, is subject to the advocate general approval of the advocate general. Each provider and facility other than a DHS-operated facility is required to submit to the advocate general for approval, its grievance policies, procedures, forms, and any adopted revisions that are adopted, along with proof that the policies or revisions have been approved by the applicable approving authority to the advocate general. Revised policies are submitted to the advocate general for approval within 30-calendar days of the provider or facility adopting the revised policy.

(3) **Notifying clients of their grievance rights.** Each client covered by these grievance policies is notified of his or her right to, and how to, access the grievance resolution procedures using Form 15GR004E, Notice of Grievance Rights - Minors in DHS Custody; Form 15GR005E, Notice of Grievance Rights - Children in DHS Custody and Care; Form 15GR006E, Notice of Grievance Rights - DDS Service Recipients (General); Form 15GR007E, Notice of Grievance Rights - Hissom Class Members; or Form 15GR008E, Notice of Grievance Rights - Foster Parents, whichever is applicable. Hissom class members are provided notice per OAC 340:2-3-52. Each provider or facility annually notifies the client, and the guardian when applicable, in writing of the right to file a grievance and how to access the grievance resolution procedures. Providers or facilities use applicable forms Forms 15GR004E, or 15GR006E, or develop an equivalent form. In addition, providers are encouraged to provide a simplified version of their grievance policies using language appropriate to the clients' age level and cognitive functioning of its clients.

(4) **Monitoring and evaluation.** OCA ensures the quality of grievance systems by establishing minimum standards and an ongoing monitoring program. The advocate general and OCA staff have immediate and unlimited access to clients, staff, and facility files, records, and documents relating to grievance procedures and practices.

(5) **Reporting deficiencies.** An LGC who becomes aware of a deficiency in a grievance system, including a failure to follow or implement the grievance policy, must report it to the advocate general by phone at ~~1-405-522-2720 or 1-800-522-8014~~, fax at ~~1-405-522-2680~~, or email.

(6) **Advocate general deficiency report.** When the advocate general determines a deficiency exists in the grievance system of a facility or agency provider, the advocate general sends a deficiency report to the administrator and, when applicable, the ~~state office~~ State Office administrator.

(7) **Advocate general grievance.** The advocate general may, on behalf of any or all clients served by the grievance policy in this Section, originate a grievance. An advocate general grievance is filed with the provider or facility administrator or the ~~state office~~ State Office administrator and processed as a contested grievance.

(8) **Advocate general report.**

(A) The advocate general may initiate an inquiry on behalf of any client as defined in ~~subsection~~ (a) of this Section regarding:

- (i) any aspect of the care of a client that effects the quality of the client's life;
- (ii) the substance, application, or interpretation of any policy, rule, or regulation, written or unwritten, of a DHS-operated shelter or residential facility, or a facility or agency that contracts with DHS, or a placement provider; or
- (iii) any decision, behavior, or action of an employee, agent, or DHS contractor ~~of DHS~~, or of any client residing in the same placement setting.

(B) The person to whom the advocate general inquiry is addressed has seven business days to respond in writing to the advocate general.

(C) The advocate general issues a report that sets forth the inquiry subject matter, pertinent facts, and recommendations. An advocate general report is submitted to the provider or facility administrator, when applicable, and the ~~state office~~ State Office administrator. A copy is submitted to the DHS Director.

(e) **The grievance form.** A grievant files a grievance by obtaining ~~from the LGC~~ Form 15GR001P, ~~from the LGC~~, filling it out, and ~~turning~~ returning it ~~in~~ to the LGC, or to the facility or to DHS staff, who immediately transmits it to the LGC. A grievance may also be filed using electronic Form 15GR001E at <http://www.okdhs.org>. The grievant submits the completed form to the OCA grievance unit at oca.grievances@okdhs.org. Within one business day of receipt of the grievance, OCA staff assigns a grievance number, sends it to the assigned LGC, and contacts the grievant. Approved kinship or foster parents contact OJSO to initiate a grievance.

~~(1) DHS LGCs order this form from the DHS Warehouse. Private provider and facility LGCs obtain copies of this form from OCA at, 1-405-522-2720 or 1-800-522-8014.~~

~~(2) Those who need assistance completing the grievance form are assisted by the LGC or other staff members.~~

~~(3) A grievance received on paper other than Form 15GR001P, is attached to Form 15GR001P and filled out by the LGC on behalf of the grievant.~~

(f) **Retaliation prohibited.** No person filing a grievance is retaliated against, discriminated against or harassed, solely

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or in part, for having asserted a grievance, or sought advice or inquired about filing a grievance. Clients are encouraged to use available grievance systems. ~~Clients and~~ are not discouraged from filing a grievance. All allegations of retaliation, discrimination, and harassment for filing a grievance, seeking advice, or inquiry about filing a grievance are reported to the OCA grievance unit and may result in an OCA investigation or an advocate general inquiry or grievance.

(g) **Grievance time limits.** Except for DDS clients, in order to be processed for action and resolution, a grievance must be filed within 15-business days of the date of the incident, decision, act, or omission complained about in the grievance, or within 15-business days of the date the grievant becomes aware of, or, with reasonable effort, should have become aware of a grievable issue. ~~The LGC may extend the time limit for filing a grievance may be extended by the LGC. When a foster parent requests an extension in order to pursue mediation through the Oklahoma Commission on Children and Youth (OCCY) Foster Parent Mediation Program per Section 601.6 of Title 10 of the Oklahoma Statutes, an LGC must grant the requested extension. The grievance is not processed until the mediation has been completed, and grievance timeframes are suspended for the duration of the mediation. When mediation resolves the original grievance, the foster parent(s) may withdraw the grievance, or the LGC may declare the grievance "administratively resolved." When a foster parent grieves, but has requested mediation of the dispute through the OCCY mediation program before filing a grievance that alleges retaliation, the LGC counts from the date of the mediation when computing timeliness.~~

(1) Filing and other time requirements contained in this Section are counted in DHS business days unless otherwise specified. In computing any time requirement, the day of the incident, decision, act, or omission at issue is not included. The next calendar day is the first day of the time requirement.

(2) When the LGC or a respondent fails to meet grievance processing time requirements without obtaining an extension, the LGC processes the grievance to the next step within three business days of the grievant's request.

(3) Responses, notices, and other documents issued during the ~~processing of a grievance~~ process are delivered to the grievant in person or by mail at the grievant's last known address. A grievance is considered administratively resolved when a correctly addressed letter with proper postage is sent to the last known address of the grievant, with proper postage and is returned undeliverable with no forwarding address.

(4) There is no time limit on allegations of abuse, neglect, verbal abuse, exploitation, or caretaker misconduct. When a grievance, timely or untimely, consists of such an allegation, the OCA intake Intake Unit or the Abuse and Neglect Hotline is immediately notified per OAC 340:2-3-33.

(5) There are no time limits for grievances filed on behalf of individuals served by DHS DDS.

(h) **Grievance records, logs, and quarterly reports.** The LGC maintains an accurate and complete record of each

grievance filed, as well as summary information about the number, nature, and outcome of all grievances filed. Grievance records are kept separate and apart from other client records and files. DHS grievance records and files are retained per federal and state and federal laws governing record retention and destruction.

(1) Each LGC tracks grievances as they progress through the system and ~~keeps a log of logs~~ every OCA-numbered grievance form issued on Form 15GR009E, ~~Grievance Tracking Log, may be used for this purpose.~~ For grievances submitted by a client, ~~the tracking log~~ Form 15GR009E includes the:

- (A) grievance number;
- (B) name of the grievant given the form;
- (C) date the form was submitted by the grievant;
- (D) nature and outcome of the grievance;
- (E) date of final resolution; and
- (F) level where it was resolved.

(2) When a ~~grievance form~~ Form 15GR001P is provided to a client and not turned in, the facility tracks only the identification number on the form copy of Form 15GR001P given to the client, the name of the client to whom the form was given, and the date it was given to the client. This information is tracked on Form 15GR009E.

(3) Each LGC submits a quarterly grievance report, Form 15GR010E, Quarterly Grievance Report, to the advocate general. ~~The quarterly report is transmitted to the advocate general~~ no later than the 21st day following the end of each calendar quarter. Quarterly reports are submitted by mail, fax, or email. The email address is [emailed to: oca.grievances@okdhs.org](mailto:oca.grievances@okdhs.org). When grievance activity did not occur or was pending during a particular fiscal year quarter, the LGC indicates it on Form 15GR010E.

(4) When a grievance becomes moot at any point during ~~the local processing of the grievance~~, the LGC may stop the grievance process and declare the grievance, administratively resolved. The LGC informs the grievant, notes it on applicable Forms 15GR001P or 15GR001E and 15GR009E, and sends a copy of Form 15GR001P or 15GR001E to OCA with the next quarterly grievance report.

(i) **Processing the grievance form.** After completing Form 15GR001P, the grievant submits the form directly to the LGC, ~~or other facility employee, or DHS lockbox, or OCA.~~ Form 15GR001P is printed in duplicate sets with a carbonless yellow copy. The grievant submits the white copy and keeps the yellow copy. If someone other than the LGC receives a grievance, that person submits it directly to the LGC within one business day of receipt. When the grievant completes and submits Form 15GR001E, the OCA grievance unit submits the grievance directly to the assigned LGC within one business day. Foster parent grievances are processed per OAC 340:2-3-50.

(j) **Informal resolution of grievance.** ~~When~~ the LGC is able to can promptly resolve the grievance to the grievant's satisfaction without further processing, the LGC fills out the bottom of Form 15GR001P or 15GR001E, signs it, and files it in the appropriate grievance file.

(k) **First level problem resolution.** Within three business days of receipt of Form 15GR001P or 15GR001E, ~~if when~~ the grievance ~~was~~ not resolved to the decision-maker's satisfaction, the LGC fills out Form 15GR002E, Local Grievance Coordinator (LGC) Worksheet.

(1) The LGC identifies who has the authority to provide the quickest and surest resolution to the problem at the lowest level in the organizational structure.

(A) For DHS grievances of children in DHS custody and care, the first level respondent may be the supervisor of the grievant's ~~Child Welfare Services (CWS)~~ specialist.

(B) For grievances regarding placements above the therapeutic foster care level made by CWS placement services, the first level respondent is the applicable CWS programs manager.

(C) For placement grievances regarding a specific foster child, the first level respondent is the applicable district director.

(D) When the minor child is also a DDS client, ~~this~~ the first level respondent may be the DDS case manager supervisor.

(E) For adults receiving services from DDS, the first level respondent may be the DDS case manager supervisor.

(2) The LGC completes the first box in the first level section on Form 15GR002E, attaches ~~the~~ corresponding Form 15GR001P or 15GR001E, and other relevant documentation and information, and submits it to the first level respondent, by the most efficient means practicable, within three business days of receipt of the grievance from the grievant.

(3) The first level respondent responds to the grievance within five business days of receipt of Form 15GR002E by completing the second box in the first level section on Form 15GR002E. When the proposed resolution contains a promise of some future action, a target date is specified for full implementation of that future action. The grievant may contest the target date by ~~taking the grievance proceeding to the next~~ second problem resolution level.

(4) The LGC monitors the timely response by the first level respondent. When a complete response is not timely received by the LGC, the LGC notes this on Form 15GR002E, and the grievance immediately proceeds to the second problem resolution level.

(5) Within three business days of receipt of the first level response, the LGC or the LGC's designee contacts the decision-maker to inform the decision-maker of the proposed resolution, ~~and~~ the right to take the grievance to the second ~~level~~ of problem resolution level, and determines if the decision-maker is satisfied with the proposed resolution. The first level respondent may meet with the decision-maker with or without the LGC present. ~~If the decision maker needs time to decide whether to accept the proposed resolution, the decision maker has three business days to make a decision. The LGC is responsible for informing the decision-maker that he or she has three~~

business days to accept or appeal the respondent's proposed resolution. ~~If when~~ a decision is not communicated to the LGC within three business days, the decision-maker is deemed to have accepted the proposed resolution. ~~The LGC is responsible for informing the decision maker that he or she has three business days to accept or appeal the respondent's proposed resolution.~~

(6) When the decision-maker is satisfied with the proposed resolution, the LGC indicates his or her acceptance on Form 15GR002E, notifies those responsible for grievance resolution, and places the form in the appropriate grievance file.

(7) When the proposed resolution has been accepted by the decision-maker, but involves a future target date, the LGC monitors compliance with the target date. If the LGC determines that the resolution was not achieved by the target date, the LGC immediately reopens the grievance and processes it for the second problem resolution level.

(8) When the decision-maker does not accept the proposed resolution and elects to take the grievance to the second problem resolution level, the LGC processes the grievance for the second problem resolution level per ~~subsection (l)~~ (l) of this Section.

(1) **Second level problem resolution.**

(1) ~~If when~~ the grievance is not resolved at the first ~~level~~ of problem resolution level, the LGC processes it ~~in accordance with~~ per this subsection within three business days of the grievant requesting the second ~~level~~ of problem resolution level, per ~~subsection (k)~~ (k) of this Section.

(2) The LGC fills out the first box in the second level section on Form 15GR002E, ensures the corresponding Form 15GR001P (paper version) or 15GR001E (electronic version) and other relevant documents are attached, and immediately submits it ~~immediately~~ to the second level respondent. For facilities and providers subject to these rules, the administrator or the administrator's designee is the second level respondent. For DHS grievances, the DHS district director or the DDS area manager, ~~whichever is~~ applicable, is the second level respondent. However, ~~if when~~ the district director was the first level respondent, then the second level respondent ~~would be~~ is the applicable deputy director or the deputy director's designee. ~~If when~~ the provider administrator or DDS area manager is the first level respondent, the second level review is ~~skipped~~ bypassed and processed as a contested grievance per OAC 340:2-3-46.

(3) The administrator or the administrator's designee responds to the grievance within seven business days of receipt of Form 15GR002E by completing the applicable box in the second level section ~~on Form 15GR002E~~. When the proposed resolution contains a promise of some future action, a target date is specified for full implementation of that future action.

(4) The second level respondent for a placement grievance regarding a specific foster child is the applicable deputy director or the deputy director's designee.

(5) The LGC monitors the timely response by the respondent. ~~If when~~ a complete response is not timely

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received by the LGC, the LGC notes this on Form 15GR002E and the grievance immediately is processed as a contested grievance. A contested DHS grievance is processed per OAC 340:2-3-46. Contested facility grievances are processed ~~in accordance with subsection~~ (m) of this Section.

(6) Within three business days of receipt of the second level response, the LGC ~~or the LGC's designee~~ contacts the decision-maker to inform him or her of the proposed resolution, ~~and~~ the right to contest the response to the grievance, and determines if the decision-maker is satisfied with the proposed resolution. ~~If the decision-maker needs time to decide whether to accept the proposed resolution, the grievant has three business days to make a decision. The LGC is responsible for informing the decision-maker that he or she has three business days to accept or appeal the respondent's proposed resolution. If~~ When no decision is communicated to the LGC within three business days, the grievant is deemed to have accepted the proposed resolution.

(7) When the decision-maker is satisfied with the proposed resolution, the LGC documents the decision-maker's acceptance on Form 15GR002E, notifies those responsible for resolution of the grievance, and places ~~the form~~ Form 15GR002E in the appropriate grievance file.

(8) When the proposed resolution ~~has been~~ is accepted by the decision-maker, but involves a future target date, the LGC monitors compliance with the target date. ~~If~~ When the LGC determines ~~that~~ the resolution ~~has~~ was not ~~been~~ completed by the target date, the LGC immediately reopens the grievance and processes it as a contested grievance.

(9) When the decision-maker does not accept the proposed resolution and elects to contest the response, a contested DHS grievance is processed, ~~in~~ per OAC 340:2-3-46. Contested facility ~~or provider~~ grievances are processed per ~~subsection~~ (m) of this Section.

(m) **Contested facility or provider grievances.** When the decision-maker does not accept the proposed resolution or the target date of the second level proposed resolution, a facility or provider grievance is appealed to the chair of the board of directors of the facility or provider or an appeals committee designated by the board. This ~~section~~ Section does not apply to grievances of Hissom class members or individuals who previously resided at NORCE or SORC after November 1, 2012. Grievances at DHS-operated facilities are appealed as a contested grievance, per OAC 340:2-3-46.

(1) The LGC transmits a contested facility or provider grievance to the chair of the board of directors of the facility or provider, or an appeals committee designated by the board, within three business days of notice that the decision-maker does not accept the proposed resolution and is contesting ~~the proposed resolution~~ it.

(2) In reviewing the contested grievance, the board of directors, or appeals committee if applicable, is not required to conduct an evidentiary hearing or hear argument. In the event the board determines evidentiary hearing

evidence would assist in resolving the grievance, the board has the option of conducting an informal hearing.

(3) Within 10-business days of ~~receiving receipt~~ of a contested grievance, the chair of the board of directors or the appeals committee responds by submitting a written decision to the LGC.

(4) Within three business days of ~~receiving receipt~~ of the written decision of the chair of the board of directors or the appeals committee, the LGC informs the decision-maker of the decision and provides the decision-maker with a copy of the board's decision. This concludes the grievance process and the grievant's administrative remedies have been exhausted.

(n) **Fast track grievances.** When the subject of a DHS grievance is such that time is of the essence, with the approval of the advocate general or ~~the advocate general's~~ designee a grievance can be submitted directly to the OCA grievance liaison for processing as a contested grievance, ~~in accordance with~~ per OAC 340:2-3-46. When a grievance involves a time-sensitive problem, the OCA grievance liaison may shorten the response time as circumstances warrant.

(o) ~~Communications~~ **Communication with OCA.** Any notices, forms, or other information that facilities, providers, or DHS county offices are required to submit to OCA or ~~to~~ the advocate general ~~can be~~ are submitted by email, ~~using the email address~~ at oca.grievances@okdhs.org.

(p) **Grievance training required.** LGCs are required to take the OCA ~~online~~ approved grievance training within 60-calendar days of their appointments, and annually thereafter.

340:2-3-46. Contested grievances appealed to the State Office

(a) **Application.** This Section describes the processes for contesting the second level response to Oklahoma Department of Human Services (DHS) grievances, facility grievances at DHS-operated facilities, and provider grievances of Hissom class members. For contested grievances of approved foster parents refer to Oklahoma Administrative Code (OAC) 340:2-3-50.

(b) **Definitions.** The definitions in OAC 340:2-3-2 and 340:2-3-45(b) apply to this Section unless the context clearly indicates otherwise.

(c) **Initiating the contested grievance.** When a decision-maker asks to appeal a grievance to the State Office administrator, within three-business days of notice of the request, the local grievance coordinator (LGC) transmits the grievance to the Office of Client Advocacy (OCA), Attention OCA grievance liaison, with Form 15GR002E, Local Grievance Coordinator (LGC) Worksheet, attaching the corresponding Form 15GR001P (paper version) or 15GR001E (electronic version), Grievance Form, and other documents and information relevant to the subject matter of the grievance.

(d) **Documentation requirements.** When Form 15GR002E is submitted to OCA, attachments are:

- (1) corresponding Form 15GR001P or 15GR001E;
- (2) supporting facts relating to the proposed resolution by the second level respondent, including documentation

relating to the first level and second level of problem resolution processes; and

(3) any written rule, policy, procedure, regulation, or other information relevant to the grievance subject matter.

(e) **OCA grievance processing.** Within three-business days following receipt of an OCA contested grievance, the OCA grievance liaison reviews the contested grievance and accompanying documentation and determines if additional information is necessary for disposition of the appeal. When information is missing, the OCA grievance liaison contacts the person(s) in possession of the needed information and sets deadlines for submission of the information by the most efficient means to avoid delays in processing the contested grievance.

(f) **Rejected grievances.** When OCA determines the subject matter of a grievance falls in one of the categories listed in OAC 340:2-3-45(c)(2), the OCA grievance liaison returns the grievance to the LGC with a cover letter indicating the reason the grievance was not accepted for processing as a contested grievance. Within three-business days following receipt of the letter, the LGC contacts the grievant to inform the grievant of the status of the grievance.

(g) **OCA transmittal to State Office administrator.** Within three-business days following receipt of an OCA contested grievance and all documents required by (d) of this Section, the advocate general or the advocate general's designee prepares and sends Form 15GR011E, Contested Grievance Transmittal, to the State Office administrator with decision-making authority to respond to the subject of the grievance.

(h) **State Office administrator's response.** The State Office administrator who receives a contested grievance responds to the grievant within 10-business days or by the due date on Form 15GR011E. The advocate general or the advocate general's designee may grant an extension when good cause is shown. The State Office administrator sends his or her response directly to the LGC after completing the designated portion of Form 15GR011E. A copy is sent to the advocate general or the advocate general's designee. The State Office administrator attaches his or her response to Form 15GR011E and includes:

- (1) the proposed resolution and how it will be implemented;
- (2) the names of those responsible for implementing the proposed resolution;
- (3) the proposed resolution target date;
- (4) the facts and analysis supporting the proposed resolution including relevant documentation; and
- (5) any relevant written rules, policies, procedures, regulations, or other information.

(i) **Timely response required.** The OCA grievance liaison monitors the timely response by the State Office administrator. When a complete response is not timely received by the OCA grievance liaison and an extension was not granted, the OCA grievance liaison immediately processes the grievance for review by the Grievance and Review Committee (GARC), per OAC 340:2-3-64(b). OCA notifies the grievant and affected

State Office administrator that the grievance is being processed for GARC.

(j) **Presentation of proposed resolution.** The LGC or the LGC's designee contacts the decision-maker within three-business days following receipt of the State Office administrator's response. When the decision-maker accepts the proposed resolution, the LGC notes this on the OCA transmittal memo and files it in the client's grievance file.

(k) **Request for GARC review.** When the grievant does not accept the State Office administrator's response, the LGC completes the designated portion of Form 15GR011E and returns it to the OCA grievance liaison within three-business days. Upon OCA receipt of Form 15GR011E, the grievance is processed for review by GARC, per OAC 340:2-3-64.

340:2-3-51. Grievances of residents of DDSD Facilities: Southern Oklahoma Resource Center (SORC), Northern Oklahoma Resource Center of Enid (NORCE), and the Developmental Disabilities Services (DDS) Greer Center Facility (Greer) resident grievances

(a) **Application.** This Section describes processes relating to grievances of residents of Oklahoma Department of Human Services ~~(OKDHS)~~(DHS)-operated facilities listed in Sections 1406 and 1414.1 of Title 10 of the Oklahoma Statutes (10 O.S. §§ 1406 and 1414.1). ~~Section 1415.1 of Title 10 of the Oklahoma Statutes~~10 O.S. § 1415.1 confers on ~~OKDHS~~DHS the responsibility for establishing an ombudsman program ~~which that~~ includes a grievance system at ~~each~~ ~~OKDHS~~DHS-operated facility for persons with developmental disabilities.

(b) **Definitions.** The definitions in Oklahoma Administrative Code (OAC) 340:2-3-2 and 340:2-3-45(b) apply to this Section unless the context clearly indicates otherwise.

(c) **Notice of grievance rights.** ~~The DDS facility gives Form 15GR006E, Notice of Grievance Rights - DDSD Clients (General), is given by the Developmental Disabilities Services Division (DDSD) facility to a~~the resident and his or her guardian within 24 hours of the resident's admission to a facility and yearly thereafter at the annual individual planning meeting. ~~This form~~Form 15GR006E is used to identify the local grievance coordinator (LGC) and to explain the resident's right to grieve. After the resident or guardian signs ~~the form~~Form 15GR006E, a copy is given to the resident, ~~or to~~ the resident's guardian, or to the responsible family member ~~if~~when the resident does not have a guardian, or both, and the original is maintained in the permanent record for the resident. ~~If~~When the designated local grievance coordinator (LGC) changes, the facility notifies the residents, ~~and their~~ guardians, or a responsible ~~relative~~relatives of the new LGC's name and contact information of the new LGC within 20-business days.

(d) **Filing and processing of grievance at the facility.** Grievances of residents are processed, ~~in accordance with~~per OAC 340:2-3-45(g) unless otherwise provided in this Section.

- (1) The Office of Client Advocacy (OCA) maintains an office on campus at ~~SORC and NORCE~~Greer. OCA assigns ~~advocates to its offices at the facilities~~an advocate

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- who ~~serve~~ serves as the LGC at ~~those facilities and~~ Greer and provides assistance to residents, their guardians, and persons interested in ~~their residents'~~ their residents' welfare who want to file a grievance. ~~[per OAC 340:2-3-71(h)(4)]~~.
- (2) The OCA ~~advocates~~ advocate at a facility ~~and~~ Greer ~~sends~~ sends a copy of a grievance to the resident's guardian or guardian ad litem ~~of the resident~~ and to a responsible relative, unless ~~contraindicated~~ otherwise specified.
- (3) ~~If~~ When a grievance involves a decision of a resident's team, the first level respondent is the applicable unit coordinator, unless the unit coordinator is involved in the decision being grieved.
- (e) **Time limits on filing grievances.** The time limit set forth in OAC 340:2-3-45(g) does not apply to grievances filed by or on behalf of residents.
- (f) **Second level problem resolution.** The facility director is the second level respondent.
- (g) **Contested grievances.** When a resident elects to contest the facility director's response to a grievance, the contested grievance is processed ~~in accordance with~~ per OAC 340:2-3-46. The ~~DDS~~ DDS director or ~~the director's~~ the director's designee is the ~~state office~~ State Office administrator responsible for responding to residents' contested grievances ~~of residents~~.
- (h) **Request for review by Grievance and Review Committee (GARC).** When a resident requests a GARC review by GARC of the ~~DDS~~ DDS director's response to a grievance, the OCA grievance liaison prepares a request for GARC review using ~~an OCA-prescribed format prescribed by OCA which includes the information listed in subsection (i) of this Section.~~ an OCA-prescribed format ~~prescribed by OCA which includes the information listed in subsection (i) of this Section.~~
- (i) **Advocate inquiry.** An OCA advocate may file a formal inquiry to request information relating to: the treatment of one or more residents; the substance, application, or interpretation of any policy, rule, or regulation, ~~written or unwritten,~~ of ~~OKDHS~~ DHS or ~~an~~ a DHS agent or contractor of ~~OKDHS~~ DHS; or any decision, behavior, or action of ~~an OKDHS~~ a DHS employee, agent, or contractor, or of another resident.
- (1) An advocate formal inquiry is submitted directly to the facility director or any other ~~OKDHS~~ DHS employee believed to have the knowledge to respond to the inquiry. The person, to whom the inquiry is submitted, has seven business days from receipt of the inquiry to respond in writing. The advocate general may grant an extension for good cause shown.
- (2) ~~If~~ When the response does not resolve the concern ~~which that~~ prompted the formal inquiry, or ~~if~~ when a response is not timely received, the matter may be treated as a formal grievance and processed as a contested grievance, ~~pursuant to~~ per OAC 340:2-3-46.
- (3) The advocate general issues a report that sets forth the subject matter of the inquiry, the pertinent facts, and the recommendations. An advocate general report is submitted to the facility director, when applicable, and the ~~state office~~ State Office administrator. A copy is submitted to the ~~OKDHS~~ DHS Director.
- (j) **Advocate grievance.** An OCA advocate may file a grievance on behalf of a resident ~~even~~ when a grievance ~~has~~ was not ~~been~~ filed by, or on behalf of a resident.

- (1) At the discretion of the advocate general or the advocate general's designee, an advocate grievance is filed directly with the facility director. The facility director has seven business days to respond in writing. The advocate general or the advocate general's designee may grant an extension for good cause shown.
- (2) ~~If~~ When the facility director's response is not acceptable or is not timely submitted, it is processed as a contested grievance, ~~pursuant to~~ per OAC 340:2-3-46.
- (k) **Fast track grievances.** When the subject of ~~an OKDHS~~ a DHS grievance is such that time is of the essence, with the approval of the advocate general or the advocate general's designee, a grievance ~~can~~ may be submitted directly to the facility director or to the OCA grievance liaison for processing as a contested grievance, ~~in accordance with~~ per OAC 340:2-3-46. When a grievance involves a time sensitive problem, the OCA grievance liaison ~~can~~ may shorten the time for responding as warranted by the circumstances.

340:2-3-52. Grievances of Hissom class members

- (a) **Application.** This Section describes processes relating to grievances of Hissom class members. The Oklahoma Department of Human Services (~~OKDHS~~) (DHS) legal basis and authority for grievance policies and procedures for Hissom class members includes orders of the United States District Court for the Northern District of Oklahoma in Homeward Bound, et al., vs. The Hissom Memorial Center, Case No. 85-C-437-E.
- (b) **Definitions.** The definitions in Oklahoma Administrative Code (OAC) 340:2-3-2 and 340:2-3-46(b) apply to this Section unless the context clearly indicates otherwise.
- (c) **Notice of grievance rights.** The Office of Client Advocacy (OCA) advocate assigned to a Hissom class member gives Form 15GR007E, Notice of Grievance Rights - Hissom Class Members, at least yearly to each class member or his or her guardian(s), close family members, and volunteer advocates. This form is used to identify the OCA advocate assigned to the class member and to explain the class member's right to grieve. After the class member, guardian(s), or both, sign the form, the advocate documents this in a contact sheet and provides copies to the client or the client's guardian, the assigned Developmental Disabilities Services ~~Division (DDSD)~~ (DDS) case manager, and the program coordinator of the applicable provider for placement in the client's home record. The original is maintained in the class member's OCA's record ~~for the class member~~.
- (d) **Filing and processing of grievances.** Grievances of class members are processed ~~in accordance with~~ per OAC 340:2-3-45 unless otherwise provided in this Section.
- (1) OCA assigns an advocate to represent each class member. The assigned advocate serves as the grievance advisor for ~~the class member~~ members and provides assistance to class members and persons interested in their class members' welfare who want to file a provider or ~~OKDHS~~ DHS grievance. ~~[per OAC 340:2-3-71(h)(4)]~~. When an advocate files a provider or ~~OKDHS~~ DHS grievance on behalf of a class member, the advocate contemporaneously provides a copy of the grievance to the

~~DDSDDS~~ case manager assigned to the class member and to the ~~DDSDDS~~ programs administrator for community services.

(2) Class members, ~~their~~ guardians, volunteer and other advocates and ~~other advocates~~, case managers, personal support team members, and persons interested in ~~their class members'~~ welfare also can file ~~an OKDHSa DHS~~ grievance by submitting/completing Form 15GR001P (paper version) or 15GR001E (electronic version); Grievance Form, to the local grievance coordinator (LGC) in the appropriate ~~DDS~~ area office. The advocate submits a completed 15GR001P to the LGC. When the advocate completes Form 15CR001E the OCA grievance unit submits it directly to the LGC within one business day of receipt. When the LGC receives a grievance that has/was not been submitted by the OCA advocate representing the class member, the LGC promptly informs the advocate of the grievance by e-mail/mail, fax, or telephone/phone.

(3) ~~If/When~~ a grievance involves a decision of a class member's team, the first level respondent is the supervisor of the client's ~~DDSDDS~~ case manager, unless the case manager is involved in the decision being grieved.

(e) **Provider grievances.**

(1) Each residential and vocational provider that contracts with ~~DDSDDS~~ to provide services to Hissom class members has a grievance resolution system ~~for resolution of grievances~~. The provider's written grievance policies, forms, and procedures are in compliance with OAC 340:2-3-45.

(2) Provider grievances ~~are initiated~~ by the class member, the assigned OCA advocate, or a person interested in the welfare of the class member by/are initiated using Form 15GR001P or 15GR001E or the provider's grievance form. The completed grievance form is submitted to the provider's grievance coordinator LGC. Upon receipt of a provider grievance by or on behalf of a Hissom class member by anyone other than the OCA advocate or the ~~DDSDDS~~ case manager ~~for the class member~~, the LGC promptly informs the ~~DDSDDS~~ case manager and the advocate ~~assigned to the class member~~ by e-mail/mail, fax, or phone. If an OKDHS/When a DHS employee initiates a grievance on behalf of a class member, at the time the grievance is filed the employee sends a copy to the DDSDDS case manager and the OCA advocate assigned to the class member.

(3) ~~If/When~~ the subject matter of a grievance can be submitted for resolution as a provider grievance or ~~an OKDHSa DHS~~ grievance, the class member has the option to file it as a provider grievance, ~~an OKDHSa DHS~~ grievance, or both.

(f) **Time limits on filing grievances.** The time limit set forth in OAC 340:2-3-45(g) does not apply to grievances filed by or on behalf of Hissom class members.

(g) **Fast track grievances.** When the subject of ~~an OKDHSa DHS~~ grievance is such that time is of the essence, with the approval of the advocate general or the advocate general's designee, a grievance can be submitted directly to the

OCA grievance liaison for processing as a contested grievance ~~in accordance with~~ per OAC 340:2-3-46. When a grievance involves a time sensitive problem, the OCA grievance liaison can shorten the response time ~~for responding~~ as warranted by the circumstances.

(h) **Second level problem resolution.** The area manager of the appropriate ~~DDSDDS~~ area office is the individual responsible for responding to ~~an OKDHSa DHS~~ grievance at the second level of problem resolution.

(i) **Contested grievances.** When the response to ~~an OKDHSa DHS~~ or provider grievance is contested by a class member or a grievant on behalf of a class member, the contested grievance is processed ~~in accordance with~~ per OAC 340:2-3-46 unless otherwise provided in this Section. The ~~DDS~~ director of ~~DDS~~ is the state office administrator responsible for responding to contested grievances of class members.

(j) **Request for review by the Grievance and Abuse Review Committee (GARC).** When a Hissom class member requests review by GARC of the ~~DDSDDS~~ director's response to a grievance, the OCA grievance liaison prepares a request for GARC review using the OCA-prescribed format ~~prescribed by OCA~~ that includes the information listed in subsection (i) of this Section.

(k) **Formal inquiry.** The advocate general or any OCA advocate staff may file a formal inquiry to request information relating to: the treatment of a client; the substance or application of any policy, rule, or regulation, ~~written or unwritten,~~ of ~~OKDHS/DHS~~ or an agent or contractor of ~~OKDHS/DHS~~; or any decision, behavior or action of ~~an OKDHSa DHS~~ employee, agent or contractor, or of another client.

(1) A formal inquiry is submitted directly to the administrator of a community services provider or the appropriate ~~DDSDDS~~ area manager. An advocate general formal inquiry is submitted to the ~~DDS~~ director of ~~DDS~~. The person to whom it is submitted has seven business days to respond in writing. The advocate general can grant an extension.

(2) ~~If/When~~ the response to the formal inquiry does not resolve the concern that prompted the formal inquiry, the matter may be treated as a formal grievance and processed as a contested grievance.

(3) The advocate general issues a report that sets forth the subject matter of the inquiry, the pertinent facts, and recommendations. An advocate general report is submitted to the administrator, when applicable, and the ~~state office~~ State Office administrator. A copy is submitted to the ~~OKDHS/DHS~~ Director.

(l) **Advocate grievances.** An OCA advocate may file a grievance on behalf of a class member even though a grievance ~~has/was~~ not ~~been~~ filed by or on behalf of the class member.

(1) At the discretion of the advocate general or the advocate general's designee, an advocate grievance is submitted directly to the administrator of a provider agency or the appropriate ~~DDSDDS~~ area manager using Form 15GR003E, Grievance - Hissom Class Member.

(2) An advocate general grievance is submitted directly to the ~~DDS~~ director of ~~DDS~~ or the administrator of the provider agency, ~~whichever is~~ applicable.

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(3) The person to whom it is submitted has seven business days to respond in writing. The advocate general can grant an extension.

(4) If the response to a grievance is not acceptable, or is not timely submitted, it is processed as a contested grievance pursuant to per OAC 340:2-3-46.

(m) **Monitoring of grievance programs.** Providers submit their policies for review and approval by the advocate general. OCA provides training and technical assistance to providers, at their request, in the development of grievance forms and procedures. OCA, in cooperation with other monitoring entities to avoid unnecessary duplication, monitors provider grievance programs in accordance with per OAC 340:2-3-45(d) through (h).

340:2-3-53. Grievances of clients receiving services from the Developmental Disabilities Services (DDS)

(a) **Application.** This Section describes processes relating to grievances of clients receiving services from the ~~Developmental Disabilities Services (DDS)~~ who are not residing in an Oklahoma Department of Human Services (DHS) operated facility and are not Hisson class members. This Section includes minors and adults in specialized foster care. Subsections (h) through (k) apply to clients who were former residents of NORCE or SORC, upon the Oklahoma Commission for Human Services resolution to close the state operated resource centers November 1, 2012.

(b) **Definitions.** The definitions in Oklahoma Administrative Code (OAC) 340:2-3-2 and 340:2-3-45(b) apply to this Section unless the context clearly indicates otherwise.

(c) **Notice of grievance rights.** The DDS case manager gives Form 15GR006E, Notice of Grievance Rights - DDS Clients (General), to the service recipient, or guardian when applicable, at the initial plan of care meeting and at each annual plan of care meeting thereafter. ~~If~~ When the service recipient does not have a DDS case manager, the provider gives Form 15GR006E to the service recipient within 30 calendar days of service initiation and annually thereafter. Form 15GR006E is used to identify the local grievance coordinator and to explain the client's right to grieve. After the client or guardian signs the form, the original is maintained in the client's permanent record ~~for the client~~.

(d) **Filing and grievance processing of ~~grievance~~.** Provider and DHS grievances are filed and processed per OAC 340:2-3-45. When a grievance involves a decision of an individual's team, the first level respondent is the supervisor of the client's case manager unless the case manager participated in making or approved the decision being grieved.

(e) **Time limits on filing grievances.** The time limit set forth in OAC 340:2-3-45(g) does not apply to grievances filed by or on behalf of ~~these~~ the clients listed in this Section.

(f) **Contested grievances.** When a grievant asks to appeal a DHS grievance, the appeal is processed per OAC 340:2-3-46.

(g) **Monitoring grievance programs.** In order to avoid unnecessary duplication, the Office of Client Advocacy (OCA), in cooperation with other monitoring entities, monitors

provider grievance programs per OAC 340:2-3-45 (d) through (m).

(h) **Provider grievances of DDS clients who were former residents at NORCE or SORC as of November 1, 2012.**

(1) Each residential and vocational provider that contracts with DDS to provide services to DDS clients has a grievance system for resolution of grievances. The provider's written grievance policies, forms, and procedures are in compliance with OAC 340:2-3-45.

(2) Provider grievances are initiated by the DDS client, the assigned OCA advocate, or a person interested in the welfare of the client by using Form 15GR001P (paper version) or 15GR001E (electronic version) or the provider's grievance form. The completed grievance form is submitted to the provider's grievance coordinator. Upon receipt of a provider grievance by or on behalf of a DDS client by anyone other than the OCA advocate or the client's DDS case manager ~~for the client~~, the LG local grievance manager promptly informs the DDS case manager and the advocate assigned to the client by email, fax, or phone. When a DHS employee initiates a grievance on behalf of a client, at the time the grievance is filed the employee sends a copy to the DDS case manager and the OCA advocate assigned to the client.

(3) ~~If~~ When the subject matter of a grievance can be submitted for resolution as a provider grievance or a DHS grievance, the DDS client has the option to file it as a provider grievance, ~~an~~ a DHS grievance, or both.

(i) **Contested grievances.** When the response to a DHS or provider grievance is contested by a DDS client or a grievant on behalf of a client, the contested grievance is processed per OAC 340:2-3-46 unless otherwise provided in this Section. The DDS director is the state office administrator responsible for responding to DDS client contested grievances.

(j) **Request for review by the Grievance and Abuse Review Committee (GARC).** When a DDS client requests a GARC review ~~by GARC~~ of the DDS director's response to a grievance, the OCA grievance liaison prepares a request for GARC review using the ~~format~~ OCA-prescribed by OCA format that includes the information listed in subsection (i) of this Section.

(k) **Formal inquiry.** The advocate general or ~~any~~ OCA advocate staff may file a formal inquiry to request information relating to:

- (1) the treatment of a client;
- (2) the substance or application of any DHS policy, rule, or regulation, ~~written or unwritten~~, of DHS or an agent or contractor of DHS; or
- (3) any decision, behavior or action of a DHS employee, agent or contractor, or of another client;

(A) A formal inquiry is submitted directly to ~~the administrator of~~ at the community services provider administrator or the appropriate DDS area manager. An advocate general formal inquiry is submitted to the DDS director. The person to whom it is submitted has seven business days to respond in writing. The advocate general can grant an extension.

(B) When the response to the formal inquiry does not resolve the concern that prompted the formal inquiry, the matter may be treated as a formal grievance and processed as a contested grievance.

(C) The advocate general issues a report that sets forth the subject matter of the inquiry, the pertinent facts, and recommendations. An advocate general report is submitted to the administrator when applicable, and the ~~state office~~ State Office administrator. A copy is submitted to the DHS Director.

PART 9. ADVOCACY PROGRAMS

340:2-3-71. Office of Client Advocacy (OCA) general advocacy services

(a) **Legal authority.**

(1) Section 1415.1(A)(2) of Title 10 of the Oklahoma Statutes (10 O.S. § 1415.1(A)(2)) requires the Oklahoma Department of Human Services (DHS) to establish an ombudsman program for each institution and residential facility for persons with intellectual disabilities operated by DHS. DHS conferred this responsibility on ~~the Office of Client Advocacy (OCA).~~

(2) Orders of the United States District Court for the Northern District of Oklahoma in Homeward Bound, Inc., et al. v. Hissom Memorial Center, et al., Case No. 85-C-437-TCK-SAJ, require DHS and OCA to provide advocacy services to individuals certified by the court as members of the plaintiff class, known as Hissom class members.

(3) Per Oklahoma Administrative Code (OAC) 340:2-3-71 through 340:2-3-75, DHS assigned additional advocacy responsibilities to OCA.

(b) **Scope.** OCA provides advocacy services to Developmental Disabilities Services (DDS) clients listed in this subsection, who are collectively referred to as "clients" in OAC 340:2-3-71 through 340:2-3-75.

(1) OCA advocacy services for residents of the Robert M. Greer Center (Greer) are outlined in greater detail per OAC 340:2-3-72.

(2) OCA advocacy services for former residents of the Southern Oklahoma Resource Center (SORC), and the Northern Oklahoma Resource Center of Enid (NORCE) are outlined in greater detail in OAC 340:2-3-73. ~~in-class members are outlined in greater detail in OAC 340:2-3-74.~~

(3) OCA advocacy services for ~~for~~ Hissom class members are outlined in greater detail in OAC 340:2-3-74.

(4) OCA provides advocacy services on a short-term or emergency basis for other DDS clients who have special advocacy needs per OAC 340:2-3-75.

(c) **Guiding principles.** OCA advocacy programs advance the capacity and recognition of individual choice, the realization of rights and responsibilities of citizenship, and the personal well-being of recipients of DDS services. In addition to the guiding principles listed in OAC 340:100-1-3.1, the guiding principles for OCA advocacy on behalf of clients are:

(1) **self-determination.** Advocates promote the individual as the driving force of life choices and decisions;

(2) **meaningful choice.** Advocates promote the development of meaningful choices for persons with developmental disabilities consistent with their unique strengths, resources, priorities, concerns, abilities, capabilities, and interests;

(3) **active citizenry.** Advocates promote the inclusion and involvement of persons with developmental disabilities in the social and political structures of the community; and

(4) **well-being.** Advocates promote access to physical and emotional supports necessary for a healthy ~~life style~~ life style.

(d) **Definitions.** In addition to definitions in OAC 340:2-3-2, the following words and terms when used in OAC 340:2-3-71 through 340:2-3-75 shall have the following meaning, unless the context clearly indicates otherwise:

(1) **"Capacity assessment"** means the process of determining an individual's ability to make informed decisions and the need for assistance with decision-making regarding personal and financial matters, per OAC 340:100-3-5.

(2) **"Human Rights Committee"** or **"HRC"** means the committee charged with the responsibility for external monitoring and advocacy to address protection of individual rights.

(3) **"Individual plan"** or **"IP"** means a written document developed by the Personal Support Team based upon assessment of need. The IP specifies outcomes pursued on behalf of the individual, steps ~~being~~ taken to achieve outcomes, and all services and supports necessary to achieve outcomes.

(4) **"Informed consent"** means ~~informed consent~~ per OAC 340:100-3-5 the ability to make and express voluntary decisions, given correct and sufficient information about the nature, purpose, risks, benefits, and alternatives of a proposed service or action. Individuals, 18 years of age and older, are presumed to have capacity to give informed consent except to the extent adjudicated incapacitated by the court. An individual is not considered incapacitated solely by reason of his or her diagnosis. Individuals may be adjudicated incapacitated in one area, while being fully capable of understanding and exercising rights in other areas. Individuals have the right to exercise judgment in all areas of capacity.

(5) **"Personal Support Team (PST)"** means the participants in the individual's assessment and planning process. The PST includes the service recipient, case manager, legal guardian, advocate, service providers, and others whose participation is necessary to achieve the outcomes desired by the service recipient.

(6) **"Program coordinator"** or **"PC"** means a person employed by a DDS residential or group home contract provider agency responsible for the supervision, coordination, and monitoring of services provided by the contract provider agency to a service recipient.

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- (7) **"Service review"** means an assessment by an OCA advocate of a client's health, living circumstances, and the delivery of supportive services. The service review documents the extent of services provided to an individual client and identifies problem areas in service delivery. Each service review is a snapshot of the life of an individual at the time the review is completed.
- (8) **"Statewide Behavior Review Committee"** or **"SBRC"** means the SBRC established per OAC 340:100-3-14 to review each protective intervention plan with restrictive or intrusive procedures to ensure the plan complies with DDS policy on the use of restrictive or intrusive procedures, per OAC 340:100-5-57.
- (e) **Client records.** Information in OCA records relating to advocacy services provided to the clients listed in (b) of this Section is confidential and protected from unauthorized use. Only authorized individuals are given access to client records or provided information from those records.
- (1) The confidentiality provisions of OAC 340:100-3-2 apply to OCA client files.
- (2) The confidentiality provisions of OAC 340:5-1-5 apply to information in OCA records regarding allegations of abuse, neglect, and exploitation of a vulnerable adult, as those terms are defined in 43A O.S. §§ 10-103, 10-110, and 10-110.1.
- (3) A breach of confidentiality may result in a criminal prosecution. Violations by DHS employees can also result in personnel action.
- (f) **Training requirements for advocates.** New and tenured OCA advocates receive appropriate training consistent with background and experience. This includes training on the rights of DDS clients under federal and state law.
- (g) **Client representation.**
- (1) OCA assigns advocates to represent Greer residents.
- (2) OCA assigns advocates, per Part 9, OAC 340:2-3-71 through 340:2-3-75 to represent specific DDS clients living in community residential settings, including Hissom class members living in Oklahoma and former residents of SORC and NORCE.
- (3) An OCA advocate is knowledgeable about the clients he or she represents and seeks to understand each client's specific challenges and communication styles, needs, interests, and goals. An advocate ascertains the client's preferences and choices. An advocate becomes familiar with a client by:
- (A) reviewing relevant client records and files;
- (B) visits and other contacts with the client at home, at work, and in other contexts; and
- (C) communication with the client's relatives, loved ones, guardians, program coordinator and other provider staff, case manager, and others in the client's circle of support.
- (h) **OCA advocacy services.**
- (1) **Advocacy.** Advocacy is ~~the function of~~ assisting an individual in voicing his or her interests. Clients are encouraged to engage in self-determination and are assisted to the extent they need and desire. When a client has a limitation in voicing his or her own interests, needs, and preferences, an advocate seeks to speak on behalf of the client. Advocacy services provided by OCA advocates include:
- (A) supporting the implementation of the least restrictive alternative in residential, vocational, therapeutic, and medical settings;
- (B) supporting the most appropriate living environment for each client consistent with the client's needs and objectives;
- (C) encouraging the development of natural supports, including friends, coworkers, and neighbors in the community where the individual lives; and
- (D) ~~advocating for those responsible for providing services for a client to fulfill their responsibilities by bringing performance issues or service deficiencies to the attention of those who are responsible for correcting the situation.~~
- (2) **Monitoring.** OCA monitors the well-being and provision of services to a client ~~by means of:~~
- (A) Monitoring is done by means of:
- (i) visits and other forms of contact with the client, staff, family members, and others who know the client;
- (ii) reviewing records, documentation, contract, and financial agreements between clients and providers of services, incident reports, and professional assessments; and
- (iii) attendance at IP and other PST meetings.
- (B) ~~reviewing records, documentation, contracts, and financial agreements between clients and providers of services, incident reports, and professional assessments; and~~
- (C) ~~attendance at IP and other PST meetings.~~
- (D) OCA advocates cooperate with and render assistance to outside monitoring and advocacy entities as provided for by federal and state laws, per laws and rules relating to client confidentiality, and release of information protocols.
- (E) The monitoring role of an OCA advocate ensures:
- (i) individual needs, preferences, and choices are identified and met appropriately and consistently;
- (ii) health, safety, and welfare standards and safeguards are maintained; and
- (iii) problems and issues are addressed at the earliest juncture by appropriate persons and entities in a prompt manner.
- (3) **Informal problem resolution.** An advocate seeks to resolve issues and client concerns by means of informal problem resolution at the lowest level of administrative responsibility or decision-making. Informal problem resolution seeks to resolve issues and reach a consensus with the client on a plan of action to informally resolve the problem. An advocate uses the problem resolution activity consistent with the nature and imminence of the

problem. An advocate assists a client in the development of problem resolution skills and self-advocacy.

(4) **Grievances.** An OCA advocate files grievances on behalf of clients, per OAC 340:2-3-45 through 340:2-3-55, as needed. OCA also advises clients and assists them ~~file in~~ file in filing grievances on their own behalf.

(5) **Protection and safety.** OCA staff ~~take~~ takes appropriate action ~~under the circumstances~~ to protect the health, safety, and well-being of clients including reporting allegations of abuse, neglect, maltreatment, and exploitation, per OAC 340:2-3-32 through 340:2-3-39.

(A) OCA advocates assist OCA, Adult Protective Services investigators, and law enforcement officers ~~obtain in~~ obtaining information necessary to complete investigations when a client is an alleged victim.

(B) Advocates engage in appropriate follow-up activity in response to a referral from the OCA Intake Unit, per OAC 340:2-3-35.

(C) When an advocate has a concern related to a client's health, safety, well-being, or program implementation, the advocate advises the client's case manager or designated qualified intellectual disabilities professional (QIDP), as applicable, and others, such as DDS staff, provider or facility staff, treatment staff, or health care professionals as circumstances warrant.

(D) Immediately upon becoming aware of concerns regarding imminent risk of harm, an advocate advises the applicable residential or vocational provider and the client's case manager.

(E) An OCA advocate ensures that abuse, neglect, maltreatment, and/or exploitation allegations are reported to the OCA Intake Unit, per OAC 340:2-3-33.

(6) **Promoting informed choice.** An OCA advocate promotes informed decision-making, consistent with a client's unique strengths, resources, priorities, concerns, abilities, capabilities, and interests through provision of necessary information and assistance to a client in understanding options and potential consequences of a decision. When a client is unable to make an informed choice, the advocate seeks to provide the client's legal guardian, ~~Guardian ad Litem~~ guardian ad litem, volunteer advocate, and other representative(s) with access to information to make an informed decision on the client's behalf. The advocate general does not provide legal advice to clients but may provide information about the law.

(7) **Protection of rights.** An OCA advocate promotes the full exercise of legal rights guaranteed clients under federal and state laws. An advocate takes appropriate steps to protect a client's rights including ensuring those rights are considered in PST decisions and in the manner PST decisions are carried out. An advocate seeks to ensure the application of due process in administrative, quasi-judicial, and judicial proceedings involving a client that might result in a rights restriction or a reduction in services. When a rights restriction is absolutely necessary,

OCA supports the least restriction necessary for the shortest period of time possible, ~~and with~~ with a plan to remove the restriction as soon as possible.

(8) **Access to services.** An OCA advocate promotes client access to the full range of supports per federal and state requirements. Although an advocate takes a position with regard to services needed by a client, an advocate does not have authority to approve services.

(9) **Guardianship issues.** The Oklahoma Guardianship and Conservatorship Act promotes the participation of persons as fully as possible in the decisions that affect them, in the development of maximum self-reliance and independence, and the appointments of guardians and others, only to the extent necessitated by the mental and adaptive limitations or other conditions of individuals, per 30 O.S. § 1-103. Because a full guardianship of the person and his or her estate is the most restrictive intrusion on an individual's decision-making, OCA advocates for the least restrictive alternative to a full guardianship feasible under the circumstances including, but not limited to:

- (A) limited guardianship;
- (B) representative payee for financial benefits;
- (C) volunteer advocate;
- (D) supportive friends and family;
- (E) health care proxy;
- (F) durable power of attorney; and
- (G) advance directives.

(10) **Promoting inclusion.** An advocate:

- (A) promotes the realization of active citizenship and inclusion in the community. This includes, but is not limited to, encouraging clients to:
 - (i) learn the rights and responsibilities of good citizenship;
 - (ii) vote;
 - (iii) take classes;
 - (iv) participate in volunteer services organizations;
 - (v) attend religious services of the client's choice;
 - (vi) attend recreational, cultural, and social events; and
 - (vii) join citizen advocacy organizations that promote inclusion in the community;
- (B) encourages the development of friends who can serve as natural supports for a client; and
- (C) assists a client in locating relatives who are not currently active in the client's life and encourages relationship building between the client and family members.

(11) **End-of-life issues.** End-of-life issues for an individual with a developmental or intellectual disability do not differ from those of other individuals. Regardless of the medical circumstance that brought these issues to the forefront, an OCA advocate seeks to have a client's physicians, guardians, and loved ones adhere to Oklahoma laws relating to do-not-resuscitate orders, withdrawal or denial of nutrition or hydration, and withdrawal or termination of medical treatment. In the absence of clear and convincing

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evidence of a client's choices, an advocate presumes the client would choose life-sustaining measures.

(i) **Contacting an OCA advocate.** When an advocate is not available during office hours, his or her supervisor serves as an advocate back-up. Information about the name of the advocate assigned to a client, the advocate's phone numbers, and the name of the advocate's supervisor is obtained by phoning OCA at 1-800-522-8014.

(j) **OCA access to client records and information.** OCA staff is provided access to all records, files, documents, and information needed to fulfill OCA responsibilities regarding a client. DDS case managers and employees and provider agency staff ~~send~~sends the assigned OCA advocate copies of documents and notices sent to the client.

340:2-3-74. Advocacy services for Hissom class members

(a) **Application.** This Section describes Office of Client Advocacy (OCA) advocacy services for Hissom class members who reside in Oklahoma. Advocacy services are provided to Hissom class members per Oklahoma Administrative Code (OAC) 340:2-3-71. Orders of the United States District Court for the Northern District of Oklahoma in Homeward Bound, Inc., et al. vs. Hissom Memorial Center, et al., Case No. 85-C-437-TCK-SAJ, require the Oklahoma Department of Human Services (DHS) and OCA to provide independent advocacy services to individuals certified by the court as members of the plaintiff class, known as Hissom class members. This includes, but is not limited to:

- (1) independently advocating for class members' rights and interests regarding their daily lives, proposed movements, medical and behavioral emergencies including hospitalizations, appropriate consents, financial interests, and meetings held on their behalf;
- (2) challenging adverse service authorization actions through the DHS administrative appeal and/or grievance procedures; and
- (3) referral to Oklahoma protection and advocacy agencies to obtain legal counsel and legal advocacy services.

(b) **Assignment of advocate.** OCA assigns an advocate to each Hissom class member living in Oklahoma. Clients are provided choices with regard to the advocate assigned to represent them to the extent feasible, taking into consideration the geographic location of the client's residence and OCA advocates' caseloads. Requests for a change in the advocate representing an individual are made to the advocate general or the advocate general's designee.

(c) **Personal Support Team (PST) membership.** As a representative of a Hissom class member living in a community residential placement, an OCA advocate is a member of the client's PST. As a PST member, the advocate receives from the client's Developmental Disabilities Services (DDS) case manager timely notice of all PST meetings, including emergency PST meetings. Within the team context, the advocate assists the client and represents the client's interests without relinquishing priority to client safety and rights.

(d) **Guardianship issues.** The OCA advocate ensures the client has a current capacity assessment and attends capacity assessment meetings. If a client with a full guardianship has sufficient capacity to require no guardian or only a limited guardian, the advocate promotes the filing of a petition with the guardianship court to limit or terminate the guardianship. If the current capacity assessment of a client who does not have a guardian recommends a guardian or volunteer advocate, the OCA advocate participates with the PST in identifying persons who might serve as guardian or advocate for the client. This includes encouraging the development of friends in the community who might become a guardian or volunteer advocate for the client. The OCA advocate monitors the implementation of the recommendations in the capacity assessment and advocates for their timely achievement. When a guardian is needed and a suitable guardian is identified, the advocate promotes filing a petition with the guardianship court to appoint a guardian.

(e) **Advocacy and monitoring services for class members in residential community settings.** OCA advocates provide advocacy and monitoring to class members living in community residential settings, including group homes, to ensure compliance with policies, rules, and regulations applicable to the client's health, safety, and well-being. In addition to the activities described in OAC 340:2-3-71(h), advocacy and monitoring activities on behalf of each client include:

- (1) verifying Form 06CB034E, Residential Pre-service Checklist, is completed prior to any change in residence, and making a home visit with the client within 30-calendar days after the client moves into a new residence;
- (2) conducting a face-to-face visit with the client at least once every three months;
- (3) completing a meaningful contact regarding each client served, at least monthly;
- (4) ~~completion of~~completing a service review twice a year, at least once every six months;
- (5) verifying direct contact staff ~~have~~ completed required training in connection with each service review;
- (6) participating as a member of a client's PST;
- (7) attending annual individual plan (IP) meetings, person-centered planning meetings, interim meetings, and follow-up planning meetings;
- (8) attending emergency PST meetings;
- (9) attending other PST meetings when significant issues are addressed, including when a rights restriction or an intrusive behavior intervention strategy is contemplated or recommended;
- (10) attending guardianship assessment meetings of the client's PST;
- (11) attending other team meetings at the request of the client, guardian, or involved family or friend;
- (12) requesting DDS Quality Assurance to conduct an administrative inquiry of suspected provider contract violations per OAC 340:100-3-27;
- (13) assisting the client and the client's guardian or representative with the review of proposed financial agreements and contracts between the client and the provider;

- (14) prior to and during a hospitalization, advocating for the provision of adequate staff to be present in the hospital with the client as circumstances warrant;
- (15) ~~review of~~ reviewing documents and electronic files including, but not limited to:
 - (A) assessments, IP, and interim IP documents;
 - (B) incident reports;
 - (C) behavior data collection forms; and
 - (D) Adult Protective Services and OCA investigation findings;
- (16) attending mortality reviews conducted, per OAC 340:100-3-35;
- (17) communicating to the client, the client's guardian, and the client's family as appropriate, the final finding of an OCA investigation in which the client was named as an alleged victim;
- (18) attending legal proceedings involving the client, including guardianship proceedings, as warranted by the circumstances;
- (19) monitoring, of the water temperature in homes every six months, using a thermometer to ensure the water does not exceed 114 degrees Fahrenheit;
- (20) verifying that appropriate records are kept with regard to an individual's personal finances at least once every six months; and
- (21) providing each client or guardian an annual copy of Form 15GR007E, Notice of Grievance Rights: Hissom Class Members.

(f) **Advocate services for Hissom class members on the Focused Advocacy List (FAL).** On December 1, 2004, the judge in *Homeward Bound, et al. vs. The Hissom Memorial Center, et al.*, U.S. District Court for the Northern District of Oklahoma, Case No. 85-C-437-E, issued an order for the transition of responsibilities and phase-out of the combined office of the Homeward Bound review panel and Guardian ad Litem (GAL). The Court Order specified "advocacy services provided by the Guardian ad Litem's Office for all class members on the GAL List will be transferred to and be assumed by the Office of Client Advocacy" by January 31, 2005. In response, OCA created the Focused Advocacy program to provide increased advocacy supports to class members with limited or no family involvement. In addition to the activities described in (e) of this Section and OAC 340:2-3-71(h), advocacy and monitoring activities on behalf of each client include:

- (1) ensuring the assigned developmental disabilities representative is invited to PST meetings when warranted to review and update progress in securing a volunteer advocate or guardian for all clients on the FAL;
- (2) visiting each class member on the FAL at least once every two months, and more frequently when warranted. Visits include home visits, work-site visits, and other face-to-face contacts;
- (3) placing a priority on expanding the circles of support of a class member on the FAL to include persons who are not paid to be involved in the class member's life, including identifying relatives not involved in the class member's life who may be encouraged to become more involved;

- (4) identifying class members who have the greatest immediate need for a volunteer advocate or guardian. Advocates must promptly inform the OCA Focused Advocacy manager when a class member is identified as having a priority need; and
- (5) ensuring a Team Review of Advocate/Guardian Participation (TRAGP) document is prepared for each class member assigned to them at least annually and one is completed more frequently whenever there is a significant change in circumstances warranting review of the involvement of persons who are not paid to be involved in the class member's life. The form includes information documenting the need for the individual to remain on, be added to, or be removed from the FAL. The Focused Advocacy Committee meets regularly to review TRAGP forms and determine whether class members remain on the FAL or require prioritized identification of a volunteer advocate or guardian.

(g) **Advocacy services for Hissom class members in private intermediate care facilities for individuals with intellectual disabilities (ICF/IID).** Advocacy and monitoring services for class members who reside in a private ICF/IID in Oklahoma are contained in this subsection.

- (1) The assigned OCA advocate personally visits a client living in a private ICF/IID at least quarterly, and more frequently as warranted.
- (2) The OCA advocate maintains a helping relationship with the client assessing the realization of desired and targeted outcomes, and initiating change through referral or grievance as needed. During contacts with the client, the advocate inquires about individual satisfaction with current supports and provides information regarding options available to clients for community supports.
- (3) The OCA advocate, at least bi-annually, contacts the guardian of the client if one was appointed. The OCA advocate also contacts the guardian in response to an expression by the client of dissatisfaction with the current residential arrangements. These contacts reaffirm the availability of service options to clients for support in community settings. Contacts with the guardian occur in person, by phone, or mail as the circumstances warrant.
- (4) The OCA advocate contacts the private ICF/IID case manager, generally a qualified intellectual disability professional, responsible for yearly care planning for the client. The advocate informs the facility case manager of the advocate's intent to attend yearly planning meetings. The advocate asks to be notified in advance of yearly planning meetings and emergency meetings. The advocate checks periodically to ensure meetings have not been held without notice to the advocate.
- (5) The OCA advocate participates in annual planning meetings at the private ICF/IID. The advocate provides advocacy assistance regarding the individual's expressed desires. The advocate brings concerns expressed by the client, guardian, or other family members to the PST attention. The advocate participates in interim meetings addressing any significant change in residence, work, health, or important relationships.

(6) The OCA advocate develops a working knowledge of the facility's grievance procedure as well as other problem resolution processes and resources for change, such as the Long-Term Care Ombudsman Program and licensing agencies. The advocate uses these services, either directly or through referral, as needed for the benefit of the individual.

(7) The OCA advocate assesses the welfare of the client and determines if OCA advocacy assistance ~~OCA can provide~~ is needed. The advocate, either directly or through referral, provides assistance with resolving concerns identified by the client or by others on behalf of the client. This includes contacting the DHS Aging Services, long-term care ombudsman. The advocate also informs the long-term care ombudsman office of concerns involving other individuals living in an ICF/IID that come to the advocate's attention.

(8) Service reviews are not completed.

(9) The OCA advocate requests a capacity assessment on behalf of the client when there has been a substantial change in circumstances regarding the individual's need for a guardian.

(10) The OCA advocate provides information and encouragement to consider community residential settings.

(h) **Advocacy services for Hisson class members who are in the Oklahoma Department of Corrections (DOC) or a county sheriff's custody.** Advocacy and monitoring services for class members who are in DOC or a county sheriff's custody except those who are detained pre-trial are contained in this subsection. The assigned OCA advocate:

(1) contacts the client at least every six months; these contacts are in person when feasible;

(2) obtains copies of court documents that reflect the sentence the class member is serving;

(3) assesses the welfare of the client and determines if advocacy assistance is needed. The advocate provides assistance, either directly or through referral, with resolving concerns identified by the client or by others on behalf of the client. Advocacy assistance is provided in regard to enforcing the rights of clients under the Americans with Disabilities Act and other federal and state laws to the extent they are applicable to persons who are in custody; and

(4) provides advocacy assistance and works with the DDS case manager to begin transition planning when the client has less than one year remaining to serve in custody. The advocate participates in and monitors transition planning, representing the client's interests.

(i) **Services for Hisson class members who decline DDS services.** Per OAC 340:100-3-11, class members and their legal representatives have the right to refuse services from DDS. The OCA advocate for a class member, who declined DDS services, contacts the individual at least once every six months, and remains available to assist with advocacy regarding non-specialized assistance when requested by the individual. If the OCA advocate determines the client's need or

desire for specialized supports has changed, the advocate takes appropriate follow-up action with DDS case management.

[OAR Docket #17-487; filed 6-23-17]

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

[OAR Docket #17-486]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 28. Office of Administrative Hearings: Child Support
340:2-28-57 [NEW]

(Reference WF 17-02)

AUTHORITY:

Director of Human Services; Sections 162 and 237.9a of Title 56 of the Oklahoma Statutes (56 O.S. §§ 162 and 237.9a); and Oklahoma Administrative Code 340:2-28.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

January 6, 2017

COMMENT PERIOD:

February 1, 2017 through March 3, 2017

PUBLIC HEARING:

March 9, 2017

ADOPTION:

March 14, 2017

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

March 16, 2017

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 13, 2017

FINAL ADOPTION:

June 13, 2017

EFFECTIVE:

September 15, 2017

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The proposed rule authorizes certification of administrative orders through electronic or digital means, in addition to physical or handwritten means, and provides that orders bearing electronic or digital signatures by the administrative law judge (ALJ) are deemed certified. The proposed rule provides a formal mechanism by which orders entered by the Office of Administrative Hearings: Child Support may be "certified," and therefore filed in Oklahoma's county district courts and facilitates the registration of those orders for enforcement or modification in other states and foreign countries.

CONTACT PERSON:

Dena Thayer, Programs Administrator, Office of Intergovernmental Relations and Policy, Department of Human Services, PO Box 25352, Oklahoma City, OK 73125, 405-521-4326.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2017:

SUBCHAPTER 28. OFFICE OF ADMINISTRATIVE HEARINGS: CHILD SUPPORT

340:2-28-57. Certification of copies of administrative orders

(a) An administrative order or other document filed within the administrative court record may be certified as a true and correct copy of the original, whether the original is in paper, electronic, or digital format by:

- (1) the physical or electronic application of language to each copy, which states, in effect, that the copy to be certified is a true and correct copy of the original as it appears in the record of the administrative court; and
- (2) an administrative law judge (ALJ) or a clerk of the administrative court completes the certification by means of the respective physical or electronic/digital signature and date; and
- (3) the application of the administrative court seal by the clerk of the administrative court, an ALJ, or other individual as directed by an ALJ.

(b) In the alternative, an administrative order, that bears an ALJ's electronic/digital signature, is deemed certified.

(c) The use of electronic/digital signatures is authorized per Section 237.9a of Title 56 of the Oklahoma Statutes.

[OAR Docket #17-486; filed 6-23-17]

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

[OAR Docket #17-488]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 2. Temporary Assistance for Needy Families (TANF) Work Program

340:10-2-3 through 340:10-2-4 [AMENDED]

Subchapter 3. Conditions of Eligibility - Need

Part 1. Resources

340:10-3-5 through 10-3-6 [AMENDED]

Part 3. Income

340:10-3-32 [AMENDED]

340:10-3-40 [AMENDED]

Part 5. Assistance Payments

340:10-3-57 [AMENDED]

Part 7. Transitional Benefits

340:10-3-75 [AMENDED]

Subchapter 18. Conditions of Eligibility for Support Service Funds for Child Only Cases

340:10-18-1 [AMENDED]

(Reference WFs 16-09 and 17-08)

AUTHORITY:

Director of Human Services; Section 162, 230.52, 230.65, 230.72 and 4001.1 through 4001.5 of Title 56 of the Oklahoma Statutes (56 O.S. §§ 162, 230.52, 230.65, 230.72, and 4001.1 through 4001.5); Part 261.11 and 261.12 of Title 45 of the Code of Federal Regulations; Sections 401 and 408 of the Social Security Act, Sections 529A and 2503 of Title 26 of the United States Code (26 U.S.C. §§ 529A and 2503); and 42 U.S.C. §§ 601 and 608.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

January 6, 2017

COMMENT PERIOD:

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ADOPTION:

March 14, 2017

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

March 16, 2017

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 13, 2017

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June 13, 2017

EFFECTIVE:

September 15, 2017

SUPERSEDED EMERGENCY ACTIONS:

Superseded rules:

Subchapter 3. Conditions of Eligibility - Need

Part 1. Resources

340:10-3-5 through 340:10-3-6 [AMENDED]

Part 3. Income

340:10-3-40 [AMENDED]

(Reference 16-09)

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February 27, 2017

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34 OK Reg 491

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17-265

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The proposed revisions to Chapter 10, Subchapter 2 amend the rules to: (1) remove substance abuse screening information from employability planning and the names of assessment tools; (2) add information regarding the Child Care Subsidy Program; (3) add clarifying and plain language for enhanced understanding; and (4) update terminology.

The proposed revisions to Chapter 10, Subchapter 3 amend the rules to: (1) exclude from income and resource consideration money deposited into or withdrawn from a qualified Achieving a Better Life Experience (ABLE) Program account per state statute and federal regulations; (2) remove outdated information and staff instructions regarding stocks and bonds; (3) remove from 10-3-5 disregarded resources that are duplicated as disregarded income in 340:10-3-40; (4) change self-employment business expense computations; (5) exclude all educational income unless it serves the same purpose as TANF; (6) add information regarding how to verify loans received on a recurrent basis; (7) reorder and clarify information regarding receipt or loss of receipt of a State Supplemental Payment; (8) add information regarding how to apply for SoonerCare (Medicaid) when the TANF benefit closes; (9) remove gender information when considering if someone is acting in the role of a spouse; (10) remove incorrect information regarding income allocation of an alien parent; (11) add rule and legal citations; (12) update, reorder, and clarify information regarding continued medical benefit receipt following a TANF closure due to earnings; (13) remove an outdated form; (14) update the medical application process after continued medical benefits (CMB) end or when an additional member moves into the home during receipt of CMB; (15) add clarifying and plain language for enhanced understanding; and (16) update terminology.

The proposed revisions to Chapter 10, Subchapter 18 amend the rules to: (1) state support service funds are not approved to reimburse an individual for already paid services; and (2) reorder and clarify the use and payment of support service funds for enhanced understanding.

CONTACT PERSON:

Dena Thayer, Programs Administrator, Office of Intergovernmental Relations and Policy, Department of Human Services, PO Box 25352, Oklahoma City, OK 73125, 405-521-4326.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S.,

Permanent Final Adoptions

SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2017:

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

340:10-2-3. Employability planning

(a) **Scope and applicability.** The employability planning process begins at intake and continues as long as there are employment barriers or family circumstances that interfere with the participant obtaining and retaining employment. The worker and the participant initiate Form 08TW002E, TANF Work/Personal Responsibility Agreement. ~~In the development of the~~ While completing Form 08TW002E, the participant provides information regarding his or her work history, education and training, employment interests, child care plan, and transportation and support services needs to help the worker develop an employability plan, the worker takes into consideration the need for English as a second language, basic education, literacy, learning disabilities, counseling or treatment for substance abuse or mental health issues, and crisis intervention for domestic violence that addresses the participant's strengths and employment barriers.

(1) ~~Substance abuse screening is mandatory for every Temporary Assistance for Needy Families (TANF) adult parent or needy caretaker applicant and participant. This includes when the client self declares a substance abuse problem.~~

(2) Literacy screening is mandatory and must be included as a required Temporary Assistance for Needy Families (TANF) Work activity for individuals participants who have not obtained a high school diploma or General Educational Development (GED) high school equivalency certificate and have demonstrated demonstrate a lack of literacy skills.

(2) The participant's identified employment barriers must be addressed on Form 08TW002E. In addition to literacy issues, barriers may include the inability to fluently speak English, learning disabilities, physical or mental health issues, domestic violence issues, lack of transportation, or substance abuse issues.

(b) **Interest and ability assessments.** Assessments are required to determine the participant's skills, abilities, and barriers per Section 261.11 of Title 45 of the Code of Federal Regulations (45 C.F.R. § 261.11). The worker includes completion of required interest and ability assessments as a required work activity on the participant's initial employability plan unless the client has a good cause reason not to participate in TANF Work activities. ~~Assessment tools used are the Washington State Learning Disability Screen, the Test of Adult Basic Education (TABE) locator, the TABE battery, the Career Occupation Preference System (COPS), Key Train, and Career Readiness Certification.~~

(1) The use of ~~these~~ assessments provides the worker, participant, assessment specialist, and/or community partners with:

(A) an indication of ~~possible~~ learning disabilities and vision problems;

(B) a measurement of the participant's skills, abilities, interests, and aptitude; ~~and~~

(C) the participant's current academic achievement level; and

(~~C~~D) meaningful information to create a valid employability plan.

(2) Participants referred for testing are informed how test results are used. Test scores are confidential but may be shared with community partners. To refer the participant for testing, the worker completes and sends Form 08TW003E, Interagency Referral and Information, to the community partner. Participants ~~inferred~~ referred for formal assessments are eligible for participant allowances and child care.

(c) **Employability planning.** The worker and the participant use the information from the assessment and other relevant information to develop a plan for securing employment per 45 C.F.R. § 261.12 and Section 230.52 of Title 56 of the Oklahoma Statutes.

(1) The employability plan:

(A) is a part of the social services plan for the entire family and includes establishing ~~both~~ short and long term goals, including specific occupational goals, activities, and services necessary to achieve the goals; ~~;~~

(B) ~~The employability plan~~ must be realistic and within the participant's ability to achieve; ~~;~~

(~~2~~C) ~~The employability plan~~ may include staffing with other community partners for assignment to specific work activities, collaboration with other agencies for services, such as job placement, training, and education, and the provision of social services; ~~;~~

(D) ~~The employability plan~~ must identify specific needs and activities required to reach the occupational goal and estimated achievement dates; ~~and~~

(E) ~~The employability plan~~ may include more than one activity at a time based on the participant's specific needs and available hours.

(~~3~~2) ~~The worker informs the participant is informed~~ that the employability plan is updated as necessary to account for situational changes.

(3) ~~The worker reviews the employability plan is reviewed~~ with the participant:

(A) ~~and updated~~ at least every six months;

(B) as changes ~~occur~~ are made to the employability plan; and

(C) at the completion of any work activity. ~~If no changes occurred, the worker reviews the employability plan within six months.~~

(4) ~~Participants who are~~ Employment plans for employed participants with income insufficient to close the ~~case~~ TANF benefit must have a plan designed to upgrade employment. These plans must not interfere with current employment.

(d) **Work activities.** Participants are assigned to one or more activities and scheduled the required minimum number of hours. The participant signs Form 08TW002E, when ~~any~~

work activity ~~other than the Work Experience Program or Subsidized Employment Program (SEP) is approved~~ agreed upon and assigned.

- (1) Assignments must be within the scope of the participant's employability plan.
- (2) The assignment must be related to the participant's capability to perform the task on a regular basis.
- (3) The daily commuting time to and from home to the assigned education, employment, or training site is normally less than two hours. Commuting time does not include the time required to transport a child to and from a child care facility. When longer travel time is normal in the community, the round trip commuting time may not exceed the general community standards.
- (4) ~~When the participant needs child care is required it must be of the participant's choosing. It in order to participate in work activities:~~
 - (A) ~~the participant chooses the child care provider;~~
 - (B) ~~child care~~ must be available during the hours the participant is engaged in any work activity, plus any additional commuting time; ~~and~~
 - (C) ~~the participant completes a child care application and must meet child care eligibility rules per Oklahoma Administrative Code (OAC) 340:40 when subsidized child care is needed.~~
- (5) Assignments that are discriminatory in terms of age, sex, race, ~~color, religion, ethnic~~ national origin, or physical or mental disability, and in some cases religion or political beliefs are not permitted.
- (6) The assignment site must not be in violation of established and applicable health and safety standards.
- (7) ~~The worker does not refer a participant is not referred for to~~ a work activity unless supportive services necessary for participation are available. The cessation or withdrawal of such services constitutes good cause for refusal to participate.
- (8) When the agreed upon employability plan requires hours in excess of the minimum requirement, the participant must participate the agreed upon number of hours.

340:10-2-4. Employment

(a) **Applicability.** Temporary Assistance for Needy Families (TANF) Work activities are designed to ~~assist~~ help the participant in ~~obtaining~~ obtain employment to achieve economic self-sufficiency. Work allows participants to enhance their self-esteem and to become more independent. Every effort is made to assist participants in securing jobs that provide financial security and opportunities for advancement. The appropriate employment criteria for subsidized and unsubsidized employment are included in (1) through (5) of this subsection.

- (1) Appropriate employment may be temporary, permanent, full-time, part-time, or seasonal work, as long as the daily and weekly hours of employment do not exceed those customary to the occupation.
- (2) The wage must meet or exceed the federal or state minimum wage laws or the prevailing rate for similar employment, whichever is applicable. The state law applies when federal law does not cover the job.

- (3) A participant is not required to accept employment when the position offered is vacant due to a strike, lockout, or other bona fide labor dispute.
- (4) A participant is not required to work for an employer when ~~this~~ it is contrary to the conditions of membership in the union governing that occupation. Employment not governed by the rules of the union to which the participant belongs may be appropriate.
- (5) A participant is not required to accept employment that results in the net loss of income.

(b) **Unsubsidized employment.** The State Work Incentive Program and any employment for which the employer does not receive reimbursement for any portion of the wages paid are examples of unsubsidized employment.

(1) **State Work Incentive Program.** The State Work Incentive Program is designed to assist in employing TANF participants into entry level positions in all branches of state government. Oklahoma Department of Human Services (DHS), in cooperation with other state agencies and the Office of Management and Enterprise Services (~~OMES~~) Human Capital Management ~~Division~~, coordinates job placements for TANF participants referred ~~for to~~ the program ~~by on~~ Form 08TW023E, State Work Incentive Referral.

- (A) Employment of eligible participants may be considered for positions of unclassified status for a two-year period in a full-time or part-time capacity. These positions are not included within any limitation on full-time equivalent employee positions for any agency.
- (B) Participants hired under this program are eligible for leave and other benefits available to other state employees, subject to other eligibility requirements, and may be reassigned or promoted while ~~they are~~ in the program.
- (C) Participants hired are exempt from probationary hiring procedures. They may be considered for conversion to ~~the~~ permanent classified status after two years of continuous program participation.
- (D) Requirements for placing employees in permanent status include:

- (i) completing satisfactory performance ratings conducted during employment; and
- (ii) having possession of the minimum requirements stated in the job specifications.

(2) **Other unsubsidized employment.** Unsubsidized employment includes any employment in which a participant is hired by a private or public employer and there is no reimbursement of any portion of the wages paid to the recipient.

(c) **Subsidized employment.** The Subsidized Employment Program (SEP), on-the-job training (OJT), and Supported Transitional Employment Program (STEP) are examples of subsidized employment. The employment criteria in (a) of this Section apply.

(1) **SEP.** SEP is a subsidized employment program through which DHS reimburses employers hiring TANF participants into full-time employment for a portion of

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their wages for up to four months. Public agencies, non-profit private agencies, and private employers are eligible to participate. When a state agency expresses an interest in participating in the program, DHS staff informs agency personnel that the subsidized employment reimbursement must not be used by the state agency to claim matching federal funds. When, for any reason in any given month, a SEP participant is paid less than the amount of his or her cash assistance at the time of entry into the program, the SEP participant receives a supplemental TANF benefit. SEP participants are entitled to all benefits the employer makes available to other employees. Participants are assigned based on their employability plan and the availability of appropriate and willing employers.

(A) **Participant requirements.** TANF participants are:

- (i) included in the cash assistance unit; and
- (ii) available for immediate employment.

(B) **Position requirements.** Position requirements must include:

- (i) full-time employment for a minimum of 35 hours per week;
- (iii) the same wages, benefits, and working conditions as provided to other employees performing a substantially equivalent job;
- (iv) employer agreement to conform to the Equal Employment Opportunity Commission and fair employment practices, such as nondiscrimination regarding age, race, sex, color, national origin, ~~or~~ disability, and in some cases religion or political belief; and
- (v) employer assurance the position:
 - (I) does not displace the employer's current employees, including any involved in a strike or lockout;
 - (II) does not involve commission sales when at least \$10 per hour is not guaranteed; or
 - (III) is not for casual, intermittent, or seasonal labor.

(C) **Recruitment of employers.** Designated county staff or the career development specialist (CDS) recruits employers interested in SEP. The employer is asked to notify designated county staff or the CDS of potential positions with job specifications and qualifications in order to match the employer with an appropriate TANF participant referral. Designated county staff or the CDS give Form 08TW011E, Subsidized Employment Program (SEP) Referral to the TANF participant to take to the employer specified on the form.

- (i) When explaining SEP to employers, designated county staff or the CDS emphasizes that employers are expected to retain the SEP participant in full-time employment unless there is good cause for the dismissal. Employers who fail to continue the successful SEP participant's employment without good cause are not granted

subsequent contracts. Good cause reasons for dismissal ~~are~~ occur when:

- (I) ~~there is a lay-off due to economic reasons which result that results~~ in a reduction-in-force;
- (II) the employee is frequently absent from work or engages in disruptive or inappropriate behavior; or
- (III) the employee is unable to perform at an acceptable skill level.

(ii) Before designated county staff or the CDS writes new or additional contracts with an employer, SEP employees or other employees in lay-off status must be recalled.

(iii) Designated county staff or the CDS has the responsibility for ensuring the employer is complying with the contract.

(D) **SEP placements.** Designated county staff or the CDS arranges interviews between participants and potential employers. SEP participants may begin employment any time during the month. The employer is informed that reimbursement begins after the participant ~~has completed~~ completes the first 30-calendar days of employment.

(i) Following the employer's agreement to participate and selection of a TANF participant, designated county staff or the CDS negotiates the contract, Form 08TW017E, Subsidized Employment Program (SEP) Contract, with the employer. Negotiation includes the beginning date of employment, the employee's salary ~~the employee will be paid~~, and the employee's planned number of employment hours per week ~~the participant will be employed~~.

(ii) Upon receipt of the contract, designated county staff or the CDS reviews it for completeness and, when approved, signs and dates the contract. Designated county staff or the CDS delivers ~~to the employer~~ the employer's copy of the contract and Form 08TW018E, Subsidized Employment Program (SEP) Invoice, for requesting reimbursement to the employer.

(iii) Designated county staff or the CDS contacts the participant to complete and sign Form 08TW006E, Subsidized Employment Program (SEP) Temporary Assistance for Needy Families (TANF) Participant Agreement.

(iv) When a contract is not approved, a letter is mailed by the designated county staff or the CDS to the employer explaining the reason for the disapproval. Designated county staff or the CDS notifies the participant by ~~either telephone~~ phone or letter that the contract was not approved.

(E) **Program procedures.** The procedures for programs listed in (i) through (iv) of this subparagraph are used.

(i) **TANF cash assistance.** Under SEP, eligibility for TANF cash assistance is frozen. During

the ~~period of participation period~~, the TANF assistance unit cannot be determined ineligible.

(ii) **Medical benefits.** SEP participants whose TANF cash assistance is frozen, continue to be eligible for SoonerCare (Medicaid) benefits unless found ineligible for a reason other than earned income.

(iii) **Food benefits.** SEP participants whose TANF cash assistance is frozen and who are receiving Simplified Supplemental Nutrition Assistance Program (SSNAP) benefits per Oklahoma Administrative Code (OAC) 340:50-11-20 continue to receive SSNAP benefits without consideration of the SEP income during the ~~period of participation period~~ as long as household composition remains the same. Once the SEP participation period ends and the TANF benefit closes, the household may be eligible for transitional food benefits per ~~Oklahoma Administrative Code (OAC) 340:50-11-27~~.

(iv) **Child care.** Child care plans must be explored with each SEP participant. During the SEP participation period while the TANF cash assistance is frozen, the child remains predetermined eligible for child care subsidy benefits with a zero family share co-payment per OAC 340:40-7-1. Once the SEP participation period ends and the TANF benefit closes, the worker considers the participant's earnings are considered in determining and computes the family share copayment per DHS Appendix C-4, Child Care Eligibility/~~Co-payment~~Copayment Chart.

(F) **Payment of employers.** Employers are eligible for:

(i) ~~One~~one hundred percent reimbursement of the employee's gross wages, capped at a maximum of 40 hours per week at \$12 per hour, for the first 30-calendar days of employment.

(I) Employers are eligible to apply for reimbursement 30-calendar days following the date of hire.

(II) Employers file for reimbursement by submitting Form 08TW018E, with proof of the participant's earnings for the last six months attached, directly to Adult and Family Services (AFS) TANF staff.

(III) When a business changes ownership, the SEP contract transfers with the business. When change of ownership occurs mid-month, the original owner maintains the right to file a claim for reimbursement for the transfer month. The new owner may claim for subsidized wages for the remaining months of the original SEP agreement;

(ii) ~~Fifty~~fifty percent reimbursement of the employee's gross wages, for the following three months, provided the employee remains employed a minimum of 35 hours per week and earning at least \$10 per hour. The reimbursement is capped at

a maximum of 40 hours per week at \$12 per hour; and

(iii) a bonus equal to 100 percent of the unsubsidized portion of wages up to 40 hours per week for the four month subsidized period, provided the SEP employee:

(I) remains employed a minimum of 35 hours per week;

(II) earns a minimum of \$10 per hour; and

(III) is retained for a minimum period of six months after the subsidized agreement ends.

(G) **Supplemental payments to SEP participants.** AFS automatically issues supplemental payments for months in which income shown on Form 08TW018E is less than the amount of the SEP participant's cash assistance prior to entering the program.

(H) **SEP contract period completions.** At the end of the fourth month of subsidized employment, the worker reviews the participant's continued TANF eligibility is reviewed for continued eligibility.

(I) **SEP contract terminations.** ~~At any time~~When the SEP placement is ~~terminated~~ends during the four months of subsidized employment, the worker reviews the participant's continued TANF eligibility is reviewed for continued eligibility.

(2) **OJT.** OJT is subsidized employment in which a ~~participant is hired by a private or public employer~~ hires the participant and, while engaged in productive work, receives training that provides knowledge or skills essential to the full performance of the job. During the OJT period, the employer receives reimbursement for a portion of the wages paid to the employee.

(A) Participants who ~~have~~ successfully completed the Work Experience Program, have a recent history of employment, or ~~who have been through~~ complete a job readiness activity are the primary candidates for OJT referral.

(B) Income from OJT is considered as any other earned income.

(C) ~~Transitional~~The worker explains the availability of transitional child care per OAC 340:40-7-1 and continued medical benefits ~~are explained per~~ OAC 340:10-3-75 to the participant at the time of entry into OJT.

(3) **STEP.** STEP is a subsidized employment program ~~that provides~~providing comprehensive support services leading to permanent employment placements for TANF participants. These services are contracted with specified vendors who provide temporary, paid work experience to program participants in a supportive work environment. When the participant is accepted into the program, his or her TANF benefit remains active with no cash benefit issued. When eligible, the participant continues to receive other program benefits.

(d) **Work Opportunity Tax Credit (WOTC).** The WOTC law permits for-profit employers to take a federal income tax credit ~~on federal income tax~~ when workers from certain target

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groups are hired. Workers in these target groups have faced significant barriers to employment. The WOTC is equal to between 25 percent and 40 percent of the first year wages, up to \$9000, depending on the number of hours the employee works, and the applicable target group for ~~that the~~ person. The main objective of this program is to enable ~~the~~ targeted employees to gradually move from economic dependency into self-sufficiency as he or she earns a steady income and become contributing taxpayers, while the participating employers are compensated by reducing their federal income tax liability.

(1) WOTC is available to employers for workers hired from targeted groups. The targeted groups are:

(A) TANF recipients who have received assistance for nine months out of the last 18 months;

(B) qualified veterans. Qualified veterans are persons who ~~have~~ received food benefits for at least three consecutive months within the last 15 months preceding the hire date of hire;

(C) qualified ex-felons. Qualified ex-felons are persons who were convicted of a felony and within the last year were either convicted or released from prison;

(D) designated community residents. Designated community residents are persons, who ~~have attained~~ are 18 years of age, but not ~~yet~~ 40 years of age, on the hiring date and ~~his or her~~ whose principal place of residence is within an Empowerment Zone, Enterprise Community, or a Rural Renewal County, and for ~~persons~~ those who began work ~~for an employer~~ after May 25, 2007. This High-Risk Youth group was renamed "Designated Community Resident" and expanded to include residents of Rural Renewal Counties;

(E) vocational rehabilitation recipients. Vocational rehabilitation recipients are persons with a disability who received or are receiving vocational rehabilitation from a rehabilitation agency approved by the ~~State~~ state or Department of Veterans Affairs;

(F) qualified summer youth employees. Qualified summer youth employees are persons at least 16 years of age, but not 18 years of age, on the hiring date and ~~who~~ have a principal residence in an Empowerment Zone, Enterprise Community, or Rural Renewal County hired between May 1 and September 15;

(G) qualified food benefit recipients. Qualified food benefit recipients are persons, who are at least 18 years of age, but ~~under~~ not 40 years of age, who are:

(i) members of a household that received food benefits for the last six-consecutive months prior to their hiring date; or

(ii) able-bodied adults without dependents no longer eligible for benefits who reside with a household currently receiving food benefits or a household that received food benefits for at least three months out of the last five consecutive months, prior to the hiring date;

(H) qualified recipients of Supplemental Security Income (SSI). Qualified recipients of SSI are persons

who received SSI for any month during the 60-calendar days before the hire date of hire;

(I) long-term TANF recipients. Long-term TANF recipients are persons certified by a designated local agency as ~~being~~ members of families who received TANF payments for:

(i) at least 18 consecutive months ending on the hiring date;

(ii) a total of at least 18 months, whether consecutive or not, after August 5, 1997, ~~if the persons were~~ when hired within two years after the date the 18 month total is reached;

(J) Hurricane Katrina employees. Hurricane Katrina employees do not require certification;

(K) unemployed veterans. Unemployed veterans are persons hired after 2008 and before 2011 who:

(i) were discharged or released from active duty in the United States (U.S.) Armed Forces at any time during the five-year period ending on the hiring date; and

(ii) received unemployment compensation under ~~state or federal or state~~ law for at least four weeks during the ~~one~~ year period ending on the hiring date; and

(L) disconnected youth. Disconnected youth are persons ~~who are~~ certified as:

(i) having attained 16 years of age, but not 25 years of age, on the hiring date;

(ii) not regularly attending any secondary, technical, or post-secondary school during the six month period preceding the hiring date;

(iii) not regularly employed during the six month period preceding the hiring date; and

(iv) not readily employable by reason of lacking a sufficient number of basic skills.

(2) Through an agreement with the Oklahoma Employment Security Commission, DHS issues WOTC conditional certification forms for DHS recipients.

(3) ~~United States~~ (U.S.) Department of Labor Form ETA-9062, Conditional Certification Work Opportunity Tax ~~Credits~~ Credit, and a letter from the worker stating the number of months the participant received DHS benefits is given to the participant to present to the employer, on or before, the first day of employment. An explanation is given to the participant about the purpose of the form and how the tax credit may help the participant get a job.

(e) **Work Experience Program (WEP).** The purpose of WEP is to provide job skills and work enhancement to TANF participants enabling them to move toward self-sufficiency and obtain unsubsidized employment following completion of the placement.

(1) **Benefits.** Program benefits for participants include an opportunity to establish a work history and earn a recommendation from an employer. Participants also learn to balance the demands of home and work, gain confidence by performing in a job setting, enhance current job skills, learn marketable skills on-the-job, and determine interest and aptitude for a particular type of work by doing the job.

(2) **WEP assignments.** WEP assignments are approved for an initial period of 90_ calendar days.

(A) No salary is paid.

(B) With respect to injuries incurred during WEP working hours, federal law requires medical coverage be offered under either state workers' compensation law or by DHS. Oklahoma workers' compensation law does not cover WEP participants. Medical coverage is provided by the SoonerCare (Medicaid) Program.

(3) **WEP referrals.** Participants are referred to WEP slots based on ~~their~~the employability plan. The worker coordinates assignment to a WEP position with the participant. Based on the employability plan, the worker:

(A) determines which facility best meets the participant's needs;

(B) arranges an interview between the facility and the participant; and

(C) notifies the participant of the place, time, and interviewer's name.

(4) **WEP facilities.** Facilities selected for WEP placements must be capable of providing employment and have an apparent intent to hire, or be able to provide quality job skills enhancement. WEP facilities are solicited by designated county staff, the CDS, or a contracted entity who ~~has~~ agreed to assist with job development and placement, including WEP. Local job market conditions, opportunities for employment following completion of WEP participation, as well as the ability of the facility to provide the necessary supervision and skills enhancement are criteria used when soliciting a facility.

(A) WEP slots are developed to meet participant employment needs as determined by the employability plan. When a facility agrees to participate in WEP, the facility representative is requested to provide:

(i) a written description of the type of activities the participant will be involved in;

(ii) the number of participants the facility can accept;

(iii) the hours of participation; and

(iv) any special requirements, such as uniforms or special equipment.

(B) There are two types of WEP facilities, WEP Non-profit (WEP-NP) and WEP-For-Profit (WEP-FP).

(i) WEP-NP placement is approved for public and private non-profit organizations or businesses. When a participant requires additional skills enhancement, the worker may approve a 60-calendar day extension. Extensions are not granted when the primary purpose is to provide additional help to the facility. The criteria listed in (I) through (VII) of this unit are used as a guide in determining the appropriateness of requesting an extension beyond the initial three-month period.

(I) The participant needs additional time to acquire skills to meet minimum hiring requirements.

(II) The participant demonstrates a willingness to learn, but needs additional time to develop new skills, to ~~be competitive~~compete in the labor market.

(III) The facility ~~has agreed~~agrees to hire the participant, but ~~will~~does not have funds available or a job opening until a specific date.

(IV) The facility has an opening in a different area from where the participant was working and ~~has agreed~~agrees to hire the participant when additional time is granted for additional development of job skills.

(V) The participant showed improvement in all areas, but needs additional socialization skills and improved behavior patterns in a work setting.

(VI) The participant missed more than two weeks due to illness or the illness of a household member.

(VII) There are extenuating circumstances that prevented the participant from receiving full benefit of the job skills enhancement.

(ii) WEP-FP is approved for businesses or entities that operate for profit. Only one WEP-FP placement is allowed per 25 full-time employees in a for-profit business or entity. The criteria in (I) through (II) of this unit must be in effect prior to a WEP-FP placement.

(I) The placement matches the participant's employability plan and the career path chosen by the participant.

(II) The employer committed to hire the participant, on or before, the completion of the three-month placement.

(5) **WEP procedures.** Upon ~~approval~~by the county director, designated county staff, or the CDS approval, the worker contacts the WEP facility to complete Form 08TW015E, Work Experience Program - Non-profit Training Agreement, or Form 08TW115E, Work Experience Program - For-Profit Training Agreement.

(A) The worker instructs the facility representative or supervisor regarding on the purpose and use of Form 08TW013E, Time and Progress Report.

(B) It is the participant's responsibility to complete Form 08TW013E and submit it to the worker by the day of the month shown on the form.

(C) Approved WEP slots not utilized within a six-month period are reviewed for appropriateness. When the position is no longer feasible, designated county staff or the CDS sends a letter to the facility stating the WEP slot is no longer active and may be re-evaluated at the facility's request.

(6) **Non-cooperation by WEP facility.** When the worker obtains information the facility is violating the terms and conditions of Forms 08TW015E and/or 08TW115E, or participants are treated unfairly, the county director is informed immediately. The nature of the allegations guides the necessary action that may include:

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- (A) suspension of subsequent assignments at the facility;
 - (B) immediate removal of current participants; or
 - (C) termination of the agreement.
- (7) **Notification to participant and facility.** Ten calendar days prior to the anticipated WEP completion date, or at any time the participant becomes ineligible for WEP, the worker notifies the participant by letter or ~~telephone call~~. The worker notifies the facility by letter or ~~by telephone call~~ five calendar days prior to the termination.
- (8) **Changes in placements and subsequent placements.** When the facility, worker, and participant determine placement in a different facility is more beneficial, the worker locates a new facility and arranges an interview for the participant. When the participant fails to secure employment following successful completion of WEP, a conference is held with the participant, worker, and supervisor to determine ~~whether~~ if a second WEP placement might be beneficial. The worker reviews the employability plan prior to allowing a participant to re-enter WEP. Consideration is given to reassignment to job search or another appropriate work activity. In making this decision, consideration must be given to the:
- (A) participant's ability to secure and maintain full-time employment;
 - (B) opportunities for employment in the new field and in the area in which the participant received job skills enhancement;
 - (C) participant's efforts to secure employment; and
 - (D) length of time between assignments.
- (f) **Community Partnership (CP).** CP is unpaid employment in which TANF recipients perform work for the direct benefit of the community. A CP may be approved for both public and non-profit agencies and organizations. A CP assignment is limited to projects that serve a useful community purpose and are designed to improve the employability of recipients not otherwise able to obtain employment. All CPs must be approved by AFS TANF staff. Placements in CP require daily supervision. ~~Prior~~ A recipient's training, experience, and skills ~~of a recipient~~ are considered in making an appropriate CP assignment.
- (1) **Benefits.** Participant program benefits include an opportunity to establish the basic skills necessary to obtain employment, such as daily attendance, appropriate attire, and proper behavior in a work environment. Participants also learn to balance the demands of home and work and gain confidence by performing in a job setting.
 - (2) **CP facilities.** CP facilities are solicited by designated county staff or the CDS. The ability of the CP to provide the necessary supervision and basic skills training are criteria used when soliciting a partnership.
 - (A) Training slots are developed to meet the participant's employment needs as determined by the employability plan.
 - (B) The worker submits Form 08TW019E, Community Partnership (CP) Approval Request, to AFS TANF staff for training facility approval.
 - (C) When a CP agrees to participate, the facility representative is requested to provide:
 - (i) a written description of the type of activities in which the participants will be involved;
 - (ii) the number of participants the CP can accept;
 - (iii) the hours of participation; and
 - (iv) any special requirements, such as uniforms or special equipment.
 - (D) No salary is paid.
 - (E) When injuries occur during working hours in CP, federal law requires medical coverage be offered under either state workers' compensation law or by DHS. Oklahoma workers' compensation law does not cover CP participants. Medical coverage is provided by the SoonerCare (Medicaid) Program.
- (3) **CP assignments.** CP assignments are approved for an initial period of no more than 60-calendar days. When a participant requires additional training, the worker may approve a 30-calendar day extension. The criteria listed in (A) through (F) of this paragraph are used as a guide when determining the appropriateness of an extension request beyond the initial 60-calendar day period, but are not limited to:
- (A) the participant needs additional time ~~for to acquire~~ skills to be acquired to meet minimum hiring requirements;
 - (B) the participant demonstrates a willingness to learn, but needs additional time to develop basic job skills necessary to ~~be competitive~~ compete in the labor market;
 - (C) the CP has an opening in a different area from the one in which the participant was trained;
 - (D) the participant ~~has shown~~ shows improvement in all areas, but needs additional socialization skills and improved behavior patterns in a work setting;
 - (E) the participant missed more than two weeks of training due to illness or the illness of a household member; or
 - (F) extenuating circumstances ~~that~~ prevented the participant from receiving the full benefit of the training.
- (4) **CP referrals.** Participants are referred to CP slots based on their employability plan and the availability of CP positions. Assignment to a CP position is coordinated between the participant, worker, and the CP. Based on the employability plan, the participant and worker determine:
- (A) which CP best meets the participant's needs; and
 - (B) the location, date, and time to report to the CP.
- (5) **Procedures.** Upon approval by AFS TANF staff, the worker contacts the CP facility to complete Form 08TW020E, Community Partnership (CP) Agreement.
 - (A) The worker instructs the facility representative or the training supervisor regarding the purpose and use of Form 08TW013E.

(B) It is the participant's responsibility to complete Form 08TW013E and submit it to the worker by the day of the month shown on the form.

(6) **Non-cooperation by CP.** When the worker obtains information that the CP is violating the terms and conditions of Form 08TW020E or participants are treated unfairly, the worker informs the county director, designated county staff, or the CDS immediately. The nature of the allegations guides the necessary action that may include:

- (A) suspension of subsequent CP assignments;
- (B) immediate removal of the current participants; or
- (C) termination of the agreement.

(7) **Changes in placements and subsequent placements.** Following successful completion of CP training, the worker and participant meet to determine whether a second CP placement or other work activity might be beneficial. The worker reviews the employability plan prior to allowing a participant to enter the next work activity. When making this decision, consideration is given to:

- (A) the participant's ability to secure and maintain employment;
- (B) whether the participant needs additional training or placement opportunities to enhance employment skills; or
- (C) whether the participant needs any educational opportunities to enhance employment skills.

SUBCHAPTER 3. CONDITIONS OF ELIGIBILITY - NEED

PART 1. RESOURCES

340:10-3-5. Personal property

(a) This subsection describes personal property and how it is considered in determining eligibility for Temporary Assistance for Needy Families (TANF).

- (1) **Household goods and equipment.** Items essential to day-to-day living, such as clothing, furniture, and other similarly essential items of limited value, are excluded as resources.
- (2) **Livestock and equipment used in a business enterprise.** A person's equity in livestock, equipment, or inventory of merchandise in a business enterprise is considered as a resource only ~~if~~when the person is not actively engaged in the business enterprise. Equity is not counted ~~if~~when the person actively participates in the business or is only temporarily inactive, for example, the person is incapacitated and can reasonably expect and has plans to resume the business enterprise. Equity is established on the basis of oral or written information which the person has at hand and counsel with persons who have specialized knowledge about the particular resources.

(3) **Livestock and home produce used for home consumption.** Any livestock or produce grown and used by the assistance unit for home consumption is exempt.

(4) **Cash savings and bank accounts.** ~~Money on hand or in a savings account is considered as a resource. The person's statement that he or she has no money on hand or on deposit is sufficient unless there are indications to the contrary.~~ Available cash and money in a financial institution is considered as a resource. The person's statement that he or she does not have cash on hand or in a financial institution is sufficient unless there are indications to the contrary. When there is information to the contrary or when the person does not have records to verify the amount on deposit, verification is obtained from bank records. Section 167.1 of Title 56 of the Oklahoma Statutes (O.S. 56 § 167.1) provides that financial records obtained for the purpose of establishing eligibility for assistance or services must be furnished without cost to the person or the Oklahoma Department of Human Services (~~OKDHS~~)(DHS).

(A) Checking accounts may or may not represent savings. Current bank statements are evaluated with the person to establish what, if any, portion of the account represents savings. Any income deposited during the current month is not considered.

(B) ~~Accounts owned jointly.~~ Jointly-owned accounts are considered available to the person unless it can be established what part of the account ~~actually~~ belongs to each of the owners, the money is separated, and the joint account is dissolved.

(C) Per 56 O.S. § 4001.1, money and assets deposited into or withdrawn from an individual savings or trust account owned by the designated beneficiary of the account and established to pay qualified disability expenses are excluded under the Oklahoma Achieving a Better Life Experience (ABLE) Program or an ABLE program in any other state for the purpose of determining eligibility to receive, or the amount of, any assistance or benefits from local or state means-tested programs. A person may have only one ABLE account. The client must provide documents to verify that the account meets exemption criteria before the funds are exempted from resource and income consideration. When verified, the exclusion applies to money:

(i) deposited in the account up to the annual federal gift tax exclusion per Section 2503(b) of Title 26 of the United States Code. Any money deposited in the account in a calendar year that is in excess of the annual federal gift tax exclusion is considered a countable resource and income in the month deposited; or

(ii) withdrawn to pay qualified disability expenses. Money withdrawn for reasons other than to pay qualified disability expenses is considered as income for the month of withdrawal.

(5) **Insurance policies and prepaid funeral benefits.**

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(A) **Life insurance policies.** The cash surrender value (CSV) less any loans or unpaid interest of life insurance policies owned by members included in the TANF cash assistance is counted as a resource. Dividends ~~which that~~ accrue and remain with the insurance company increase the amount of the resource. Dividends paid to a person are considered as income. Assignment of the face value of a life insurance policy to fund a prepaid burial contract is not counted as a resource. In this instance, the amount of the face value of the life insurance is evaluated according to (C) or, ~~if when~~ applicable, (D) of this paragraph.

(B) **Burial spaces.** The value of a burial space for each family member whose needs are included in the cash assistance or whose income and resources are considered when computing the cash assistance is excluded from resources.

(C) **Burial funds.** Revocable burial funds not in excess of \$1500 for each person included in the assistance unit are excluded as a resource ~~if when~~ the funds are specifically set aside for the burial arrangements of the person. Any amount in excess of \$1500 for each person included in the assistance unit is considered as a resource. Burial policies ~~which that~~ require premium payments and do not accumulate cash value are not considered prepaid burial policies.

(i) ~~Burial~~The term burial funds means a prepaid ~~funeral~~burial contract or ~~burial~~ trust with a funeral home or burial association ~~which that~~ is set aside to pay for the person's burial expenses.

(ii) The face value of a life insurance policy, when properly assigned by the owner to a funeral home or burial association, may be used for purchasing burial funds as described in (i) of this subparagraph.

(iii) The burial fund exclusion must be reduced by the face value of life insurance policies owned by the person and by the amounts in an irrevocable trust or other irrevocable arrangement.

(iv) Interest earned or appreciation on the value of any excluded burial funds is excluded ~~if when~~ left to accumulate and become a part of the burial fund.

(v) ~~If When~~ the person did not purchase the prepaid burial contract or trust, even ~~if when~~ the person's money was used for the purchase, the person is not the owner and the prepaid burial funds ~~cannot be~~ not considered a resource to the person.

(D) **Irrevocable burial contract.** Oklahoma law provides that a purchaser of a prepaid ~~funeral~~burial contract may elect to make the contract irrevocable. Irrevocability becomes effective 30-calendar days after the contract is signed.

(i) ~~If When~~ the irrevocable election was made prior to July 1, 1986, and the person received assistance on July 1, 1986, the full amount of the irrevocable contract is excluded as a countable

resource. This exclusion applies only ~~if when~~ the person does not add to the amount of the contract. Interest accrued on the contract is not considered as added. Any break in assistance requires that the contract be evaluated at the time of reapplication.

(ii) ~~If When~~ the effective date for the irrevocable election or application for assistance is July 1, 1986, or later, the amount in any combination of an irrevocable contract, revocable prepaid burial contract or trust, and the cash value of unassigned life insurance policies cannot exceed \$10,000. When the principal amount exceeds \$10,000, the person is ineligible for assistance. Accrued interest is not counted as a part of the \$10,000 limit, regardless of when it is accrued.

(iii) For an irrevocable contract to be valid, the election to make it irrevocable must be made by the purchaser or the purchaser's guardian or a person with power of attorney for the purchaser.

(E) **Medical insurance.** When a person has medical insurance ~~whether directly purchased or available in conjunction with employment, the available benefits are applied toward the payments made to the medical expense for which the benefits are paid. If an assignment of the insurance is not made to the vendor and payment is made~~provider or directly to the person, and the payment must be ~~payments are applied to the cost of medical services, they are excluded from resource consideration.~~ Any amount remaining after payment for medical services is considered a resource.

(6) **Stocks, bonds, mortgages, and notes.** The person's equity in stocks, ~~and~~ bonds, including United States Savings Bonds, Series A through EE, ~~is~~mortgages, and notes are considered ~~a resource~~ as resources.

(A) The current market value less encumbrances is the equity of stocks or bonds.

(B) ~~Except for a bond which has been held beyond the maturity date, the current value is the redemption value listed in the table on the back of the bond for the anniversary date most recently reached.~~

~~(C) If the bond has been held beyond maturity date, it has continued to draw interest.~~

~~(D) The amount which that can be realized from notes, mortgages, and similar instruments, if when offered for immediate sale, constitutes a resource.~~

(7) **Non-negotiable resources.** Installment payments received on a note, mortgage, and similar instruments, for which a buyer cannot be found, are considered as monthly income.

(8) ~~Vehicles, pickups, and trucks.~~ For each ~~auto~~mobile, pickup, truck, motorcycle, or other vehicle, the market value of each year's make and model is established on the basis of the average trade-in value listed in the National Automobile Dealers Association (NADA) books, other blue books, or one of the Internet Web sites that provide data on the market value of used vehicles at no cost to the user. ~~In the event~~ When the person ~~and worker~~

~~cannot agree on the value of~~states the vehicle is worth less than the average trade-in value, the person secures written appraisals ~~by~~from two persons familiar with current values. ~~The appraisals must state the appraised value of the vehicle and why it is worth less than the average trade-in value.~~When there is a substantial unexplained ~~divergence~~difference between ~~these~~the appraisals or between the blue book value and one or more of ~~these~~the appraisals, the worker and the person jointly arrange for a third person familiar with current values and acceptable to both, to establish the true market value ~~to be established by an appraisal made by a third person who is familiar with current values and acceptable to both the person and worker~~of the vehicle.

(A) **Exempt vehicles.** ~~One automobile, pickup, truck, motorcycle, or other~~The equity value of up to \$5,000 in one vehicle used for the primary source of transportation for each assistance unit not to exceed an equity of \$5,000 is ~~exempted~~exempt from resource consideration. The amount of the equity in excess of \$5,000 is considered against the resource limit.

(B) **Other vehicles and personal property.** The equity in other automobiles, pickups, and trucks as well as ~~other~~vehicles and personal property including boats, travel trailers, motorcycles, motor homes, and campers, and similar items is considered a resource ~~against the resource limit.~~ The current market value less encumbrances ~~on the vehicle~~ is the equity. Only encumbrances that ~~can be~~are verified are considered in computing equity.

(9) **Lump sum payments.** A lump sum settlement ~~which~~that compensates for the loss of a resource, such as an automobile, may be disregarded in the amount used to replace the loss.

(A) The person is given a reasonable amount of time to replace the loss not to exceed 30-calendar days. Extension beyond 30-calendar days may be justified in special instances when completion of the transaction is beyond the person's control.

(B) Any amount remaining after the replacement of the loss is considered as income.

(C) Income tax refunds, except for the portion that ~~represents~~representing an earned income tax credit (EITC), must be treated as a resource and considered available to the person upon receipt. Per the Tax Relief, Unemployment Insurance Authorization, and Job Creation Act of 2010, {Public Law 111-312}, EITC payments received after December 31, 2009, as a result of filing a federal or state tax return are exempt as a resource for 12 months following receipt.

(D) Retirement benefits received as a lump sum payment at termination of employment are considered a resource. These benefits are not treated as income because the retirement contribution was regarded as income in the month earned and withheld by the employer.

(10) **Individual Development Accounts (IDAs).** IDAs are dedicated savings accounts that are used for a qualified

purpose, such as purchasing a first home, education or job training expenses, capitalizing a small business, or other purposes designated by the IDA administrative entity.

(A) IDAs are managed by community organizations and accounts are held at local financial institutions.

(B) Cash deposits and interest accrued from the deposits made by a person in an IDA up to \$2,000 are not considered as income or resources in determining TANF eligibility.

(C) The account deposits must be made from earned income, EITCs, or tax refunds.

(11) **Saving For Education, Entrepreneurship, and Downpayment (SEED) Initiative accounts.** SEED accounts are dedicated savings accounts for persons age 13 through 18 years of age that are used for a qualified purpose, such as purchasing a first home, education or job training expenses, capitalizing a small business, or other purposes designated by the administrative entity. SEED accounts are managed by community organizations and accounts are held at local financial institutions. Cash deposits and interest accrued from the deposits made by a person in a SEED account up to \$2,000 are not considered as income or resources in determining TANF eligibility.

(b) This subsection describes resources disregarded in determining need. Disregarded resources are:

(1) ~~food benefit allotments under the Food and Nutrition Act of 2008~~income disregarded per Oklahoma Administrative Code 340:10-3-40;

(2) ~~any payments received under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;~~

(3) ~~education grants, including work study, scholarships, and similar grants, if receipt is contingent upon the student regularly attending school. The student's classification, graduate or undergraduate, is not a factor;~~

(4) ~~loans, regardless of use, if a bona fide debt or obligation to pay can be established. Criteria to establish a loan as bona fide includes an acknowledgment of obligation to repay or evidence that the loan was from an individual or financial institution in the loan business. The borrower's acknowledgment of obligation to repay, with or without interest, is considered to indicate that the loan is bona fide. If the loan agreement is not written, Form 08AD103E, Loan Verification, is completed by the borrower attesting the loan is bona fide and signed by the lender verifying the date and amount of loan;~~

(5) ~~Indian payments, including judgment funds or funds held in trust, distributed per capita by the Secretary of the Interior, Bureau of Indian Affairs (BIA) or distributed per capita by the tribe subject to approval by the Secretary of the Interior. For purposes of this paragraph, per capita is defined as each tribal member receiving an equal amount. Any interest or investment income accrued on such funds while held in trust or any purchases made with judgment funds, trust funds, interest, or investment income accrued on such funds is disregarded. Any income from mineral leases or tribal~~

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business investments is disregarded as long as the payments are paid per capita. Any interest or income derived from the principal or produced by purchases made with the funds after distribution is considered as any other income;

(6) special allowances for school expenses made available upon petition, in writing, from funds held in trust for the student;

(7) trusts of a child(ren) included in a TANF benefit if it is determined by the worker when the funds are to be used for educational purposes for the child(ren). Any court-established trust must be examined to determine if the court has restricted the trust for other purposes. The worker/client must verify at application and re-termination/renewal if funds have been/were withdrawn. Any funds withdrawn/Withdrawn funds are treated as lump sum unearned income unless it can be is documented/documentation shows the funds were used for the child(ren)'s educational purposes;

(8) any accounts, stocks, bonds, or other resources held under the control of a third party if/when the funds are designated for educational purposes for a child(ren) eligible for TANF, even if the/when a child(ren)'s name is on the account and the third party holder is required to access the funds;

(9) benefits from state and community programs on aging from Title III and Title V are disregarded. Both Title III and Title V are under the Older Americans Act (OAA) of 1965 amended by Public Law (P.L.) 100-175 to become the OAA as amended 2000;

(10) unearned income received, such as needs based payments, cash assistance, compensation in lieu of wages, or allowances from programs funded by the Workforce Investment Act (WIA), including Job Corps income. This includes WIA earned income received as wages;

(11) payments for supportive services or reimbursement of out of pocket expenses made to individual volunteers serving as foster grandparents, senior health aides, or senior companions, and to persons serving in the Service Corps of Retired Executives (SCORE), Active Corps of Executives (ACE), and any other programs pursuant to the National and Community Service Trust Act of 1993 (NCSTA);

(12) payments to volunteers under the NCSTA, such as Americorps VISTA;

(13) the value of supplemental food assistance received under the Child Nutrition Act or the special food service program for children under the National School Lunch Act;

(14) any portion of payments made under the Alaska Native Claims Settlement Act to an Alaska Native which are exempt from taxation under the Settlement Act;

(15) Experimental Housing Allowance Program (EHAP) payments made under Annual Contributions Contracts entered into prior to January 1, 1975, under Section 23 of the U.S. Housing Act of 1937, as amended;

(16) refunds of federal and state EITC received after December 31, 2009 as a result of filing a federal or state tax

return are exempt as a resource for 12 months following receipt per the Tax Relief, Unemployment Insurance Authorization, and Job Creation Act of 2010, [Public Law 111-312];

(17) payments from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the In Re Agent Orange product liability litigation, M.D.L. No. 381 (E.D.N.Y.);

(18) payments made from the Radiation Exposure Compensation Trust Fund as compensation for injuries or deaths resulting from the exposure to radiation from nuclear testing and uranium mining;

(19) federal major disaster and emergency assistance provided by Section 5515(d) of Title 42 of the United States Code (U.S.C.), and comparable disaster assistance provided by state, local governments, and disaster assistance organizations;

(20) interests of individual Indians in trust or restricted lands. However, any disbursements from the trust or restricted lands are considered as income;

(21) a migratory farm worker's out-of-state homestead if the farm worker's intent is to return to the homestead after the temporary absence;

(22) a non-recurring lump sum Supplemental Security Income (SSI) retroactive payment, made to a TANF recipient, in the month paid and the next following month. The amount remaining in the second month after the month of receipt is a countable resource;

(23) payments received under the Civil Liberties Act of 1988. These payments are made to persons of Japanese ancestry who were detained in internment camps during World War II;

(24) payments made to persons because of their status as victims of Nazi persecution;

(25) payments made from the crime victims compensation program as amended in section 1403 of the Victims of Crime Act of 1984, Section 10602 of Title 42 of the U.S.C.;

(26) reimbursements made to a foster care parent(s);

(27) payments as described in Section 1823(e) of Title 38 of the U.S.C. provided to certain persons who are children of Vietnam War veterans;

(28) funds in education accounts established under Section per Sections 529 and 530 of the Internal Revenue Code or exempted by Section 4000 of Title 56 of the Oklahoma State Statutes O.S. 56 § 4000; and

(29) child support collected from a child support tax intercept for the month received. The amount remaining in the second month after the month of receipt is a countable resource.

340:10-3-6. Trust accounts

Monies held in trust for an individual When a person applying for or receiving Temporary Assistance for Needy Families (TANF) must have has monies held in trust, a decision regarding the availability of the funds determined must be made. Funds held in trust are considered available both when actually available and when the applicant or recipient

has a legal interest in a liquidated sum and has the legal ability to make such sum available for support and maintenance. ~~In this circumstance, a decision regarding availability is made by the worker.~~ Funds may also be held in trust and under the control of someone other than the TANF parent or caretaker relative, such as the courts, agencies, other individuals, or the Bureau of Indian Affairs (BIA). The availability of these funds is determined by using the procedures described in (1) ~~and (2) through (3)~~ of this Section.

(1) **Funds held in trust by courts, agencies, or other individuals.** ~~Certain information~~ The applicant or recipient must be obtained ~~provide trust documents at the time of application or at the time it is learned~~ when the worker becomes aware of the existence of a trust is in existence. ~~This information must~~ Documents include a copy of the trust instrument, ~~when applicable,~~ and a copy of all relevant court documents ~~including that may include~~ a Journal Entry, Order, Settlement Agreement, and documentation as to date, amount, and purpose ~~reflecting of~~ any prior disbursements.

(A) **Release of trust by written petition or written request.** The availability of the trust can only be determined after the TANF payee sends a written petition to the court ~~for the release of the total funds has been made~~ or a written request is ~~made~~ to the trustee ~~if when~~ the trust is not in a court supervised account for the release of the total funds. ~~The individual is instructed in writing to petition the court in writing or submit a written request to the trustee for release of the total amount of the funds in the trust account.~~

(i) The worker sends a written notice to the TANF ~~caretaker relative~~ informspayee informing him or her to:

(I) file the written petition with the court or submit a written request ~~must be filed with the court or submitted~~ to the trustee within 30-calendar days from the date of the notice;

(II) provide a copy to the worker; and ~~that~~

(III) failure to do so results in case denial or closure due to the county not being able to determine as benefit eligibility cannot be determined. ~~A copy of the petition or request must be submitted by the caretaker relative to the worker.~~

(ii) Upon receipt of a copy of the petition or request, the trust account at issue is considered unavailable. ~~The caretaker relative is instructed~~ worker instructs the TANF payee to provide the worker with a copy of the court or trustee's response when received.

(iii) ~~When the TANF caretaker relative complies timely with~~ payee submits the petition or request timely but ~~cannot~~ does not get a response from the court or trustee, the worker offers assistance, such as writing with the client's permission, to write a letter, with his or her written permission, to the court or trustee.

(iiiiv) When the court or trustee's response to the petition or request is explicit as to the availability

of funds, the worker takes appropriate action. ~~Otherwise, the information is submitted under cover memo to~~ When the response is not explicit, the worker asks Adult and Family Support Services Division (AFSSD) TANF Section staff to make a decision regarding the availability of funds. ~~If~~ When necessary, AFS TANF staff obtains a decision is ~~obtained~~ from the Legal Division Services about the availability of the funds held in trust.

(ivv) A decision regarding trust availability is rendered in one of two ways. The trust monies are considered:

(I) ~~Trust is not available.~~ The trust monies are considered unavailable to the child(ren) and further review is not needed unless the trust instrument is amended.; or

(II) ~~Trust is available.~~ The trust monies are considered available as a resource in determining eligibility.

(B) **Periodic review** ~~renewal.~~ If the funds are ~~Funds~~ determined to be unavailable to the ~~individual, they person~~ are excluded as a resource at that time. ~~However, at~~ until the next ~~redetermination~~ renewal or reapplication. At renewal, the worker obtains information from the court or trustee regarding any modification to the trust instrument and any disbursements. ~~Any disbursements~~ Disbursements are considered as income the month received. ~~If~~ When modification or disbursements ~~have~~ did not occurred occur, the funds continue to be considered as unavailable until the next renewal is due.

(2) **Funds held in trust by BIA.** Interests of individual Indians in trust or restricted lands are not considered a resource in determining eligibility for assistance under the Social Security Act or any other federal or federally-assisted program.

(3) **Funds held in trust in an Achieving a Better Life Experience (ABLE) Program account.** Funds held in a trust account owned by the designated beneficiary of the account and established to pay qualified disability expenses under the Oklahoma Achieving a Better Life Experience (ABLE) Program or an ABLE program in any other state are excluded under the Oklahoma ABLE program or an ABLE program in any other state is excluded for the purpose of determining eligibility to receive, or the amount of, any assistance or benefits from local or state means-tested programs per Sections 4001.1 through 4001.5 of Title 56 of the Oklahoma Statutes or the Achieving a Better Life Experience Act of 2014, Section 529A of Title 26 of the United States Code (26 U.S.C. § 529A). The applicant or recipient must provide documents to verify that the trust account meets exemption criteria before the funds in the trust account are exempted from resource and income consideration. When verified, the exclusion applies to money:

(A) deposited in the account up to the annual federal gift tax exclusion per 26 U.S.C. § 2503(b). Any money deposited in the account in a calendar year in

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excess of the annual federal gift tax exclusion is considered a countable resource and income in the month deposited; or

(B) withdrawn to pay qualified disability expenses. Money withdrawn for reasons other than to pay qualified disability expenses is considered as income for the month of withdrawal.

PART 3. INCOME

340:10-3-32. Determination of earned income

Earned income results from self-employment or other employment sources.

(1) **Self-employment income.** Self-employment income received by a member of the assistance unit whose income is derived from a self-employment business enterprise owned solely or in part by the person or when the person works for an employer, but is considered self-employed per Oklahoma Administrative Code (OAC) 340:10-3-31(a), is considered per the procedures listed in (2) of this Section.

(A) **Room or board.** Earned income from a room rented in the home is determined by considering 25% percent of the gross amount received as business expenses. Earned income from room and board paid by a person in the home is determined by considering 50% percent of the gross income received as a business expense.

(B) **Rental property.** Income from rental property is considered income from self-employment if none of the activities associated with renting the property is conducted by an outside person or agency.

(C) **Profit sharing.** Households who operate S corporations, general or limited partnerships, or limited liability companies may receive profit sharing that is reported on the household's personal income tax return. When a household member:

- (i) actively participates in the operations, the income from profit sharing is considered part of the household's self-employed earned income; or
- (ii) does not actively participate in the operations, the income from profit sharing is considered part of the household's unearned income.

(2) **Self-employment income procedures.** Self-employment income that represents the person's annual support is prorated over a 12-month period, even if when the income is received in a shorter period of time. The countable earned income is determined by deducting worker uses the gross self-employment shown on the person's most recent federal tax return, when filed, or computes the person's gross self-employment income from the person's business or employer records. When the person claimed business expenses, the worker subtracts 50% percent of the person's gross self-employment income as business expenses or by using the net business profit for the most recent tax year as reported on the person's income tax return and divides the remaining income by

the number of months to be averaged to arrive at the person's net monthly self-employment income.

(A) **New income source.** When self-employment income ~~has been~~ was received for less than a year, the income must be averaged over the period of time received and the monthly income projected for the coming year.

(B) **Averaged over period of time received.** When there is insufficient data to make a reasonable income projection from this income source, the worker does not consider income from this source until the six month ~~review~~ renewal. At ~~review~~ renewal, the worker averages the income over the number of months received until a full year's data information is available.

(C) **Substantial increase or decrease in income.** When the person who would normally have the self-employment income annualized experiences a substantial increase or decrease in income, the worker does not calculate self-employment income on the basis of prior earnings such as income tax returns. Instead, the worker calculates the self-employment income using only the income that can reasonably be anticipated to project future earnings.

(3) **Earned income from sources other than self-employment.**

(A) **Earned income from wages, salary, or commission.** If the income is from wages, salary, or commission, the earned income is the gross income ~~or true wage~~ prior to payroll deductions and withholdings. This includes earned income from contract employment. Money from the sale of whole blood or blood plasma is considered as earned income.

(B) **Earned income from work and training programs.**

(i) ~~Workforce Investment Act (WIA)~~ Innovation and Opportunity Act (WIOA) of 2014. ~~WIA~~ Per Section 181 of WIOA, earned income is exempt.

(ii) **On-the-job training (OJT).** Earned income from regular employment for OJT is considered as any other earned income.

340:10-3-40. Income disregards

Income that is disregarded in determining eligibility for Temporary Assistance for Needy Families (TANF) is:

- (1) the food benefit allotment under the Food and Nutrition Act of 2008;
- (2) any payment received under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;
- (3) educational assistance including grants, work study, scholarships, fellowships, educational loans on which payment is deferred, veterans education benefits, and the like ~~if receipt is contingent upon the student regularly attending school and the money received is intended to offset the costs of education and expenses as identified by the institution, school, program, or other grantor. If~~

~~the money is not intended to be a reimbursement and is a gain to the client, it is considered income.~~ When the educational assistance is serving the same purpose as TANF cash assistance, such as when the client receives a stipend for living expenses, the stipend is countable income. The student's classification as a graduate or undergraduate is not a factor;

(4) loans, regardless of use, if a bona fide debt or obligation to pay can be established.

(A) Criteria to establish a loan as bona fide includes an acknowledgment of obligation to repay or evidence that the loan was from a person or financial institution in the loan business.

(B) ~~If~~When the loan was from a person(s) not in the loan business, the ~~borrower's~~client's acknowledgment of obligation to repay, with or without interest, is required to indicate that the loan is bona fide.

(C) ~~If~~When the loan agreement is not written, the client and lender must complete and sign Form 08AD103E, Loan Verification, must be completed by the borrower or a written statement, attesting that the loan is bona fide and signed by the lender verifying the date and amount of loan.

(D) ~~When copies of written agreements or Form 08AD103E are not available, detailed case documentation must include information that the loan is bona fide and how the debt amount and date of receipt was verified.~~the client receives loans on a recurrent or regular basis from the same source to meet expenses, the client and lender must sign an affidavit that states the payments are loans that must be repaid or that payments will be made in accordance with an established repayment schedule;

(5) Indian payments, including judgment funds or funds held in trust, distributed per capita by the Secretary of the Interior, Bureau of Indian Affairs (BIA) or distributed by the tribe subject to approval by the Secretary of the Interior. For purposes of this paragraph, per capita is defined as each tribal member receiving an equal amount.

(A) Any interest or investment income accrued on such funds while held in trust or any purchases made with judgment funds, trust funds, interest, or investment income accrued on such funds is disregarded.

(B) Any income from mineral leases or from tribal business investments is disregarded as long as the payments are paid per capita.

(C) Any interest or income derived from the principal or produced by purchases made with the funds after distribution is considered as any other income;

(6) special allowance(s) for school expenses made available upon petition in writing from trust funds of the student;

(7) income from trusts of a child(ren) included in a TANF benefit ~~if it is determined by when~~ the worker ~~determines~~ that funds are to be used for educational purposes for ~~the~~ child(ren). Any court established trust must be examined to determine if the court ~~has~~ restricted the trust

for other purposes. The worker must verify at application and ~~redetermination~~renewal if funds ~~have been~~were withdrawn. Any funds withdrawn are treated as lump sum unearned income unless it ~~can be~~is documented the funds were used for ~~the~~ child(ren)'s educational purposes;

(8) income from accounts, stocks, and bonds held under the control of a third party ~~if~~when the funds are designated for educational purposes for a child(ren) in a TANF benefit even when ~~the~~ child(ren)'s name is on the account and the third-party holder is required to access the funds;

(9) benefits from state and community programs on aging from Title III and Title V. Title III and Title V are under the Older Americans Act (OAA) of 1965 amended by Public Law (P.L.) 100-175 to become the OAA, as amended 2000. Each state and various organizations receive ~~some~~ Title V funds. These organizations include:

- (A) Experience Works;
- (B) National Council on Aging;
- (C) National Council of Senior Citizens;
- (D) American Association of Retired Persons (AARP);
- (E) ~~United States (US)~~U.S. Forest Service;
- (F) National Association for Spanish Speaking Elderly;
- (G) National Urban League;
- (H) National Council on Black Aging; and
- (I) National Council on Indian Aging;

(10) unearned income received by a child(ren) in a TANF benefit, such as a needs based payment, cash assistance, compensation in lieu of wages, or allowance from a program funded by the Workforce ~~Investment Act (WIA)~~Innovation and Opportunity Act (WIOA) of 2014, including Job Corps income and ~~WIA~~ earned income received as wages;

(11) payments for supportive services or reimbursement for out-of-pocket expenses made to individual volunteers serving as foster grandparents, senior health aides, or senior companions, and to persons serving in the Service Corps of Retired Executives (SCORE) and Active Corps of Executives (ACE);

(12) payments to volunteers under the National and Community Service Trust Act of 1993 (NCSTA), such as AmeriCorps VISTA;

(13) the value of supplemental food assistance received under the Child Nutrition Act or the special food service program for children under the National School Lunch Act;

(14) any portion of payments, made under the Alaska Native Claims Settlement Act to an Alaska Native that are exempt from taxation under the Settlement Act;

(15) any income of an adult or a child(ren) in the family group living in the home and receiving Supplemental Security Income (SSI) is not considered in determining the TANF benefit. ~~His or her individual~~The individual's income is considered by the Social Security Administration in determining eligibility for SSI and includes any payment made by ~~the~~ Developmental Disabilities Services

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~~Division~~ through the Family Support Assistance Payment Program on behalf of a child(ren) receiving SSI and any other earned or unearned income of the person;

(16) Experimental Housing Allowance Program (EHAP) payments made under Annual Contributions Contracts entered into prior to January 1, 1975, under Section 23 of the US Housing Act of 1937, as amended;

(17) earnings of a child(ren) in a TANF benefit who is a full-time student;

(18) government rental or housing subsidies by governmental agencies, ~~for example, such as~~ Housing and Urban Development (HUD) ~~which are~~ received in-kind or in cash for rent, mortgage payments, or utilities;

(19) reimbursements from an employer, the Department of Labor, or the Bureau of Indian Affairs, for out-of-pocket expenditures and allowances for travel, training, meals, or supplies including uniforms, to the extent the funds are used for expenses directly related to such travel, training, meals, or supplies;

(20) Low Income Home Energy Assistance Program (LIHEAP) payments for energy assistance and payments for emergency situations under Emergency Assistance to Needy Families with Children;

(21) refunds of federal or state Earned Income Tax Credit (EITC) received after December 31, 2009, as a result of filing a federal or state tax return are exempt as income for 12 months following receipt per the Tax Relief, Unemployment Insurance Authorization, and Job Creation Act of 2010, ~~{Public Law 111-312}~~;

(22) payments made from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the In Re Agent Orange product liability litigation, M.D.L. No. 381 (E.D.N.Y.);

(23) payments made from the Radiation Exposure Compensation Trust Fund as compensation for injuries or deaths resulting from the exposure to radiation from nuclear testing and uranium mining;

(24) federal major disaster and emergency assistance provided by Section 5515(d) of Title 42 of the United States Code (~~U.S.C.~~) 42 U.S.C. § 5515(d) and comparable disaster assistance provided by states, local governments, and disaster assistance organizations;

(25) interests of individual Indians in trust or restricted lands;

(26) income up to \$2,000 per calendar year received by individual Indians ~~that is~~ derived from leases or other uses of individually-owned trust or restricted lands. Any remaining disbursements from the trust or the restricted lands are considered unearned income;

(27) payments received under the Civil Liberties Act of 1988. These payments are made to persons of Japanese ancestry who were detained in internment camps during World War II;

(28) payments made to persons because of their status as victims of Nazi persecution;

(29) interest accrued from ~~the~~ deposits made by ~~an~~ person into an Individual Development Account (IDA) up to \$2,000;

(30) stipends paid to students participating in the Indian Vocational Education Program (IVEP) through the Carl D. Perkins Vocational and Applied Technology Education Act;

(31) payments made from the crime victims compensation program as amended in ~~section~~ Section 1403 of the Victims of Crime Act of 1984, ~~Section 10602 of Title 42 of the United States Code (42 U.S.C. § 10602)~~;

(32) reimbursements made to a foster care parent(s) or a potential foster care parent(s);

(33) payments as described in ~~Section 1823(e) of Title 38 of the U.S.C.~~ 38 U.S.C. § 1823(c) provided to certain persons who are children of Vietnam War veterans;

(34) allowances, stipends, earnings, compensation in lieu of wages, or other payments made for participation in WIA/WIOA or other federally-funded grants and workforce training programs paid to persons of all ages and student status; ~~and~~

(35) child support judgments or arrearage payments received for a child no longer age-eligible for the TANF cash benefit; ~~and~~

(36) money deposited into or withdrawn from a qualified Oklahoma Achieving a Better Life Experience (ABLE) Program account per Sections 4001.1 through 4001.5 of Title 56 of the Oklahoma Statutes or a qualified ABLE Program account set up in any other state per the ABLE Act of 2014, 26 U.S.C. § 529A is excluded as income or a resource when the client:

(A) provides documents to verify the account meets exemption criteria;

(B) verifies money deposited in the account does not exceed the annual federal gift tax exclusion amount per 26 U.S.C. § 2503(b). Any money deposited in the account in the calendar year that is in excess of the annual federal gift tax exclusion amount is considered as countable income in the amount deposited; and

(C) verifies withdrawals from the account were used to pay qualified disability expenses. Money withdrawn for reasons other than to pay qualified disability expenses is considered as income for the month of withdrawal.

PART 5. ASSISTANCE PAYMENTS

340:10-3-57. Special considerations

(a) ~~Concurrent receipt of~~ **Parent receiving or applying for State Supplemental Payment (SSP) for the aged, blind, or disabled.** A person must not concurrently be included in a Temporary Assistance for Needy Families (TANF) assistance unit and SSP for the same month. The person may be included in the TANF assistance unit while an application is pending for SSP or Supplemental Security Income (SSI) when all eligibility requirements are met.

(1) When a parent living in the home is not included in the TANF benefit because he or she receives SSP, the

worker does not consider the parent's income or resources as available to the TANF assistance unit.

(2) When a parent becomes ineligible to receive SSP and does not receive SSI, the worker considers the parent's income, resources, and deprivation status in determining TANF eligibility for the assistance unit and the parent.

(A) When adding the parent and his or her income causes the TANF assistance unit to be over income per Oklahoma Department of Human Services (DHS) Appendix C-1, Maximum Income, Resource, and Payment Standards, Schedule IX, the worker closes the TANF and medical benefit.

(B) When the parent's SSP benefit closed because of an overall Social Security increase and the parent cannot be added to the TANF benefit, the worker places the SSP benefit in Special Medical Status.

(3) When a parent becomes ineligible to receive SSP but continues to receive SSI, the worker does not consider the parent's income or resources as available to the TANF assistance unit. The parent must complete a separate SoonerCare (Medicaid) application to continue receiving medical benefits.

(b) **Concurrent receipt of TANF and SSI.** A person must not concurrently be included in a TANF benefit and receive a SSI payment for the same month. When a person included in a TANF application or an active TANF benefit meets the eligibility conditions for TANF and SSI, the person ~~has a choice~~ may choose to have eligibility determined for TANF or SSI benefits. The payee must inform the Oklahoma Department of Human Services (DHS) Adult and Family Services (AFS) worker when any member of the assistance unit makes application for, or becomes eligible to receive, SSI. When the payee or a member of the assistance unit makes an application for SSI, the payee must inform the Social Security Administration (SSA) of TANF receipt.

(1) When the only dependent child(ren) receives SSI, the natural or adoptive parent(s) or needy caretaker relative may receive an adult only TANF benefit when all other eligibility factors are met.

(2) When a TANF applicant is also a SSI applicant, he or she may be included in the TANF benefit, when eligible, until notified of SSI eligibility.

(3) When a TANF recipient is a SSI applicant, SSA notifies DHS of SSI eligibility to coordinate closure of the person's TANF benefit and approval of SSI and requests the amount of TANF benefits paid for each month of SSI eligibility. ~~If~~ When the actual closure date is later than the date given orally to SSA, TANF payments to SSI recipients are TANF overpayments and must be recouped per Oklahoma Administrative Code (OAC) 340:65-9.

(4) When a TANF recipient is determined ineligible for SSI, the person may continue to be included in the TANF assistance unit when all other conditions of eligibility are met.

(5) When a TANF recipient is determined ineligible for SSI for reasons other than a disability determination, the person may be included in a ~~SSP-cash assistance benefit~~ instead of TANF, if ~~when~~ determined disabled by the

Oklahoma Health Care Authority (OHCA) Level of Care Evaluation Unit (LOCEU) per OAC 317:35-5-4(1)(D).

(c) **Concurrent receipt of state and tribal TANF.** A person must not ~~be~~ concurrently be included in a tribal TANF payment and a state approved TANF benefit in the same month. When the person meets the criteria of a tribal TANF service area and population, the entire assistance unit must be served by tribal TANF. When the household moves out of the tribe's service area, the worker coordinates certification of state TANF benefits.

(d) **Concurrent receipt of TANF in more than one state.** A person must not be included in a TANF benefit in Oklahoma and another state for the same month.

(e) **Stepparent, spouse of needy caretaker, person acting in the role of a spouse, parent who is ineligible as a result of a positive screen for the illegal use of a controlled substance or substances, or parent(s) of a minor parent.** The natural or adoptive parent's income ~~cannot be~~ is considered available to the TANF assistance unit and none of his or her income is diverted to meet the needs of the stepparent or other dependents in the home. No income is considered when the stepparent, spouse of a needy caretaker, person acting in the role of a spouse, parent(s) of a minor parent, or his or her dependent is a SSI recipient.

(1) **Stepparent or spouse of needy caretaker income.** ~~If~~ When a stepparent ~~of the child(ren)~~ or the spouse of a needy caretaker for whom TANF is requested lives in the home with the child(ren) applying for or receiving TANF, the worker ~~computes the~~ counts a portion of his or her verified gross earned and unearned income ~~of the stepparent or spouse of a needy caretaker,~~ after all applicable TANF income disregards and work related expenses are subtracted, to determine the amount considered as income available to the assistance unit. To determine the amount to consider, the worker computes the stepparent's or spouse of a needy caretaker's income by:

(A) ~~subtracting~~ subtracts the work-related expense, one-half of the remaining gross earned income, and any dependent care expense from the stepparent's or spouse of a needy caretaker's earned income ~~for full time or part time employment~~ per OAC 340:10-3-33;

(B) ~~adding~~ adds the net earned income to the stepparent's or spouse of a needy caretaker's gross unearned income;

(C) ~~subtracting~~ subtracts the need standard for the appropriate number of persons, ~~including~~ per DHS Appendix C-1, Maximum Income, Resource, and Payment Standards, Schedule IX.A. The need standard includes the stepparent or spouse of a needy caretaker and any dependents ~~who are~~ not included in the assistance unit, but ~~are~~ living in the home and who can be claimed on the stepparent's or spouse of a needy caretaker's personal income taxes;

(D) ~~subtracting the actual amounts the stepparent or spouse of a needy caretaker paid to persons not living in the household, but claimed as tax dependents.~~

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It is the stepparent's or spouse of a needy caretaker's responsibility to identify and verify tax dependents; ~~(E) subtracting~~ subtracts the actual verified payments of alimony and child support to persons outside of the household to arrive at the stepparent's contribution to the assistance unit; and ~~(F) adding~~ adds the stepparent's or spouse of a needy caretaker's remaining net income contribution to all other gross income of persons included in the TANF assistance unit to determine eligibility. ~~If the income does not exceed the monthly maximum gross income, the remaining income of the stepparent or spouse of a needy caretaker is considered as a contribution to the assistance unit.~~

(2) **Stepparent or spouse of a needy caretaker resources.** The worker does not consider resources owned exclusively by the stepparent or spouse of a needy caretaker to determine the assistance unit's resource eligibility, but does consider the assistance unit's share of resources owned jointly with the stepparent or spouse of a needy caretaker.

(3) **Person acting in the role of a spouse.** The worker must count the income of a person acting in the role of a spouse who lives in the home with the natural or adoptive parent when he or she does not receive a TANF benefit on another case.

(A) For the purpose of this rule, "living in the home with" means a person of the opposite sex is a person is considered to be acting in the role of a spouse.

(i) ~~The opposite sex individual is acting in the role of a spouse~~ when one or both of these factors exist:

(i) they represent themselves to be a couple; or
(ii) have a physical relationship with each other.

~~(B)~~ When the client states the conditions in (A)(i) of this paragraph do not exist, factors that may indicate the opposite sex individual person is acting in the role of a spouse include, when he or she:

(i) assists in parenting the child(ren), such as exercising responsibility for the child(ren), providing day-to-day care, physical care, and guidance for the child(ren);

(ii) provides financial support for the family beyond his or her own pro rata share of the household expenses;

(iii) shares joint bank accounts or real property ownership with the client; or

(iv) files a joint tax return with the client.

~~(C)~~ The worker computes the income of this person the same as stepparent income. The person acting in the role of spouse is not eligible to receive the exemption of one-half of the remainder or a dependent care expense deduction in determining this person's countable earned income.

~~(D)~~ ~~If~~ When the parent or the person acting in the role of a spouse fails to provide information necessary to determine income eligibility, the worker denies

~~the application is denied~~ or closes the cash assistance terminated. The income of non-relative adults of the ~~opposite sex~~ may be excluded when the adults have separate living quarters and demonstrate no characteristics of a person acting in the role of spouse.

(4) **Parent who is ineligible as a result of a positive screen for the illegal use of a controlled substance or substances.** The income, earned and unearned, of a parent who is ineligible as a result of a positive screen for the illegal use of a controlled substance or substances per OAC 340:10-4-1 is considered in its entirety.

(5) **Parent(s) of a minor parent.** When a minor parent is living in the home lives with his or her natural or adoptive parent(s) and the needs of the parent(s) are not included in the assistance unit, the:

(A) parent's income is considered available to the assistance unit and computed the same as stepparent income. The parent of the minor parent may or may not be designated as the substitute payee for the assistance unit; and

(B) income of a minor parent's stepparent is not considered. ~~The parent of the minor parent may be designated as the substitute payee for the assistance unit.~~

(f) **Allocating or diverting income.** When family members are not included in the assistance unit, special consideration is required in determining the income available to the assistance unit.

(1) Income received by a person included in the assistance unit is not allocated or diverted to persons who are not in the assistance unit. All countable unearned and earned income of the person is considered available to the assistance unit.

(2) The net income of an alien parent excluded from the benefit because the citizenship or alienage requirement is not met is considered the same as stepparent income. ~~The needs and~~ income of disqualified alien siblings ~~are~~ is not considered when determining eligibility of an otherwise eligible child(ren).

(3) The net income of a fugitive felon excluded from the benefit is considered the same as stepparent income.

(g) **Benefit reduction as a result of program violation.** The TANF benefit is reduced by 25 percent of the payment standard when a determination of program violation is made. The 25 percent penalty is removed the next effective date when compliance is documented or the penalty time period ends. When multiple types of program violations occur, a 25 percent penalty of the payment standard is imposed for each type of violation. ~~If~~ When the benefit reduction causes existing income to be in excess of the benefit amount, the case is closed using the reason for the benefit reduction. The amount of the payment standard reduction applies as Food Stamp Penalty Income (FSPI) in the Supplemental Nutrition Assistance Program (SNAP) per OAC 340:50-7-29(c)(1)(A). Reasons for benefit reduction are:

(1) refusal to cooperate in an effort to obtain child support per OAC 340:10-10-5(c);

- (2) failure to apply for or provide a Social Security number per OAC 340:10-12-1;
- (3) failure of a child(ren) in kindergarten to 18 years of age to attend school per OAC 340:10-13-1;
- (4) failure to provide verification of child(ren) immunizations per OAC 340:10-14-1; and
- (5) intentional program violations determined as fraud by court action or an administrative disqualification hearing or administrative hearing waiver per OAC 340:65-9-2(d) and 340:65-9-4.

(h) **Benefit reduction penalty resulting from use of the TANF benefit in a prohibited business.** Per Section 608(a)(12) of Title 42 of the United States Code (~~42 U.S.C. § 608(a)(12)~~) and Section 241.4 of Title 56 of Oklahoma Statutes (~~56 O.S. § 241.4~~), TANF recipients must not use a debit or electronic benefit transfer (EBT) card containing TANF cash assistance in prohibited businesses. Refer to OAC 340:10-1-3(13) for a list of prohibited businesses and the definition of an EBT transaction.

- (1) When it is determined the parent or caretaker violated provisions per OAC 340:10-1-3(13), the worker reduces the TANF cash assistance payment standard is reduced by:
 - (A) 25 percent for three months for the first violation;
 - (B) 35 percent for six months for the second violation;
 - (C) 50 percent for 12 months for the third violation; and
 - (D) permanently by deeming the parent or needy caretaker ineligible for TANF benefits for subsequent violations.
- (2) When the parent or needy caretaker is permanently deemed ineligible to receive TANF cash assistance for this reason and all other factors of eligibility are met, he or she may receive child only benefits. The ineligible parent's earned and unearned income is considered in its entirety.
- (3) The amount of the penalty reduction applies as FSPI for SNAP per OAC 340:50-7-29(c)(1)(A).

(i) ~~**Parent living in the home receiving SSP.** When there is a parent living in the home, but not included in the TANF benefit because of receipt of SSP and not SSI, no consideration is given to does not his or her individual consider the parent's income for the TANF benefit. When a parent in the SSP benefit becomes ineligible to continue to receive the SSP, the parent is included in the TANF benefit and all income and resources of the parent are considered in determining eligibility for TANF. If consideration of the parent's SSP income and resources causes the TANF benefit to close, and the closure of the SSP benefit was a direct result of an overall Social Security increase, the SSP benefit is placed in Special Medical Status. If the parent is living in the home, but not included in the TANF benefit because of receipt of SSP and SSI, no consideration is given to the parent's income and the parent is not included in the TANF assistance unit as long as the parent remains eligible for SSI.~~

(j) **TANF eligibility when the child(ren) is placed in out-of-home care.** When Child Welfare Services(~~CW~~)(CWS)

staff removes the child(ren) from the home and reasonably anticipates the child(ren) will return home within four months, the natural or adoptive parent or needy caretaker relative may continue to be eligible to receive an adult only TANF benefit per OAC 340:10-3-56(a)(2)(B)(ii). The adult remains eligible when all other conditions of eligibility are met unless the child(ren) is placed with a relative requesting needy caretaker benefits. The child(ren) must be removed from the TANF benefit effective the next advance notice deadline date per Appendix B-2, Deadlines for Case Actions.

(1) A team consisting of the worker, ~~CWCWS~~ special-ist, natural or adoptive parent or needy caretaker relative, and any other appropriate partner must meet to develop a mutually agreed upon plan of action. The plan must include the parent or needy caretaker's employability plan and strategies to correct the conditions that caused the child(ren) to be removed from the home.

(2) At the end of the four-month period ~~if~~when the child(ren) ~~has~~is not ~~been~~ returned to the home, the adult only TANF benefit is closed.

(k) **Strikers.** The assistance unit is not eligible for TANF for any month the natural or adoptive parent, ~~whether included in the benefit, is participating~~living in the home participates in a strike on the last day of that month. A ~~person other than the natural or adoptive parent~~caretaker relative is not included in the benefit for any month ~~if~~when that person is participating in a strike on the last day of the month.

PART 7. TRANSITIONAL BENEFITS

340:10-3-75. Continued medical benefits (CMB)

(a) **Conditions for CMB.** ~~Medical benefits are continued when~~When a Temporary Assistance for Needy Families (TANF) benefit ~~is closed~~closes due to the receipt of child or spousal support, or new or increased earnings of the natural or adoptive parent or caretaker relative, referred hereafter as payee, medical benefits are continued for the time period described in (b) and (c) of this Section when the payee is included in the benefit per Section 408 of the Social Security Act, Section 608 of Title 42 of the United States Code. The medical benefits coverage is of the same amount, ~~duration,~~ and scope as if the assistance unit continued receiving TANF. Eligibility for CMB eligibility begins with the effective date of the TANF benefit closure date or the effective date of closure had the income been reported timely. A person is included for CMB only if that person was eligible for TANF and Only persons included in the assistance unit at the time of the closure when the TANF benefit closed are eligible for CMB. To be eligible for CMB the assistance unit must meet all of the requirements listed in (1) - (~~4~~)(5) of this subsection.

(1) At least one member received TANF in at least three of the six months immediately preceding the month of ~~ease~~closurethe TANF benefit closed.

(2) ~~The assistance cannot have received fraudulently as determined by Family Support Services Division Benefit Integrity and Recovery Section in any one of those six months~~payee must be included in the TANF benefit in the

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month of closure and remain as payee during CMB receipt.

(3) The assistance unit did not fraudulently receive TANF benefits in the six months preceding TANF closure. Refer to Oklahoma Administrative Code (OAC) 340:65-9-4 for fraudulent receipt rules.

(34) ~~The assistance unit must include a dependent an eligible child who meets the age and relationship requirements for TANF and whose needs are~~

(A) An eligible child is a child who is included in the TANF cash assistance unit benefit at the time of closure, unless the only and continues to meet age requirements per OAC 340:10-5-1 and relationship requirements per OAC 340:10-9-1 while receiving CMB.

(B) A child who is not included in the TANF cash assistance benefit because of Supplemental Security Income receipt is also considered an eligible child is a Supplemental Security Income (SSI) recipient when he or she is the only child in the home meeting age and relationship requirements.

(C) The eligible child must have met deprivation requirements per OAC 340:10-10-1 prior to TANF benefit closure but is not subject to deprivation requirements during the CMB eligibility period.

(45) ~~Client~~ The payee must comply with Soonercare (Medicaid) citizenship and identity verification rules at per OAC 317:35-5-25.

(b) **Closure due to child support or spousal support.** Medical benefits are continued ~~if for up to four months when the TANF closure is due to the receipt of new or increased child support or payments for spousal support in the form of alimony. The medical benefits are continued for four months.~~

(c) **Closure due to new or increased earnings of caretaker relative payee.** Medical benefits ~~are may be continued if up to 12 months when the closure is due to the new or increased earnings of the caretaker relative payee. The caretaker relative's needs must be included in the assistance unit at the time of closure. The caretaker relative who~~ When the payee is the natural or adoptive parent, ~~he or she is required to cooperate with Oklahoma Child Support Services (OCSS) during the period of time the family is (CSS) while receiving CMB. If the caretaker relative changes during the CMB period, the assistance unit loses its CMB coverage.~~

(1) **Eligibility.** Medical benefits may be continued for ~~a period up to 12 months. This~~ The CMB eligibility period is divided into two, six-month periods with eligibility requirements and procedures for each period.

(A) **Initial six-month period.** The assistance unit is eligible for CMB ~~if when:~~

- (i) an eligible child remains in the home per (a)(4) of this Section;
- (ii) the ~~caretaker~~ relative payee remains the same; and
- (iii) the assistance unit remains in Oklahoma.

(B) **Additional six-month period.** Medical benefits are continued for the additional six month period ~~if when:~~

(i) an eligible child remains in the home per (a)(4) of this Section;

(ii) the ~~caretaker~~ relative payee remains the same;

(iii) the assistance unit remains in Oklahoma;

(iv) the assistance unit was eligible for and received CMB for each month of the initial six month period;

(v) the assistance unit ~~has~~ has complied with reporting requirements in (4) of this subsection;

(vi) the assistance ~~unit~~ unit ~~has~~ unit's average monthly earned income ~~that~~ does not exceed the income standard which per the Oklahoma Department of Human Services (DHS) Appendix C-1, Maximum Income, Resource, and Payment Standards, Schedule I. The income standard is based on 185% percent of the Federal Poverty Level federal poverty level; and

(vii) the ~~caretaker~~ relative payee had earnings in each month of the three-month reporting period, unless the lack of earnings was due to an involuntary loss of employment, illness, or other good cause.

(C) **Income eligibility for additional six-month period.** ~~Income~~ The worker determines income eligibility is determined using for the additional six-month period per rules in (i) through (ix)(iii) of this subsection subparagraph.

(i) The worker disregards the assistance unit's:

(I) unearned income;

(II) a child's earned income when the child is a full time student; and

(III) ~~resources of the assistance unit are disregarded in determining eligibility for CMB.~~

(ii) ~~There is no earned income test for the initial six month period.~~

(iii) ~~The gross earnings of all assistance unit's medical benefits are not continued for the additional six month period if the assistance unit's countable earnings unit members minus the payee's child care expenses incurred for employment purposes must not exceed the income standard per household size on DHS Appendix C-1, Schedule I. Income is determined by averaging To determine income eligibility over the three-month reporting period, the worker averages the:~~

(iv) ~~the entire assistance unit's gross monthly earnings for the three month reporting period;~~

(v) ~~Use average family size for the immediate preceding three months when the family size when changes during the three month period occurred per (D) of this subsection;~~ and

(vi) ~~The only deduction allowed is the cost for approved child care necessary for the employment of the caretaker relative expenses. The child care deduction is averaged for the~~

~~same three month reporting period. There is no maximum amount for this deduction.~~

~~(viii) The earnings of all assistance unit members are used in determining the earned income test. The earnings of an additional family member are considered only if that member is a natural or adoptive parent.~~

~~(viii) The needs of all persons whose additional family member's earnings are considered, are he or she is included in determining the household size for the income test.~~

~~(ix) The earned income of a full time student included in the assistance unit is disregarded the same as in TANF rules.~~

~~(D) **Eligible child.** When the TANF benefit is closed and CMB begins, the assistance unit must include an eligible child whose needs were included in the TANF benefit at the time of closure, unless the only eligible child is a SSI recipient. After the CMB begins, the assistance unit must continue to include an eligible child. However, age is the only requirement an eligible child must meet. This means that the eligible child does not have to meet the deprivation factor once CMB begins.~~

~~(E) **Additional members.** After the CMB begins, the worker:~~

~~(i) does not add family members who move into the home cannot be added to the CMB coverage. This includes siblings and a natural or adoptive parent(s). If when the additional member is in need of needs medical services, a new application is completed for that person the worker refers the payee to the Oklahoma Health Care Authority (OHCA) online enrollment system at www.mysoonercare.org to complete an application for the additional member. The payee may also complete an application at the local health department, Indian clinic, participating health care provider, or county office; and~~

~~(ii) adds a child younger than one year of age to the CMB coverage when the child is deprived of parental support per OAC 340:10-10-1 and the child's mother is included in the CMB coverage.~~

~~(E) **Assistance unit member leaves home and returns.** If when an assistance unit member included in the CMB leaves the home and then returns, that member he or she may be added back to the CMB coverage if when all conditions of eligibility are met, provided the member is not the payee. A child under the age of one year whose mother is included in the CMB coverage, is added to the assistance unit if the child is deprived of parental support.~~

~~(F) **Third party liability.** The assistance unit's eligibility unit remains eligible for CMB is not affected by when it obtains health insurance coverage and third party liability must be considered. However, the assistance unit is responsible for reporting all insurance coverage and any changes in the coverage.~~

~~The worker must explain is responsible for explaining third-party liability and the necessity for applying benefits from filing medical claims with the private insurance to the cost of medical care before filing with OHCA.~~

~~(G) **Termination of CMB closure.** The worker closes the CMB coverage is discontinued any time the assistance unit fails to meet the eligibility requirements as shown included in this Section. If it becomes necessary to discontinue When the worker closes the CMB coverage for the assistance unit or any member of the assistance unit, the person must be advised that he or she worker informs the payee that the assistance unit or the member may be eligible complete an application for medical benefits under the regular SoonerCare (Medicaid) Program and how to obtain these benefits by accessing OHCA's online enrollment system at www.mysoonercare.org or complete an application at the local health department, Indian clinic, participating health care provider, or county office.~~

~~(2) **Notification.** Notices are sent DHS sends notices to the assistance unit, both at the onset of when CMB is approved and throughout the CMB period. These The notices, which are sent at specific times, and inform the assistance unit of its rights and responsibilities. When a TANF benefit is closed closes and the assistance unit is eligible for CMB, the computer-generated closure notice includes notification of the continuation of medical benefits. Another DHS sends another computer-generated notice is sent at the same time to advise the assistance unit of the reporting requirements and under what circumstances the medical benefits may be discontinued. Each notice listed in (A) through (C) of this paragraph includes specific information about what the assistance unit must report. The notices serve unit's reporting responsibilities and serves as the required advance notification in the event benefits are discontinued as a result closed because of the information furnished in response to these notices or because the payee does not respond to the notices.~~

~~(A) **Notice # 1.** PSNCM1 is issued issues in the third month of the initial continued medical eligibility period. This notice advises the assistance unit of the additional six-month period of CMB, the eligibility conditions, reporting requirements, and appeal rights.~~

~~(B) **Notice # 2.** PSNCM2 is issued issues in the sixth month of the continued medical eligibility period, but only if when the assistance unit is eligible for the additional six-month period. This notice advises the assistance unit of the eligibility conditions, reporting requirements, and appeal rights.~~

~~(C) **Notice # 3.** PSNCM3 is issued issues in the ninth month of the continued medical eligibility period, or the third month of the additional six-month period. This notice advises the assistance unit of the eligibility conditions, the reporting requirements, appeal rights, and the expiration of CMB coverage.~~

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(3) **Notices not received.** In some instances the assistance unit does not receive all of the notices listed in ~~(e)(2)(A) through~~ (C) of this ~~Section~~ subsection. The notices and report forms are not issued retroactively. When the payee notifies the worker he or she did not receive a notice or report form, the worker obtains required information necessary to establish the assistance unit's continued eligibility and informs the payee he or she must provide earned income proof for the appropriate reporting period.

(4) **Reporting.** The assistance unit is required to periodically report specific information necessary to determine the assistance unit's continued eligibility for CMB. To assist the unit, ~~computer-generated~~ Form 08TA018E, Continued Medical Benefit Reply Form, is sent ~~at the same time as to~~ the assistance unit with the notices generated during the CMB period. Though preferred, it is not mandatory ~~for the report form itself to that~~ Form 08TA018E be returned. The information may be reported by ~~telephone~~, in an office interview, or by letter. The payee must provide proof of all gross earnings for the three-month reporting period.

(A) The assistance unit must report:

- (i) gross earned income of the entire assistance unit for the appropriate three-month period;
- (ii) child care expenses, for the appropriate three-month period, necessary for the caretaker relative's continued employment;
- (iii) changes in members of the assistance unit;
- (iv) residency; and
- (v) third party liability.

(B) The reporting requirement time frames are explained in this subparagraph.

(i) The payee must report required information requested in the third month must be received and return required earned income proof by the 21st day of the fourth month and is used. The worker evaluates the information provided to determine the assistance unit's eligibility for the additional six-month period. ~~While this~~ Even though the payee is required to report is due required information in the fourth month, no negative action cannot be taken occurs during the initial six-month period for failure to report. If when the:

(I) assistance unit returns required information and no longer meets eligibility conditions per (1) of this subsection, the worker closes CMB effective the first day of the seventh month; or

(II) payee fails to report required information and submit the requested information earned income proof, benefits are CMB automatically suspended — suspend effective the first day of the seventh month. If action to When the worker does not reinstate is not taken CMB by advance notice deadline of the suspension month per DHS Appendix B-2,

Deadlines for Case Actions, the computer CMB automatically closes the case effective the next month.

(ii) The payee must report required information requested in the sixth month must be furnished and return required earned income proof by the 21st day of the seventh month. The decision to continue benefits into the eighth month is determined by the information reported. When the:

(I) assistance unit returns required information and no longer meets eligibility conditions per (1) of this subsection, the worker closes CMB effective the first day of the eighth month; or

(II) payee fails to report required information and submit earned income proof, CMB automatically suspends effective the first day of the eighth month. When the worker does not reinstate CMB by advance notice deadline of the suspension month per DHS Appendix B-2, CMB automatically closes effective the next month.

(iii) The payee must report required information requested in the ninth month must be furnished and return required earned income proof by the 21st day of the tenth month. The decision to continue medical benefits into the 11th month is determined by the information reported. When the:

(I) When the assistance unit returns required information and no longer meets eligibility conditions per (1) of this subsection, the worker closes CMB effective the first day of the eleventh month; or

(II) payee fails to report required information is not reported timely and return required earned income proof by the 21st day of the tenth month, the CMB are automatically suspended by the computer for the appropriate suspends effective date the first day of the eleventh month. When the worker does not reinstate CMB by advance notice deadline of the suspension month per DHS Appendix B-2, CMB automatically closes effective the next month.

~~(H5)~~ **CMB reinstatement.** ~~If~~ When the assistance unit subsequently reports the necessary information following suspension, the worker determines eligibility. ~~(H)~~ ~~If~~ When all eligibility factors are met during and after the suspension period, the worker reinstates the medical benefits are reinstated. ~~The effective date of the reinstatement is the same as the effective date of the suspension so the~~ assistance unit has continuous medical coverage.

(d) **Receipt of medical benefits after CMB ends.** To ensure continued medical coverage, ~~Form 08MA007E, Recertification of Eligibility for Sooner Care Health Benefits, is a~~ computer-generated expiration notice is mailed to the assistance unit during the third month of CMB for benefits closed due to the receipt of child or spousal support or the 11th month of CMB for benefits closed due to new or increased earnings.

The assistance unit must return Form 08MA007E for a medical redetermination to be made prior to the termination of the CMB benefit; expiration notice explains how to apply for medical benefits. When the assistance unit applies and is determined eligible, medical benefits continue as regular SoonerCare (Medicaid) benefits, not CMB. If the assistance unit fails to return Form 08MA007E, medical benefits are terminated.

SUBCHAPTER 18. CONDITIONS OF ELIGIBILITY FOR SUPPORT SERVICE FUNDS FOR CHILD ONLY CASES

340:10-18-1. Conditions of eligibility for support service funds for child only cases

(a) **Scope.** In an effort to promote family stability and assist in the prevention of Child Welfare (CW) involvement, the Oklahoma Department of Human Services (DHS) provides support service funds ~~are provided~~ to child only cases when there is no natural or adoptive parent(s) in the home and a caretaker relative has assumed responsibility for rearing the child(ren). The worker provides or arranges payment(s) of the approved support service fund(s) determined appropriate to maintain the child(ren) in the home. ~~Items and services covered by Medicaid are not paid by support service funds.~~

(b) **Support service funds.** Payments for the services through support service funds are not an automatic entitlement to the child(ren). The worker determines on a case-by-case basis, whether to authorize payments and services. The county director or designee is responsible for periodically monitoring expenditures from the support service account.

(1) ~~Support~~ The worker does not approve support service funds are not used for:

- (A) fines, including traffic fines or any cost related to a criminal offense, such as legal fees or court costs;
- (B) items and services covered by SoonerCare (Medicaid);
- (C) ongoing household expenses, such as, but not limited to, rent, utilities, and car payments; or
- (D) payments to reimburse the client or another person for the cost of services already paid.

(2) ~~Before any consideration is given to authorizing payment for support service funds, the worker:~~

- (A) ~~must determine~~ determines if the service is available through any other resource. Resources may include other Oklahoma Department of Human Services (OKDHS) DHS programs, local churches, and civic groups. ~~This determination is made on a case-by-case basis. The worker pre determines and authorizes payments and services; and~~
- (B) ~~The worker~~ negotiates for goods and services for the child(ren) for the least possible cost. The negotiated amounts must not include state or local sales taxes.

(3) Payments of specific services are allowed only after the service is rendered. ~~Ongoing maintenance payments~~

~~are not allowed. The county director or designee is responsible for periodically monitoring expenditures from this account. The~~ To authorize payment, the:

- (A) worker signs an Authorization to Purchase form and gives it to the caretaker relative to take to;
- (B) caretaker relative takes the Authorization to Purchase form to the provider. Approval for payment to the;
- (C) provider occurs after is rendered renders the service and the caretaker relative signs the Authorization to Purchase form confirming the service was provided; and
- (D) provider sends the Authorization to Purchase form to DHS Finance and Administration for payment.

[OAR Docket #17-488; filed 6-23-17]

**TITLE 340. DEPARTMENT OF HUMAN SERVICES
CHAPTER 20. LOW INCOME HOME ENERGY ASSISTANCE PROGRAM (LIHEAP)**

[OAR Docket #17-489A]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. Low Income Home Energy Assistance Program
340:20-1-14 [AMENDED]
(Reference WF 17-10)

AUTHORITY:

Director of Human Services; Section 162 of Title 56 of the Oklahoma Statutes (56 O.S. § 162); and Sections 8621 through 8624 of Title 42 of the United States Code.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

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APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 13, 2017

FINAL ADOPTION:

June 13, 2017

EFFECTIVE:

September 15, 2017

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The proposed revisions to Chapter 20 Subchapter 1 amends the rule to: (1) increase timely application processing time to 60-calendar days for winter heating and summer cooling and include timeliness information for the Energy Crisis Assistance Program (ECAP) portion of LIHEAP; (2) reorganize and clarify information for increased understanding; (3) add approval requirements, denial reasons, and associated policy cites; (4) update

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and remove no longer applicable information regarding payment issuances and closures; (5) reference an appendix; and (6) update terminology.

CONTACT PERSON:

Dena Thayer, Programs Administrator, Office of Intergovernmental Relations and Policy, Department of Human Services, PO Box 25352, Oklahoma City, OK 73125, 405-521-4326.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2017:

SUBCHAPTER 1. LOW INCOME HOME ENERGY ASSISTANCE PROGRAM

340:20-1-14. Actions, method of payment, and notifications

Contingent upon the receipt of federal funding, ~~one~~ payment is made during the federal fiscal year to or on behalf of households included in paragraph (1) of this Section unless a situation arises that causes two payments to be made. ~~Two or more payments may be made when there is a delay in federal funding or the release of contingency funds by the President~~ submitted Low Income Home Energy Assistance Program (LIHEAP) applications are approved or denied, payments are issued, and households are notified of their eligibility during winter heating, summer cooling, and Energy Crisis Assistance Program (ECAP) application periods.

(1) Households pre-authorized for LIHEAP. Selected households may be pre-authorized for winter heating or summer cooling and sent a pre-authorization notice prior to an open application period.

(A) Households are pre-approved for LIHEAP per criteria in Oklahoma Administrative Code (OAC) 340:20-1-19 for winter heating and OAC 340:20-1-20 for summer cooling.

(B) The pre-authorization notice informs the household:

(i) of the utility supplier and the account number the Oklahoma Department of Human Services (DHS) intends to pay based on the prior year's certification; and

(ii) DHS does not pay a different utility supplier based on the pre-authorization.

(C) Households are not pre-authorized for ECAP.

(2) Approvals. Maximum household benefit levels are determined by the primary energy source, household size, and household income. Generally, one direct payment is made to designated energy suppliers on behalf of approved households. Payments are made on a weekly basis. The amount of the payment is the original household benefit level as adjusted, if necessary, based upon the total encumbrance for assistance in relation to federal funds available for payments. Households may be approved for LIHEAP during each of the three-designated application periods per fiscal year.

(A) Certain households may be approved for ECAP outside of a designated application period when there is a life-threatening emergency per OAC 340:20-1-17(g).

(B) Households are approved for LIHEAP when they:

(i) submit a signed and completed application during the designated application period per OAC 340:20-1-12;

(ii) provide required verification per OAC 340:20-1-13; and

(iii) meet program factors per OAC 340:20-1-10.

(2) Direct payments. The same payment schedule in paragraph (1) of this Section applies to unsubsidized renters and roomers with utilities included in their rent, and for households whose energy source is wood, coal, heating oil, or kerosene, except when payments are made directly to approved households.

(3) Closures. The worker authorizes closure of cases in which the household is no longer eligible. Closure is not authorized before the worker has contacted the designated energy supplier and determined that the household has no outstanding debt with the supplier. If there is an outstanding debt, the case is not closed. The case automatically closes after the household's program benefit level has been paid.

(4) Denials. The worker/employee denies any application applications:

(A) submitted outside of a designated application period;

(B) that is/are incomplete. Reasons an application is considered incomplete include submitting an unsigned application or failing to verify program factors per OAC 340:20-1-10. Prior to application denial, the worker/employee must allow ~~ten~~ give or send the applicant Form 08AD092E, Client Contact and Information Request, indicating what verification must be provided and allow the applicant at least 10-calendar days to provide the needed verification; or

(C) when the household does not meet program factors per OAC 340:20-1-10.

(5) Timeliness. Applications are considered timely processed when approved or denied within ~~ten~~ calendar days of:

(A) the ~~date~~ 60-calendar days of the application when all verification is provided at the time of application date for winter heating and summer cooling; or

(B) giving or mailing Form 08AD092E, Client Contact and Information Request, to the applicant requesting needed verification no later than 18 hours from the application date for an ECAP application involving a life-threatening medical situation or 48 hours for all other ECAP applications.

(6) Households pre-authorized for the Low Income Home Energy Program (LIHEAP). Selected households

may be pre-authorized for winter heating or summer cooling when the household continues to meet pre-authorization requirements per OAC 340:20-1-19 and 340:20-1-20. Households are mailed a pre-authorization notice prior to the application period. The notice advises the household:

- (A) of the utility supplier and account number the Oklahoma Department of Human Services (OKDHS) plans to pay based on the prior year's certification; and
- (B) OKDHS will not pay a different utility supplier based on this pre-authorization.

(5) **LIHEAP payments.** LIHEAP payment amounts are estimated and reserved for each application period based on available funding and may be adjusted as needed. Refer to Appendix C-7-A, Estimated Low Income Home Energy Assistance Program (LIHEAP) Benefit Level for all Households, for maximum payment amounts.

(A) Payment amounts are determined based on the household's size, income, and primary energy source.

(B) One payment is made per approved application directly to:

(i) designated energy suppliers on behalf of approved households responsible for their utilities;

or

(ii) the household when the:

(I) utilities are included in the rent;

(II) energy source is wood, coal, heating oil, or kerosene; or

(III) energy supplier is not designated to receive direct payments from DHS.

(C) Payments are made on a weekly basis as applications are approved.

(6) **Closures.** The LIHEAP authorization automatically closes after the LIHEAP payment issues. Authorizations are closed when it is discovered that an ineligible household was certified in error before a LIHEAP payment is made.

(7) **Computer-generated notices.** Computer-generated notices are mailed to the applicant or recipient showing actions taken.

(A) LIHEAP-37-A, Notice of Eligibility/Authorization, is mailed to the applicant.

(B) LIHEAP-37-C, Notice of Eligibility, is mailed to the recipient. This notice is mailed for authorization of each roomer or renter when fuel is included as a part of the shelter payment, and for households whose fuel source is wood, coal, kerosene, or oil.

(C) LIHEAP-37-D, Notice of Payment, is mailed to the recipient as notification that the payment has been made to the energy supplier on his or her behalf.

(D) LIHEAP-37-E, Notice of Denial, is mailed to the applicant when an application has been denied.

(E) LIHEAP-37-F, Notice of Closure, is mailed to the recipient when the worker closes an authorization closes.

(F) PSNEN37K, Utility Account Verification and Pre-Approval Notice, is mailed to clients who were

pre-authorized for LIHEAP winter heating or summer cooling.

(G) LIHEAP-37-M, Energy Crisis Assistance Program Notice of Payment, is mailed to the recipient as notification that the payment was made to the supplier on his or her behalf.

(8) **Worker/Employee-generated notices/notice.** The worker mails or employee issues Form 08LH003E, Notice of Eligibility for Energy Assistance, to the energy provider/supplier or to the recipient for delivery to the energy provider/supplier unless the provider is specifically exempted by the Family Support Services Division. The notice is issued by the worker whenever when the household meets eligibility requirements for crisis assistance per OAC 340:20-1-17. Issuance of Form 08LH003E is not necessary when the supplier's business system is set up to receive a daily approval file from DHS.

[OAR Docket #17-489A; filed 6-23-17]

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

[OAR Docket #17-489]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 1. Scope and Applicability
 - 340:25-1-1.1 [AMENDED]
 - 340:25-1-2 [AMENDED]
 - 340:25-1-3.1 [AMENDED]
- Subchapter 3. Commissioned Peace Officers
 - 340:25-3-3 [AMENDED]
- Subchapter 5. Operational Policies
 - Part 9. Disclosure of Information
 - 340:25-5-67.1 [AMENDED]
 - Part 15. Case Initiation, Case Management, and Case Closure
 - 340:25-5-114 [AMENDED]
 - 340:25-5-117 through 340:25-5-118 [AMENDED]
 - Part 17. Past Support
 - 340:25-5-140.2 [REVOKED]
 - Part 19. Locate Services
 - 340:25-5-155 [AMENDED]
 - Part 20. Medical Support
 - 340:25-5-169 [AMENDED]
 - Part 22. Review and Modification
 - 340:25-5-198.2 [AMENDED]
 - Part 23. Enforcement
 - 340:25-5-200 [AMENDED]
 - 340:25-5-200.3 [AMENDED]
 - 340:25-5-211.1 [AMENDED]
 - 340:25-5-213 [AMENDED]
 - Part 37. Recovery
 - 340:25-5-312 [AMENDED]
 - Part 38. Title IV-D and Non-Title IV-D Central Case Registry Information
 - 340:25-5-340 through 340:25-5-340.1 [AMENDED]
 - Part 39. Accounting and Distribution
 - 340:25-5-350.1 [AMENDED]
 - 340:25-5-351 [AMENDED]

(Reference WF 17-05)

AUTHORITY:

Director of Human Services, Section 162 of Title 56 of the Oklahoma Statutes (56 O.S. § 162); Section 1738B of Title 28 of the United States Code (28 U.S.C. § 1738B); 42 U.S.C., Chapter 7, Subchapter IV, Part D; 50A U.S.C.

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§§ 501 through 596; Chapter III of Subtitle B of Title 45 of the Code of Federal Regulations; 3A O.S. § 724.1; 10 O.S. §§ 80, 83, 90.5, 7700-101 through 7800; 12 O.S. §§ 1170, 1171.2 through 1171.4, 2004, and 2005; 21 O.S. §§ 566, 566.1, 567, and 852; 36 O.S. § 6058A; 43 O.S. §§ 109.2 through 110, 112, 112A, 112.1A, 114 through 120, 135 through 139.1, 140, 410 through 413, 601-100 through 601-903; 47 O.S. §§ 1-153, 6-201, 6-201.1, 6-211, and 6-212; 56 O.S. §§ 166.1, 183, 230.60, and 231 through 240.24; 63 O.S. §§ 1-311, 1-311.2, 1-311.3, and 1-321; 68 O.S. § 205.2; and 70 O.S. §§ 3970.1 through 3970.12.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

January 6, 2017

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APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 13, 2017

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June 13, 2017

EFFECTIVE:

September 15, 2017

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

Chapter 25, Subchapter 1: The proposed revisions are designed to provide clear and concise information for customers and staff to ensure consistency in policy interpretation.

Chapter 25, Subchapter 3: The proposed revisions are designed to provide more complete information about service of process for customers and staff.

Chapter 25, Subchapter 5: The proposed rules are designed to contribute to the health, safety, and wellbeing of children entitled to support and promote healthy families by: (1) increasing program efficiency; (2) improving customer service; and (3) providing clear and accurate guidance to staff to ensure consistency in policy application.

Failure to adopt these rules could cause hardships on families by negatively impacting the services Child Support Services (CSS) provides, decreasing CSS's ability to serve customers, and result in unnecessary expenditures of public funds to provide support for children that could otherwise be provided by noncustodial parents.

The classes of persons most likely to be affected by the proposed rules are children entitled to support, noncustodial parents (NCP) who owe child support, custodial parents (CP) who are owed child support, CSS staff, and courts. Most affected classes of persons will bear no costs associated with implementation of the rules. Custodial persons not receiving Temporary Assistance for Needy Families (TANF) or Medicaid (SoonerCare) will be charged a service fee of three percent per Title IV-D payment, not to exceed 10 dollars per month.

CONTACT PERSON:

Dena Thayer, Programs Administrator, Legal Services - Policy, Oklahoma Department of Human Services, PO Box 25352, Oklahoma City, Oklahoma 73125, 405-521-4326.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2017:

SUBCHAPTER 1. SCOPE AND APPLICABILITY

340:25-1-1.1. Definitions

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

"Address of record" or "AOR" means an address for a party or a custodial person (CP) in the Central Case Registry of Oklahoma Child Support Services (~~OCSS~~) ~~that is~~ (CSS) used for service of process in support, custody, and visitation actions. An ~~address of record~~ AOR may be different from the party's or ~~custodial person's~~ CP's physical address.

"Alleged father" means *a man who alleges himself to be, or is alleged to be, the genetic father or a possible genetic father of a child, but whose paternity has not been determined per Section 7700-102 of Title 10 of the Oklahoma Statutes (10 O.S. § 7700-102).* ~~{10 O.S. § 7700-102}~~

"Alternative health coverage" means health care services other than health insurance; including, but not limited to, Indian Health Services (IHS) or Defense Eligibility Enrollment Reporting System (DEERS), ~~which is~~ available to either parent under which medical services could be provided to the dependent child(ren).

"Annual notice" means the yearly notice provided for in ~~Section 237A of Title 56 of the Oklahoma Statutes~~ 56 O.S. § 237A to notify the noncustodial parent (NCP) and ~~custodial person~~ CP of the amount due, actions that may be taken to enforce the child support obligation, actions required of the ~~noncustodial parent~~ NCP and ~~custodial person~~ CP, and other related information and instructions.

"Applicant" means the individual who requested child support services or was referred by another agency or program for child support services.

"Arrears," "arrearage," or "past-due support" means the total amount of unpaid support obligations ~~that has~~ accrued under a support order. ~~See also the definition for~~ Refer to "delinquency" in this Section.

"Assignment" means any transfer of rights to support to the State of Oklahoma under Sections 608 and 671 of Title 42 of the United States Code (42 U.S.C. §§ 608 and 671) or any transfer of rights to medical support and to payment of medical care from any third party under Section 433.146 of Title 42 of the Code of Federal Regulations (42 C.F.R. § 433.146).

"Authorized representative" means a person designated by a ~~custodial person~~ CP, ~~noncustodial parent~~ NCP, or biological parent ~~according to per~~ Oklahoma Administrative Code (OAC) 340:25-1-3.1.

"Biological parent" means the natural parent of a child.

"Case" means the relationship of a particular group of people bound by legal rights and duties for the support of a child(ren) who is receiving or ~~has~~ received child support services and all of the records and actions associated with the group.

"Cash medical support" means *an amount ordered to be paid toward the cost of health coverage provided by a public entity or by a person other than the parents through employment or otherwise per 43 O.S. § 118F.*

"Central Case Registry" or "CCR" means Oklahoma's repository for Part D of Subchapter IV of Chapter 7 of Title 42 of the United States Code (Title IV-D) cases and child support

orders established or modified in Oklahoma after October 1, 1998. It includes, but is not limited to, information required to be transmitted to the Federal Case Registry under Section 654a of Title 42 of the United States Code per 42 U.S.C. § 654a. OCSSCSS maintains the Central Case Registry under Section 112A of Title 43 of the Oklahoma Statutes CCR per 43 O.S. § 112A.

"Centralized Support Registry" means a repository maintained by OCSSCSS to receive, allocate, and distribute support payments, including child support, spousal support when paid in conjunction with child support, and related support payments under Section 413 of Title 43 of the Oklahoma Statutes per 43 O.S. § 413. It serves as Oklahoma's State Disbursement Unit under Section 654b of Title 42 of the United States Code per 42 U.S.C. § 654b. The Centralized Support Registry processes payments per 43 O.S. § 413:

- (A) *in all cases in which child support services are being provided under the state child support plan as provided under Section 237 of Title 56 of the Oklahoma Statutes until all monies owed for child support are no longer owed;*
- (B) *in all other cases in which support is being paid by income withholding; and*
- (C) *when a court orders payments to be made through the Centralized Support Registry. {43 O.S. § 413}*

"Child support order" means an obligation addressing monetary support, cash medical support, medical support for the child(ren), and support arrearage and arrearage payments, ~~if~~ when any.

"CSED" means ~~the Child Support Enforcement Division of the Oklahoma Department of Human Services and is also known as Oklahoma Child Support Services (OCSS). OCSS includes a central state office, district offices, and other offices that may be administered through contract or cooperative agreements with district attorneys, Community Action Program (CAP) agencies, and others. OCSS includes all of these offices and their employees and agents.~~

"CSS" means Child Support Services. CSS includes a central state office, district offices, and other offices that may be administered through contract or cooperative agreements with district attorneys, community action program agencies, and others. CSS includes all of these offices, employees, and agents. CSS was formerly known as CSED and Oklahoma Child Support Services (OCSS).

"Current child support" means the base child support obligation and the proportional share of health insurance costs, fixed medical costs, transportation expenses, and annualized child care costs. Current child support does not include cash medical support.

"Custodial person," "custodian," or "CP" means the person who has primary physical custody of the child(ren).

"Delinquency" means *any payment under an order for support which becomes due and remains unpaid—{per 12 O.S. § 1170 and 56 O.S. § 237.7}.*

"DHS" means the Oklahoma Department of Human Services, formerly known as OKDHS. DHS is the state agency

designated to administer the child support program for the State of Oklahoma.

"District office" means a child support services office operated by ~~OKDHS~~DHS or through contract or agreement with ~~OKDHS~~DHS to serve a specific area of the state.

"Family violence" means domestic abuse or child abuse, including physical or emotional harm.

"Fixed medical" means fixed periodic payments for ongoing medical costs not paid or reimbursed by insurance, or included in a cash medical support order.

"Full-service case" means a child support case for which OCSSCSS provides all appropriate Title IV-D services ~~as described in~~ per OAC 340:25-1-1.2.

"Health insurance" means insurance coverage that provides routine and major medical expenses, including, but not limited to: preventive care, office visits, hospitalization, and medication coverage, that may be provided through a fee for service, health maintenance organization, ~~or~~ preferred provider organization, or other private or public organization, other than SoonerCare (Medicaid).

"High-volume administrative enforcement cases in interstate actions" means, on request of another state, the identification by a state, through automated data matches with financial institutions and other entities where assets may be found, of assets owned by persons who owe child support in other states, and the seizure of such assets by the state through levy or other appropriate processes—~~{per 42 U.S.C. § 666}.~~

"Income assignment" means an assignment, by operation of law or by court or administrative order, of a portion of the monies, income, or periodic earnings due and owing by the ~~noncustodial parent~~NCP to the person entitled to the support or to another person designated by the support order or assignment, per 12 O.S. § 1170 and 56 O.S. § 237.7. An income assignment may be for payment of current support, arrearages, or both. The terms "income assignment" and "income withholding" may be used interchangeably. ~~{12 O.S. § 1170 and 56 O.S. § 237.7}~~

"Interstate case" means a case in which at least one party resides in another state or country, or a support order was entered in another state or country.

"Intrastate case" means a case existing or occurring within the boundaries of a single state.

"IV-A" means Title IV, Part A, of the Social Security Act, codified in 42 U.S.C. Part A of Subchapter IV of Chapter 7 of Title 42 of the United States Code, covering the federal-state Temporary Assistance for Needy Families (TANF) Program.

"IV-B" means Title IV, Part B, of the Social Security Act, codified in 42 U.S.C. Part B of Subchapter IV of Chapter 7 of Title 42 of the United States Code, covering child welfare services.

"IV-D" means Title IV, Part D, of the Social Security Act, codified in 42 U.S.C. Part D of Subchapter IV of Chapter 7 of Title 42 of the United States Code, generally relating to child support.

"IV-D case" means a child support case receiving Title IV-D services.

"IV-D programs and services" means programs and services under Title IV, Part D, of the Social Security Act, codified

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in 42 U.S.C. Part D of Subchapter IV of Chapter 7 of Title 42 of the United States Code.

"**IV-E**" means Title IV, Part E, of the Social Security Act, codified in 42 U.S.C. Part E of Subchapter IV of Chapter 7 of Title 42 of the United States Code, covering foster care.

"**IV-E foster care**" means federal and state funded placement of a child(ren) removed from a home whose family members meet the eligibility criteria for federal participation for Title IV-E foster care.

"**Medicaid**" means medical assistance provided under a state plan approved under Title XIX of the Social Security Act, codified in 42 U.S.C. Subchapter XIX of Chapter 7 of Title 42 of the United States Code including SoonerCare, State Children's Health Insurance Program (S-CHIP), and Insure Oklahoma. In Oklahoma, the Oklahoma Health Care Authority (OHCA) provides Medicaid services for eligible adults and children.

"**Medical enforcement only case**" or "**MEO case**" means a child support case for which OCSS provides only Title IV-D services related to securing and enforcing medical support to non-TANF SoonerCare (Medicaid) recipients.

"**Medical support**" means health insurance, alternative health coverage, cash medical support, or a combination of these for the benefit of a minor child(ren).

"**Member of military service**" or "**servicemember**" means any member of the uniformed service on active duty, including the Army, Navy, Air Force, Marine Corps, and Coast Guard. Also included are members of the National Guard called to active service, certain members of the Public Health Service, and the National Oceanic and Atmospheric Administration, members of the Reserves when ordered to report for active military duty, and United States citizens serving with the military of other countries if their when that service is similar to military service. ~~[50A per 50 App. U.S.C. §§ 511, 514, and 516].~~ A servicemember may be a noncustodial parent an NCP or a custodial person CP.

"**Non-cash support**" means support provided to a family in the nature of goods or services, rather than in cash, but which has a certain and specific dollar value support given to a family in the nature of good or services that can be assigned a specific dollar value in lieu of monetary payment.

"**Noncustodial parent**" or "**NCP**" means a parent who does not have primary physical custody of the child(ren).

"**Non-IV-D case**" means a private child support case not receiving Title IV-D services.

"**Non-IV-E foster care**" means state funded placement of a child(ren) removed from a home where the child(ren) does not meet federal Title IV-E participation requirements.

"**Non-TANF SoonerCare (Medicaid)**" means a case in which a parent or custodial person CP receives Title XIX Medicaid services for the minor child(ren).

"**Notice of Income Assignment**" means the tool used to affect the income withholding process. This document is used to notify employers and other withholders to deduct child support payments from noncustodial parents' an NCPs' income and to send the payments to Oklahoma's Centralized Support Registry for distribution. The terms "income withholding" and "income assignment" may be used interchangeably.

"**OAH**" means the ~~OKDHS~~ DHS Legal Division Office of Administrative Hearings: Child Support (OAH), ~~which that~~ employs and assigns administrative law judges to conduct child support administrative hearings.

"**Obligee**" or "**person entitled**" per 56 O.S. § 237.7 means:

(A) *a person to whom a support debt or support obligation is owed;*

(B) *the Department of Human Services or a public agency of another state that has the right to receive current or accrued support payments or that is providing support enforcement services; or*

(C) *a person designated in a support order or as otherwise specified by the court.* ~~[56 O.S. § 237.7]~~

"**Obligor**" means the person who is required to make payments under an order for support. ~~[per 12 O.S. § 1170 and 56 O.S. § 237.7].~~

"**OCSS**" means ~~Oklahoma Child Support Services~~ CSS. ~~OCSS includes a central state office, district offices, and other offices that may be administered through contract or cooperative agreements with district attorneys, Community Action Program (CAP) agencies, and others. OCSS includes all of these offices and their employees and agents. OCSS is formerly known as the Child Support Enforcement Division of the Oklahoma Department of Human Services.~~

"**Offset**" means an amount of money intercepted from a ~~noncustodial parent's an NCP's~~ state or federal tax refund, or from an administrative payment, such as federal retirement benefits, to satisfy a child support debt.

"**OKDHS**" means ~~the Oklahoma Department of Human Services~~ DHS. ~~OKDHS is the state agency designated to administer the child support program for the State of Oklahoma.~~

"**Oklahoma Health Care Authority (OHCA)**" means the Oklahoma agency that administers the Medicaid and SoonerCare programs for adults and children who meet eligibility requirements. OHCA operates under the authority of Title XIX of the Social Security Act and ~~Sections 5003, et seq. of Title 63 of the Oklahoma Statutes~~ 63 O.S. §§ 5003 et seq.

"**Overpayment**" means a CSS payment to a custodial person CP, noncustodial parent NCP, or other entity by OCSS to which the entity or person is not entitled.

"**Participant in a case**" means a child, parent, ~~or~~ alleged father, or custodial person CP associated with a child support services case.

"**Past support**" means past-due support or support for a prior period. Refer to ~~the definition for~~ "arrear" in this Section.

"**Payment plan**" includes, but is not limited to, a plan approved by the court or the support enforcement entity that provides sufficient security to ensure compliance with a support order, ~~or that~~ incorporates voluntary or involuntary income assignment, or a similar plan for periodic payment of past-due support and, ~~if when~~ applicable, current and future support. ~~[per 43 O.S. § 139.1 and 56 O.S. § 237.7].~~ A payment plan is intended to incrementally reduce arrear.

"**Payor**" means *any person or entity paying monies, income, or earnings to an obligor. In the case of a self-employed*

person, the "payor" and "obligor" may be the same person. ~~per 12 O.S. § 1170 and 56 O.S. § 237.7.~~

"Presumed father" means a man who, by operation of law ~~under Section~~ per 10 O.S. § 7700-204 of Title 10 of the Oklahoma Statutes, is recognized as the father of a child until that status is rebutted or confirmed in a judicial proceeding. ~~[10 O.S. § 7700-102]~~

"Social Security Act" means Public Law 74-271, approved August 14, 1935, as currently in effect ~~codified in 42 U.S.C. Chapter 7 that established the Title IV-D program and other social services programs.~~

"State's attorney" means a lawyer employed in the child support program to represent the state in rendering services pursuant to ~~per the Social Security Act, codified in 42 U.S.C. Part D of Subchapter IV of Chapter 7 of Title 42 of the United States Code.~~

"Support" ~~per 56 O.S. § 237.7~~ means all payments or other obligations due and owing to the ~~custodial person CP~~ or person entitled by the ~~noncustodial parent NCP~~ under a support order, and may include, but is not limited to, child support, medical insurance or other health benefit plan premiums or payments, child care obligations, support alimony payments, and other obligations as specified in ~~Section 43 O.S. §§ 118A through 119 of Title 43 of the Oklahoma Statutes.~~ ~~[56 O.S. § 237.7]~~

"Support for a prior period" means the amount of child support ordered under the child support guidelines in ~~Sections 43 O.S. §§ 118 through 119 of Title 43 of the Oklahoma Statutes~~ in paternity orders and in TANF notice of support debt orders for past months when no child support order was in effect.

"Support order" ~~per 43 O.S. § 601-101~~ means a judgment, decree, order or directive, whether temporary, final, or subject to modification, issued by a tribunal for the benefit of a child, a spouse, or a former spouse, which provides for monetary support, health care, arrearages, or reimbursement, and may include related costs and fees, interest, income withholding, attorney's fees, and other relief. ~~[43 O.S. § 601-101]~~

"TANF" means Temporary Assistance for Needy Families. TANF replaces Aid to Families with Dependent Children (AFDC).

"Tribunal" ~~per 43 O.S. § 601-101~~, means a court or administrative agency authorized to establish, enforce, ~~or~~ modify support orders, or determine parentage. ~~[43 O.S. § 601-101]~~

"UIFSA" means the Uniform Interstate Family Support Act. In Oklahoma, UIFSA is codified at ~~Sections 43 O.S. §§ 601-100 through 601-901 of Title 43 of the Oklahoma Statutes~~ 601-903.

"Unreimbursed public assistance" means money paid as cash assistance from Title IV-A and Title IV-E programs that has not been recovered.

"UPA" means the Uniform Parentage Act. In Oklahoma, ~~the UPA is codified in Sections 10 O.S. §§ 7700-101 through 7700-902 of Title 10 of the Oklahoma Statutes.~~

340:25-1-2. Legal base

(a) **Federal law.** Sections 651 through 669b of Title 42 of the United States Code ~~is~~ (42 U.S.C. §§ 651 through 669b) are

the primary basis in federal law for Oklahoma's child support program. The program is also governed by Chapter III of Title 45 of the Code of Federal Regulations. The Servicemembers Civil Relief Act, codified in Sections 50 App. §§ 501 through 596 of Title 50A of the United States Code, applies to servicemembers. Other federal laws and regulations are followed to the extent they apply to Oklahoma's child support program.

(b) **State law.** Oklahoma Statutes covering child support issues include, but are not limited to:

- (1) Sections 80, 83, 90.4, 90.5, ~~7005-1.4~~, and 7700-101 through ~~7700-902~~ 7800 of Title 10 ~~(10 O.S. §§ 80, 83, 90.4, 90.5, and 7700-101 through 7800);~~
- (2) ~~Sections 12 O.S. §§ 1170 and 1171.2 through 1171.4 of Title 12;~~
- (3) ~~Sections 21 O.S. §§ 566, 567, and 852 of Title 21;~~
- (4) ~~Sections 43 O.S. §§ 109.2 through 110, 112, 112A, 114 through 120, 135 through 139.1, 410 through 413, and 601-100 through 601-901 of Title 43~~ 601-903;
- (5) ~~Sections 56 O.S. §§ 166.1, 183, 230.60, and 231 through 240.23 of Title 56~~ 240.24;
- (6) ~~Sections 63 O.S. §§ 1-311.2 and 1-311.3 of Title 63;~~ and
- (7) ~~Sections 68 O.S. § 205.2 and 205.3 of Title 68.~~

(c) **Applicability.** Oklahoma Department of Human Services Child Support Services ~~(OCSS)~~ (CSS) uses federal or state statutes, as appropriate, in specific situations to establish and enforce child support orders. ~~OCSS~~ CSS follows applicable state and federal laws in carrying out its responsibilities and providing services regardless of whether a statute, regulation, final order, or other legal obligation is specifically referenced in this Chapter.

340:25-1-3.1. Designation of an authorized representative

(a) A custodial person, noncustodial parent, or biological parent may designate a person as an authorized representative to:

- (1) obtain child support case information and documents from Oklahoma Department of Human Services (DHS) Child Support Services (CSS) on his or her behalf; or
- (2) provide information and documents to CSS on his or her behalf.

(b) CSS does not honor requests to designate ~~as an authorized representative~~ a person who has a conflict of interest that would result in the release of information he or she is otherwise not entitled to receive as an authorized representative.

(c) ~~The~~ An authorized representative may obtain information and documents ~~an authorized representative may obtain~~ are limited to those items the person represented may obtain per Oklahoma Administrative Code 340:25-5-67.

(d) This Section does not allow an authorized representative to appear before the DHS Office of Administrative Hearings: Child Support or the district court on behalf of the person represented unless specifically allowed by law. Further, nothing in this Section prevents CSS from requesting the court to enter a default order based on the person's failure to appear, even when the person's authorized representative is present.

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- (e) The authorized representative does not have to be an attorney.
- (f) A person must complete and submit Form 03EN010E, Authorized Representative Designation, to CSS, before the representative may act or receive information orally or in writing on behalf of the person represented. A person may have only one authorized representative at any time.
- (g) ~~Once~~ When CSS receives Form 03EN010E, CSS verifies the identity of the individual completing Form 03EN010E. CSS considers the designation in effect until CSS receives:
- (1) a new Form 03EN010E designating another person as the authorized representative;
 - (2) written notice that the designation of an authorized representative is revoked; or
 - (3) written notice that the designator is deceased.
- (h) CSS reserves the right to refuse to honor a designation of authorized representative.

SUBCHAPTER 3. COMMISSIONED PEACE OFFICERS

340:25-3-3. Service of process

- (a) **Authority.** Oklahoma Department of Human Services Child Support Services (~~OCSS~~)(CSS) follows the provisions of Section 2004 of Title 12 of the Oklahoma Statutes (12 O.S. § 2004) for service of process. ~~OCSS~~CSS uses the most cost effective and efficient method of service of process depending on what is most appropriate under the facts of the case.
- (b) **Service by acknowledgment.** ~~When feasible, OCSS delivers the documents directly to a party and requests the party accept and acknowledge service. The Acknowledgment of Service is filed in the court case.~~
- (~~e~~) **Service by regular mail to address of record (AOR).** Service to the AOR by regular mail may be appropriate when an AOR is on file with the Central Case Registry for a party in the case per Oklahoma Administrative Code 340:25-5-340. Service to the ~~address of record~~AOR is not appropriate when the:
- (1) remedy sought may result in the obligor's incarceration including, but not limited to, indirect civil contempt actions; or
 - (2) court may require a higher level of notice to the affected party, including, but not limited to, actions to determine paternity.
- (c) **Service by acknowledgment.** CSS delivers the documents directly to a party and requests the party accepts and acknowledges service, as appropriate. The Acknowledgment of Service is filed in the court case.
- (d) **Service by certified mail.** Service by mail is made by certified mail, return receipt requested, and delivery restricted to the addressee. CSS uses service by certified mail when service to the AOR or by Acknowledgment of Service is not appropriate or successful. CSS staff is not required to attempt service by certified mail before attempting personal service when the case history indicates a low probability of acceptance or the court requires personal service.

- (~~e~~) **Personal ~~service~~Service by personal delivery.** Service by personal delivery is completed by a sheriff, deputy sheriff, individual licensed to make service of process in civil cases, or an individual specially appointed for that purpose per 12 O.S. § 2004. ~~OCSS~~CSS uses service by personal service~~delivery~~ when:
- (1) ~~a person~~ individual has not accepted service by certified mail;
 - (2) service to the ~~address of record~~address of record ~~AOR~~ or by acknowledgment is not available or appropriate;
 - (3) case history indicates a low probability of acceptance of service by certified mail; or
 - (4) the court requires service ~~by personal service~~delivery.
- (~~e~~) **Diligent efforts.** When CSS contracts with vendors for service of process, the vendor must make diligent efforts to complete service and provide timely documentation to CSS. Diligent efforts means repeated attempts to serve the ~~person~~individual at least three times, and at different times of day or on different days of the week, before declaring inability to serve. ~~OCSS~~CSS:
- (1) attempts to serve process in the manner, ~~and~~ at the time, and place most reasonably calculated to complete service of process in the most efficient and cost effective manner;
 - (2) makes diligent efforts to serve process utilizing all information:
 - (A) provided by ~~OCSS~~CSS staff;
 - (B) documented in the case record; or
 - (C) gathered from other locate resources;
 - (3) provides address and employer information to the process server;
 - (4) attempts to serve the person at:
 - (A) work;
 - (B) home; or
 - (C) other locations based on information gathered on the ~~person's~~his or her lifestyle; and
 - (5) documents all facts about attempts to serve process in the case record.
- (~~e~~) **Minor noncustodial parent.** ~~OCSS~~CSS serves a minor noncustodial parent (NCP) who is:
- (1) 15 years of age or older per 12 O.S. § 2004; or
 - (2) younger than 15 years of age, through a parent, guardian, or other appropriate adult as the next friend of the minor NCP.

SUBCHAPTER 5. OPERATIONAL POLICIES

PART 9. DISCLOSURE OF INFORMATION

340:25-5-67.1. Family violence

- (a) Oklahoma Department of Human Services (DHS) Child Support Services (~~OCSS~~)(CSS) establishes and maintains records regarding family violence per Sections 303.21 and 307.11 of Title 45 of the Code of Federal Regulations and

Sections 653 and 654 of Title 42 of the United States Code (42 U.S.C. §§ 653 and 654).

(b) ~~OCSS~~CSS is committed to promoting the safety and well-being of its customers and staff.

(c) A family violence indicator is a designation placed on a participant in a Title IV-D or non-Title IV-D case by ~~OCSS~~CSS indicating the risk of child abuse or domestic violence. The family violence indicator is used to restrict disclosure of the location of a participant who is reported to ~~OCSS~~CSS as being at risk of family violence.

(d) ~~OCSS~~CSS considers as reasonable evidence of family violence, and enters a family violence indicator on appropriate ~~persons~~individuals, when:

(1) a parent or custodian states that he or she or the child(ren) is at risk of emotional or physical harm from another ~~person~~individual in the same child support case; or

(2) ~~OKDHS~~DHS has knowledge of a court-ordered protective order or other information that family violence exists.

(e) ~~OCSS~~CSS makes available to custodial persons (CP) and noncustodial parents (NCP) Form 03EN008E, Family Violence - Address of Record Statement, to collect address of record (AOR) information and explain how the information is used. The ~~custodial person~~CP or noncustodial parent NCP may use Form 03EN008E to:

(1) request that his or her home address, or location information, not be released to another parent or party in a child support case because release could result in family violence to the requesting ~~person~~individual or his or her children; or

(2) designate an ~~address of record~~AOR per OAC 340:25-5-340. ~~OCSS~~CSS may release the ~~address of record~~AOR per OAC 340:25-5-340.1.

(f) The presence or absence of a family violence indicator on a case does not guarantee anyone's safety. ~~OCSS~~CSS is not liable for harm arising from the use or non-use of a family violence indicator.

(g) ~~OCSS~~CSS may remove a family violence indicator from a case participant when ~~OCSS~~CSS receives:

(1) a written request from the participant;

(2) information that the family violence indicator was entered in error; or

(3) a court order to remove the family violence indicator.

(h) Upon order of a court having the authority to make or enforce child custody or visitation determinations per 42 U.S.C. § 663, ~~OCSS~~CSS may:

(1) request the federal Office of Child Support Enforcement to override a family violence indicator in a single instance; and

(2) authorize release of the person's home address or location to the court.

(i) Interstate cases follow OAC 340:25-5-270.

(j) When an NCP submits an application for Title IV-D services in a case previously closed for good cause, CSS follows OAC 340:25-5-117.

PART 15. CASE INITIATION, CASE MANAGEMENT, AND CASE CLOSURE

340:25-5-114. Procedures for determining and processing noncooperation on Temporary Assistance for Needy Families (TANF) and non-TANF SoonerCare (Medicaid) cases

(a) **Cooperation of custodial persons.** The custodial person (CP) must cooperate with the Oklahoma Department of Human Services (DHS) Child Support Services (~~OCSS~~)CSS program in establishing paternity or in establishing, modifying, or enforcing a support order per Section 654 of Title 42 of the United States Code (42 U.S.C. § 654) and Section 264.30 of Title 45 of the Code of Federal Regulations (45 C.F.R. § 264.30). A CP receiving:

(1) ~~Temporary Assistance for Needy Families (TANF)~~ must assign rights to support to the ~~Oklahoma Department of Human Services (OKDHS)~~DHS per 42 U.S.C. § 608; and

(2) non-TANF SoonerCare (Medicaid) benefits for minor child(ren) must assign medical support rights to the Oklahoma Health Care Authority (OHCA) per ~~(42 C.F.R. § 433.146)~~.

(b) **Noncooperation of custodial persons.** When a CP fails to cooperate, ~~OCSS~~CSS reviews the case to determine noncooperation. ~~If OCSS~~When CSS determines noncooperation, ~~OCSS~~CSS notifies ~~OKDHS~~ Adult and Family Services (AFS) staff in the appropriate DHS county office. AFS staff updates the computer document for noncooperation with ~~OCSS~~CSS and a computer-generated notice per Oklahoma Administrative Code (OAC) 340:65-5-1 is sent advising the recipient of any decrease in benefits due to noncooperation.

(1) For ~~OCSS~~CSS to make a noncooperation determination on a TANF case, the cooperation must be essential for the next step in providing child support services, per OAC 340:10-10-5 and 340:10-10-7.

(2) Noncooperation is indicated when the CP:

(A) fails to appear at a CSS district office to provide information or evidence relevant to the case;

(B) refuses to complete and sign documents necessary to take legal action against the noncustodial parent(s) (NCPs) when requested to do so by ~~the district office~~CSS;

(C) fails to comply with an order to submit oneself ~~and/or~~ the child(ren) to genetic testing to determine paternity;

(D) fails to appear as a witness at an administrative, ~~or~~ district court hearing, or other proceeding;

(E) fails to provide information, or attest to lack of information, under penalty of perjury;

(F) fails to forward to ~~OCSS~~CSS all child support payments received from the NCPs or those received from entities other than the Centralized Support Registry; ~~or~~

(G) pursues private legal action affecting paternity, child support, medical support, or child care, or authorizes payments made other than through the

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Centralized Support Registry without giving ~~OCSS~~ CSS notice, and fails to keep ~~OCSS~~ CSS informed of the case status; or

(H) engages in ongoing conduct detrimental to CSS enforcement efforts.

(3) ~~OKDHS~~ DHS AFS staff in the county office determines ~~whether~~ if good cause for noncooperation with ~~OCSS~~ CSS exists per OAC 340:10-10-6.

(c) **Noncooperation of custodial persons on non-TANF SoonerCare (Medicaid) cases.** When ~~the OCSS~~ CSS district office ~~staff~~ receives an OHCA referral on a non-TANF or existing case update with a pending good cause indicator (~~PGC~~), ~~OCSS~~ CSS district office ~~staff~~ determines ~~whether~~ if good cause exists for noncooperation per OAC 317:35-5-7.

340:25-5-117. Initiation of Title IV-D cases

(a) **Title IV-A, Title IV-E foster care, non-TANF SoonerCare (Medicaid), and child care subsidy referrals.**

(1) Oklahoma Department of Human Services Child Support Services (~~OCSS~~) CSS automatically initiates child support cases without additional application for certified Title IV-A, Title IV-E foster care, non-Temporary Assistance for Needy Families (TANF) SoonerCare (Medicaid), and child care subsidy referrals.

(2) Custodial persons (CP)s who apply for non-TANF SoonerCare (Medicaid) ~~on behalf of~~ for themselves and their child(ren) must assign medical support rights to the state per Section 1396k of Title 42 of the United States Code (42 U.S.C. § 1396k).

(A) A referral from the Oklahoma Health Care Authority (OHCA) means receipt of data that includes verified information with no errors or duplications ~~that is sufficient for OCSS~~ CSS to initiate a child support case.

(B) These ~~custodial persons~~ CPs must cooperate in establishing paternity and obtaining medical support unless an exception exists per ~~Sections 42 U.S.C. §§ 1396a(1)(1)(A), 1396k, or 1396r-6 of Title 42 of the United States Code.~~

(C) ~~OCSS~~ CSS must open a Title IV-D medical enforcement only case per Oklahoma Administrative Code (OAC) 340:25-5-169. ~~OCSS~~ CSS may open a full-service case to provide all appropriate Title IV-D services per OAC 340:25-1-1.2 at the ~~custodial person's~~ CPs request.

(3) When ~~OCSS~~ CSS receives a referral from the Adult and Family Support Services—Division worker per OAC 340:40-7-9, ~~OCSS~~ CSS must open a full-service case ~~if~~ when any of the applicant's children in the household are certified for a child care subsidy.

(4) When ~~OCSS~~ CSS receives a non-TANF SoonerCare (Medicaid) referral from ~~the~~ OHCA in which assigned court-ordered or cash medical support child support is owed, ~~OCSS~~ CSS must open a full-service case per OAC 340:25-5-169.

(5) ~~Custodial persons~~ CPs who apply for non-TANF SoonerCare (Medicaid) on behalf of their child(ren) only

are not required to cooperate in establishing paternity and obtaining medical support. Therefore, except when (a)(3) of this Section applies, ~~OCSS~~ CSS does not provide child support services unless the ~~custodial person has~~ CP made a request for a full-service case or the case is for medical enforcement only.

(b) **Termination of Title IV-A, Title IV-E foster care, and non-TANF SoonerCare (Medicaid) benefits.** When a family is no longer eligible for assistance under Titles IV-A, Title IV-E foster care, or SoonerCare (Medicaid) programs, all appropriate Title IV-D services continue without application per Section 302.33 of Title 45 of the Code of Federal Regulations. Non-TANF SoonerCare (Medicaid) cases previously limited to medical support continue as full-service cases. ~~If~~ When a ~~custodial person~~ CP refuses continued Title IV-D services and subsequently requests services, the ~~person~~ CP must submit a completed and signed Form 03EN001E, Application for Child Support Services, even ~~if OCSS~~ when CSS has an active case because of unreimbursed assistance owed to the state.

(c) **Referrals from other jurisdictions.** ~~OCSS~~ CSS accepts cases referred:

(1) by any state or tribal Title IV-D agency and from other countries when the noncustodial parent (NCP) resides in Oklahoma. ~~OCSS~~ CSS does not require an application for cases referred from another Title IV-D agency;

(2) by interstate referrals for judgment only collections ~~if~~ when the case was opened in the initiating state during the minority of any child on the case; or

(3) when Oklahoma is an appropriate jurisdiction to establish, enforce, modify, or determine the controlling order per the Uniform Interstate Family Support Act in Sections 601-101 through ~~601-901~~ 601-903 of Title 43 of the Oklahoma Statutes, whether or not the ~~noncustodial parent~~ NCP resides in Oklahoma.

(d) **Responses from ~~noncustodial parents~~ NCPs who sign an acknowledgment of paternity form.** ~~OCSS~~ CSS opens full-service cases for ~~noncustodial parents~~ NCPs who have filed Form 03PA209E, Acknowledgment of Paternity, with the Oklahoma State Department of Health, Division of Vital Records, and requested child support services by completing and signing Form 03EN001E, Application for Child Support Services ~~in response to outreach letters sent to them.~~

(e) **Other Title IV-D cases.** Except as provided in subsections (a), (c), and (d) of this Section, an applicant must submit a completed and signed Form 03EN001E to receive all appropriate child support services or locate only services.

(f) **Building case balances.**

(1) ~~OCSS~~ CSS builds case balances on new and reopened cases per OAC 340:25-5-140.

(2) When ~~OCSS~~ CSS opens a case and has information the ~~noncustodial parent has~~ NCP made payments in excess of the court-ordered child support order, ~~OCSS~~ CSS only collects the excess payment when a court has determined the amount of the excess payment and ordered that it be satisfied by offset against the monthly current child support obligation.

(g) **Good cause.** When the NCP submits an application for child support services in a case previously closed for good cause for noncooperation, CSS:

- (1) reviews the case to determine if:
 - (A) good cause still exists for the CP not to cooperate with CSS; and
 - (B) CSS can proceed without the CP's cooperation or participation;
- (2) opens the case when good cause no longer exists;
- (3) opens the case when good cause exists, but CSS can proceed without the CP's cooperation or participation; or
- (4) closes the case when good cause still exists and CSS cannot proceed without the CP's cooperation or participation.

340:25-5-118. Noncooperation on non-TANF and child care subsidy cases

- (a) The ~~Oklahoma Child Support Enforcement Division (CSED) Services (CSS)~~ determines noncooperation in a non-TANF case on the same basis as a Temporary Assistance for Needy Families (TANF) case. Oklahoma Administrative Code (OAC) 340:25-5-114 describes indications of noncooperation. ~~If CSED~~ When CSS determines noncooperation, ~~CSED~~ CSS closes the case under Section 303.11 of Title 45 of the Code of Federal Regulations.
- (b) ~~CSED~~ CSS requires a new application to reopen a case closed because of noncooperation. The applicant for services must agree to cooperate with ~~CSED~~ CSS.
- (c) OAC 340:40-7-9 describes the requirement to pursue child support with ~~CSED~~ CSS, as a condition of eligibility, for custodial persons participating in the Oklahoma Department of Human Services (~~OKDHS~~) (DHS) child care subsidy program. ~~If CSED determines noncooperation of a custodial person receiving CSED child support services and child care subsidy services, CSED notifies the OKDHS Family Support Services (FSS) worker in the county office. CSED~~ When the noncooperation prevents CSS from providing child support services, CSS initiates case closure action under Section 303.11 of Title 45 of the Code of Federal Regulations. The FSS worker closes the child care subsidy benefits under OAC 340:40-7-9.

PART 17. PAST SUPPORT

340:25-5-140.2. Child Support College Savings Incentive Program [REVOKED]

- (a) **General.** ~~Oklahoma Department of Human Services Child Support Services (CSS) partners with the Oklahoma State Treasurer to offer the Oklahoma Child Support College Savings Incentive Program (program). The program allows CSS to waive all or a portion of arrears assigned to Oklahoma (state) in exchange for contributions to a designated Oklahoma 529 College Savings Plan (529) account by the noncustodial parent (NCP) or by other persons on behalf of the NCP.~~
- (b) **Authority.** ~~CSS is authorized to offer the college savings plan by Oklahoma Statute Title 70 Sections 3970.1 through~~

~~3970.12 (70 O.S. §§ 3970.1—3970.12), 43 O.S. § 112, and Oklahoma Administrative Code 340:25-5-140 and 340:25-5-140.1.~~

(e) **Program Details.**

- (1) ~~To be eligible for the program, all child support arrears owed on an NCP's case must be assigned to the state.~~
- (2) ~~CSS waives two dollars of child support arrears assigned to the state in exchange for every one dollar contributed to the program account on behalf of an eligible NCP when:~~
 - (A) ~~any current support amount has been paid in full; and~~
 - (B) ~~at least one dollar has been paid to CSS toward the state arrears in the same month as the deposit in the 529 account.~~

PART 19. LOCATE SERVICES

340:25-5-155. Locate services

- (a) **Scope of Services.** ~~Oklahoma Department of Human Services (DHS) Child Support Services (OCSS)~~ (CSS) follows the provisions of Sections 653, 654, 654a, 663, and 666 of Title 42 of the United States Code (42 U.S.C. §§ 653, 654, 654a, 663, and 666) and Sections 302.35, 303.3, 303.7, and 303.15 of Title 45 of the Code of Federal Regulations (45 C.F.R. §§ 302.35, 303.3, 303.7, and 303.15) in locating parents and their assets for the ~~purpose~~ purposes of:
 - (1) establishing paternity;
 - (2) establishing, setting the amount of, modifying, or enforcing child support obligations;
 - (3) making or enforcing a child custody determination; ~~and/or~~
 - (4) assisting in cases of parental kidnapping.
- (b) **Locate only services.** When authorized persons apply for locate only services, ~~Oklahoma Department of Human Services~~ Form 03EN007E, Locate Only Rights and Responsibilities, must be completed and submitted with an application for child support services.
- (c) **Most Wanted Missing Parent program (MWMP).**
 - (1) Per Section 240.24 of Title 56 of the Oklahoma Statutes, CSS maintains publicly accessible lists of Oklahoma's CSS most wanted and missing parents to find parents, who:
 - (A) are in arrears in court-ordered child support obligations;
 - (B) are sought for the purpose of establishing a child support order; or
 - (C) have a valid child support arrest warrant issued at the time of the MWMP listing.
 - (2) At CSS's discretion the list may include the names of parents who were referred for inclusion according to CSS established criteria.

PART 20. MEDICAL SUPPORT

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340:25-5-169. Establishment of medical enforcement only cases

(a) **Legal authority.** Oklahoma Department of Human Services (DHS) Child Support Services (CSS) follows Sections 302.33, 302.56, 303.30, and 303.31 of Title 45 of the Code of Federal Regulations (45 C.F.R. §§ 302.33, 302.56, 303.30, and 303.31); Section 6058A of Title 36 of the Oklahoma Statutes (36 O.S. § 6058A); 43 O.S. §§ 112, 118F, 118.2, and 119; and 56 O.S. § 237.

(ab) **Medical enforcement only (MEO) status.** When a person receiving non-TANF (Temporary Assistance for Needy Families) SoonerCare (Medicaid) notifies ~~Oklahoma Child Support Services (OCSS)~~CSS that only Title IV-D services related to securing medical support are requested, ~~OCSS~~CSS updates the case as an MEO case and does not provide full child support services per Oklahoma Administrative Code (OAC) 340:25-1-1.2. OCSS follows Sections 302.33, 302.56, 303.30, and 303.31 of Title 45 of the Code of Federal Regulations; Section 6058A of Title 36; Sections 112, 118F, 118.2, and 119 of Title 43; and Section 237 of Title 56 of the Oklahoma Statutes.

(bc) Services provided on MEO cases.

(1) ~~OCSS~~CSS establishes paternity, ~~if~~when necessary, and a child support order. The child support order must include a provision for:

(A) ~~a provision for~~ current child support per OAC 340:25-5-178;

(B) ~~a provision for~~ support for a prior period per OAC 340:25-5-179.1, when appropriate; and

(C) ~~a provision for~~ medical support per OAC 340:25-5-168.

(2) ~~OCSS~~CSS conducts a review of the order per OAC 340:25-5-198.1 and seeks a modified order including a provision for medical support when:

(A) the existing child support order does not include a medical support provision;

(B) ~~no~~ insurance is not available for the child(ren); or

(C) a parent or custodial person claims ~~that~~ the available health insurance is not accessible or reasonable in cost.

(ed) **Exception to MEO status.** ~~OCSS~~CSS opens a full-service case on all of the custodial person's (CP) child support cases when ~~OCSS~~CSS receives a non-TANF SoonerCare (Medicaid) referral, ~~as defined in~~per OAC 340:25-5-117, from the Oklahoma Health Care Authority and:

(1) assigned court-ordered child support is owed per OAC 340:25-5-117;

(2) the child(ren) is in a deprived or delinquent juvenile court action;

(3) assigned cash medical support is owed per OAC 340:25-5-117; or

(4) the ~~custodial person~~CP is a child care subsidy recipient.

340:25-5-198.2. Modification

(a) **Authority for modification.** Oklahoma Department of Human Services(DHS) Child Support Services (CSS) may initiate modification of a child support order per Sections 112, 118-118I, 118.1, 119, 601-611, 601-613, and 601-615 of Title 43 of the Oklahoma Statutes (43 O.S. §§ 112, 118-118I, 118.1, 119, 601-611, 601-613, and 601-615) and 56 O.S. § 237 in the appropriate tribunal when facts indicate modification is warranted under applicable state or federal law or regulation.

(b) **Modification of child support order.** CSS seeks a modification when:

(1) there ~~has been~~is a material change in circumstances per 43 O.S. § 118I including, but not limited to:

(A) a change in either parent's gross income or changes in child support guideline calculation, such as child care expenses or medical support;

(B) a child reaching the age of majority per 43 O.S. § 112;

(C) a component of or the new current child support amount is 20 percent higher or lower than the existing order;

(D) there is a change in physical custody verified per Oklahoma Administrative Code (OAC) 340:25-5-201.1;

(E) one of the parents is determined disabled by the Social Security Administration and the parent is receiving Supplemental Security Income or Social Security Disability Income; or

(2) per 56 O.S. § 237 when the evidence in the case justifies a modification regardless of whether there has been a change of circumstances including, but not limited to, when:

(A) the original order fails to set child support according to the guidelines;

(B) an adjustment is needed to maximize a noncustodial parent's (NCP's) available income to meet the current child support obligation in each of the NCP's cases; or

(C) a parent provides proof the child support obligation is being satisfied in full or in part by an apportionment of the veteran's disability compensation.

(c) Modification of medical support order.

(1) CSS seeks a modification of ~~an order for~~a medical support order, when:

(A) there is no existing order for either parent to provide dependent health care coverage. CSS initiates a modification of a support order to require either or both parents to provide dependent health care coverage when CSS obtains information the child(ren) is not covered under an existing health care plan other than SoonerCare (Medicaid), regardless ~~of whether~~ ~~the~~if coverage is currently available to either parent;

(B) the availability of medical insurance changes;

(C) there is an order for the custodial person to provide medical support for the minor child(ren) and enforcement of the order is not appropriate per 43 O.S. § 139.1 or 21 O.S. § 566;

PART 22. REVIEW AND MODIFICATION

(D) an order for the NCP to provide medical insurance and the release of information necessary for enrollment of the child is inappropriate due to family violence and a cash medical order is appropriate per OAC 340:25-5-198; or

(E) there is an order for a parent to provide medical insurance, the applicant for child support services ~~has~~ did not request services against that parent, and the ordered parent is not actually providing medical insurance for the child.

(2) When CSS participates in the modification of a child support order filed by a party, CSS requests the court order contain a provision for medical support consistent with OAC 340:25-5-168.

(3) When a child support order exists, CSS considers a request to establish a medical support order as a request for modification of the order per 43 O.S. § 118.1. CSS seeks a medical support order in a tribunal ~~that has~~ with jurisdiction to modify the child support order and follows procedures per OAC 340:25-5-198.1.

(4) When cash medical support is ordered as part of a modification action, CSS requests a cash medical support order be effective the ~~first day of the month following the date the modification order is entered~~ same date the modified child support amount is effective, unless the parties agree to a different date or the change in health coverage cost or availability occurred on a later date.

PART 23. ENFORCEMENT

340:25-5-200. Scope and applicability

(a) **Enforcement.** The Oklahoma Department of Human Services Child Support Services (CSS) follows Part D of Subchapter IV of Chapter 7 of Title 42 and Section 1738B of Title 28 of the United States Code (28 U.S.C. § 1738B), Section 303.6 of Title 45 of the Code of Federal Regulations (45 C.F.R. § 303.6), and Section 240.1 of Title 56 of the Oklahoma Statutes (56 O.S. § 240.1) in initiating enforcement proceedings.

(1) Orders for current and past child and spousal support, health care coverage, fixed amounts of medical support, judgments, and delinquencies may be enforced through expedited and judicial processes, or through other collection efforts.

(2) Past-due child support is a judgment by operation of law and may be enforced in the same manner as any other money judgment per 43 O.S. § 137.

(3) Post-judgment remedies do not require an adjudicated judgment by a district or administrative court.

(4) Each missed support payment is a judgment; thus, a judgment increases with each missed payment. This total judgment becomes a lien on the real and personal property of the noncustodial parent (NCP).

(b) **Non-Oklahoma support order.** CSS registers a support order from another state, Native American tribe, territory, or foreign country, per subsection (b) of the Full Faith and Credit for Child Support Orders Act codified in 28 U.S.C. § 1738B(b)

and 43 O.S. § 601-101(21) when enforcement of the order is sought.

(c) **Multiple support orders.** When multiple child support orders are entered in the same or different tribunals involving the same NCP and child, CSS seeks a determination of controlling order, per 43 O.S. §§ 601-207, 601-307, and 601-601 through 601-603 and Oklahoma Administrative Code (OAC) 340:25-5-270.

(d) **Legal remedies.** CSS determines appropriate enforcement actions and may use any legal remedy to enforce support obligations. CSS chooses remedies designed to obtain compliance with an obligor's support obligations and does not use any remedy for the purpose of punishment. When an NCP is participating in the Court Liaison Program (CLP) or complying with a seek work order, CSS considers the NCP's participation and compliance per OAC 340:25-5-200.3 when choosing enforcement remedies. Remedies CSS may use include, but are not limited to:

(1) annual notice to NCPs per 56 O.S. § 237A and OAC 340:25-5-213;

(2) income assignment, garnishment, and levy per Chapter 21 of Title 12, 43 O.S. §§ 115 and 601-501 through 601-507, 56 O.S. §§ 237, 240.2, and 240.23, and 42 U.S.C. § 666;

(3) hearing on assets per 12 O.S. § 842;

(4) intercept of federal tax refunds, per 42 U.S.C. § 664, 31 C.F.R. § 285.3, and 45 C.F.R. § 303.72, OAC 340:25-5, Part 25. Intercept of state tax refunds per 45 C.F.R. § 303.102, 68 O.S. §§ 205.2 ~~and 205.3~~, and OAC 340:25-5, Part 27;

(5) administrative offsets per 31 U.S.C. § 3716, 31 C.F.R. § 285.1, and Executive Order 13019;

(6) denial, revocation, or suspension of United States passports, per 56 O.S. § 240.1 and 42 U.S.C. §§ 652 and 654;

(7) revocation, suspension, non-renewal, and non-issuance of various licenses including, but not limited to, revocations of certificates of motor vehicle titles per 43 O.S. §§ 139 and 139.1 47 O.S. §§ 1-153, 6-201, 6-201.1, and 6-211, and 56 O.S. §§ 237.1 and 240.15 through 240.21A;

(8) imposing liens and executing and levying on personal and real property, including, but not limited to, workers' compensation benefits, personal injury, wrongful death, and probate actions per 43 O.S. § 135, 56 O.S. § 240.23, and Titles 12 and 58 of the Oklahoma Statutes;

(9) registration of foreign support orders per the Uniform Interstate Family Support Act per 43 O.S. §§ 601-100 through 601-903;

(10) credit bureau referrals per 42 U.S.C. § 666 and 15 U.S.C. § 1681b, 56 O.S. § 240.7, and OAC 340:25-5, Part 31;

(11) financial institution data match per 42 U.S.C. §§ 666 and 669A, 56 O.S. §§ 240.22 through 240.22G, and OAC 340:25-5-212;

(12) seek work orders per 56 O.S. § 240.10;

(13) indirect civil contempt of court per 21 O.S. §§ 566 and 567, 43 O.S. § 137, and 56 O.S. § 234. CSS does not

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use contempt as a penal sanction and does not recommend incarceration to the district court at sentencing in an indirect civil contempt proceeding unless there is evidence or information available that the obligor can purge the contempt. CSS asks the court to set a reasonable purge fee per Rule 8.3 of the Rules of the District Court;

(14) action to void the transfer or obtain favorable settlement in cases in which a debtor transferred income or property to avoid payment to a child support creditor per the Uniform Fraudulent Transfer Act, 24 O.S. §§ 112 through 123 and 42 U.S.C. § 666;

(15) registration of foreign judgments per the Uniform Enforcement of Foreign Judgments Act, 12 O.S. §§ 719 through 726;

(16) criminal actions brought per 21 O.S. § 852;

(17) civil actions brought per 42 U.S.C. § 660;

(18) transfer of child support obligation to another custodian per 56 O.S. § 237;

(19) referral to the United States Attorney for federal prosecution per 18 U.S.C. § 228;

(20) full collection services by the Secretary of the Treasury per 6305 of the Internal Revenue Code of 1954; and

(21) attachment of lottery prize winnings from the Oklahoma Lottery Commission per 3A O.S. § 724.1.

(e) **Servicemember.** When CSS initiates proceedings to enforce a child support order for a child of an NCP or a custodial person who is a servicemember, CSS applies the provisions of the Servicemembers Civil Relief Act, per 50A U.S.C. §§ 501 through 596.

340:25-5-200.3. ~~Child Support Services (CSS) Problem-Solving Court Liaison Program (CLP)~~

(a) ~~CLP is the program designated by~~ Oklahoma Department of Human Services Child Support Services (CSS) designates the following process as the problem-solving court program referenced in Section 140 of Title 43 of the Oklahoma Statutes (43 O.S. § 140), 21 O.S. § 566.1, and 56 O.S. § 240.10.

(b) When:

(1) a noncustodial parent (NCP) is participating in the CLP, CSS staff follows (1) and (2) of this subsection indicates barriers to the payment of child support, CSS staff offers information about available community resources that might assist in removing such barriers; or

(2) a court action is ongoing, CSS requests the court include requirements in the court order for the NCP to work to remove barriers to payment of child support by using available community resources.

(c) CSS requests the court set future court dates as appropriate under the circumstances of the case to review the NCP's compliance with the court's requirements. When a court action is not filed, CSS may file a seek work proceeding per 56 O.S. § 240.10.

(d) When an NCP is complying with the court's requirements:

(1) When an NCP is complying with CLP requirements or a seek work order, CSS staff coordinates, within

an office and between offices, to find a case management strategy that treats NCP's cases consistently and is most likely to result in a reliable source of support in all of the NCP's cases.

(2) "Complying" means the NCP is following the ~~CLP Individual Service Plan~~ court's orders to remove barriers to paying support or is otherwise meeting the requirements set out in a seek work order, including disclosing all information about earnings and assets.

340:25-5-211.1. License revocation and reinstatement for failure to comply with child support order

(a) **Legal basis.** Oklahoma Department of Human Services Child Support Services (CSS) follows Sections 139 and 139.1 of Title 43 of the Oklahoma Statutes (43 O.S. §§ 139 and 139.1), 47 O.S. §§ 1-153, 6-201, 6-201.1, and 6-211, and 56 O.S. §§ 237.1, 240.15 through 240.17, and 240.19 through 240.21A in processing enforcement actions to order the revocation, suspension, non-issuance, nonrenewal, or probation of a license for a noncustodial parent (NCP) who is not in compliance with an order for child support.

(b) **License Reinstatement Process.**

(1) **Request for license reinstatement; desk review.** When CSS receives a written request to reinstate a license, CSS conducts a desk review of the case file within 15-calendar days after receipt of a written request for reinstatement.

(2) **Compliance with payment plan.** When CSS determines an NCP is complying with a court-ordered payment plan and other terms of a support order, and the reinstatement provisions of 43 O.S. § 139.1 or 56 O.S. § 240.17, CSS requests a reinstatement of the license from the tribunal that revoked the license.

(3) **Alternative compliance.** CSS may request a reinstatement of the license when:

(A) the NCP is actively participating in the ~~CSS Court Liaison Program~~ problem-solving court program per Oklahoma Administrative Code 340:25-5-200.3 and 43 O.S. § 140 or complying

with a seek work order per 56 O.S. § 240.10; and

(B) a CSS state's attorney determines reinstating the NCP's license ~~would~~ will increase the ~~likelihood that the NCP is able~~ NCP's likelihood to pay support.

(4) **Noncompliance with payment plan.**

(A) When CSS determines an NCP is not complying with a court-ordered payment plan, other terms of a support order, or the reinstatement provisions per 43 O.S. § 139.1, CSS sends a notice to the NCP that the request for reinstatement of a license is denied. The notice advises the NCP that he or she has 15-calendar days to request a reinstatement hearing in writing. Upon timely receipt of a written request for a hearing, CSS schedules the matter for a hearing before the tribunal that ordered the license revocation.

(B) CSS provides notice of the hearing to the custodial person per 12 O.S. § 2005 or 43 O.S. § 112A.

(C) When a license was reinstated per (b) of this Section and the NCP subsequently is in noncompliance with a payment plan, CSS requests the court immediately revoke the NCP's license(s).

340:25-5-213. Annual notice

(a) Oklahoma Department of Human Services Child Support Services (CSS) sends a notice, referred to as the Notice and Order of Child Support Lien or annual notice, per Section 237A of Title 56 of the Oklahoma Statutes (56 O.S. § 237A) to noncustodial parents (NCP) and custodial persons (CP) in Title IV-D cases at least once every 12 months, *unless the amount of past due support has been determined in a court proceeding within the past twelve months. The annual notice:*

- (1) ~~confirms the amount of past support and establishes a payment plan to collect past support;~~
- (2) ~~includes notice of the procedure to submit address changes to the Central Case Registry;~~
- (3) ~~informs the NCP that child support services under the state plan are being provided;~~
- (4) ~~instructs the NCP to redirect the support payments to the Centralized Support Registry;~~
- (5) ~~advises the NCP of the amount of past support and collection actions that may be taken to collect the support debt;~~
- (6) ~~includes directions for the NCP to make specified monthly payments to satisfy past due support; and~~
- (7) ~~establishes an address of record for the NCP.~~

(b) The annual notice includes directions for the NCP to make specified monthly payments to satisfy past-due support. The annual notice requests two separate monthly payments on past due support: one temporary payment and one permanent payment.

- (1) The temporary monthly payment on past due support is a payment that is effective when the annual notice is issued and is included on an Income Withholding Order (IWO).
- (2) The permanent monthly payment on past due support is a payment that is effective after the time period for administrative review has passed. After the time period for administrative review has passed, CSS issues an amended IWO that includes the permanent monthly payment on past due support.
- (3) To promote healthy families, CSS sets a payment schedule per Oklahoma Administrative Code 340:25-5-140 temporary and permanent monthly payment on past due support appropriate to the obligor's circumstances, according to the best evidence available per Oklahoma Administrative Code 340:25-5-140. The temporary monthly payment on past due support does not exceed 25 percent of the last order addressing current support.

(c) The initial notice is served ~~upon~~ on the NCP per 12 O.S. § 2005. When there is an address of record (AOR) on file with the Central Case Registry ~~under~~ per 43 O.S. § 112A, the notice may be served by regular mail at the ~~address on record~~ AOR. Subsequent notices may be served by regular mail with a certificate of mailing to the last ~~address of record~~ AOR. The

initial notice and subsequent annual notices are sent to the CP by regular mail with a certificate of mailing.

(d) The annual notice sent to the NCP must not include the CP's address or employer's name and address. The annual notice sent to the CP must not include the NCP's address or employer's name and address.

(e) The NCP or CP may timely request in writing, an administrative review of the annual notice per 56 O.S. § 237A. When all disputed issues are not settled at the administrative review, CSS sets the matter for hearing.

PART 37. RECOVERY

340:25-5-312. Overpayment rules and procedures

(a) **Overpayment recipient.** A custodial person (CP), noncustodial parent, or other entity to whom Oklahoma Department of Human Services (DHS) Child Support Services (~~OCSS~~)CSS has made an overpayment is an overpayment recipient and owes the amount of the overpayment to ~~OCSS~~CSS, acting on behalf of the State of Oklahoma.

(b) **Fraud.** ~~If~~When an overpayment ~~may have~~ resulted in whole or in part from false or misleading statements, concealed information, willful misrepresentation, or ~~if~~when fraud is otherwise suspected, ~~OCSS~~CSS reports the information to the Oklahoma Department of Human ServicesDHS Office of Inspector General for appropriate action. Action may include, but is not limited to, investigation and criminal prosecution.

(c) **Recovery amount.**

(1) In order to recover ~~overpayments of any child support overpayments,~~ ~~OCSS~~CSS retains 25 percent of monthly current support payments collected for the recipient and retains the total amount of any arrearage payments collected at any time until the overpayment is recovered in full. The percent retained can be changed:

- (A) at the discretion of the ~~OCSS~~CSS director; or
- (B) when the CSS Center for Finance and Budget determines the overpayment was a result of fraud by the CP.

(2) ~~When the custodial person has~~CP received his or her full monthly support payment in the same month as an overpayment, ~~OCSS~~CSS retains the full amount of any subsequent payments for that month up to the amount of the overpayment. ~~OCSS~~CSS satisfies any remaining overpayment as set forth in (1) ~~above~~of this subsection.

(d) **Notice.** ~~OCSS~~CSS sends a notice of overpayment and recovery to the recipient of the overpayment. The notice includes:

- (1) a statement that the recipient received money to which ~~the recipient~~he or she was not entitled and owes money to ~~OCSS~~CSS;
- (2) the overpayment amount of the overpayment;
- (3) the withholding method of withholding from monthly payments until the overpayment is recovered in full;
- (4) a statement that ~~OCSS~~CSS may collect the overpayment through any means permitted by law; and

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- (5) instructions for requesting in writing, an administrative review per Oklahoma Administrative Code (OAC) 340:25-5-200.1 within 30-calendar days after the date on the notice of overpayment and recovery letter, ~~if when~~ the recipient disagrees with the amount of the overpayment.
- (e) **Other overpayment recovery methods.** ~~OCSS~~ CSS recovers overpayments; including, but not limited to:
- (1) voluntary payments;
 - (2) state income tax refund intercepts per Section 205.2 of Title 68 of the Oklahoma Statutes (68 O.S. § 205.2); and
 - (3) lottery prize claims per ~~Section 3A O.S. § 724.1 of Title 3A of the Oklahoma Statutes.~~
- (f) **Temporary Assistance for Needy Families (TANF) customers.** In active ~~Temporary Assistance for Needy Families (TANF)~~ cases, when a TANF recipient retains child support receipts, ~~OCSS~~ CSS may make a noncooperation referral to the TANF social services specialist. ~~OCSS~~ CSS recovers overpayments from TANF customers through voluntary payments, state income tax refund intercepts, and lottery prize claims.
- (g) **Administrative review and hearing.**
- (1) ~~If When~~ an administrative review is requested per OAC 340:25-5-200.1, the purpose of the review is to provide the overpayment recipient an opportunity to offer new or additional information regarding the amount of the overpayment. Upon timely receipt of a written request for an administrative review, the ~~OCSS~~ CSS office conducts the review within 30-calendar days.
 - (2) After the administrative review, ~~OCSS~~ CSS issues a notice of administrative review decision and information about requesting an administrative hearing. The overpayment recipient may request in writing, a hearing within 20-calendar days after the ~~date of the~~ administrative review decision date.
 - (3) Upon timely receipt of a written request for an administrative hearing, ~~OCSS~~ CSS schedules the matter for an administrative hearing before the Office of Administrative Hearings: Child Support (OAH). OAH conducts a hearing and enters an order determining the contested issues.

PART 38. TITLE IV-D AND NON-TITLE IV-D CENTRAL CASE REGISTRY INFORMATION

340:25-5-340. Collection and maintenance of addresses of record

- (a) **Scope and authority.** Section 112A of Title 43 of the Oklahoma Statutes (43 O.S. § 112A) provides the basis for Oklahoma Department of Human Services (DHS) Child Support Services (CSS) to collect and maintain address of record an (AOR) for:
- (1) parties and custodial persons (CP) subject to paternity orders or child support orders entered in Oklahoma;
 - (2) noncustodial parents (NCP) per ~~456 O.S. § 237A~~ and Oklahoma Administrative Code 340:25-5-213;
 - (3) parties and CPs subject to paternity orders or child support orders entered in other jurisdictions; and

(4) parties and CPs when ~~they~~ voluntarily submit them submitted.

(b) Establishment of address of record AOR.

(1) CPs and NCPs establish the initial ~~address of record~~ AOR through:

- (1A) completion of Form 03EN008E, Child Support Services - Address of Record and/or Family Violence Statement;
- (2B) designation in form 03EN001E, Application for Child Support Services;
- (3C) a court order; or
- (4D) a support order summary form when services are not provided under the DHS state Title IV-D plan per 56 O.S. § 237.

(2) When an AOR is established, it remains in effect until it is updated per (c) of this Section.

(c) Updating an address of record AOR.

(1) A person ~~who~~ is responsible for maintaining an ~~address of record~~ AOR, on file with CSS per 43 O.S. § 112A or 56 O.S. § 237A must notify CSS of any change in the ~~address~~ AOR within 30-calendar days. The person may send changes to CSS, Central Case Registry, PO Box 248843, Oklahoma City, Oklahoma 73124-8843 or to a district child support office. CSS may require proof of a person's identity before establishing or changing a person's name or the ~~address of record~~ AOR and may attempt to verify or confirm the correctness of the ~~address of record~~ AOR.

(2) A CP updates an ~~address of record~~ AOR:

- (A) by submitting a new ~~address of record~~ AOR in writing;
- (B) by ~~telephoning~~ calling CSS customer service at 405-522-2273 in the Oklahoma City calling area, 918-295-3500 in the Tulsa calling area, or toll-free at 1-800-522-2922 ~~and entering a DHS customer identification number and personal identification number. This provides restricted access to the CP's case information for CSS to update~~ updates the mailing address of record by telephone. CSS sends Form 03EN008E, Address of Record and/or Family Violence Statement, in confirmation of the mailing address update and for the CP to complete and return an updated AOR or claim family violence; or
- (C) through a court order.

(3) A CP who is represented by an attorney may designate the attorney's address as the ~~address of record~~ AOR per 43 O.S. 112A & 413(F) by completing Form 03EN026E, Designation of Custodial Person's Address of Record. The designation must include the CP's and ~~the~~ attorney's signatures. In accepting designation as the CP's ~~address of record~~ AOR, the attorney becomes responsible for receiving the CP's legal documents and other official papers by regular mail and may receive the CP's payments. When a CP ~~has designated~~ designates an attorney's address as the ~~address of record~~ AOR, the CP can update the address of record can be updated AOR by ~~the CP~~ completing Form 03EN030E, Termination of Attorney Address of Record Designation.

- (4) CSS does not change a CP's ~~address of record~~AOR to ~~that of~~ a collection agency to send support payments to the collection agency's address. CSS denies any such request, unless there ~~has been~~ is an assignment of child support to an attorney per 43 O.S. § 118.4.
- (5) An NCP updates an ~~address of record~~AOR:
 - (A) by submitting a new ~~address of record~~AOR in writing; or
 - (B) through a court order.

340:25-5-340.1. Disclosure of address of record

- (a) A party or custodial person (CP) seeking disclosure of the address of record (AOR) of another party or ~~custodial person~~CP from the Central Case Registry (CCR) of Oklahoma Department of Human Services Child Support Services (~~OCSS~~CSS) must submit Form 03EN009E, Request for Address of Record, that:
 - (1) elicits information about the requester and the reasons for the request; and
 - (2) includes information about statutory limitations on the AOR release of ~~addresses of record~~.
- (b) ~~OCSS~~CSS may:
 - (1) refuse to release an ~~address under~~AOR per Sections 112A and 413 of Title 43 of the Oklahoma Statutes (43 O.S. §§ 112A & 413), Oklahoma Administrative Code (OAC) 340:25-5-67.1, or other applicable law; and
 - (2) release ~~addresses of record under~~an AOR per OAC 340:25-5, Part 9.
- (c) ~~The address of record~~When the AOR is not included in a public record document, the AOR of a party or ~~custodial person~~CP may be released by CCR staff or an ~~OCSS~~CSS state's attorney after verifying that the sole purpose of providing the address is for service of process in support, visitation, ~~and~~or custody actions. The AOR release of ~~the address of record~~ by a state's attorney is at the ~~discretion of the state's attorney~~pursuant to attorney's discretion per OAC 340:25-5-67.1 and Section 112A of Title 43 of the Oklahoma StatutesO.S. § 112A.
- (d) When an AOR is established per OAC 340:25-5-340, CSS staff lists the AOR in the certificate of service for all court documents.

PART 39. ACCOUNTING AND DISTRIBUTION

340:25-5-350.1. Return of over collected support amounts

- (a) When Oklahoma Department of Human Services (DHS) Child Support Services (CSS) receives a payment:
 - (1) in excess of the noncustodial parent's (NCP's) total arrears balance, CSS returns the excess amount to the payor within 45-calendar days, after discovering the ~~overcollection~~over collection;
 - (2) and the custodial person's (CP's) address is unknown, CSS applies support collections to any unreimbursed public assistance debt associated with the NCP; and
 - (3) made due to an error on the part of the payor that ~~has~~was not ~~been~~ disbursed, CSS returns it to the payor

within 45-calendar days, after discovering the ~~overcollection~~over collection. CSS is not required to correct, redirect, or recover the payment unless it was retained by DHS; ~~and~~ that cannot be disbursed to a CP; or returned to the payor or NCP; and there is no debt to the State of Oklahoma, CSS remits the payment to the DHS General Revenue Fund Treasury.

- (b) When an NCP makes an overpayment, amounts less than \$3 are not refunded unless issued on an Electronic Benefits ~~debit~~Transfer (EBT) card. Amounts less than \$3 and not issued on a ~~debit~~EBT card are remitted to the DHS General Revenue Fund Treasury.
- (c) CSS does not return ~~overcollected~~over collected support amounts when the parties failed to provide CSS with:
 - (1) a copy of the modified or vacated order ~~that was modified or vacated~~; or
 - (2) verification of a change in physical custody of the child.
- (d) When a child support modification order ~~initiated by~~ CSS is effective back to the date the motion to modify was filed and the modified support amount is less than the amount previously ordered and paid, CSS:
 - (1) CSS satisfies the over collection when the NCP owes:
 - (A) owes past-due child support, by crediting the arrears amount by the amount ~~overcollected~~over collected; or
 - (B) ~~does not owe~~ past-due child support but owes current support, by offsetting the current child support by an amount each month ~~that will~~ to satisfy the ~~overcollected~~over collected. Unless the parties agree to another amount, CSS requests the offset not exceed 25 percent of the current child support amount; or
 - (2) CSS is not responsible for satisfying the over collection when there is no current or past due support due and the ~~overcollected~~over collected support was not retained by the state.

340:25-5-351. Allocation and distribution of collections

- (a) **Authority.** Oklahoma Department of Human Services Child Support Services (~~OCSS~~CSS) allocates and distributes support collections per Section 657 of Title 42 of the United States Code (42 U.S.C. § 657) and Sections 302.32, 302.51, and 302.52 of Title 45 of the Code of Federal Regulations (45 C.F.R. §§ 302.32, 302.51, and 302.52). ~~OCSS~~CSS collects ~~the annual fee~~fees per 42 U.S.C. § 654, 45 C.F.R. § 302.33, and Section 237 of Title 56 of the Oklahoma Statutes (56 O.S. § 237) ~~in the collection of the annual fee~~.
- (b) **Annual fee**fees. ~~OCSS~~CSS collects ~~the annual fee~~fees per 42 U.S.C. § 654, 45 C.F.R. § 302.33, and 56 O.S. § 237. A case is exempt from fees when the custodial person (CP) is currently receiving Temporary Assistance for Needy Families (TANF). Fees are withheld prior to child support distribution to the CP. CSS collects:

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- (1) ~~OCSS automatically collects~~ an annual \$25 fee once \$500 in support is collected and issued to the ~~custodial person (CP)~~. A case is exempt from this annual fee when the family is currently receiving or formerly received assistance under state or tribal Temporary Assistance for Needy Families (TANF) or the Aid to Families with Dependent Children program. When there is more than one Title IV-D child support program involved, ~~OCSS CSS~~ collects the annual fee on cases when Oklahoma is the initiating state; and
- (2) a three percent service fee for each payment distributed to the CP, up to a \$10.00 per month maximum.
- (c) **Allocation.**
- (1) ~~In general~~**General allocation.** Allocation refers to how a payment ~~will be~~ is divided among eligible obligations. Some obligors have more than one child support case and the allocation rules of ~~allocation~~ determine which case receives all or a portion of the collection received. A collection is allocated based on the source of the collection and the type of legal action resulting in a collection.
- (2) **Allocation models.** ~~OCSS CSS~~ divides collections among the obligor's eligible obligations based on the following models:
- (A) ~~Standard Model.~~ All payments not made by income withholding order or federal income tax refund offset are allocated to eligible obligations in the following sequence (i) through (iii):
- prorated to the current child support, cash medical support, and spousal support;
 - prorated to the monthly payment plan on past support; and
 - amounts remaining from the initial collection or additional collections received during the same month will allocate based on a prorated share of total arrears owed on all eligible obligations. The allocated amounts cannot exceed the total arrears due on the cases.
- (B) **Income Withholding Order (IWO) Model.** Periodic payments from an ~~income withholding order~~IWO are allocated to eligible obligations in the following sequence (i) through (iii):
- prorated to the current child support, cash medical support, and spousal support;
 - prorated to the monthly payment plan on past support and other judgment(s), such as judgments for attorney fees or genetic testing costs; and
 - the steps in (1) and (2) of this subsection are repeated for amounts remaining from the initial collection or additional collections received during the same month, until the entire collection is allocated.
- (C) **Internal Revenue Service (IRS) Model.** Collections received from the offset of federal income tax refunds are allocated according to the existing federal hierarchy per 42 U.S.C. § 657 and 45 C.F.R. § 302.32. ~~OCSS CSS~~ allocates only to balances certified to the IRS. ~~OCSS CSS~~ applies these collections to each eligible obligation; first to ~~any~~ balances certified to the IRS as public assistance, and then to any CP's certified balances.
- (3) **Specific enforcement actions.** Collections received from case-specific enforcement actions are not allocated across all cases, but are allocated to the case(s) in which the action is taken.
- (4) **Non-Title IV-D cases.** In non-Title IV-D cases, ~~OCSS CSS~~ allocates payments as follows:
- (A) payments received from an ~~income withholding order~~IWO are allocated using the IWO Model above model. Collections are allocated to non-Title IV-D cases based on the amounts listed in the non-Title IV-D IWO; and
- (B) all other payments are allocated using the Standard Model above model. When ~~OCSS CSS~~ receives information on processing a specific payment, ~~OCSS CSS~~ may allocate the payment based on that information.
- (5) **Intergovernmental cases.**
- (A) **Incoming.** In cases where ~~OCSS CSS~~ is collecting support for a CP who is receiving services from another jurisdiction's child support agency, past-due payments are allocated based on information provided by the initiating state.
- (B) **Outgoing.** Collections received from other jurisdictions resulting from an outgoing referral are allocated to that case.
- (d) **Distribution.**
- (1) ~~OCSS CSS~~ distributes collections based on the federal distribution hierarchy per 42 U.S.C. § 657 and 45 C.F.R. §§ 302.32 and 302.51.
- (2) ~~OCSS CSS~~ initially distributes collections to current support, and current cash medical support obligations due each month. ~~If~~When collections are less than the amount of all current support and current cash medical support due, ~~OCSS CSS~~ distributes collections between the current child support and the current cash medical support obligations in proportionate shares.
- (3) After the current child support and current cash medical support ~~obligation~~ obligations are met, ~~OCSS CSS~~ distributes collections to current spousal support due.
- (4) After current child support, current cash medical support, and current spousal support obligations are satisfied, ~~any~~ remaining collections for the month are distributed to past-due balances.
- (5) ~~OCSS CSS~~ distributes payments to interest owed after ~~the~~ current child support and principal arrears balances are paid in full to each obligation.
- (6) When a payment collected represents current support for future months, the amount is applied to such future months. When past support balances exist on any of the noncustodial parent's cases, payments ~~should~~ are not be applied to the next month's current support per 45 C.F.R. § 302.51.

[OAR Docket #17-489; filed 6-23-17]

**TITLE 340. DEPARTMENT OF HUMAN SERVICES
CHAPTER 40. CHILD CARE SUBSIDY PROGRAM**

[OAR Docket #17-490]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions
340:40-1-2 through 340:40-1-3 [AMENDED]
340:40-1-5 [AMENDED]
Subchapter 3. Initial Application
340:40-3-1 [AMENDED]
Subchapter 7. Eligibility
340:40-7-3 [AMENDED]
340:40-7-5 through 340:40-7-9 [AMENDED]
340:40-7-11 through 340:40-7-12 [AMENDED]
Subchapter 9. Procedures Relating to Case Changes
340:40-9-1 through 340:40-9-2 [AMENDED]
Subchapter 13. Child Care Rates and Provider Issues
340:40-13-3 [AMENDED]
340:40-13-5 [AMENDED]

(Reference WFs 16-03, 16-08 and 17-11)

AUTHORITY:

Director of Human Services; Section 162 of Title 56 of the Oklahoma Statutes (O.S. 56 § 162); Title 45 of the Code of Federal Regulations (C.F.R.) Parts 98 and 99; Public Law 113-186, and the Child Care and Development Block Grant of 2014.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

January 6, 2017

COMMENT PERIOD:

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PUBLIC HEARING:

March 9, 2017

ADOPTION:

March 14, 2017

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

March 16, 2017

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 13, 2017

FINAL ADOPTION:

June 13, 2017

EFFECTIVE:

October 1, 2017

SUPERSEDED EMERGENCY ACTIONS:

Superseded rules:

Subchapter 1. General Provisions
340:40-1-2 [AMENDED]
Subchapter 3. Initial Application
340:40-3-1 [AMENDED]
Subchapter 7. Eligibility
340:40-7-3 [AMENDED]
340:40-7-5 through 340:40-7-9 [AMENDED]
340:40-7-11 through 340:40-7-12 [AMENDED]
Subchapter 9. Procedures Relating to Case Changes
340:40-9-1 through 340:40-9-2 [AMENDED]
Subchapter 13. Child Care Rates and Provider Issues
340:40-13-3 [AMENDED]

(Reference 16-03)

Gubernatorial approval:

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Register publication:

34 OK Reg 58

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Superseded rules:

Subchapter 7. Eligibility
340:40-7-12 [AMENDED]

(Reference 16-08)

Gubernatorial approval:

February 27, 2017

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34 OK Reg 502

Docket number:

17-267

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The proposed revisions to Chapter 40, Subchapter 1 amend the rules to: (1) add the Child Care Development Block Grant of 2014 to the legal authority for the Child Care Subsidy Program; and (2) update terminology. The proposed revisions to Chapter 40, Subchapter 3 amend the rules to: (1) rename expedited eligibility processing to presumptive eligibility processing; (2) expand the reasons for an initial 30-calendar day approval; (3) clarify eligibility requirements prior to approval and before further care is approved; (4) update terminology regarding request, application, and certification dates to match systems fields; (5) clarify that the child care interview may be completed over the phone and must be completed prior to determining the applicant eligible; (6) add required 12-month eligibility period; (7) add information that application approval is subject to available funding; (8) clarify when a new application is needed following a denial; (9) add legal and policy cites; (10) update a form name; and (11) simplify and clarify terminology.

The proposed revisions to Chapter 40, Subchapter 7 amend the rules to: (1) allow a child to remain eligible for child care until renewal when the child reaches the maximum allowable age during an eligibility period; (2) add an eligibility requirement that household resources may not exceed \$1,000,000 to qualify for subsidized child care; (3) add resource types; (4) add a definition for a person acting in the role of a spouse; (5) remove gender information when considering whether to count the income of an adult non-relative living in the child care household; (6) add definition for acting in the role of a spouse; (7) simplify and clarify the eligibility process when parents share custody of the child; (8) add Supplemental Nutrition Assistance Program (SNAP) Education and Training (E&T) activities as an allowable need factor; (9) remove job search as an allowable need factor; (10) remove court-ordered community service hours as a non-allowable need factor for child care subsidy; (11) allow child care to remain open until renewal, when after initial approval, the client begins new employment with an employer who refuses to pay the client at least minimum wage; (12) allow child care to remain open until renewal when the client is not making at least minimum wage and has been self-employed or working for an employer paying wages based on commission or another performance measure for less than one year; (13) add qualifications to when child care is approved for a person working from home; (14) remove job search as meeting the employment need factor for child care subsidy for clients who lose employment or complete an education or training program; (15) change proof of progress and attendance requirements from when requested or as a class ends to at renewal for the training and education need factors; (16) remove the requirement to provide proof of initial education or literacy level testing results when child care is requested to participate in high school equivalency, literacy, or adult basic education (ABE) classes; (17) change the time frame for not approving further child care, to at renewal when the client is not making satisfactory progress or stops attending training or education during an eligibility period; (18) add approval requirements for the SNAP E&T need factor and time frame for discontinuing child care when the client stops participating; (19) update Temporary Assistance for Needy Families (TANF) related subsidized child care to: (a) remove limited approval period for TANF clients waiting to enter an approved TANF Work activity and TANF applicants in job search, (b) include child care for a child included in a child only TANF benefit, and (c) include time frame for discontinuing child care when the client stops meeting a need factor; (20) for protective or preventive child care: (a) reorder information, (b) remove the face-to-face interview requirement, (c) add reasons protective or preventive child care may be approved, (d) add definition of homeless and when a homeless family or a family that experienced a natural disaster may be approved for child care, and (e) clarify procedures to request approval for more than 30-calendar days of care; (21) remove the requirement that a minor parent must pursue child support for his or her own child; (22) update terminology regarding a non-relative adult considered a household member to remove gender information and use the term acting in the role of a spouse; (23) add information that a person in non-cooperation status with Child Support Services (CSS) at application must verify cooperation before approval; (24) change the requirement to close child care when a client fails to cooperate with CSS during an eligibility period from 10-calendar days to not approving further care at renewal; (25) change the requirement to pursue identified potential income from 90-calendar days to before the next child

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care renewal; (26) change the requirement to close child care when the client does not pursue potential identified income, accept a pay raise, or decreases work hours or pay rate to decrease or avoid a family share copayment during an eligibility period to not approving further care at renewal; (27) remove no longer applicable information regarding calculation of self-employment income from a new source; (28) remove gender information and update terminology regarding a non-relative adult; (29) change the time frame regarding when a client must take action to become the payee for a Social Security Administration (SSA) benefit when appropriate; (30) allow an eligible child adopted through the Oklahoma Department of Human Services (DHS) to remain eligible for child care with a household income exemption until renewal when the child turns 6 years of age during an eligibility period; (31) update and simplify language and terminology; (32) add, remove, and update policy and legal cites; (33) change self-employment business expense computations; (34) clarify that excess benefit allowances are considered earned income; (35) add clarifying information regarding loans; (36) exclude all educational income; (37) exclude from income and resource consideration money deposited into or withdrawn from a qualified Achieving a Better Life Experience (ABLE) Program account per state statute and federal regulations; and (38) update a legal cite.

The proposed revisions to Chapter 40, Subchapter 9 amend the rules to: (1) change the child care renewal time frame from six months to no earlier than 12 months from the date of approval or last renewal unless the client applies for food benefits before the next renewal; (2) remove the requirement for a face-to-face interview at renewal for the protective or preventive need factor; (3) clarify information regarding income changes and advance notice procedures when child care benefits decrease; (4) add effective dates for different types of closure actions; (5) clarify that a new child care application based on the adoptive parent's income is not required until renewal when a child adopted through DHS turns 6 years of age during an eligibility period; (6) add a policy cite; and (7) update terminology and simplify language.

The proposed revisions to Chapter 40, Subchapter 13 amend the rules to: (1) remove information regarding when eligibility stops because of a child's age as it is duplicated in another section and is not rate related; (2) update a form name; (3) remove the reference to contracting with out-of-state providers; (4) remove the Oklahoma State Bureau of Investigation background investigation as a procedure for obtaining child care contracts; (5) add clarifying language that Adult and Family Services Child Care Subsidy staff will provide written notice when approving care to be provided at a different site; (6) remove the requirement for providers to maintain copies of manual claims and daily attendance records and to make them available to DHS upon request; and (7) update and simplify language and terminology.

CONTACT PERSON:

Dena Thayer, Programs Administrator, Office of Intergovernmental Relations and Policy, Department of Human Services, PO Box 25352, Oklahoma City, OK 73125, 405-521-4326.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF OCTOBER 1, 2017:

SUBCHAPTER 1. GENERAL PROVISIONS

340:40-1-2. Legal basis and authority

The legal ~~base~~basis for the ~~child care subsidy program~~Child Care Subsidy Program is granted under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 ~~{P. L. Public Law (P.L.) 104-193}~~, Child Care and Development Block Grant Act of 2014 P.L. 113-186, the Balanced Budget Act of 1997 ~~{P. L. 105-33}~~, and ~~45 CFR Parts 98 and 99 of Title 45 of the Code of Federal Regulations~~. The ~~child care subsidy program~~Child Care Subsidy Program also receives funding ~~under~~per Title XX of the U.S. Social Security Act as Amended Title XX.

340:40-1-3. State Plan for ~~child care~~the Child Care Subsidy Program

The Oklahoma Department of Human Services (~~OKDHS~~DHS) administers the State Plan ~~covering the child care subsidy program for the Child Care Subsidy Program~~. ~~The Division of DHS Child Care Services~~ is responsible for directly administering and implementing all programs funded by the Child Care and Development Fund in collaboration with ~~the Adult and Family Support Services Division, Field Operations Division, Finance Division and Administration, and Office of the Inspector General~~.

340:40-1-5. Disclosure of information

~~Federal~~Per federal and state laws and the Oklahoma Department of Human Services rules and regulations, adopted by the Oklahoma Commission for Human Services restrict the use or disclosure of information concerning applicants or recipients of ~~child care services~~Child Care Subsidy program benefits is restricted to purposes directly connected with ~~the program~~ administration of the program.

SUBCHAPTER 3. INITIAL APPLICATION

340:40-3-1. Application process

(a) **Application process.** The application process for subsidized child care benefits begins with a request for benefits and ends with an eligibility determination. Application approval is subject to available funding. Subsidized child care benefits must be synchronized with the client's food benefits or Sooner-Care (Medicaid) benefits per Oklahoma Administrative Code (OAC) 340:40-9-1(e)(f). ~~The Child Welfare Services or Adult and Family Services (AFS) staff process the application.~~

(1) **When an application is required.** An application is required when:

(A) an applicant initially applies for subsidized child care benefits. Refer to (c)(2) of this Section when an application is denied;

(B) the client's subsidized child care benefits ~~have been~~are closed for more than 30-calendar days;

(C) the payee for the subsidized child care benefits changes; or

(D) family income was not considered because OAC 340:40-7-12(6) policy applied and one or more of the affected adopted children turns 6 years of age unless there is already a separate open income eligible case and the child can be added to that case per OAC 340:40-9-2(c).

(2) **Who can apply.** An applicant or the applicant's authorized representative may apply for subsidized child care benefits. When an authorized representative applies on behalf of an applicant, he or she must bring a signed statement from the applicant giving ~~this~~the person permission to act on behalf of the applicant or the applicant must have designated ~~this~~the person as his or her authorized representative on the signed application.

- (A) ~~If~~When the natural or adoptive parent or step-parent ~~of~~lives with the child ~~is in the home~~, he or she is considered the applicant and eligibility is based on ~~that~~the parent's situation regardless of whether he or she has custody of the child.
- (B) ~~If~~When both the natural and adoptive parent of the child ~~are living~~live in the same household and the adoption ~~has been finalized~~is final, the adoptive parent is considered the applicant and eligibility is based on ~~that~~the adoptive parent's situation.
- (C) ~~If~~When the natural or adoptive parent or step-parent is not in the home, the person acting in the role of the parent, referred to as the caretaker, is the applicant. The caretaker may or may not be related to the child.
- (D) ~~If~~When the child's parent is a minor, either the minor parent or the responsible adult the minor ~~is living~~lives with can be considered the applicant for the subsidized child care benefits. Eligibility is based on the minor parent's situation.
- (E) ~~If~~When the natural or adoptive parent ~~is living~~inglives in the home but is too incapacitated to apply, another person living in the home may apply for the natural or adoptive parent. The other person must provide proof of the parent's inability to apply.
- (3) **Application.** An applicant or the applicant's authorized representative completes and signs an application to apply for subsidized child care benefits. ~~When the applicant requests child care is needed for a child with disabilities, the worker, and applicant also complete~~gives Form 08AD006E, Certification for Special Needs Child Care Rate for Licensed Child Care Homes and Centers, to the applicant.
- (4) ~~Date of request~~**Request date.** ~~The request date of request, known as the application date for other Adult and Family Services programs, is the date the applicant requests subsidized child care benefits verbally or in writing.~~
- (5) ~~Date of application~~**Certification date.** ~~The certification date of application is the date the applicant or the applicant's authorized representative completes the child care interview and provides all necessary verification to the county office, including the name of the child care provider the client chooses to use.~~
 - (A) The provider must have a valid Oklahoma Department of Human Services (~~OKDHS~~)DHS child care provider contract.
 - (B) Refer to OAC 340:40-5-1(7) for reasons an applicant cannot choose certain child care providers.
 - (C) For applicants choosing an in-home provider, refer to OAC 340:40-13-1 and 340:40-13-2.
- (6) **Child care interview.** ~~Child care interviews are typically may be completed face-to-face or over the phone with the applicant or authorized representative. A face to face interview is required for protective or preventive child care requests and strongly recommended for special needs requests.~~

- (7) **Explanation of eligibility factors.** At the time of the initial interview, the worker ~~advises~~informs the applicant or authorized representative of:
 - (A) his or her rights and responsibilities;
 - (B) all factors of eligibility including ~~which~~the re-requirement that the chosen child care providers are eligible to receive subsidy paymentprovider be contracted with DHS;
 - (C) the child care plan ~~of service~~ and reason child care may be approved based on the applicant's statements at interview;
 - (D) the applicant's electronic benefit transfer (EBT) responsibilities including viewing the client training video;
 - (E) the earliest date child care can be approved;
 - (F) the requirement to cooperate with the ~~OKDHS~~DHS Office of Inspector General during any audit or investigation of the applicant or the provider the applicant uses for child care; and
 - (G) the requirement to report ~~any~~ changes in his or her circumstances within 10-calendar days.
- (8) **Timeliness.** To be considered timely, the worker must determine eligibility within two ~~working~~business days of receiving all necessary verification to certify or deny the application.
 - (A) ~~If~~When the applicant does not provide requested verification, the worker denies the request within 30-calendar days of the request date ~~of request.~~
 - (B) ~~The~~When eligibility is not determined within 30-calendar days, the worker sends Form 08MP038E, Client Notice of Action Taken, explaining the reason for delay ~~to any applicant whose application is over 30 calendar days old.~~
- (9) **Right to appeal.** The applicant has the right to appeal the untimely processing of a child care request or the decision of eligibility or ineligibility per OAC 340:2-5.
- (b) **Expedited Presumptive eligibility processing.** ~~The worker must process an application immediately when required verification is beyond the applicant's control to provide, the applicant does not have the money to pay toward the cost of~~may presumptively approve a maximum of 30-calendar days of child care, and without child care the applicant prior to making a complete eligibility determination when a reason described in (1) of this paragraph applies:
 - (1) Reasons include when the applicant:
 - (~~1~~) is in danger of losing a job; or
 - (~~2~~) cannot start a new job unless child care is immediately approved. In this circumstance it must be out of the applicant's control to provide required verification and the applicant does not have the money to pay toward the cost of child care;
 - (B) is employed but has not received pay from the job and is not guaranteed a wage because he or she is self-employed or works on a commission only basis. Further care is not approved until the applicant provides proof he or she received earnings from the job;
 - (C) requests protective or preventive child care per OAC 340:40-7-8(f); or

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(D) requests good cause for refusal to cooperate in pursuing child support with Child Support Services per OAC 340:40-7-9 and has not provided good cause proof yet. Further care is not approved until the applicant provides good cause proof that supports the good cause claim.

(2) The worker gives or sends the applicant Form 08AD092E, Client Contact and Information Request, to inform the applicant what he or she needs to provide before further care is approved.

(c) Eligibility determination. The worker determines the applicant's eligibility to receive child care subsidy benefits based on eligibility conditions per OAC 340:40-7. The applicant must meet a need factor within 30-calendar days of the request date. ~~The~~After calculating family income, the worker uses ~~OKDHS~~DHS Appendix C-4, Child Care Eligibility/~~Co-payment~~Copayment Chart, to determine whether the household meets income guidelines. Refer to OAC 340:40-5-1(8) and 340:40-7-10 through 40-7-13 for information regarding income determination.

(1) Applicant determined eligible. The earliest date the worker approves subsidized child care benefits is the date the applicant completes the child care interview and provides all necessary verification to determine eligibility. The worker certifies the applicant for a 12-month eligibility period per Section 658E(c)(2)(N)(i) of the Child Care and Development Block Grant Act of 2014, Public Law 113-186. The applicant is responsible for child care used before the certification date that is not part of the approved child care plan of service.

(A) The client swipes attendance with his or her EBT card through a point-of-service (POS) machine at the child care facility.

(B) ~~OKDHS~~DHS does not pay for care for any day the child attends child care if when the client fails to swipe attendance, unless extenuating circumstances exist beyond the control of the client or provider.

(C) If when the client fails to swipe attendance, he or she is responsible for any care provided that day and may be responsible for any absent day payment ~~OKDHS~~DHS pays, if when all of the days the child attended were recorded.

(2) Applicant determined ineligible. The worker denies the child care request or application is denied if when the applicant completes the application process and is determined ineligible, does not provide needed verification, or requests cancellation of the application fails to cooperate in determining eligibility.

(A) When the applicant is determined ineligible after completing the application process and providing necessary verification, a new application is required regardless of the original request date.

(B) ~~A new~~When the worker denies the application because the applicant did not provide required verification, including choice of provider, a new application is not needed when the applicant completes the application process and provides necessary

verification within 60-calendar days of the original request date.

(C) When the worker denies the application because the applicant fails to cooperate in determining eligibility, a new application is not required when the applicant cooperates within 30-calendar days of the original request date.

SUBCHAPTER 7. ELIGIBILITY

340:40-7-3. Age requirements

(a) A child is eligible for subsidized child care benefits through the day before he or she turns 13 years of age. When a child turns 13 years of age during an eligibility period, the child remains eligible until the next renewal.

(b) A child with disabilities may be eligible to receive subsidized child care benefits through the day before he or she turns 19 years of age. When a child with disabilities turns 19 years of age during an eligibility period, the child remains eligible until the next renewal.

(1) A child with disabilities is defined at Oklahoma Administrative Code (OAC) 340:40-7-3.1.

(2) When a child with disabilities is 13 years of age or older, the client must provide a statement from a licensed health care professional verifying that the child is physically or mentally incapable of self-care as age appropriate before care is approved and annually at review. If the licensed health care professional states that the child is capable of self-care as age appropriate, care is not approved.

(c) A child under court supervision may be eligible to receive subsidized child care benefits through the day before the child turns 19 years of age. When a child under court supervision turns 19 years of age during an eligibility period, the child remains eligible until the next renewal. When the child is 13 years of age or older, the client must provide a copy of the court order, a statement from the ~~Child Welfare worker~~child welfare specialist, or the Office of Juvenile Affairs (OJA) worker verifying this before care is approved and annually at ~~review~~renewal.

340:40-7-5. Resources, residence, and citizenship

(a) ~~Resources are not considered in determining eligibility.~~Household resources must not exceed \$1,000,000 for subsidized child care per Section 658P(4) of the Child Care and Development Block Grant Act of 2014, Public Law 113-186. Resources include, but are not limited to; liquid resources, such as cash; financial institution account balances; certificates of deposit; stocks; bonds; and real property other than home property.

(b) A parent or caretaker's statement that he or she lives in Oklahoma meets the residence requirement for child care.

(c) Only the child for whom child care is requested must meet the citizenship and alienage requirements.

(1) A child eligible to be included in a child care benefit must be either a:

(A) citizen or a national of the United States (U.S.), including the 50 states, District of Columbia, Commonwealth of Puerto Rico, Virgin Islands, Guam, American Samoa, and Northern Mariana Islands. The child may be a citizen of the U.S. by being born in the U.S. or by being born in some other country but moving to the U.S. and being granted U.S. citizenship through the U.S. Citizenship and Immigration Services (USCIS), a bureau of the Department of Homeland Security; or

(B) qualified alien:

(i) who is lawfully admitted for permanent residence under the Immigration and Nationality Act (INA);

(ii) who is paroled into the U.S. ~~under~~ per Section 212(d)(5) of INA, ~~§~~ 8 United States Code (U.S.C.) 1182, for a period of at least one year;

(iii) who is granted conditional entry ~~pursuant to~~ per Section 203(a)(7) of INA, ~~§~~ 8 U.S.C. 1153, as in effect prior to April 1, 1980;

(iv) who is granted asylum ~~under~~ per Section 208 of INA;

(v) who is admitted to the U.S. as a refugee ~~under~~ per Section 207 of INA, ~~§~~ 8 U.S.C. 1157;

(vi) whose deportation is withheld ~~under~~ per Section 241(b)(3) of INA;

(vii) who is a Cuban or Haitian entrant ~~as defined in~~ per Section 501(e) of the Refugee Education Assistance Act of 1980;

(viii) who was battered or whose parent or caretaker was battered ~~as defined in~~ per Section 431(c) of the Personal Responsibility and Work Opportunity Reconciliation Act as amended ~~per~~ § 8 U.S.C. 1641(c); or

(ix) who was a victim or whose parent or caretaker was a victim of a severe form of trafficking ~~pursuant to~~ per Section 107(b) of the Trafficking Victims Protection Act of 2000 ~~which that~~ was reauthorized and amended ~~by the~~ per Trafficking Victim's Protection Reauthorization Act of 2003.

(2) A declaration of citizenship and alien status is required for all children included in the child care benefit. This requirement is met when an adult member of the household completes and signs the application or ~~review form~~ renewal attesting to the citizenship and alien status for all children included in the benefit. Refer to Oklahoma Administrative Code (OAC) 340:65-3-1(g) for additional citizenship requirements for persons 14 years of age and older ~~pursuant to~~ per Section 71 of Title 56 and Section 20j of Title 74 of the Oklahoma Statutes.

(3) ~~A child who is an alien determined to have satisfactory~~ The worker must verify the alien status must have the status verified of an alien child through the United States Citizenship and Immigration Services (USCIS) Systematic Alien Verification for Entitlements (SAVE). In situations which require a ~~When SAVE indicates that written inquiry~~ the child's alien status documents must be submitted to the USCIS, the worker must not delay, deny,

~~terminate~~ close, or reduce benefits to an alien pending USCIS verification of submitted documentation.

340:40-7-6. Household composition and income consideration

(a) **Definition of household composition terms.** The worker determines household composition for income considerations using the definition of terms listed in (1) through (9) of this subsection.

(1) An adult is an emancipated minor or person 18 years of age or older. A child who is ~~also~~ a parent is considered an adult.

(2) A spouse is a person married by ceremony or common-law to another person. They ~~can be living~~ may live together or separately. ~~If~~ When they ~~are living~~ live separately, they are not considered part of the household ~~if~~ unless the separation is temporary ~~with no intention of severing the marital relationship or the separation is involuntary.~~

(3) A stepparent is a person who is or was a spouse ~~or has been a spouse~~ to the child's parent.

(4) A caretaker is an adult ~~the child is living with who is acting~~ who lives with and acts in the role of a parent to the child applying for or receiving subsidized child care benefits.

(A) ~~This person~~ The caretaker may or may not be:

(i) related to the child by blood, adoption, or marriage; ~~and~~ or

(ii) ~~may or may not be~~ legally and financially responsible for the child.

(B) The caretaker must pursue child support from the natural or adoptive parent per Oklahoma Administrative Code (OAC) 340:40-7-9.

(5) An adult non-relative is defined as any person over 18 years of age or an emancipated minor who is not related to the parent or caretaker by blood, adoption, or marriage.

(6) The term legally and financially responsible adult is defined as a parent or stepparent of the child who needs child care. The term also includes other caretaker adults who are court-ordered to be legally and financially responsible for the child.

(7) A child is any unmarried, unemancipated, non-parental person under 18 years of age.

(8) A child who has married or voluntarily left the parental home for any reason and established independent living arrangements, other than being away from home for school or health reasons, is considered emancipated and treated as an adult. Once a child is emancipated, the emancipation is permanent.

(9) A sibling is a minor child who has at least one parent in common with another child in the same household. ~~This~~ The definition of a sibling also includes a step-brother or step-sister.

(b) **Household composition and income consideration.** To establish a child's eligibility for subsidized child care benefits, it is necessary to define who must be considered part of household composition for income consideration. All persons whose income is counted in determining the family share

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~~co-payment~~copayment are included to determine ~~whether~~ to use a family size of five members or less or for six or more members on ~~OKDHS~~Oklahoma Department of Human Services (DHS) Appendix C-4, Child Care Eligibility/Co-payment~~Copayment~~ Chart. Persons whose income must be considered in determining eligibility are:

- (1) the natural, adoptive, or stepparent of the child living in the home who needs child care;
 - (2) the caretaker(s) of the minor child needing child care ~~if that~~when the caretaker is legally and financially responsible for the child;
 - (3) the child needing child care and his or her siblings under 18 years of age living in the home;
 - (4) ~~any~~an adult non-relative ~~opposite sex individual (ANROSI) who is living~~lives in the home with the natural or adoptive parent ~~provided, however, the income of the non-relative adult of the opposite sex may be excluded if the parent and the adult non-relative have separate living quarters and demonstrate no characteristics of a couple and acts in the role of a spouse. An adult non-relative is considered to be acting in the role of a spouse when the person lives with the parent or caretaker and they represent themselves as a couple and/or have a physical relationship with each other;~~ and
 - (5) ~~any~~a child of the ~~ANROSI who is living~~an adult non-relative acting in the role of a spouse when the child lives in the home with the natural or adoptive parent.
- (c) **Periods of Temporary absence of a household member.**
- (1) When a household member is out of the home due to a temporary absence, he or she is considered a household member as long as he or she plans to return to the home. Any parent or caretaker(s) who remains in the home must meet a need factor per OAC 340:40-7-8. Examples of temporary absence include, but are not limited to:
 - (A) hospitalization for physical or mental health reasons;
 - (B) incarceration;
 - (C) attending school;
 - (D) military service;
 - (E) working or training away from home;
 - (F) looking for a job away from home. ~~Refer to OAC 340:40-7-8(a)(6);~~ and
 - (G) vacation time for a child. When a child goes to stay with:
 - (i) someone other than a natural or adoptive parent for a vacation, household composition, income, and need is based on the usual home situation. The person the child is staying with must also meet the need factor for child care; or
 - (ii) a non-custodial natural or adoptive parent, that parent must apply for subsidized child care benefits for that time frame based on his or her own household's eligibility.
 - (2) ~~If~~When a child lives with each parent for part of the month, refer to (d) of this Section.

(3) ~~If~~When a child lives with a parent for part of the month and a caretaker for the rest of the month, the child's eligibility is based on the parent meeting the eligibility factors per OAC 340:40-7. The caretaker must also meet a need factor per OAC 340:40-7-7 during the time he or she has physical custody of the child.

- (d) **Joint or shared custody.** When parents separate or divorce and ~~share~~have joint or shared custody of their child ~~and one or both need child care, either voluntarily or through a court order, the worker considers each parent's eligibility parent applies separately as well as his or her income for subsidized child care benefits.~~
- (1) Joint or shared custody may be voluntary or court-ordered.
 - (2) The worker determines each parent's eligibility separately. This includes a separate income and need for child care determination.
 - (3) ~~If~~When only one parent qualifies for subsidized child care benefits, the worker only approves child care for the days and hours of care needed while that parent meets a need factor for child care and has physical custody of the child are approved.
 - (4) ~~If~~When both parents qualify for subsidized child care benefits, the worker approves each parent is approved only for the days and hours that parent meets a need factor for child care and has physical custody and meets a need factor of the child.

340:40-7-7. Establishing the need factor for child care

- (a) **Establishing the need factor.** In order for children to be cared for in a safe environment while the parent or caretaker participates in an approved activity or for protective or preventive reasons, the Oklahoma Department of Human Services (DHS) provides subsidized child care benefits.
- (1) The worker arranges to obtain from the client or collateral sources, documentation of the need factor.
 - (2) The worker and client negotiate the amount of travel time allowed for an activity based on what is a reasonable length of time.
 - (3) The worker does not approve child care for the hours the child attends school or Head Start.
- (b) **Need factor for single parent or caretaker families.** The need for subsidized child care is met when the:
- (1) parent or caretaker is employed per Oklahoma Administrative Code (OAC) 340:40-7-8(a);
 - (2) parent or caretaker needs sleep time during the day after working night hours when a feasible alternative is used at no cost to DHS during the night working hours per OAC 340:40-7-8(a)(5);
 - (3) ~~parent or caretaker is actively searching for a job per OAC 340:40-7-8(a)(6);~~
 - (4) parent or caretaker attends a training or formal education program designed to lead to employment per OAC 340:40-7-8(b) and (c);
 - (5) ~~parent or caretaker attends high school, General Educational Development (GED) high school equivalency classes, literacy, adult basic education (ABE), or~~

English as a Second Language (ESL) classes per OAC 340:40-7-8(c);

(5) parent or caretaker participates in Supplemental Nutrition Assistance Program (SNAP) Education and Training (E&T) activities per OAC 340:40-7-8(d);

(6) parent or caretaker participates in an approved Temporary Assistance for Needy Families (TANF) Work activity per OAC 340:10-2-1;

(7) child needs care or supervision for part of the day as a protective or preventive service per OAC 340:40-7-8(e)(f); or

(8) child receives Supplemental Security Income (SSI) and needs care for enrichment purposes per OAC 340:40-7-8(f)(g).

(c) **Need factor for two-parent or two-caretaker families.**

Two-parent or two-caretaker families include two natural or adoptive parents, the natural parent and a stepparent, two grandparents, other relative married couples, or other non-relative married couples. When an unmarried couple applies, only the natural or adoptive parent must meet a need factor. The need for subsidized child care is met when:

(1) both parents or caretakers work during the same hours they request child care per OAC 340:40-7-8(a);

(2) one or both parents or caretakers need sleep time during the day after working night hours when a feasible alternative is used at no cost to DHS during the night working hours per OAC 340:40-7-8(a)(5). When both parents do not work night hours, one parent must work during the other parent's sleep time hours;

(3) ~~one or both parents are searching for a job per OAC 340:40-7-8(a)(6). When one parent or caretaker searches for a job, the other parent or caretaker must work or attend a training or formal education program during the same hours;~~

(4) one parent or caretaker attends a formal education or training program during the same hours the other parent or caretaker works per OAC 340:40-7-8(a) through (c);

(5) both parents or caretakers attend high school per OAC 340:40-7-8(c);

(6) one parent or caretaker attends high school during the same hours the other parent or caretaker works or attends a formal education or post high school training program per OAC 340:40-7-8(a) through (c);

(7) one parent or caretaker attends ~~GED~~high school equivalency classes, literacy, ABE, or ESL classes during the same hours the other parent or caretaker works per OAC 340:40-7-8(a) through (c);

(8) one or both parents or caretakers participates in SNAP E&T activities per OAC 340:40-7-8(d);

(9) one or both parents or caretakers participate in approved TANF Work activities per OAC 340:10-2-1. When one parent or caretaker is not participating in TANF Work activities, that parent must meet a need factor per OAC 340:40-7-8 during the same hours;

(10) the child needs care or supervision for part of the day as a protective or preventive service per OAC 340:40-7-8(e)(f);

(10) the child receives SSI and needs care for enrichment purposes per OAC 340:40-7-8(f)(g); or

(11) one parent or caretaker is incarcerated and the other parent remains in the home. In this instance, the parent remaining in the home is treated as a single parent.

(d) **Need factor in joint custody cases.** When parents are separated or divorced and share custody of their child, voluntarily or through a court order, each parent's income and need for child care is considered separately.

(e) **Need factor for a child attending an Early Head Start-Child Care (EHS-CC) Partnership grant program.**

A child attending an EHS-CC Partnership grant program may be approved for a weekly unit type when the parent or caretaker qualifies for Child Care Subsidy and meets a need factor per (b) or (c) of this Section for some of the EHS-CC Partnership grant program care hours.

(f) **Activities that do not meet the need factor for child care.** The need factor for child care is not met and child care must not be approved for:

(1) job search for parents or caretakers not:
(A) participating in TANF Work activities per OAC 340:10-2-1; or

(B) ~~meeting the job search employment need factor per OAC 340:40-7-8(a)(6);~~

(2) online Internet based or televised education or training courses when an instructor is not conducting a live broadcast and attendance is not required while the program is being broadcast per OAC 340:40-7-8(b) and (c);

(3) undergraduate classes or other training not expected to lead to a degree or certificate of completion per OAC 340:40-7-8(b) and (c);

(4) post graduate education, such as master's and doctoral programs;

(5) two-parent or two caretaker families when both attend a formal education or training program during the same days and hours;

(6) transportation only;

(7) ~~court ordered community service hours~~, volunteer hours; or jury duty;

(8) hours a school age child could attend a public or private school, but the parent or caretaker chooses to home school the child at night; and

(9) children in Child Welfare Services (CWS) foster care, when one or both foster parents do not meet child care eligibility rules per OAC 340:75-7-65.

340:40-7-8. Defining the need factor for child care benefits

(a) **Employment.** Employment means the parent or caretaker earns wages for work performed or meets criteria per (5) or (6) of this subsection.

(1) The client must provide proof of his or her work hours. When the client has the flexibility to set his or her own work hours, the client and worker jointly determine if the client can reduce the number of hours the child needs care by rearranging the client's work schedule. This is

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especially important in two-parent or two-caretaker families.

(2) The worker limits approval of child care to the number of days and hours the client is working plus reasonable travel time. In two-parent or two-caretaker working families, the worker limits approval to the days and hours they work the same hours plus reasonable travel time.

(3) The client must make at least minimum wage for the number of hours he or she works to meet the employment need factor unless the client qualifies for an exception per (D) or (E) of this paragraph. Criteria for determining minimum wage is specified in (A) through (C) of this paragraph.

(A) Minimum wage is determined by the federal government.

(B) The worker reviews the pay information provided by the client to determine whether the client makes at least minimum wage.

(i) When the paycheck or employer statement shows the hourly pay rate, the worker compares it to the federal minimum wage.

(ii) When the pay information provided does not show the client's hourly pay rate, the worker divides the number of hours the client works by the gross pay per pay period to determine the client's hourly pay rate.

(iii) When the client is considered self-employed per Oklahoma Administrative Code (OAC) 340:40-7-11(b)(2)(A), the worker divides the number of hours the client works by the net pay, after applicable business expenses, to determine the client's hourly pay rate. When the client and spouse are self-employed in the same business, the worker combines their work hours and divides the work hours by the net pay to determine their hourly pay rate.

(C) When the client works for an employer paying a set wage less than minimum wage, and the employer refuses to begin paying at least minimum wage, the worker ~~denies or closes~~ child care benefits or, when at renewal, does not approve further care.

(D) When the client is self-employed or works for an employer paying wages based on commission or other performance measures instead of a set wage, has received earnings and does not make at least minimum wage, and the client has been performing this work:

(i) less than one year, the worker counsels with the client to develop a plan ~~for increasing to~~ increase his or her income ~~within three to six months to at least minimum wage before the renewal is due.~~ When the client ~~does not cooperate in developing a plan or does not agree to implement the developed plan, the worker closes or denies the child care benefits~~ not making at least minimum wage at renewal, further care is not approved.

~~(I) When the client's income increases to at least minimum wage during this time period, no further monitoring is needed until the next renewal.~~

~~(II) When after three to six months the client's income increases, but is less than minimum wage, the worker evaluates the likelihood of the client making at least minimum wage before approving more care. Factors to consider include how closely the client followed the plan, how much the hourly rate increased, and whether plan modifications could help the client increase earnings. The worker may approve an additional three to six months of care when appropriate.~~

~~(III) When it is not reasonable to presume the client's income will increase to at least minimum wage within three to six months, the worker closes the child care benefit; or~~

(ii) at least one year without any substantial change, the worker denies ~~or closes~~ the child care subsidy benefit.

(E) When the client is an adoptive parent who meets criteria per OAC 340:40-7-12(6) or a caretaker not legally and financially responsible for the child per OAC 340:40-7-6(a)(6), he or she is not required to make at least minimum wage for the number of hours worked.

(4) A ~~person~~ client employed and working from his or her own home may be approved for subsidized child care benefits in an out-of-home child care home or center when he or she is unable to work while the child is in the home. When the person has flexible work hours and can work while the child is in school, care is not approved. When the person operates a licensed child care home, care is only approved in another licensed child care home or center when the client's own child places him or her over maximum licensed capacity;

(5) Subsidized child care benefits may be approved for sleep time during the day when a parent or caretaker works night hours and a feasible alternative is used at no cost to the Oklahoma Department of Human Services (DHS) during the night working hours. Night working hours are defined as the hours between 11:00 p.m. and 7:00 a.m.

(A) The maximum amount of time the worker approves child care allows the client eight hours of sleep plus travel time to and from the child care provider.

(B) In two-parent or two-caretaker families care may only be approved for this reason when both parents have night time jobs or when one parent has a night time job and the other parent or caretaker works during the day while the other parent is sleeping.

~~(6) Job search meets the definition of employment when the client received subsidized child care benefits for at least 30 calendar days, loses employment or successfully completes a formal education or training program, and requests child care to look for a job.~~

(A) ~~Child care may be approved for a maximum of 90 calendar days from the date the client loses employment or successfully completes a formal education or training program as long as the child continues to attend the same child care facility.~~

~~(i) Job search may be approved no more than twice per calendar year.~~

~~(ii) The client must work or attend school for at least 90 calendar days between job search approval periods.~~

~~(B) When the client reports a new job and provides all required verification to prove continued eligibility within the job search period or 30 calendar days of the job search closure, a new application is not needed. When the client does not report a new job or provide required verification within the job search period or 30 calendar days of the job search closure, he or she must complete a new application before being approved for further child care.~~

(b) **Training.** A training program is defined as a course of study that when completed, qualifies a person to meet requirements for a job the client could not obtain without the certificate of completion, accreditation, or licensure. Child care may be approved for one parent or caretaker to attend a training program. In two-parent or two-caretaker families, the other parent or caretaker must work during the same hours.

(1) The training program must qualify to receive federal financial aid from the United States Department of Education (USDE) or other federal or state education funds.

(2) Prior to initial approval for child care and at renewal, the client must provide proof of enrollment, the days and hours the client will be attending, and when he or she is expected to complete the program.

(3) The program must require classroom attendance on a school campus with an instructor present. Care is only approved for an online Internet based course or televised course when it is a live broadcast conducted by an instructor and attendance is required while the program is being broadcast. When the program is self-paced and the client may choose his or her own school hours, care is not approved.

(4) The client must provide proof of progress ~~when requested at renewal~~. When the client is not making satisfactory progress, the worker does not approve further child care for this reason ~~is not approved~~.

(5) Once the client completes a training program, further child care is not approved for training or education. The client is expected to look for jobs that require his or her training credentials. ~~The client may be approved for subsidized child care benefits to job search when he or she meets requirements at (a)(6) of this Section.~~

(6) In certain circumstances, the worker may approve child care benefits for a client to attend a second training program. The client must have been employed in a job requiring the training credentials he or she has for at least 12 months. Possible circumstances include when:

(A) the client can no longer perform the job he or she is trained to do because of physical or mental health reasons. In this instance, the client must provide a statement from a doctor, mental health professional, or a vocational rehabilitation professional verifying the reason. The professional must also state that the client is capable of performing the job tasks after completion of the training program;

(B) there is no longer a demand for the type of work the ~~person~~client is trained to do. The client must provide a statement from a professional working with the client to obtain employment stating there is no demand. The professional must be employed by the Workforce Oklahoma Center, a Workforce ~~Investment~~Innovation and Opportunity Act (WIA)(WIOA) contracted entity, the Oklahoma Employment Security Commission (OESC), or the Oklahoma Department of Rehabilitation Services (DRS); or

(C) the client can establish receipt of the additional training will increase ~~the person's~~his or her earning potential. The client must provide proof the starting salary ~~for a person~~ with the training credentials the client wants to obtain is higher than he or she is currently earning.

(c) **Education program.** An education program may include:

(1) **High school.** Child care may be approved for one or both parents or caretakers to attend high school. It is not approved for a parent or caretaker to receive homebound instruction. Prior to approval the client must provide proof that he or she is enrolled, the days and hours ~~the client is attending~~he or she attends, and when he or she is expected to graduate.

(2) ~~General Educational Development (GED)~~**High school equivalency, literacy, or adult basic education (ABE) classes.** The program must require classroom attendance with an instructor present. Child care may be approved for one parent or caretaker to attend ~~GED~~high school equivalency, literacy, or ABE classes. However, in two-parent or two-caretaker families, the other parent or caretaker must be employed during the same hours.

(A) The client must provide proof of enrollment, the days and hours the client is attending, and the end date of the class prior to care approval. When the class has open enrollment and no established end date, the client must provide proof of progress and how it is measured.

~~(B) Within the first month of classes, the client must provide proof of initial testing showing the client's education or literacy level.~~

~~(C) When the class ends, the~~The worker reviews the client's progress at renewal prior to approval for approving further child care for this reason. ~~When the class is open ended, the worker reviews progress no later than 12 months from the date care is approved for this reason.~~ At renewal, the client must provide a statement from the school that includes:

(i) whether the client attends regularly;

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- (ii) whether the client is making satisfactory progress;
- (iii) an estimated end date to complete the program; and
- (iv) the days and hours the client currently attends classes.

(D) When the client is not attending regularly or making satisfactory progress, further child care for this reason is not approved at renewal.

(3) **English as a Second Language (ESL) classes.** The program must require classroom attendance with an instructor present. Child care may be approved for one parent or caretaker to attend ESL classes when the client lacks proficiency in understanding, speaking, reading, or writing the English language. In two-parent or two-caretaker families, the other parent or caretaker must be employed during the same hours.

(A) The client must provide proof of enrollment, the days and hours the client attends, and the end date of the class prior to care being approved. When the class has open enrollment and no established end date, the client must provide proof of how often progress is measured.

(B) The worker reviews the client's progress ~~when the class is expected to end~~ at renewal prior to approval for further care for this reason. ~~When the class is open ended, the worker reviews progress no later than 12 months from the date care is approved for this reason.~~ At renewal, the client must provide a statement from the school that includes:

- (i) whether the client attends regularly;
- (ii) whether the client is making satisfactory progress;
- (iii) an estimated length of time needed to complete the program; and
- (iv) the days and hours the client currently attends.

(C) When the client is not attending regularly or making satisfactory progress at renewal, the worker does not approve further child care for this reason ~~is not approved~~.

(4) **Formal education program.** A formal education program is defined as a course of study leading to the attainment of an associate or bachelor's degree. Child care may be approved for one parent or caretaker to attend a formal education program and participate in activities required to maintain a scholarship. Only required scholarship activities for scholarships disbursed through the school's financial aid office qualify for child care. In two-parent or two-caretaker families, the other parent or caretaker must work during the same hours.

(A) The formal education program must qualify to receive federal financial aid from USDE or other federal or state education funds.

(B) Prior to initial approval for child care and at renewal, the client must provide:

- (i) proof of enrollment;

- (ii) the days and hours the client attends school or participates in activities required to maintain a scholarship; and
- (iii) when the client expects to complete the degree.

(C) The degree program must require classroom attendance on the school campus with an instructor present. Care is only approved for an online Internet based course or a televised course when it is a live broadcast conducted by an instructor and attendance is required while the program is being broadcast. When the program is self-paced and may be completed whenever the client chooses, care is not approved.

(D) ~~The client must provide~~ worker must request proof of progress when requested at renewal when the class schedule does not show the client is progressing from freshman level classes to sophomore, junior, and senior level classes. When the client is not making satisfactory progress at renewal, the worker does not approve further child care for this reason ~~is not approved~~.

(E) Once the client completes a bachelor's degree, further care is not approved for training or education. The client is expected to look for jobs that require a degree. ~~The client may be approved for subsidized child care benefits to job search when he or she meets requirements at (a)(6) of this Section.~~

(F) In certain circumstances, the worker may approve subsidized child care benefits for a client to obtain a different bachelor's degree. The client must first have been employed in a job that required the degree he or she already has for at least 12 months. Possible circumstances include when:

(i) the client can no longer perform the job he or she is trained to do because of physical or mental health reasons. In this instance, the client must provide a statement from a doctor, mental health professional, or a vocational rehabilitation professional that verifies the reason. The professional must also state that the client is capable of performing the job tasks of the degree program in which the client wants to enroll;

(ii) there is no longer a demand for the type of work the person is trained to do. The client must provide a statement from a professional working with the client to obtain employment stating there is no demand. The professional must be employed by the Workforce Oklahoma Center, a ~~WIA~~ WIOA contracted entity, OESC, or DRS; or

(iii) the client can establish receipt of the second degree may increase the person's earning potential. The client must provide proof the starting salary for a person with the degree the client wants to obtain is higher than he or she is currently earning.

(d) **Supplemental Nutrition Assistance Program (SNAP) Education and Training (E&T) related child care.**

Subsidized child care benefits may be provided for SNAP E&T program-related assigned activities.

(1) Prior to approval, the SNAP E&T coordinator confirms with the contracted service provider the:

- (A) activity is part of SNAP E&T;
- (B) assigned start date; and
- (C) scheduled days and hours of the activity.

(2) When a parent or caretaker stops participating in SNAP E&T activities for reasons other than employment, child care is continued for an additional 90-calendar days from the date the client stops participating as long as the client continues to use at the same child care provider. When the client wishes to change child care providers during the 90-calendar day period, care by a different provider is not approved.

(e) Temporary Assistance for Needy Families (TANF) related child care.

(1) TANF related subsidized child care benefits may be provided for:

(1A) any TANF Work activity outlined on the client's Form 08TW002E, TANF Work/Personal Responsibility Agreement, per OAC 340:10-2-1 including when:

(A) the person is waiting to enter an approved TANF Work activity. The worker limits approval to a time period not to exceed:

- (i) two weeks; or
- (ii) one month, on an exception basis, when child care arrangements or other services would otherwise be lost and the subsequent activity is scheduled to begin within that period;

(B) prior to TANF approval, applicants are referred for immediate job search. TANF applicants are advised:

- (i) child care to job search is limited to 20 days that must be used within 30-calendar days from the date of request;
- (ii) TANF applicants may not choose in-home child care arrangements;
- (iii) child care is limited to the times the applicant is actually looking for a job; and
- (iv) he or she must notify the worker immediately upon securing employment; and

(C) the person is sanctioned per OAC 340:10-2-2 and participating in TANF Work activities; or

(2B) substance abuse treatment when the parent of a child receiving TANF is ineligible for TANF due to the illegal use of a controlled substance or substances per OAC 340:10-4-1. Prior to approval, the parent must provide proof of the substance abuse treatment plan from the treatment provider; or

(C) a child receiving a child only TANF benefit when the parent or caretaker relative meets a need factor included in this Section.

(2) When the parent or caretaker relative receiving TANF related subsidized child care stops meeting a need factor, the worker continues subsidized child care benefits for 90-calendar days at the same child care provider.

When the client wishes to change child care providers during the 90-calendar day period, care by a different provider is not approved.

(ef) Protective or preventive child care. Subsidized protective or preventive child care benefits may be used as an early intervention strategy in certain critical situations to help prevent neglect, abuse, or exploitation of a child. The worker may approve child care in these situations to help stabilize the family situation or enhance family functioning. In most instances, Child Welfare Services (CWS) staff completes protective or preventive child care requests when they are working with the family and recommending protective or preventive child care. ~~When CWS staff contracts with an outside agency to provide~~Subsidized protective or preventive services and child care is recommended, Adult and Family Services (AFS) staff completes the child care requests with help from contracted agency staff benefits are approved on a temporary basis. The worker helps the family develop a plan to reduce or eliminate the need for such child care beginning with the initial contact.

(1) Subsidized Reasons protective or preventive child care benefits are temporary and planning to reduce or eliminate the need for such child care begins at the initial contact may be approved include, but are not limited to, when:

(A) an outside agency contracting with CWS to provide Comprehensive Home-Based Services (CHBS) for a non-court involved family recommends child care be provided on a temporary basis;

(B) the parent or caretaker requests child care because of a medical condition that prevents the parent or caretaker from properly caring for the child;

(C) a homeless family requests child care while working to stabilize the family. Homeless means the family lacks a fixed, regular, and adequate night time residence, and includes families who:

(i) temporarily share housing with other persons due to loss of housing, economic hardship, or a similar reason;

(ii) temporarily live in motels, hotels, trailer parks, or camping grounds due to the lack of alternative accommodations;

(iii) live in emergency or transitional shelters; or

(iv) live in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings not designed for or ordinarily used, as a regular sleeping accommodation for human beings; or

(D) a family affected by a natural disaster requests child care to deal with the effects of the natural disaster, such as damage or loss of the home following a fire, flood, or tornado.

(2) The worker must complete a face to face interview with the client prior to approving subsidized protective or preventive child care benefits in order to better assess all of the service needs of the family may approve subsidized protective or preventive child care benefits for a maximum of 30-calendar days.

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(3) ~~When the family requests more than 30-calendar days of subsidized protective or preventive child care benefits, the worker must obtain approval from Adult and Family Services Child Care Subsidy staff before authorizing more care. The~~ Prior to requesting an extension, the client must provide a statement written recommendation from a professional working with the family stating:

(A) the names and ages of the children for whom child care is recommended;

(B) the reason child care is recommended;

(C) the days and hours child care is needed;

~~(D)~~ how placing the child in a child care facility helps to prevent neglect, abuse, or exploitation of the child; and

~~(E)~~ the length of time the professional expects care to be needed.

(4) ~~When the family receives CHBS services, the family is not responsible for paying a copayment. The~~ In other protective or preventive situations, the family may or may not be expected to help in ~~paying~~ pay the cost of the subsidized child care benefits depending on the unique circumstances of the family.

(5) In certain circumstances, families who are financially ineligible for subsidized child care benefits may be approved for protective or preventive child care benefits when the child is in danger of neglect, abuse, or exploitation. The client must provide evidence the family is so burdened by debt the additional financial pressure of paying for child care may result in further deterioration of family stability and functioning. The client must also provide a plan for reducing his or her debt.

~~(6) The worker may approve subsidized protective or preventive child care benefits for a maximum of 30 calendar days.~~

~~(7) When the family requests subsidized protective or preventive child care benefits, the worker scans supporting documentation into imaging and sends an email to the AFS Child Care Subsidy staff to request an extension. The client must provide all needed eligibility information prior to submission of the extension request.~~

(fg) **Enrichment.** The purpose of subsidized enrichment child care benefits is to assist a child receiving Supplemental Security Income (SSI) to develop socialization skills and transition into a group setting, such as a classroom. When a child is not receiving SSI benefits, the child is not approved for subsidized enrichment child care benefits.

(1) The need for subsidized enrichment child care benefits is based solely on the needs of the child's condition of delay or disability instead of the activities of the parent or caretaker.

(2) Enrichment child care is limited to a maximum of two days per week not to exceed 10 full-time or part-time days per month.

(3) The parent or caretaker must provide a written recommendation from a professional working directly with the child that states how child care would be beneficial to the child. The professional could be the child's doctor,

occupational therapist, physical therapist, or special education teacher.

(4) Enrichment child care is only approved for a child who has not started school or Head Start unless, due to the child's disabilities, the child receives instruction from a teacher in his or her home.

(5) When subsidized enrichment child care benefits are approved, care must be provided outside of the child's home and at least one other child must attend during the same hours.

(6) The worker obtains approval from staff in AFS Child Care Subsidy prior to authorizing care for this need factor.

340:40-7-9. Mandatory pursuit of child support and other potential income

(a) **Mandatory referral to Child Support Services (CSS).** When one or both of the child's parents are absent from the home, the client must agree to pursue child support through CSS for all children who must be included in the same household per Oklahoma Administrative Code (OAC) 340:40-7-6 before subsidized child care benefits are approved.

(1) **When a CSS referral is required.** The client is required to pursue child support for all children living in the home when one or both parents are absent, unless good cause exists per (2) or (6) of this subsection, including when:

(A) the parent or caretaker is not requesting subsidized child care benefits for every child living in the home;

(B) the client receives court-ordered child support;

(C) there is a joint custody agreement and neither parent is ordered to pay support;

(D) parental rights are terminated, except in the case of adoption, per Section 1-4-906 of Title 10A of the Oklahoma Statutes;

(E) an additional child, whose parent is absent, is added to the household after certification; or

(F) one or both parents leave the home after certification.

(2) **When a CSS referral is not required.** The client is not required to complete child support forms when:

(A) he or she is a foster parent to the child and the CSS referral was completed in the child's SoonerCare (Medicaid) case;

(B) the client is an adoptive parent and provides proof of a single parent adoption;

(C) a parent is temporarily out of the home per OAC 340:40-7-6(c) and considered part of the household;

(D) the child, whose parent is absent, is not required to be considered part of the household per OAC 340:40-7-6;

(E) the client is a minor parent ~~and is not living with his or her own parents. The minor parent must pursue child support for his or her own child but not for the minor parent;~~ or

(F) the child does not receive a subsidized child care benefit and is included in household composition because his or her parent is considered an adult non-relative of the opposite sex individual (ANROSI) acting in the role of a spouse per OAC 340:40-7-6(a) and (b).

(3) **Required forms.** The worker makes the referral to CSS by completing with the client Form 08TA001E, Absent Parent (AP) Information Sheet, for each absent parent. The client must sign Form 08TA012E, Cooperation Agreement and Request for Good Cause, per ~~paragraph~~ (6) of this subsection. The worker gives the Oklahoma Department of Human Services (DHS) Appendix C-16, Child Support Services and Responsibilities, to the client. The form explains CSS services and client expectations. The worker sends copies of legal documents concerning custody or child support to the appropriate CSS district office.

(4) **Oklahoma Centralized Support Registry (CSR).** After approval, the client must send all future child support payments to the CSR. DHS Appendix C-16 contains the address for the CSR. CSR returns the child support payments to the client unless the client receives Temporary Assistance for Needy Families per OAC 340:10-10-7.

(5) **Establishment of paternity.** When the worker is able to contact the alleged father, the worker asks whether he is willing to acknowledge paternity. When the alleged father agrees to acknowledge paternity, the worker gives or sends him Form 03PA209E, Acknowledgment of Paternity, to review. The worker advises him to contact CSS at the ~~telephone~~ number on the back of the form when, after review, he is willing to sign the form.

(6) **Good cause.** Good cause for refusal to cooperate in pursuing child support may be granted when cooperation is not in the best interest of the child or the parent. DHS may continue to pursue child support when CSS determines child support activities may be safely conducted without the client's cooperation.

(A) The client must sign Form 03TA012E, Cooperation Agreement and Request for Good Cause:

- (i) at the time of the initial application;
- (ii) at the time of an additional child request; or
- (iii) when circumstances result in an applicant or recipient's request for good cause.

(B) The worker does not deny, delay, or discontinue subsidized child care benefits pending a determination of good cause when the applicant or recipient furnishes evidence or information supporting the good cause claim.

(C) DHS determines the client has good cause for refusing to cooperate only when:

- (i) there is possible physical or emotional harm to the child;
- (ii) there is possible physical or emotional harm to the parent or caretaker;
- (iii) the child was conceived as a result of incest or forcible rape;

(iv) legal proceedings for adoption of the child are pending before a court; or

(v) the client is currently being assisted by a public or licensed private social agency to resolve the issue of whether to keep the child or relinquish the child for adoption.

(D) The applicant or recipient claiming good cause is responsible for supplying documentary evidence to establish the claim or furnishing sufficient information to permit DHS to investigate the good cause claim. Uncorroborated statements of the applicant or recipient are not acceptable documentation. The evidence must be of probative value and supported by written statements to the extent possible. Examples of acceptable written statements include:

- (i) birth certificate, medical, or law enforcement records indicating the child was conceived as a result of incest or forcible rape;
- (ii) court documents or other records indicating legal proceedings for adoption are pending before a court of competent jurisdiction;
- (iii) criminal, medical, child protective services, social services, psychological, or law enforcement records indicating the putative or absent parent might inflict physical or emotional harm on the child or caretaker;
- (iv) medical records indicating the emotional health history and present emotional health status of the caretaker or child or a written statement from a mental health professional indicating a diagnosis or prognosis concerning the emotional health of the caretaker or child;
- (v) a written statement from a public or licensed private social agency working with the applicant or recipient to resolve the issue of whether to keep the child or relinquish the child for adoption; and
- (vi) sworn statements from persons other than the client with knowledge of the circumstances that provide the basis for the good cause claim.

(E) Upon request, the worker helps the client obtain applicable documentary evidence listed in (D)(i) through (vi) of this subsection. The client must specify the type of document or record needed and provide sufficient identifying information to make it possible for the worker to obtain the documents.

(b) **Failure to cooperate in the pursuit of child support.** Failure to cooperate in pursuit of child support without good cause may be indicated at the time of application or at any time further action by the client is necessary.

(1) Actions indicating failure to cooperate include refusals to:

- (A) identify and assist in locating a known parent;
- (B) establish paternity; or
- (C) establish, modify, or enforce a support order.

(2) When the client refuses to cooperate at the time of application, the worker denies the application.

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(3) When an applicant applies for subsidized child care and is in non-cooperation status with CSS, the applicant must verify cooperation with CSS before the worker approves subsidized child care benefits.

~~(34) When, after certification, CSS informs the worker the client is not cooperating, the worker closes the subsidized child care benefits for all children included in the child care benefits effective 10 calendar days from the date action is taken remain open until the child care renewal is due. At renewal, the worker reviews the client's cooperation with CSS. When the client is not cooperating, further care is not approved.~~

(c) **Cooperation with CSS following denial or closure of the subsidized child care benefits.** The client must verify that he or she is cooperating with CSS before the worker approves subsidized child care benefits following a denial or closure based on non-cooperation with CSS.

(1) When the client cooperates with CSS and notifies the worker of the cooperation within 30-calendar days of the:

(A) denial of subsidized child care benefits, the client is not required to file a new application before benefits may be approved; or

(B) closure of the subsidized child care benefits, the worker reopens the benefits back to the closure date.

(2) When the client does not cooperate with CSS or cooperates, but waits to inform the worker of the cooperation for more than 30-calendar days from the denial or closure date, the client must complete a new application before care is approved. The earliest date subsidized child care benefits may be approved is the date the client completes a child care interview and provides all necessary verification per OAC 340:40-3-1.

(d) **Exploration and development of potential income other than child support.** The worker explores potential sources of income, such as Social Security benefits, Supplemental Security Income (SSI), unemployment benefits, veteran's benefits, and increased wages with the client at the time of application and each renewal for all members of the household whose income must be considered per OAC 340:40-7-6. The client must apply for, or continue to pursue, all potential sources of income for which it appears likely he or she may be eligible, except for SSI before the next child care renewal is due. The client is encouraged, but not required, to apply for SSI when the client indicates a household member has a disability. ~~The worker gives the client 90 calendar days to pursue potential identified income.~~

(1) When the client refuses to pursue available income at the time of request, the worker denies the child care request.

(2) When the client agrees to pursue all potential income and fails to do so within ~~90 calendar days~~ the 12 month eligibility period, ~~the worker closes subsidized child care benefits~~ further care is not approved at renewal.

(3) When the client is approved for the potential income or offered a pay raise in pay within the 12 month eligibility period and refuses to accept it, ~~the worker closes~~

~~the subsidized child care benefits effective 10 calendar days from the date the worker takes action~~ further care is not approved at renewal.

(4) When the client's pay decreases in rate of pay or number of hours worked, the worker explores why the decrease occurred. When the client requested the decrease to avoid a family share copayment increase or to maintain eligibility ~~for the subsidized child care benefits~~, the worker closes the subsidized child care benefits ~~are closed~~ at renewal.

(5) At each renewal, the worker determines whether the client continues to pursue potential income.

(A) When the client begins receiving previously identified potential income, the worker considers the income for the next negative action deadline after it is reported.

(B) When the client was not approved for the income, the client must verify this. The worker records in the case record the verification provided and stops exploring this potential income with the client.

(C) When the client stops pursuing potential income and was not determined ineligible for ~~the income~~, ~~the worker closes the client's child care benefit for failure to cooperate effective 10 calendar days from the date the worker takes action~~ further care is not approved at renewal.

(6) When the client's subsidized child care benefits ~~closed~~ close at renewal because of failure to ~~cooperate~~ pursue potential income, the client must verify receipt or pursuit of such income or that such income is no longer potentially available before child care may be approved.

(A) When the client verifies cooperation within 30-calendar days of the closure of subsidized child care benefits, the worker may reopen the benefits back to the date they were closed without imposing a penalty.

(B) When the client does not cooperate or waits to verify cooperation for more than 30-calendar days from the date the subsidized child care benefits close, the client must complete a new application before care is approved. The earliest date subsidized child care benefits may be approved is the date the client completes a child care interview and provides all necessary verification per OAC 340:40-3-1.

340:40-7-11. Sources of income considered

(a) **Sources of income considered.** Income may be received periodically or at irregular intervals. All income, unless specifically excluded per Oklahoma Administrative Code (OAC) 340:40-7-12, is considered in determining monthly gross income. Income is classified as earned or unearned income.

(b) **Earned income.** Earned income means total money earned by a person through the receipt of wages, salary, commission, or profit from activities in which the person is engaged as self-employed or as an employee. Temporary disability insurance payment(s) and temporary ~~worker's~~ workers' compensation payments are considered ~~as~~ earned income

when payments are employer-funded and the person remains employed.

(1) **Wages.** Wages include total money earned for work performed as an employee including armed forces pay, commissions, tips, piece-rate payments, longevity payments, and cash bonuses before ~~any~~ deductions ~~are made~~, such as taxes, bonds, pensions, union dues, credit union payments, ~~and/or~~ cafeteria plans are subtracted.

(A) Countable wages for military personnel include any allowance included on the earnings statement, such as the Basic Allowance for Housing (BAH) ~~and the~~ Basic Allowance for Subsistence (BAS).

(B) Only the portion of the cafeteria plan the client controls, including any excess benefit allowance payments, is counted as income.

(C) Reimbursements for expenses, such as a uniform allowance or transportation costs, other than daily commuting, are subtracted from the gross income.

(D) Payments made for annual leave, sick leave, or severance pay are considered earned income during the month such income is received whether paid during employment or at termination of employment.

(E) Wages that are garnished or diverted and paid to a third party are also counted as income.

(2) **Self-employment.** Self-employment income is ~~considered~~ calculated based on procedures listed in this subsection.

(A) **Persons considered self-employed.** A person is considered self-employed when:

- (i) he or she declares himself or herself to be self-employed;
- (ii) there is an employer/employee relationship and the employer does not withhold income taxes or Federal Insurance Contributions Act (FICA), even when required to do so by law; or
- (iii) the employer withholds taxes and the person provides proof he or she files taxes as self-employed.

(B) **Records used and income calculation.** The worker uses the records described in (i) through (iii) of this subparagraph to calculate income. When the person reports a loss instead of a profit on the business, the worker does not deduct the loss from other household income.

- (i) When the person filed a federal income tax return for self-employment income for the most recent year, whether the person's income is derived from his or her own business or from working for an employer, the worker uses the net gross self-employment income shown on the person's federal income tax return, subtracts 50 percent of the income for claimed business expenses, and divides the income by 12 or the number of months the business has ~~been in existence~~ existed or the person started ~~working~~ working for the employer, when less than 12 months. The worker verifies the person's

start date with the employer when the person states he or she has not worked for the employer for at least 12 months.

(ii) When the person did not file an income tax return for the most recent tax year for his or her own business, the worker calculates self-employment income using the person's business records for the last 12 months or the number of months the business has ~~been in existence~~ existed when less than 12 months. When the client declares ~~he or she has~~ business expenses, the worker subtracts 50 percent of the gross self-employment income to arrive at the net profit.

(iii) When the person works for an employer, did not file a federal tax return as self-employed, and receives earnings from an employer, the person must provide proof of the last 12 months of income from the employer. The worker divides the gross income by 12 or the number of months the person ~~has~~ worked for the employer to determine monthly income. When the person declares ~~he or she has~~ business expenses, the worker subtracts 50 percent of the gross self-employment income before dividing the income by the applicable number of months to determine monthly income.

(C) **Profit sharing.** Households who operate S corporations, general or limited partnerships, or limited liability companies may receive profit sharing that is reported on the household's personal income tax return. When a household member:

- (i) actively participates in the operations, the income from profit sharing is considered part of the household's self-employed earned income; or
- (ii) does not actively participate in the operations, the income from profit sharing is considered part of the household's unearned income.

(D) **Monthly self-employment income.** Self-employment income received on a monthly basis is normally averaged over a 12-month period. When the averaged amount does not accurately reflect the household's actual monthly circumstances because the household ~~has~~ experienced a substantial increase or decrease in income, the worker calculates the self-employment income based on anticipated earnings.

(E) **Seasonal self-employment.** Self-employment income intended to meet the household's needs for only part of the year is averaged over the period of time it is intended to cover.

(F) **Annualized self-employment income.** Self-employment income that represents a household's annual support is averaged and annualized over a 12-month period, even when the income is received in a short time period.

- (i) ~~If~~ When the average annualized amount does not accurately reflect the person's actual monthly circumstances because the person experienced a substantial increase or decrease in income,

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the worker calculates the self-employment income on anticipated earnings.

(ii) The worker does not calculate self-employment income on the basis of prior earnings, such as income tax returns, when an increase or decrease of business has occurred.

~~(iii)~~ When the person ~~has~~ received the self-employment income for less than 12 months, ~~the worker averages the income is averaged~~ over the applicable number of months and ~~projects~~ the monthly amount ~~projected~~ for the coming year.

~~(H)~~ ~~When the person has received the self-employment income for a short time and there is insufficient data to make a reasonable income projection, the worker does not consider income from this source until the renewal is due. At the renewal, the worker averages income over the number of months received until a full year's information is available.~~

(G) **Income from rental property.** Income from rental property is considered self-employment income.

(H) **Income from room and board.** Payments from roomers or boarders are considered self-employment when the roomer or boarder is ~~paying~~ pays a reasonable amount. When the roomer or boarder is an ~~adult non relative opposite sex individual (ANROSI) acting in the role of a spouse,~~ OAC 340:40-7-6(b)(4) applies.

(3) **On-the-job training.** Earned income from regular employment for on-the-job training (OJT) is considered as earned income. This includes OJT provided ~~under Sections 204(b)(1)(c) or 264(c)(1)(A) per Section 3(44) of the Workforce Investment Innovation and Opportunity Act (WIOA) for persons 19 years of age or and older.~~

~~(4) **Workforce Investment Act (WIA).** Income earned in OJT positions provided under Section 134 of WIA is considered earned income for persons who are 19 years of age and older. On the job training provided must be full time positions, and there must be a contract between WIA and the employer for each individual position. This does not include classroom or institutional training and institutional training or intern assignments sponsored by WIA/WIOA, even when an hourly amount is paid for such training. Refer to per OAC 340:40-7-12(25)(G) for other types of excluded WIA income.~~

~~(5)~~ **Title I payments of Domestic Volunteer Services Act.** Payments under Title I of the Domestic Volunteer Services Act of 1973 as amended ~~per P.L. Public Law 93-113~~ are considered income unless excluded per OAC 340:40-7-12.

~~(6)~~ **Earnings of children.** Earned income of a minor parent is treated as adult earned income. Earnings of other children 17 years of age and younger who are under the parental control of an adult household member are excluded per OAC 340:40-7-12.

(c) **Unearned income.** Unearned income is income a person receives for which the person does not put forth any

daily, physical labor. Types of income listed in paragraphs (1) through (10) of this subsection are considered unearned income.

(1) **Assistance payments.** Assistance payments include state means-tested programs, such as Temporary Assistance for Needy Families (TANF), including Supported Permanency benefits, State Supplemental Payment (SSP) to the aged, blind, or disabled, and Refugee Resettlement Program (RRP) cash assistance.

(2) **Pensions, disability, and Social Security benefits.** Annuities, pensions, retirement benefits, disability benefits from either government or private sources, or Social Security survivor benefits are considered unearned income.

(A) When a minor child receiving Social Security benefits no longer lives with the payee receiving the Social Security benefits, only the portion of the child's Social Security benefit used to meet the minor child's needs is considered income. This may include cash given directly to the minor child or money paid to a third party for room and board for the minor child.

(B) The parent or caretaker or, when appropriate, the minor child must take action to become the payee within ~~90 calendar days~~ the 12 month eligibility period per OAC 340:40-7-9(d). When ~~the parent, caretaker, or minor child does not take action is not taken within 90 calendar days~~ by renewal, the worker counts the total Social Security benefit as income.

(3) **Supplemental Security Income (SSI).** SSI is considered unearned income.

(4) **Unemployment and workers' compensation.** Income from unemployment insurance benefits or workers' compensation is counted as unearned income.

(5) **Child support, court-ordered or third party paid child care, and alimony.** Child support, child care payments, and alimony payments, whether court-ordered or voluntary, made directly to the household from non-household members are counted as unearned income.

(A) When a child care payment is paid directly to the child care provider, it is not considered income for the client.

(B) When the absent parent reports he or she is paying a portion of the client's family share copayment to the child care provider, the only action taken by the worker is to record this in the case record.

(C) When the absent parent or another third party, such as an employer, is making a payment to the provider in addition to the client's copayment, it is considered as an additional copayment that must be met before the Oklahoma Department of Human Services (DHS) makes a subsidy payment to the provider.

(D) Any other payment made to a third party for a household expense must be considered as income when a court order directs the payment be made to the household. Payments for medical support are excluded.

~~(6) **Veterans' compensation, pensions, or military allotments.** Annuities, pensions, disability~~

Disability compensation, military allotments, servicemen dependent allowances, and similar payments are considered unearned income.

(7) **Contributions.** Appreciable contributions recurrently received in cash are considered unearned income except when the contribution is not made directly to the client. To be appreciable, a contribution must exceed \$30 per calendar quarter per person.

(8) **Dividends, interest, minerals, and royalties.** Dividends, interest income, income from minerals, royalties, and similar sources are considered unearned income. When income from these sources is received irregularly or in varied amounts, it is averaged over 12 months. Income from royalties is treated as unearned, self-employment income, subject to (b)(2) of this Section.

(9) **Lump sum payments.** Recurring lump sum payments, including income from earnings, are averaged over the period they are intended to cover.

(10) **Irregular income.** Income received irregularly but in excess of \$30 per quarter is considered income unless it is from an excluded income source specifically mentioned at OAC 340:40-7-12. Countable irregular income is averaged over 12 months.

340:40-7-12. Sources of excluded income

Only the income listed in this Section is excluded in determining a household's eligibility for a child care benefit. No other income is excluded.

(1) **Lump sum payments.** One-time lump sum payments are excluded as income. Recurring lump sum payments are excluded as a countable income source unless specifically mentioned per Oklahoma Administrative Code (OAC) 340:40-7-11 ~~as a countable source of income.~~

(2) **In-kind income.** In-kind income is excluded as income. In-kind income is defined as any gain or benefit that is not in the form of money paid directly to the household. This includes non-monetary or in-kind benefits, such as meals, clothing, public housing, or produce from a garden.

(3) **Money received from the sale of property.** Money received from the sale of property, such as stocks, bonds, or a house, or a car is excluded. This exclusion does not apply when the person is engaged in the business of selling such property.

(4) **Bank or trust account withdrawals.** Money withdrawn from a bank or trust account is excluded as income even when used to meet current living expenses.

(5) **Capital gains.** The proceeds from the sale of capital goods or equipment are excluded.

(6) **Household income for certain children adopted through Oklahoma Department of Human Services (DHS).** The income of all household members is exempt for a child only when conditions in (A) through (E) are met. The:

(A) child was adopted through DHS or a federally-recognized Indian tribe, as defined by the Federal and Oklahoma Indian Child Welfare Acts, by the parent applying for benefits;

(B) adoptive parent applying for benefits must provide:

- (i) a fully executed Form 04AN002E, Adoption Assistance Agreement, listing child care as an adoption assistance benefit for the child;
- (ii) Form 04AN033E, Post Adoption Child Care Referral;
- (iii) the Final Decree of Adoption; and
- (iv) a form of identity;

(C) adoptive parent and child are Oklahoma residents ~~of Oklahoma~~;

(D) child is 5 years of age or younger. When a child turns 6 years of age during the 12-month eligibility period, household income remains exempt until the next renewal; and

(E) adoptive parent meets an allowable need factor ~~as defined in~~ per OAC 340:40-7-7 and OAC 340:40-7-8 and provides proof. In a two-parent family, both parents must meet an allowable need factor.

(7) **Household income when at least one child attends an Early Head Start-Child Care (EHS-CC) Partnership grant program.** The household income is exempt for all children in care when at least one child attends an EHS-CC Partnership grant program and the household meets income guidelines per DHS Appendix C-4, Child Care Eligibility/~~Co-payment~~Copayment Chart.

(8) **Earnings of children.** Earnings~~Exclude~~ the earnings of a person 17 years of age and younger who is considered a child in the case ~~is excluded~~ as long as the child is attending school regularly. The exclusion continues to apply during temporary interruptions in school attendance due to semester or vacation breaks, provided the child's enrollment resumes following the break. When the child is a minor parent and the payee, the minor parent's earnings are treated as adult income.

(9) **Irregular income.** Any income received too infrequently or irregularly to be reasonably anticipated is not counted unless it is in excess of \$30 per calendar quarter.

(10) **Reimbursements.** Reimbursements for past or future expenses not exceeding actual expenses are excluded.

(11) **Tax refunds.** ~~Federal~~Exclude federal or state income tax refunds; including ~~the state and federal~~ Earned Income Tax Credit (EITC), ~~and advance~~ payments of ~~federal EITC are excluded.~~

(12) **Money received for third parties.** Money received and used for the care and maintenance of a third party who is not a household member is excluded.

(13) **Loans.** All loans, including loans from private as well as commercial institutions, are excluded as income. Verification the incomeWhen the household states someone is loaning the household money to meet expenses, a statement signed by both parties is required indicating the payment is a loan is required and must be repaid. When the household states it receives loans on a recurrent or regular basis from the same source, the lender must sign an affidavit stating the payments are loans that must be repaid or that payments will be made in accordance with an established repayment schedule.

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(14) **Grants.** Grants obtained and used under conditions that preclude their use for current living costs are excluded.

(15) **Educational assistance.** Educational assistance is excluded ~~when receipt is contingent upon the student regularly attending school.~~

~~(A) Examples of educational assistance include as income and includes, but is not limited to:~~

~~(i) work study;~~

~~(ii) scholarships;~~

~~(iii) fellowships;~~

~~(iv) educational loans when payment is deferred; and~~

~~(v) veteran's/veterans' education benefits.~~

~~(B) The educational assistance must be intended to offset the costs of education and expenses as identified by the institution, school, program, or other grantor.~~

~~(C) When the educational assistance is not intended to be a reimbursement and is a gain to the client, it is considered income.~~

(16) **Stipends.** Stipends paid to students participating in the Indian Vocational Education Program through the Carl D. Perkins Vocational and Applied Technology Education Act are excluded as income.

(17) **Service Corps of Retired Executives (SCORE) and Active Corps of Executives (ACE).** Payment for supportive services or reimbursement of out-of-pocket expenses made to volunteers serving as foster grandparents, senior health aides, ~~or~~ senior companions, and to persons serving in SCORE and ACE is excluded as income.

(18) **Government rent or housing subsidies.** Government rent or housing subsidies by government agencies received in-kind or in cash for rent, mortgage payments, or utilities ~~is~~are excluded as income.

(19) **Foster care payments.** Foster care payments received for a foster child in state or tribal custody are excluded as income.

(20) **Title IV E of the Social Security Act or State Adoption Subsidy.** Federal or state funded adoption subsidy payments made to adoptive parents are excluded as income.

(21) **Victims of Crime Act of 1984.** Payments made from the crime victims' compensation program as amended in Section 1402 of the Victims of Crime Act of 1984 and per Section 10602 of Title 42 of the United States Code (42 U.S.C. § 10602) are excluded as income. ~~[42 USC 10602]~~

(22) **Family Support Assistance Payment Program.** Family Support Assistance Payment Program payments paid to persons by the DHS Developmental Disabilities Services are excluded as income.

(23) **Vendor payments.** Vendor payments made directly to the household's creditors, ~~or~~ a person, or an organization providing a service to the household, are excluded as income unless a court order or other legally binding agreement specifies the money is to be paid directly to the client.

(24) **Money received by another household for a household member.**

(A) When a child spends part of the month in two separate households and receives countable income, the worker considers the portion of the income received by the household applying for or receiving a child care benefit as income and excludes the remainder.

(B) When a minor parent is the payee and lives with ~~one of his or her parents~~ a parent or caretaker, child support received for the minor parent is considered income for the parent or caretaker and not considered for the minor parent's child care benefit.

(25) **Money deposited into or withdrawn from a qualified Oklahoma Achieving a Better Life Experience (ABLE) Program account.** Money deposited into or withdrawn from a qualified ABLE Program account per Sections 4001.1 through 4001.5 of Title 56 of the Oklahoma Statutes or a qualified ABLE Program account set up in any other state per the ABLE Act of 2014 (26 U.S.C. § 529A) is excluded as income when the client:

(A) provides documents to verify the account meets exemption criteria;

(B) verifies money deposited in the account does not exceed the annual federal gift tax exclusion amount per 26 U.S.C. § 2503(b). Any money deposited in the account in the calendar year that is in excess of the annual federal gift tax exclusion amount is considered as countable income in the amount deposited; and

(C) verifies withdrawals from the account were used to pay qualified disability expenses. Money withdrawn for reasons other than to pay qualified disability expenses is considered as income for the month of withdrawal.

(2526) **Income excluded by federal law.** Income excluded by federal law is defined as:

(A) payments received under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;

(B) payments received:

(i) under the Alaska Native Claims Settlement Act, ~~per~~ Public Law (P.L.) 92-203, § 21(a);

(ii) under the Sac and Fox Indian Claims Agreement, ~~per~~ P.L. 94-189;

(iii) from the disposition of funds to the Grand River Band of Ottawa Indians ~~per~~ P.L. 94-540;

(iv) by members of the Confederated Tribes of the Mescalero Reservation ~~per~~ P.L. 95-433;

(v) under the Maine Indian Claims Settlement Act of 1980 to members of the Passamaquoddy and the Penobscot Nation, ~~per~~ P.L. 96-420; or

(vi) by an individual as a lump sum or a periodic payment via the Cobell Settlement per the Claims Resolution Act of 2010, ~~per~~ P.L. 111-291;

(C) any payment to volunteers under Title II, Retired and Senior Volunteer Program, Foster Grandparents and others, of the Domestic Volunteer Services

Act of 1973, ~~P.L. 93-113~~ as amended. Payments under Title I of that Act, Volunteers in Service To America, University Year for Action, and Urban Crime Prevention Program, to volunteers are excluded only ~~if~~when the monthly amount, ~~when~~ converted to an hourly rate, is less than the Oklahoma minimum wage;

(D) income derived from submarginal land of the United States held in trust for certain Indian tribes ~~per~~P.L. 94-114, See Section 6;

(E) Indian per capita payments distributed from judgment awards and trust funds made ~~pursuant to~~per P.L. 98-64. Also excluded is any interest or investment income accrued on such funds while held in trust or any purchases made with judgment funds, trust funds, interest, or investment income accrued on such funds. Any per capita payments, headrights of the Osage tribe, income from mineral leases or other tribal business ventures are excluded as long as the payments are paid per capita. Any interest or income derived from the funds after distribution is considered as any other income. The per capita exclusion applies per person rather than per family;

(F) income up to \$2,000 per year received by individual Indians, ~~which is~~ derived from leases or other uses of individually-owned trust or restricted lands, is not counted as income. The income exclusion applies to calendar years beginning January 1, 1994. Any remaining disbursements from the trust or restricted lands are considered as income;

(G) allowances, stipends, earnings, compensation in lieu of wages, grants, and other payments made for participation in the Workforce ~~Investment~~Innovation and Opportunity Act (WIA)(WIOA) or other federally funded workforce training program to persons of all ages and student status with the exception of income paid to persons 19 years of age and older for on-the-job training. This income is treated as any other earned income. ~~Refer to~~per OAC 340:40-7-11(b)(4);

(H) payments, allowances, or earnings to persons participating in programs under Title I of the National and Community Service Trust Act of 1993. Title I includes three Acts: Serve-America, The Community Service, Schools and Service-Learning Act of 1990, the American Conservation and Youth Service Corps Act of 1990, and the National and Community Service Act. Most of the payments are made as a weekly stipend or for educational assistance. The Higher Education Service-Learning Program and the AmeriCorps Umbrella Program come under this Title. This includes AmeriCorps income;

(I) payments or allowances made under any federal law for the purpose of energy assistance, Low Income Home Energy Assistance Program (LIHEAP), and utility payments and reimbursements made by

the Department of Housing and Urban Development (HUD) and the Farmers Home Administration (FmHA);

(J) the amount of the mandatory salary reduction of military service personnel used to fund the G.I. Bill;

(K) all funds paid to persons under the Community Service Employment Program under Title V, P.L. 100-175. This program is authorized by the Older Americans Act. Each ~~State~~state and various organizations receive some Title V funds. These organizations include:

- (i) Experience Works, formerly Green Thumb;
- (ii) National Council on Aging;
- (iii) National Council of Senior Citizens;
- (iv) American Association of Retired Persons;
- (v) United States (U.S.) Forest Service;
- (vi) National Association for Spanish Speaking Elderly;
- (vii) National Urban League;
- (viii) National Council on Black Aging; and
- (ix) National Council on Indian Aging;

(L) payments made from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement In Re Agent Orange Product Liability Litigation, M.D.L. No. 381 (E.D.N.Y.);

(M) payments received under the Civil Liberties Act of 1988. These payments are made to persons of Japanese ancestry who were detained in internment camps during World War II;

(N) payments made from the Radiation Exposure Compensation Trust Fund as compensation for injuries or deaths resulting from exposure to radiation from nuclear testing and uranium mining;

(O) payments for the fulfillment of a Plan for Achieving Self-Support under Title XVI of the Social Security Act;

(P) payments made to persons because of their status as victims of Nazi persecution;

(Q) payments made for the Experimental Housing Allowance Program under Annual Contributions Contracts entered into prior to January 1, 1975, ~~under~~per Section 23 of the U.S. Housing Act of 1937 as amended;

(R) monetary allowances provided to certain children of Vietnam War veterans ~~as described in~~per Chapter 18 of Title 38 of the United States Code (USC);

(S) federal funds distributed by Federal Emergency Management Assistance (FEMA) due to a disaster or emergency to persons directly affected by the event. This exclusion also applies to comparable disaster assistance provided by states, local governments, and disaster assistance organizations. For payments to be excluded, the disaster or emergency must be declared by the President of the United States;

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- (T) the value of the food benefit allotment under the Food and Nutrition Act of 2008; and
- (U) the value of supplemental food assistance under the Child Nutrition Act of 1966 and the special food services program for children under the National School Lunch Act of 1970, both as amended by the per Omnibus Budget Reconciliation Act of 1981.

SUBCHAPTER 9. PROCEDURES RELATING TO CASE CHANGES

340:40-9-1. Renewal of child care eligibility

(a) **Child care renewal.** All conditions of eligibility are periodically reviewed per OAC 340:40-7. The client is sent notification when the renewal is due and the methods the client may use to complete it. The client must complete the child care renewal at the end of the 12-month eligibility period in order to continue receiving benefits. Refer to Oklahoma Administrative Code 340:40-9-2(g) for reasons child care is closed prior to the renewal. At renewal, the client is sent a computer-generated notice informing the client:

- (1) the renewal is due;
- (2) the methods the client may use to complete the renewal;
- (3) types of verification that may be required; and
- (4) when benefits close if the renewal is not completed.

(b) **Renewal time frame.** ~~When circumstances change between renewal months, the worker evaluates whether to complete a renewal early, a new application, or make changes to the client's family share co-payment and/or plan of service. A child care renewal for subsidized child care benefits must be completed is due no later earlier than 12 months from the date of approval or the last renewal unless the client receives SNAP and benefits must be synchronized per (f) of this Section:~~

- ~~(1) six months from the date of approval or the last renewal when the child does not receive public assistance; or~~
- ~~(2) 12 months from the date of approval or last renewal when the child receives Temporary Assistance for Needy Families (TANF) or a State Supplemental Payment (SSP).~~

(c) **Signature requirement.** The client or the client's authorized representative must sign the renewal.

(d) **Interview requirement.** An interview is not required at renewal for the Child Care Subsidy Program ~~unless the client receives child care benefits because of a protective or preventive reason per OAC 340:40-7-8. When an interview is required, it must be a face-to-face interview.~~

(e) **Eligibility determination.** An eligibility determination is made once the renewal is signed, all required information ~~has been~~ provided, an interview, if required, is conducted, and all information evaluated.

- (1) The eligibility determination results in:
 - (A) completing the renewal without changes;
 - (B) completing the renewal with changes; or
 - (C) closing the child care benefits.

(2) Benefits, when closed, may be reopened when the client provides required information ~~by the last day of the month~~ within 30-calendar days of closure.

(f) **Synchronization of benefits.** When the client is receiving other Adult and Family Services benefits ~~from the Oklahoma Department of Human Services~~ in addition to the subsidized child care benefits, certification and renewal dates must be coordinated with the other programs.

340:40-9-2. Case changes

(a) **Case changes.** The client must report ~~any~~ changes in his or her circumstances within 10-calendar days that would result in an increase or decrease in subsidized child care benefits ~~within 10-calendar days. The worker acts on changes that increase or decrease within 10-calendar days of a reported change listed in this paragraph, except for (8), when the change increases or decreases the subsidized child care benefits within 10-calendar days of the reported change.~~ Failure to report changes timely may result in an overpayment assessment against the client. Examples of changes the client must report include:

- (1) household income;
- (2) household composition;
- (3) names and number of household members in child care;
- (4) ~~the reason child care is needed;~~
- (5) the parent's or caretaker's work or school schedule or any other change affecting the days and hours child care is needed;
- ~~(6) the client's address or telephone number;~~
- ~~(7) the child care facility the child is attending;~~
- ~~(8) when child care is no longer being used or needed;~~
- ~~(9) when the reason for child care changes or the client no longer meets a need factor;~~
- (9) family size; and
- (10) when a child stops attending an Early Head Start-Child Care Partnership grant program.

(b) **Change of payee.** When a change of payee is reported, a new application must be taken. Refer to Oklahoma Administrative Code (OAC) 340:40-3-1 for application processes.

(c) **Additional child request.** When an additional child requires subsidized child care benefits, the worker completes the request within two ~~working~~ business days of the client providing all necessary verification to determine eligibility. When eligible, the child may be approved for subsidized child care benefits beginning with the date of request. Family share copayment increases due to adding an additional child to the subsidized child care benefits are effective the month after the month the client requests subsidized child care benefits for the child.

(d) **Changes that increase the subsidized child care benefits.** When the client reports a timely change ~~timely~~ that increases the subsidized child care benefits, the client and the worker jointly plan the effective date of the change. When the client does not report timely changes ~~timely~~, the earliest date the worker increases the subsidized child care benefits is the first day of the month in which the client reports the change.

(e) **Changes that decrease the subsidized child care benefits.** When possible, the worker and client plan changes that decrease the subsidized child care benefits before implementing the change. When the client reports an increase in income, the worker uses Oklahoma Department of Human Services (DHS) Appendix C-4, Child Care Eligibility/~~Co-payment~~Copayment Chart, to determine whether the household meets income guidelines per OAC 340:40-5-1(8) and to apply or increase a family share copayment when appropriate. Unless the client consents to an earlier change date, the worker makes changes that decrease the client's subsidized child care benefits effective the next advance notice deadline date per DHS Appendix B-2, Deadlines for Case Actions.

(f) **Change in provider.** When a client reports a change in provider, the change is effective the date the change in provider occurs, regardless of whether the client reports the change timely. The worker completes provider changes within two ~~working~~business days of the date the client reports the change.

(g) **Closure of the subsidized child care benefits.** When the client is no longer eligible for subsidized child care benefits, the closure date varies depending on circumstances.

(1) When advance notice is required for reasons other than (2) through (6) of this paragraph, the worker closes the subsidized child care benefits effective 10-calendar days from the date action is taken.

(2) When the closure is based on anticipated income the client will receive in the next month, the worker closes the child care benefit effective the last day of the current calendar month.

(3) When at child care renewal, the client does not meet a need factor or is not pursuing child support or other potential income per OAC 340:40-7-9, the worker closes the child care benefit effective the last calendar day of the renewal month.

(4) When the client receiving Temporary Assistance for Needy Families (TANF) related subsidized child care per OAC 340:40-7-8(e) stops meeting a need factor, the worker closes the child care benefit effective 90-calendar days from the date the client stops participating.

(5) When a client stops participating in Supplemental Nutrition Assistance Program Employment and Training activities per OAC 340:40-7-8(d) and does not meet another need factor, the worker closes the child care benefit effective 90-calendar days from the date the client stops participating.

(6) Ten-day advance notice is not required when the client gives written permission agreeing to an earlier closure date. The earliest date the worker closes the child care benefit is the date action is taken.

(7) When the client does not complete the benefit renewal timely, the system closes the child care benefit effective the last day of the renewal month.

(h) **Reopen action.** When a client's subsidized child care benefits close, benefits may be reopened within 30-calendar days of the closure effective date using current eligibility information unless the client must complete a new application per OAC 340:40-3-1(a)(1). A new application is required when:

- (1) the client's subsidized child care benefits are closed for more than 30-calendar days;
- (2) the payee changes; or
- (3) family income was excluded per OAC 340:40-7-12(6) for an adopted child turning 6 years of age unless the child can be added to an open income eligible case established for the child's siblings in which the adoptive parent's income is considered. When an adopted child turns 6 years of age during the eligibility period, household income is exempt until the next renewal, at which time, a new application is required.

SUBCHAPTER 13. CHILD CARE RATES AND PROVIDER ISSUES

340:40-13-3. Child care payments and rates

(a) The Oklahoma Department of Human Services (~~OKDHS~~DHS) contracts to purchase out-of-home child care services for children only with licensed providers who:

- (1) post rates and fees;
- (2) sign and comply with all the terms of Form 08CC001E, Child Care Provider Contract;
- (3) have participated in mandatory contract training; and
- (4) have access to an account at a financial institution for electronic benefit transfer (EBT) purposes.

(b) Per Section 85.44B of Title 74 of the Oklahoma Statutes, ~~OKDHS~~DHS cannot make advance payments to child care providers.

(c) The rates paid by ~~OKDHS~~DHS are described on DHS Appendix C-4-B, Child Care Provider Rate Schedule, and determined by:

- (1) the child's age;
- (2) settings in which the care is provided:
 - (A) the child's own home;
 - (B) a child care center; or
 - (C) a child care home;
- (3) whether the child has disabilities and the provider is approved for the special needs rate unit type. The special needs rate is added to the applicable rate a child care provider receives for a typical child of the same age after the Form 08AD006E, Certification for Special Needs Child Care Rate, Certification for Special Needs Child Care Rate for Licensed Child Care Homes and Centers, approval process is followed;
- (4) whether the care is provided full-time, over four hours per day, or part-time, four hours or fewer per day;
- (5) whether the worker approves a full-time daily, part-time daily, a combination of full-time and part-time daily, blended, or a weekly unit;
- (6) the county in which the provider is located; and
- (7) whether the facility qualifies for a differential quality rate.

(d) The in-home child care rate is paid for children cared for in their own homes. The in-home rate is shown on ~~OKDHS~~DHS Appendix C-4-B for the child's age. If a child is eligible

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for the severe or moderate special needs rate, this additional amount is added to the applicable in-home rate for that child.

(e) When the child is cared for in an out-of-home child care center or home, the allowable rate is the amount as shown on ~~OKDHS~~DHS Appendix C-4-B.

(f) Care may only be authorized at one facility per day per child. If the client uses care at two different providers for the same day for the same child, ~~OKDHS~~DHS staff approves care at only one of the facilities. The parent or caretaker may use care at two different providers for the same child when care is needed on different days of the week.

(g) Charges are authorized and payment is made only when the care provided is in accordance with the jointly developed child care plan of service between the client and ~~OKDHS~~DHS.

(h) Age-driven rate changes are effective the first of the month following the child's birth date ~~except as shown in (i) of this Section.~~

(i) ~~Eligibility for a child stops the day before a:~~
(1) ~~typical child reaches 13 years of age; or~~
(2) ~~a child with disabilities or a child under court supervision reaches 19 years of age.~~

(j) A change to add the higher special needs rate to the applicable daily rate is effective the first of the month following the month eligibility for this rate is determined.

(k) A child care provider may be approved for a differential quality rate if he or she meets the criteria for this rate. This rate is approved effective the first of the month following the month Oklahoma Child Care Services (~~OCCS~~) licensing staff approves the provider for the rate. The rate is designated on ~~OKDHS~~DHS Appendix C-4-B by its star status.

340:40-13-5. Child care provider contracts

(a) **Criteria.** A child care ~~provider facility owner and the Oklahoma Department of Human Services (DHS) director or designee~~ must ~~have a current sign~~ Form 08CC001E, Child Care Provider Contract, ~~signed by the owner of the facility and the Oklahoma Department of Human Services (DHS) Director or designee~~ before DHS pays for out-of-home child care services. By signing the contract, the provider agrees to not take into account a person's race, color, religion, sex, national origin, or disability in deciding which children to accept in the child care program or in how services are provided to them. Age may be a factor only to the extent that certain services are designed for a particular age group.

(1) Written complaints of noncompliance with the assurance in (a) of this Section may be made to the DHS Director or to the Secretary of Health and Human Services, Washington, D.C., 20201.

(2) Local Child Care Services (CCS) licensing staff provides initial contract information ~~about contracts~~ for child care facilities. The provider contacts Adult and Family Services (AFS), Child Care Subsidy staff to request a contract.

(3) Child care contracts are valid for a maximum of one year. Contracts may be renewed at the sole option of DHS for successive one year terms, ~~under the same terms and conditions, unless the child care provider or DHS gives written notice of its intent not to renew to the other party at~~

~~least 30 calendar days prior to the expiration of the current term~~ (g) of this Section.

(b) **License and star status for child care centers and homes.** DHS does not contract with child care providers located out-of-state ~~unless the provider had a contract in effect on January 1, 2010.~~ Child care providers may only obtain a DHS contract after they are licensed or permitted.

(1) A child care center provider requesting a contract must have a license or permit and a one plus or higher star status.

(2) A child care home provider requesting a contract must have a license or a permit.

(A) When licensed, the child care home provider must have a star status of one star or higher.

(B) When on permit, the child care home provider must have a star status of one star plus or higher.

(c) **Procedure for obtaining child care contracts.** The procedures in (1) through (5) of this subsection are used to obtain child care contracts.

(1) CSS licensing staff gives the child care provider a publication DHS Publication 07-12, "Obtaining a Contract with OKDHS for Child Care Subsidy Payments" and instructs the provider to contact AFS Child Care Subsidy to obtain a DHS child care contract ~~with DHS.~~

(2) When contacted by the owner of a child care facility, AFS Child Care Subsidy staff explains to the owner or person authorized to sign the contract that he or she must provide documents listed in (A) through ~~(E)~~(C) of this paragraph before signing a contract. Documents include a copy of:

(A) the owner's Social Security card;

(B) ~~the owner's Oklahoma State Bureau of Investigation (OSBI) background investigation report unless a National Criminal History Result Information report is on file with DHS;~~

~~(C)~~ a document from the Internal Revenue Service (IRS) verifying the employer identification number (EIN) for a child care center provider and a home provider who is not a sole proprietor; and

~~(E)~~(C) the certificate of completion of the required online "Orientation to Child Care Subsidy Contracts" training.

(3) Once the owner provides the required documents, AFS Child Care Subsidy staff sends Form 08CC001E to the provider and explains that the earliest date a contract is valid is the date of approval by the DHS Director or designee.

(4) The owner or person authorized to sign the contract signs and returns the contract to AFS Child Care Subsidy.

(5) AFS Child Care Subsidy staff processes the contract request for approval or denial.

(A) When approved, AFS Child Care Subsidy staff assigns a contract number and sends a copy of the signed contract ~~back~~ to the provider.

(B) When denied, AFS Child Care Subsidy staff sends a ~~denial~~ letter to the provider ~~advising of the denial.~~

(d) **Changes the provider must report.** Form 08CC001E informs child care providers of changes they must report to AFS Child Care Subsidy no less than 30-calendar days prior to the effective date of any changes. When the provider fails to report the anticipated change timely and a new contract is needed, a gap may occur in the child care subsidy payment to the provider. Changes that must be reported include:

- (1) collaborations or agreements;
- (2) change of ownership;
- (3) change of legal business entity;
- (4) change in facility status;
- (5) legal name change;
- (6) plan to stop caring for children; and
- (7) reduction of star status.

(e) **Changes that require a new contract.** A new contract is required when changes listed in (1) through (3) of this subsection occur.

- (1) **Change in ownership.** A change in ownership occurs when the owner of a child care center or child care home changes.
- (2) **Change of legal business entity.** A change of legal business entity is a change from one legal business entity type to another. Refer to Appendix L-7, Ownership Proof Chart, for a list of legal business entity types.
- (3) **Change in facility status.** A change in facility status occurs when a child care home changes to a child care center or a child care center changes to a child care home.

(f) **Providing care at a different site than is authorized.** When the child care provider signs the child care contract, he or she agrees to provide care only at the physical address designated in the contract.

~~(1) In certain circumstances after obtaining prior written approval from AFS Child Care Subsidy staff, a child care center provider owning more than one child care center may be authorized to move children receiving subsidized child care benefits and the point-of-service (POS) machine to an alternate center. The provider must receive prior written approval from AFS Child Care Subsidy staff authorizing him or her to move the children and the point of service (POS) machine to the alternate site for a designated period of time.~~

(2) AFS Child Care Subsidy staff may ~~approve~~ provide written approval when ~~(1)(A)~~ through ~~(4)(D)~~ of this subsection ~~paragraph~~ are met.

- ~~(1A)~~ The same owner or legal business entity operates the alternate site.
- ~~(2B)~~ The alternate site is licensed and contracted at the same star level and the provider has adequate licensed capacity at the alternate site.
- ~~(3C)~~ There is a legitimate business reason for providing care in another location.
- ~~(4D)~~ The provider advises AFS Child Care Subsidy staff how he or she is ensuring parents are aware their children are being cared for at a different location.

(g) **Renewal of child care contracts.** ~~Child care contracts~~ contract renewal. ~~Contracts~~ Child care contracts may be renewed at the sole option of DHS for successive one-year terms, under the same terms and conditions, unless DHS makes changes to

Form 08CC001E. The child care contract is not renewed when:

- (1) the provider or DHS gives written notice of its intent not to renew to the other party at least 30-calendar days prior to the expiration of the previous contract term; or
- (2) ~~A contract is not renewed when a provider during the contract renewal period, the provider fails to:~~
 - (A) complete required contract training; or
 - (B) ~~to~~ provide any other information or documents requested ~~during the contract renewal period.~~

(h) **Contract violations.** ~~When~~ By signing the child care provider signs contract, Form 08CC001E, the child care provider agrees to abide by the terms of the contract. When local county staff becomes aware a provider is violating the terms of the contract, he or she ~~sends an email~~ emails the circumstances to AFS Child Care Subsidy staff ~~advising of the circumstances.~~ Local county staff may also complete Form 19MP001E, Referral Form, to report the violation to the Office of Inspector General. Examples of contract violations include, but are not limited to:

- (1) discriminating against persons seeking services by charging a discriminatory rate or violating a person's rights as listed in the Civil Rights Act of 1964 as amended, the Rehabilitation Act of 1973 as amended, or the Americans with Disabilities Act of 1990, as amended;
- (2) failing to maintain a drug-free workplace;
- (3) operating over licensed capacity;
- (4) possessing or swiping a client's electronic benefit transfer (EBT) card;
- (5) knowing a client's EBT personal identification number (PIN);
- (6) refusing unlimited access by a parent or caretaker to the areas of the facility used for child care during the hours of operation;
- (7) failing to ensure the parent or caretaker records accurate time and attendance information on the POS machine. During the school year when a child is approved for a blended unit type or any time part-time care is approved, the parent or caretaker is only required to enter one swipe per day to record attendance because the number or hours the child attends does not affect provider payment;
- (8) charging a client receiving subsidized child care more than the DHS rate for days and hours within the client's child care plan;
- (9) charging a client receiving subsidized child care an allowable fee when not charged to non-DHS participants;
- (10) failing to post all of the facility's rates and fees;
- (11) charging or requiring a client to swipe attendance for days and hours outside of client's child care plan when those days and hours are a requirement of the provider, not a choice of the client;
- (12) failing to advise and provide DHS a completed copy of any collaboration or agreement the provider enters into within 30-calendar days of signing the collaboration or agreement. This includes agreements with Head Start, Early Head Start, public schools, or ~~any~~ other programs receiving ~~state or federal or state~~ state or federal or state funding;

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(13) claiming or receiving payment from DHS for any hours of care the provider is not charging all parents for care because provider receives federal or state ~~or federal~~ funds for those hours. Refer to Oklahoma Administrative Code (OAC) 340:40-5-1(7) ~~for policy on~~ regarding collaborations;

(14) claiming payment for care given for any hours in an unlicensed collaborative classroom;

(15) moving the children from the agreed upon location shown in the contract and claiming for services at the other location without prior, written approval from AFS Child Care Subsidy staff;

(16) moving the POS machine without receiving prior, written approval from AFS Child Care Subsidy staff per subsection (f) of this Section;

(17) failing to inform DHS of a change in facility status, legal business entity, or ownership of the business at least 30-calendar days in advance of the change;

(18) failing to inform DHS in writing within 10-calendar days of any person who has an ownership or controlling interest in, or is an agent or managing employee of the child care business, who ~~has been~~ was convicted of a criminal offense related to such person's involvement under Titles XVIII, XIX, or XX of the Social Security Act;

(19) ~~not maintaining copies of manual claims filed during the last three years;~~

(20) ~~not maintaining daily written attendance records that include in and out times for the last three years;~~

(21) ~~refusing to make available to DHS all business records that document proper fiscal and program management by the provider within an hour of request by any DHS representative;~~

(22) ~~failing to allow full access to the facility's premises and personnel to investigate a complaint;~~

(23) ~~failing to report the income from the child care business within 10-calendar days to his or her AFS worker if when receiving benefits;~~

(24) ~~claiming payment for care given by a home provider for an employee's child. Refer to OAC 340:40-5-1(7);~~

(25) ~~subcontracting services to another provider; and/or~~

(26) ~~breaching the contract signed by the provider with the DHS EBT contractor.~~

(i) **Cancellation of child care provider contracts.** AFS Child Care Subsidy staff initiates the cancellation by issuing a notice to the provider. When AFS cancels a contract, all open child care authorizations for the provider close automatically. Contracts may be cancelled:

(1) with cause. The effective date of cancellation is 13-calendar days after AFS Child Care Subsidy staff mails the notice. This allows three-calendar days for mailing time. The notice must contain a reference to the grounds for cancellation including the specific contract provision(s) ~~that was~~ violated; or

(2) without cause. The effective date of cancellation is 33-calendar days after AFS Child Care Subsidy staff mails

the notice. This allows three-calendar days for mailing time.

[OAR Docket #17-490; filed 6-23-17]

TITLE 340. DEPARTMENT OF HUMAN SERVICES CHAPTER 50. SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM

[OAR Docket #17-491]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions

340:50-1-5 [AMENDED]

340:50-1-8 through 340:50-1-9 [AMENDED]

Subchapter 3. Application Process

340:50-3-2 [AMENDED]

Subchapter 5. Non-Financial Eligibility Criteria

Part 1. Household Definition

340:50-5-5 [AMENDED]

340:50-5-7 [AMENDED]

340:50-5-7.1 [NEW]

340:50-5-10.1 [AMENDED]

Part 5. Students, Strikers, Resident Farm Laborers, Migrant Households, Sponsored Aliens, and School Employees

340:50-5-48 [AMENDED]

Part 7. Related Provisions

340:50-5-64 [AMENDED]

Part 9. Work Registration

340:50-5-88 [AMENDED]

340:50-5-97 [REVOKED]

Subchapter 7. Financial Eligibility Criteria

Part 3. Income

340:50-7-22 [AMENDED]

340:50-7-29 through 340:50-7-31 [AMENDED]

Part 5. Determination of Income

340:50-7-45 through 340:50-7-46 [AMENDED]

Subchapter 9. Eligibility and Benefit Determination Procedures

340:50-9-1 [AMENDED]

340:50-9-5 [AMENDED]

Subchapter 11. Special Procedures

Part 1. Households Entitled to Expedited Service

340:50-11-1 [AMENDED]

Part 12. Categorically Eligible Households

340:50-11-111 [AMENDED]

340:50-11-113 [AMENDED]

Subchapter 15. Overpayments and Fraud

Part 1. Overpayments

340:50-15-1 [AMENDED]

340:50-15-3 through 340:50-15-4 [AMENDED]

340:50-15-6 [AMENDED]

Part 3. ~~Fraud~~ Intentional Program Violation

340:50-15-25 [AMENDED]

(Reference APA WFs 16-10 and 17-12)

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Director of Human Services; Section 162 of Title 56 of the Oklahoma Statutes (O.S. 56 § 162), Sections 272.6, 273.1, 273.2, 273.7, 273.9, 273.10, 273.11, 273.12, 273.13, 273.18, and 273.24 of Title 7 of the Code of Federal Regulations (C.F.R.); Civil Rights Compliance Review Report, FNS Approval Memo to change Oklahoma Marriage Initiative to 2-1-1 Oklahoma; FNS Memo regarding SNAP ABAWD Time Limit; FNS Memo regarding Deductible Excess Medical Expenses; FNS Waiver Approval to Align Timeframes for Reporting Changes for All Households; and FNS Waiver Approval of Telephone Interviews.

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Subchapter 7. Financial Eligibility Criteria

Part 3. Income

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GIST/ANALYSIS:

The proposed revisions to Chapter 50, Subchapter 1 amend the rules to: (1) change the name of the Section; (2) update: (a) the Supplemental Nutrition Assistance Program (SNAP) non-discrimination statement; (b) client rights information; (c) client and Oklahoma Department of Human Services (DHS) staff responsibility requirements; and (d) terminology; (3) add information regarding: (a) public notification requirements; (b) the civil rights complaint process and form; (c) ethnic and racial categories and data reporting requirements; (d) interpreter services and alternative means of communication for persons with disabilities; and (e) policy citations; and (4) remove redundant and unnecessary information.

The proposed revisions to Chapter 50, Subchapter 3 amend the rules to: (1) update interview requirements to allow completion by phone on all SNAP interviews and remove the hardship condition and duplicative interview waiver information requirements; (2) add clarifying information regarding verification and worker assistance requirements following a postponed interview, when requested; (3) simplify language regarding interview scheduling; (4) update a form name; and (5) add clarifying language for household cooperation with eligibility determination and quality control.

The proposed revisions to Chapter 50, Subchapter 5 amend the rules to: (1) simplify and remove repetitive information regarding persons who cannot be considered non-household members; (2) reorganize, rename, and move information regarding households in this Subchapter to: (a) combine all boarder information into one Section; (b) clarify information regarding when a child in foster care or placed by Developmental Disabilities Services (DDS) with an extended family care provider may receive food benefits and how to consider the child's income; (c) separate information regarding food distribution programs and residents of institutions; (d) define excluded household members as disqualified or ineligible household members and clarify income and expense differences; and (e) update and clarify information regarding migrant farm laborers; (3) add information to able-bodied adults without dependents (ABAWD) work requirements to: (a) clarify that in-kind, unpaid, or volunteer work meets the 20 hours per week work rule; (b) clarify when job search may be included in an Employment and Training (E&T) Program; (c) add chronically-homeless as a work requirement exemption; (d) clarify that a refugee participating in a refugee-specific training program meets student exemption criteria; and (e) add good cause provisions for failing to meet the work requirement; (4) update and clarify SNAP work registration and E&T plan rules to meet the revised and expanded SNAP E&T plan that includes: (a) making participation in the SNAP E&T program voluntary; (b) referring ABAWDs and other voluntary E&T participants to a contracted service provider for E&T services; (c) explaining the referral and assessment process, SNAP E&T component assignments, and contractor and SNAP E&T staff responsibilities; (d) updating supportive services; (e) updating and clarifying work registration exemption rules; (f) removing information that is

no longer applicable; and (g) revoking SNAP E&T Program rules, including voucher-authorized child care language, that are no longer applicable; (5) update terminology; and (6) add and remove applicable legal and rule citations.

The proposed revisions to Chapter 50 Subchapter 7 amend the rules to: (1) exempt all educational assistance income; (2) explain how to consider an excess benefit allowance; (3) add information regarding loan verification requirements; (4) exclude from income and resource consideration money deposited into or withdrawn from a qualified Achieving a Better Life Experience (ABLE) Program account per state statute and federal regulations; (5) add information regarding when to count a DDS room and board payment as income; (6) add clarifying language on how to consider income when a public assistance program penalty is imposed; (7) define excluded household members as ineligible or disqualified and update how income and expenses are considered for them; (8) update and change how self-employment farm income losses are offset by other household income; (9) change how self-employment business expenses are computed; (10) add clarifying language that allowable medical expenses must be prescribed or approved by a state-licensed or qualified practitioner; (11) add that costs associated with all service animals are medical expenses; (12) add information on calculating one-time medical and other expenses; (13) remove incorrect and error prone information regarding expense averaging; (14) clarify that households approved for Low Income Heat Energy Assistance Program payments are eligible for the standard utility allowance; (15) update terminology and simplify language regarding expense calculation for households that include disqualified or ineligible household members; (16) add clarifying language regarding documentary evidence, unreported income, loan verification, and income calculation methods; (17) remove duplicative information and staff instructions not affecting clients or the public; (18) update terminology, rules, and legal citations; and (19) reorder and simplify information.

The proposed revisions to Chapter 50, Subchapter 9 amend the rules to: (1) add clarifying language regarding income and expense calculation for different households, benefit proration, and certification periods; (2) remove duplicative, confusing, and inaccurate language regarding benefit calculation and proration; (3) add identifying a household member as a fleeing felon or probation violator to the reasons why benefits may decrease or close between reporting periods for benefit reporters; (4) update reporting rules for change and benefit reporters to the 10th day of the month following the month the change occurred; (5) add the verification request requirement before closing or reducing benefits for change reporting households; (6) add a definition for when an advance notice of adverse action is considered timely and effective dates for making changes; and (7) add applicable legal and rule citations.

The proposed revisions to Chapter 50, Subchapter 11 amend the rules to: (1) add clarifying language regarding applicable deductions when determining eligibility for expedited services; (2) replace the Oklahoma Marriage Initiative with 2-1-1 Oklahoma when determining categorical eligibility; and (3) add applicable rule and legal citations. The proposed revisions to Chapter 50, Subchapter 15 amend the rules to: (1) add clarifying information regarding: (a) when an overpayment referral is made following a fair hearing request; (b) which staff is responsible for determining the amount of an overpayment; and (c) when an overpayment claim classified as an inadvertent household error may exceed 12 months from the month the overpayment was discovered; (2) update terminology to remove the term fraud, when referring to an intentional program violation and change the term used to describe an agency error overpayment from incorrect benefit allotment to excess benefit allotment; (3) add qualifying language regarding the overpayment repayment time frame when food benefits are reopened; (4) remove benefit expungement from repayment options and add recalculation of debt as a more accurate term to explain how expunged benefits may reduce an overpayment claim balance; (5) clarify criteria used in referring a delinquent claim to the Treasury Offset Program for collection; and (6) add qualifying language to a court specified disqualification period when it supersedes a disqualification period imposed by Adult and Family Services (AFS).

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2017:

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SUBCHAPTER 1. GENERAL PROVISIONS

340:50-1-5. ~~Non-discrimination~~ Civil rights responsibilities

(a) **Non-discrimination statement.** Applications for participation in the ~~The Oklahoma Department of Human Services (DHS) processes Supplemental Nutrition Assistance Program (SNAP) are handled~~ applications, certification renewals, and mid-certification renewals in a non-discriminatory manner without regard to age, race, color, sex, disability, religious creed, political beliefs, or national origin, or reprisal or retaliation for prior civil rights activity in any program or activity conducted or funded by the United States Department of Agriculture (USDA) per Section 272.6 of Title 7 of the Code of Federal Regulations.

(1) ~~Persons who believe they have been subject to discrimination may file a written complaint within 180 calendar days with the Secretary of Agriculture, Administrator of Food and Nutrition Services (FNS), or with OKDHS.~~

(2) ~~The worker explains the complaint system to each person who expresses an interest in filing a discrimination complaint and advises the person of the right to file a complaint.~~

(b) **Public notification.** DHS must have a public notification system to inform potentially eligible persons, applicants, and participants of the availability of SNAP food benefits, program rights and responsibilities, non-discrimination policy, and the procedure for filing a discrimination complaint. This includes, but is not limited to:

(1) informing applicants and participants during an application or certification renewal interview of the right to file a civil rights complaint, how to file a complaint, and complaint procedures per (c) of this Section;

(2) displaying the USDA "And Justice for All" poster in a prominent location, such as the lobby, in all DHS offices;

(3) displaying the non-discrimination statement on forms and public notification materials; and

(4) informing potentially eligible persons, applicants, participants, and grassroots organizations of programs and program changes. This includes information pertaining to eligibility, benefits, services, the location of local county offices or service delivery points, and hours of service.

(c) **Explanation of civil rights complaint process.** When a person makes a discrimination allegation to a DHS employee, the employee to whom the allegation is made is responsible for explaining the civil rights complaint process to the person. The proper procedure includes:

(1) providing Form 14CR001E, Discrimination Complaint - Client or Vendor, to any person alleging discrimination based on a protected class.

(A) The employee offers to help the person complete Form 14CR001E and asks if the complainant wants the employee to submit the complaint for the complainant.

(B) The complainant may choose to submit a written statement instead of using Form 14CR001E. When this occurs, the employee informs the person

what information is needed to facilitate the complaint investigation and provides the addresses for USDA and the DHS Office of Civil Rights (OCR).

(C) When a person makes a verbal discrimination allegation and is unable or unwilling to put the allegation in writing, the employee to whom the allegation is made completes Form 14CR001E based on the information provided by the complainant and asks the complainant to sign the form, when available;

(2) explaining to the complainant that he or she has the right to file the complaint with the DHS OCR or with the USDA Office of Civil Rights, or both;

(3) informing the complainant:

(A) he or she has the right to file a written complaint within 180-calendar days of the alleged discriminatory action and, if accepted for investigation, the investigation is completed within 90-calendar days of receipt;

(B) the complaint is confidential and protected by the Privacy Act of 1974;

(C) the complaint will not affect receipt of benefits; and

(D) DHS is prohibited from retaliating against the person for filing a complaint;

(4) asking the complainant if he or she would like to talk to a supervisor to try to resolve the matter.

(d) **Alternative means of communication.** Persons with disabilities who require alternative means of communication for program information are advised to contact the USDA's TARGET Center at (202) 720-2600 for voice and telecommunications device for the deaf or TDD.

340:50-1-8. **Reporting racial/ethnic groups**

~~Applicable data on households for racial/ethnic groups will be voluntarily collected and reported to FNS by the State Office.~~ The Oklahoma Department of Human Services is required to obtain ethnic and racial data on household members participating in the Supplemental Nutrition Assistance Program in the manner described by the Food and Nutrition Service per Section 272.6(g) of Title 7 of the Code of Federal Regulations.

(1) **Self-identification.** The applicant is asked to self-identify ethnic and racial information regarding all participating household members on the application and, when necessary, during the interview.

(A) The application must clearly indicate that the:

(i) provision of ethnic and racial data is voluntary and will not affect the eligibility or benefit level of food benefits; and

(ii) information is needed to ensure that food benefits are distributed without regard to race, color, or national origin.

(B) When the applicant does not self-identify ethnic and racial information on the application prior to the interview, the worker asks the applicant to provide ethnic and racial information during the interview and explains:

- (i) provision of ethnic and racial data is voluntary and will not affect the eligibility or benefit level of food benefits; and
 - (ii) information is needed to ensure that food benefits are distributed without regard to race, color, or national origin.
- (2) **Worker identification.** When the applicant chooses not to provide ethnic and race information, the applicant is informed that when possible, the worker makes a visual identification of the applicant's ethnicity and race, and records the data in the system.
- (3) **Race and Ethnic Categories.** To provide flexibility and ensure data quality, separate categories are used to collect and report ethnicity and race information.
- (A) The applicant is asked to provide ethnicity information first. The ethnicity question is "Are you Hispanic or Latino?" The term "Spanish origin" may be used in addition to "Hispanic" or "Latino." Hispanic or Latino refers to a person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race.
 - (B) The applicant is then offered the option of selecting one or more racial designations. Racial designations include:
 - (i) American Indian or Alaskan Native referring to a person with origins in the original peoples of North or South America, including Central America, and who maintains tribal affiliation or community attachment;
 - (ii) Asian referring to a person with origins in the original peoples of the Far East, Southeast Asia, or the Indian subcontinent, including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, or Vietnam;
 - (iii) Black or African American referring to a person with origins of the black racial groups of Africa. Terms, such as "Haitian" or "Negro" may be used in addition to "Black" or "African American;"
 - (iv) Native Hawaiian or Other Pacific Islander referring to a person with origins in the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.
 - (v) White, referring to a person with origins in any of the original peoples of Europe, the Middle East, or North Africa.

340:50-1-9. Rights and responsibilities

- (a) An applicant or recipient for the Supplemental Nutrition Assistance Program (SNAP) has the right to:
- (1) make application on the same day he or she initially contacts the Oklahoma Department of Human Services (~~OKDHS~~)(DHS) in person, by ~~telephone~~phone, or by mail, or through okdhslive.org;
 - (2) designate an authorized representative;
 - (3) be provided information about SNAP;

- (4) a face-to-face interview when ~~the person is discussing his or her individual situation with OKDHS~~requested;
 - (5) have access to free interpreter services when the applicant or recipient is limited English proficient and alternative means of communication for persons with disabilities;
 - (6) a prompt decision in writing ~~of a decision~~ on his or her application and, ~~if~~when eligible, to receive food benefits within 30-calendar days following application;
 - (67) retroactive or lost benefits when the application ~~has been wrongfully~~is incorrectly delayed, denied, or ~~terminated~~closed;
 - (78) the correct amount of food benefits based upon current budgetary standards;
 - (89) equal treatment. The applicant has the right to be treated the same as all other food benefit recipients. On the ~~grounds~~basis of race, color, religious creed, national origin, political beliefs, age, sex, or disability, a person applying for SNAP is not:
 - (A) excluded from participation;
 - (B) denied benefits; or
 - (C) subjected to discrimination;
 - (910) a fair hearing ~~if~~when dissatisfied with any ~~OKDHS~~DHS decision or lack of action in regard to his or her food benefit application. The ~~client~~applicant or recipient also has the right to examine his or her case record and all files and documents to be used at a fair hearing;
 - (1011) withdraw his or her application at any time prior to the eligibility determination ~~of eligibility~~. ~~Once~~After eligibility ~~has been~~is determined, the ~~client~~applicant or recipient has the right to request ~~that~~closure of his or her ~~case~~be closedfood benefits; and
 - (1112) examine the case ~~file~~record upon written request from a responsible member of the household or its authorized representative. ~~OKDHS~~DHS may withhold confidential information, ~~in accordance with~~per Oklahoma Administrative Code (OAC) 340:50-1-6.
- (b) The applicant or recipient has the responsibility to:
- (1) submit an application containing a legible name, address, and signature ~~if~~when he or she wants to participate in SNAP;
 - (2) participate in a ~~face to face~~an interview ~~unless it may be waived per OAC 340:50-3-2(b)~~. ~~The applicant or recipient has a face to face interview with a worker prior to initial certification and either a face to face or a telephone interview for all recertifications;~~
 - (3) supply information essential to ~~the establishment of his or her eligibility to participate in a~~SNAP eligibility determination;
 - (4) ~~provide required or requested verification. Gross non-exempt income and identified alien status are verified for all households prior to certification. The household has primary responsibility for providing verification. Certain exceptions to these requirements are specified at OAC 340:50-3-3;~~

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- (5) be accountable for all information given by the authorized representative that includes any overissuance of benefits ~~that result~~ resulting from erroneous information given by an authorized representative;
 - (6) report certain changes. The applicant has the responsibility to report all changes ~~which that~~ occur between the application date of application and the certification interview. The recipient has the responsibility to report ~~certain~~ changes in circumstances within ten calendar days from the date the change becomes known to them per OAC 340:50-9-5;
 - (7) ~~cooperate by providing required information;~~
 - (8) register for work, unless otherwise exempt, at the time of the initial application and at each ~~recertification~~ certification renewal per OAC 340:50-5-85 and 340:50-5-86; and
 - (9) provide a Social Security number (SSN) for each household member that wants to participate in SNAP per OAC 340:50-5-68.
- (c) ~~OKDHS~~ DHS has the responsibility to:
- (1) accept an identifiable application when submitted. An identifiable application is an application containing a legible name, address, and a signature;
 - (2) inform the applicant or recipient of his or her rights and responsibilities;
 - (3) take prompt action on all applications by ~~either~~ approving or denying the application within 30-calendar days from the date the application is filed ~~submitted~~;
 - (4) take prompt action on all changes to determine if the change affects the household's eligibility or entitlement;
 - (5) notify the client of the need for recertification just prior to or at the start of the last month of the household's certification period ~~recipient when mid-certification and certification renewals are due per the time frames specified in OAC 340:50-9-5 and 340:50-9-6;~~
 - (6) recertify ~~renew~~ eligible households timely so there ~~will~~ is not be a break in the benefits the ~~client~~ recipient is eligible to receive;
 - (7) restore lost benefits when the food benefits were ~~wrongfully~~ incorrectly denied, delayed, or ~~terminated~~ closed;
 - (8) give adequate and/or timely notice of action when appropriate; and
 - (9) provide services. The local ~~human services center~~ (HSC) county office ensures that the operating hours meet the needs of recipients or applicants who work. ~~Annually~~ Each office is annually reviewed to ensure that such needs are met. The results of these reviews are retained ~~in~~ by Adult and Family Support Services ~~Division~~ SNAP staff for review by Food and Nutrition Services (~~FNS~~).

SUBCHAPTER 3. APPLICATION PROCESS

340:50-3-2. Interview process

- (a) ~~Face-to-face interview~~ Interview requirement. All households initially applying for food benefits or completing a certification renewal, including those submitting applications

electronically or by mail, must have a face-to-face or phone interview with a worker ~~except when the household~~ prior to certification unless the household meets criterion in (a)(2) or (b) of this Section. Staff may conduct 100 percent of all Supplemental Nutrition Assistance Program (SNAP) initial and certification renewal application interviews by phone.

(1) A face-to-face interview must be conducted when the household or its authorized representative requests the face-to-face interview, be waived because the household is unable to appoint an authorized representative and does not have a household member able to come to the county office because of hardship conditions. Hardship conditions include, but are not limited to:

- (A) education, training, or work hours that make it difficult to come to the county office during business hours;
- (B) illness or the need to care for a family or household member;
- (C) bad weather conditions;
- (D) transportation problems of any kind;
- (E) residence in a rural area; or
- (F) advanced age or disability; or

(2) is being recertified for food benefits. At certification renewal, the interview may be conducted face to face or by phone. Certification renewal interviews may be waived for households when all adult members are elderly or disabled and have no earned income.

(b) ~~Waiver of face-to-face interview~~. When the face-to-face interview is waived, the worker conducts the interview as soon as possible either by phone or at a location convenient to the household, such as a home visit.

- (1) The seven day expedited service or 30-calendar day processing standards apply.
- (2) The home visit or telephone interview is scheduled in advance with the household.
- (3) The household must provide the required verification. If the household is unable to furnish the required verification, the worker provides assistance.

(c) Postponed interviews. Households applying for food benefits that complete and sign an online application or hand-deliver, mail, or fax a complete and signed Form 08MP001E, Request for Benefits, to the county office and who appear eligible for expedited services per Oklahoma Administrative Code (OAC) 340:50-11-1 may have the interview postponed in certain circumstances. The seven-calendar day expedited service or 30-calendar day processing standards apply.

- (1) The interview may be postponed when the:
 - (A) applicant's identity is verified; and
 - (B) worker is unable to contact the household or determines that an interview cannot be scheduled within seven-calendar days.
- (2) When the interview is postponed, the worker ~~sends~~ schedules the interview in advance by sending the household Form 08AD092E08AD091E, Client Contact and Information Request Interview Notice, setting an interview date and time, and listing the type of verification

~~that must be provided~~ the household may need to provide before further benefits are approved.

(A) When, after the interview, the household needs to provide verification, the worker gives or sends the household Form 08AD092E, Client Contact and Information Request, requesting the verification. When the household informs the worker it is unable to furnish the required verification, the worker offers to help the applicant obtain the verification.

(i) The worker's assistance may range from explaining how or where to obtain proof to the worker obtaining proof when the applicant is unable to do so.

(ii) The worker is not required to obtain proof for an applicant who is unwilling to do so.

(B) Per OAC 340:50-3-1 and 340:50-11-5, the interview must be completed and postponed verification provided within 30-calendar days of the application date in order to avoid a break in benefits.

(C) ~~If~~When the household completes the interview and provides postponed verification within 60-calendar days of the date of application, ~~the household is not required to file a new application is not needed.~~ Benefits are prorated from the date the interview is completed and verification provided.

(dc) Who must be interviewed. The person interviewed may be the head of the household, spouse, any other responsible member of the household, or an authorized representative who knows the household's circumstances. ~~The~~When the household chooses to be interviewed face-to-face, the person interviewed may bring any person of their choice to the ~~face-to-face~~ interview.

(ed) Worker responsibilities during the interview. During the ~~face-to-face~~ interview, the worker:

- (1) reviews with the household the information on the application and resolves unclear and incomplete information;
- (2) inquires ~~whether~~if changes ~~have~~ occurred in the household's income, deductions, or other circumstances since the application was filed;
- (3) ~~advises~~informs the household of its rights and responsibilities, including reporting requirements;
- (4) conducts the ~~face-to-face~~ interview as an official and confidential discussion of household circumstances limited to facts related to food benefit eligibility factors;
- (5) gives Form 08MP006E, Information for Benefit Renewal, to the household and explains benefit renewal procedures; and
- (6) ensures the household's right to privacy is protected.

(fe) Scheduling interviews. The worker schedules the ~~face-to-face~~ interview ~~or alternate interview method~~ as ~~promptly~~soon as possible ~~after the filing of the application to ensure the household, if~~when eligible, may participate within 30-calendar days following the application date ~~of application~~.

(1) ~~When the type of verification needed is unknown, the~~The worker uses Form 08AD091E, Interview Notice, or Form 08AD093E, Telephone Support Center Interview Notice, to schedule the interview.

(2) When the person to be interviewed is employed, the worker schedules an appointment to minimize the person's absence from work even ~~if~~when it must be scheduled outside of normal business hours. ~~When the person is unable to attend a scheduled face-to-face interview for any of the reasons stated in (a) of this Section, the worker offers to waive the face-to-face interview and schedules a telephone interview or home visit.~~

(43) ~~Timely certification renewals.~~ When the household submits a timely certification renewal, the worker schedules the interview as early as possible, but not later than the last day of the month.

(A) ~~If~~When the household fails to appear for the ~~first~~ interview, the worker does not reschedule the interview unless the household requests another appointment by the 30th calendar day after the application date.

(B) Upon request, the worker reschedules the interview at the earliest possible date.

(24) ~~Untimely certification renewals and initial applications.~~ When the household submits an untimely certification renewal ~~or an initial application~~, the worker schedules an interview as early as possible, but not later than 20-calendar days from the application date.

(A) ~~If~~When the household fails to appear for the scheduled interview, the worker does not reschedule the interview unless the household requests another appointment by the 30th calendar day after the application date.

(B) Upon request, the worker reschedules the interview at the earliest possible date.

(gf) Household cooperation with eligibility determination. To determine eligibility, the household or authorized representative must complete and sign the application ~~must be completed and signed~~ or certification renewal, the household or its authorized representative must be interviewed, and provide required information on the application verified to determine eligibility.

(4) ~~If~~When the household ~~refuses to~~does not cooperate with the worker in determining:

- (1) ~~completing this process~~initial eligibility, the worker denies the application is denied at that time; or
- (2) ~~continuing eligibility at mid-certification renewal or certification renewal, the worker closes food benefits.~~

(g) Household cooperation with a quality control (QC) review. When the household is selected for a QC review, the household must cooperate with the QC reviewer. When the household refuses to cooperate, the QC reviewer informs the household's worker of the non-cooperation. The worker closes the food benefit for refusal to cooperate.

(A1) For a determination of refusal to be made, the household must be able to cooperate, ~~but~~and clearly demonstrate that it will not take the necessary actions required to complete the ~~application~~QC review process.

(B) ~~The household is also ineligible if it refuses to cooperate in any subsequent benefit renewal, review generated by reporting changes, certification~~

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renewals, or an Office of Inspector General Quality Control (QC) review.

(2) ~~If an application is denied or food benefits are closed for refusal to cooperate, the~~The household may reapply following food benefit closure, but may not be determined eligible until it cooperates with the QC review unless (3) of this subsection applies.

(3) ~~If~~When food benefits have ~~been~~were closed for refusing to cooperate with the QC reviewer and the household ~~reapplies~~waits to reapply until after 125-calendar days from the end of the QC review period, October 1 through September 30, the household must provide verification of eligibility factors ~~only~~ for the new application only. For example, if ~~when~~ the household had a QC review during the October 20102014, through September 20112015, annual QC review period and food benefits were closed for refusal to cooperate with the QC review, the household is required to only provide verification for the new application if/when it is filed after February 2, 20122016.

SUBCHAPTER 5. NON-FINANCIAL ELIGIBILITY CRITERIA

PART 1. HOUSEHOLD DEFINITION

340:50-5-5. Non-household members

Persons residing in a household who cannot be considered household members are termed non-household members and are not considered in determining the household's eligibility or food benefit allotment. ~~Such non household~~Non-household members include ~~those~~are described in this subsection(1) through (6) of this Section. Except for ineligible students, persons who cannot be a separate food benefit household per Oklahoma Administrative Code (OAC) 340:50-5-3 are not considered non-household members.

(1) **Roomers.** Roomers are persons to whom the household furnishes lodging for compensation, but not meals.

(2) **Boarders.** ~~Boarders~~Per Section 273.1(b)(3) of Title 7 of the Code of Federal Regulations, 7 C.F.R. § 273.1(b)(3), boarders are residents of a commercial boarding house and persons to whom the household furnishes lodging and meals and who pay a reasonable monthly payment for board.

(A) A commercial boarding house is defined as an establishment that offers meals and lodging for compensation with the intention of making a profit. The number of boarders residing in a boarding house cannot be used to determine if a boarding house is a commercial enterprise.

(B) Households containing a boarder or the proprietor of a commercial boarding house may participate in the program, separate and apart from the boarders

or residents of the boarding house, when the household meets all of the eligibility requirements for participation.

(C) Only the amount paid for board is evaluated to determine if the payment is ~~To be considered~~ a reasonable monthly amount payment for board. A boarder whose arrangement is for:

(i) more than two meals per day must pay an amount ~~which that~~ equals or exceeds the ~~amount of the~~ maximum food benefit allotment amount for the appropriate size of the boarder household size as shown on Oklahoma Department of Human Services (~~OKDHS~~)DHS Appendix C-3, Maximum Food Benefit Allotments and Standards for Income and Deductions; or

(ii) Boarders whose arrangements are for two meals or less per day must pay an amount ~~which that~~ equals or exceeds two-thirds of the food benefit allotment for the appropriate size of the boarder household size as shown on ~~OKDHS~~DHS Appendix C-3.

(D) Boarder status cannot be extended to:

(A) parents who live with children, natural, adopted, or step regardless of age, unless at least one parent is elderly or disabled as defined in OAC 340:50-5-4;

(B) children under the age of 18 under the control of an adult household member. Children placed in foster care or children placed in the home by the Developmental Disabilities Services Division (DDSD) (DDS) may be considered boarders;

(C) a spouse, ceremonial or common law, of a household member;

(D) siblings, natural, adopted, half or step, unless at least one sibling is elderly or disabled as defined in OAC 340:50-5-4; and

(E) persons paying less than a reasonable monthly payment for meals as described in this paragraph. Persons furnished both meals and lodging by a household but paying less than a reasonable monthly payment are considered members of the household which provides the meals and lodging.

(3) **Children in foster care or children placed by ~~DDSD~~Developmental Disabilities Services (DDS).** Children in foster care or children placed by ~~DDSD~~DDS with extended family care providers ~~are~~must be considered boarders unless the household providing care requests ~~such person~~the children be included as food benefit household members. The children cannot participate in the Supplemental Nutrition Assistance Program independently of the household providing the foster care or DDS services.

(A) ~~The foster~~Foster care payments and the ~~DDS room and board~~ reimbursements for room and board paid by ~~DDSD~~ are considered as income to the children and, ~~therefore, cannot be~~are:

(i) not included as income to the household caring for the children even when the payments are

~~made to the provider household when the children are not included in the food benefit household; and~~

~~(ii) The counted as income to the household when the host household has the option chooses to include the children as members of the food benefit household. When the children are included as food benefit household members the entire foster care payment or reimbursement for room and board is counted as income to the household.~~

~~(B) The income paid to the extended family care provider by ~~DDSD~~DDS for care rendered is counted as earned income to the provider.~~

(4) **Live-in attendants.** Live-in attendants are persons who reside in a household to provide medical, housekeeping, child care, or other similar services.

(5) **Students.** Students are persons enrolled in an institution of higher education who are ineligible because they fail to meet the eligibility criteria in OAC 340:50-5-45(a).

(6) **Others.** Others are persons who share living quarters with the household but who do not customarily purchase food or prepare meals with the household.

340:50-5-7. Excluded households and/or Households or household members participating in a food distribution program (FDP) operated by Indian tribal organizations (ITO)

~~(a) Food distribution programs (FDP) operated by Indian tribal organizations (ITO). Several ITO operate FDP. There are several ITOs operating FDPs in the State of Oklahoma. Households or any member of a household participating in a FDP are not eligible to participate in the Oklahoma Department of Human Services (DHS) Supplemental Nutrition Assistance Program (SNAP) for the same month.~~

(1) A household may elect to participate in the FDP instead of SNAP when the household:

(A) includes at least one adult household member of any Indian tribe; and

(B) lives within the boundaries of an ITO location in a rural area or in a town with a population of less than 10,000 persons.

(2) A household may switch between the FDP and SNAP as long as there is no dual participation for any member for the same month.

(3) To ensure dual participation does not occur, exchange of client benefit information between ITO and DHS is needed.

(A) The worker is responsible for calling the appropriate ITO when there are indications an applicant or recipient meets ~~the criteria for FDP eligibility criteria~~, before approving or renewing food benefits.

(i) ITOs in Oklahoma are listed on DHS Appendix D-4-C, Indian Food Distribution Programs.

(ii) When calling, the worker verifies if the household currently receives FDP and if the household was certified since the date of the last inquiry.

(iii) When an FDP case is open, the worker must verify, by a ~~telephone~~ call to or receive written notice from the FDP office, that FDP benefits are closed, before certifying a household can be certified for food benefits.

(B) The FDP office contacts the county office to determine if the household receives food benefits before approving the household for a FDP. The worker provides the ITO with information pertinent to participate in, or eligibility for SNAP food benefits.

(4) When the worker discovers the household received FDP benefits and SNAP food benefits for the same month or months, the household is responsible for repaying the overpayment to DHS or the ITO. When the household was receiving FDP benefits at the time of SNAP certification, it is a SNAP food benefit overpayment.

(5) When a client is disqualified from FDP or SNAP, he or she is prohibited from receiving benefits from the other program per Section 273.11(k) of Title 7 of the Code of Federal Regulations (7 C.F.R. § 273.11(k)).

~~(b) Ineligible households.~~

~~(1) Boarders. Residents of a commercial boarding house and boarders defined per 7 § C.F.R. 273.1(b)(3) and Oklahoma Administrative Code (OAC) 340:50-5-5 are not eligible to participate in SNAP.~~

~~(A) A commercial boarding house is defined as an establishment that offers meals and lodging for compensation with the intention of making a profit. The number of boarders residing in a boarding house cannot be used to determine if a boarding house is a commercial enterprise.~~

~~(B) Households containing a boarder or the proprietor of a commercial boarding house may participate in the program, separate and apart from the boarders or residents of the boarding house when the household meets all the eligibility requirements for participation.~~

~~(2) Residents of institutions. Persons are considered residents of an institution when the institution provides them with over 50 percent of three meals daily as part of the institution's normal services. Per 7 § C.F.R. 273.1(b)(7)(vi) residents of institutions are not eligible for participation in the program unless they are:~~

~~(A) residents of federally subsidized houses for the elderly built either under Section 202 of the Housing Act of 1959 or Section 236 of the National Housing Act;~~

~~(B) residents of a drug addiction or alcoholic treatment and rehabilitation program, meeting criteria per OAC 340:50-5-26;~~

~~(C) residents of group homes who are considered blind or disabled per OAC 340:50-5-4 when the group home meets criteria per OAC 340:50-5-27. Group home means a private or public non-profit residential setting serving no more than 16 residents certified by the Oklahoma State Department of Health per Section 1616(e) of the Social Security Act;~~

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- (D) ~~victims of domestic violence and their children temporarily residing in a domestic violence shelter meeting criteria, per OAC 340:50-5-28. A domestic violence shelter means a public or private non-profit residential facility serving victims and their children. When the facility also serves other persons, a portion of the facility must be set aside on a long-term basis to serve only victims of domestic violence and their children; or~~
- (E) ~~residents of public or private non-profit shelters for homeless persons when the shelter meets criteria per OAC 340:50-5-30.~~

340:50-5-7.1. Residents of institutions

Persons are considered residents of an institution when the institution provides them with over 50 percent of three meals daily as part of the institution's normal services. Per Section 273.1(b)(7)(vi) of Title 7 of the Code of Federal Regulations (7 C.F.R. § 273.1(b)(7)(vi)), residents of institutions are not eligible for participation in the Supplemental Nutrition Assistance Program unless they are:

- (1) residents of federally subsidized housing for the elderly, built either under Section 202 of the Housing Act of 1959 or Section 236 of the National Housing Act;
- (2) residents of a drug addiction or alcoholic treatment and rehabilitation program, meeting criteria per Oklahoma Administrative Code (OAC) 340:50-5-26;
- (3) residents of group homes who are considered blind or disabled per OAC 340:50-5-4 when the group home meets criteria per OAC 340:50-5-27. Group home means a private or public non-profit, residential setting serving no more than 16 residents certified by the Oklahoma State Department of Health per Section 1616(e) of the Social Security Act;
- (4) victims of domestic violence and their children temporarily residing in a domestic violence shelter meeting criteria, per OAC 340:50-5-28. A domestic violence shelter means a public or private non-profit, residential facility serving victims and their children. When the facility also serves other persons, a portion of the facility must be set aside on a long-term basis to serve only victims of domestic violence and their children; or
- (5) residents of public or private non-profit shelters for homeless persons when the shelter meets criteria per OAC 340:50-5-30.

340:50-5-10.1. ~~Disqualified~~Excluded household members

(a) **Excluded household members.** Excluded household members may not participate as a separate food benefit household. When excluded members live with the food benefit household, they are excluded from the household's size when determining benefits and comparing the household's monthly income with the income eligibility standards. Depending on the reason they are excluded, all or a portion of their income is included as countable income for the food benefit household and deductible expenses may be prorated per Section

273.11(c) of Title 7 of the Code of Federal Regulations (7 C.F.R. § 273.11(c)). Per Oklahoma Administrative Code (OAC) 340:50-7-29(d), excluded household members whose income is:

- (1) included in its entirety are termed disqualified members and the worker does not prorate deductible expenses; and
- (2) prorated are termed ineligible household members and all deductible expenses are prorated with the exception of the standard utility expense.

(b) **Disqualified household members.** ~~When a household member meets one of the criteria listed in (1) through (7) of this subsection, he or she may be disqualified for Supplemental Nutrition Assistance Program (SNAP) food benefits per Section 273.1(b)(7) of Title 7 of the Code of Federal Regulations (C.F.R.) (7 C.F.R. § 273.1(b)(7)). Disqualification criteria include for:~~

- ~~(1) committing an intentional program violation or fraud per Oklahoma Administrative Code (OAC) 340:50-5-7 or 340:50-15-25;~~
- ~~(2) failing to register for employment or participate in the Employment and Training Program;~~
- ~~(3) meeting fleeing felon criteria per (A) of this paragraph.~~

(A) A fleeing felon is a person who knows a warrant was issued for his or her arrest in relation to a felony.

(B) When the worker has information that a person has a felony warrant issued for his or her arrest, the worker:

- (i) does not initiate contact with law enforcement officials;
- (ii) verifies the person has knowledge of the warrant by asking the person if he or she has satisfied the warrant; and
- (iii) allows the person an opportunity to submit documentation showing the warrant was satisfied.

(I) ~~If~~When the warrant was not satisfied, the person is not eligible to receive food benefits.

(II) ~~If~~When the household provides verification showing the person is not a fleeing felon, the person may be included in the food benefits, ~~if~~when otherwise eligible; or

(3) being a probation or parole violator meeting criteria of this paragraph. Per 7 C.F.R. § 273.11(n)(2), to be considered a probation or parole violator, an impartial party, such as Office of the Inspector General staff, must determine that:

(A) the person violated a condition of his or her probation or parole imposed under federal or state law; and

(B) federal, state, or local law enforcement authorities are actively seeking the person to enforce the conditions of the person's probation or parole.

(c) **Ineligible household members.** Ineligible household members are members that do not meet a program requirement such as:

- (4) failure to obtain or refusal to provide a Social Security number per OAC 340:50-5-68;
- (5) not being a citizen or qualified alien per OAC 340:50-5-67;
- (6) being a probation or parole violator; or
- (7) being an able-bodied adult without dependents and not meeting work requirements per OAC 340:50-5-64.

(b) ~~**Income and deductible expenses of a disqualified person.** The disqualified household member is not included in household size when determining other household members' food benefit allotment. A disqualified member's income and deductible expenses are handled differently, depending on the reason for the disqualification, per Section 273.11(e) of Title 7 of the Code of Federal Regulations (CFR) (7 CFR, § 273.11(e)). Refer to OAC 340:50-7-29(d) for income and expense handling information.~~

PART 5. STUDENTS, STRIKERS, RESIDENT FARM LABORERS, MIGRANT HOUSEHOLDS, SPONSORED ALIENS, AND SCHOOL EMPLOYEES

340:50-5-48. Migrant farm laborers

Migrant farm laborers usually have little or no income upon arriving at a work area; ~~therefore, the worker should be alert to the need for emergency food and determine whether the migrant farm laborer's household qualifies and must be assessed for expedited services per Oklahoma Administrative Code (OAC) 340:50-11-1.~~

- (1) **Income.** In addition to income declared by the household, the worker explores the possibility that out-of-state real property is being rented or is producing income. ~~If when the household has income producing home or other real property is producing income, the worker adds the income must be added to all other household income to determine eligibility and food benefit allotment.~~
- (2) **Exempt income of children in migrant households.** ~~Since many~~ When migrant households receive one payment in combination for work performed by all household members, ~~the worker excludes the earned income of a student under 18-17 years of age must be differentiated from the rest of the household's income or younger. The~~ To exclude the income, the worker prorates the income equally among ~~the number of all working household members working and excludes that and subtracts the student's portion allowed to the student.~~
- (3) **Deductions from income** ~~Income deductions.~~ When eligible, ~~the worker deducts the migrant household is responsible for deductible expenses described at per OAC 340:50-7-31, the worker deducts the expenses from the household's income.~~
- (4) **Work registration.** Employable members of migrant households who are not employed at least 30 hours a week or receiving weekly earnings equal to the federal minimum wage times 30 hours must register for and accept suitable employment the same as other persons.

PART 7. RELATED PROVISIONS

340:50-5-64. Work requirements

(a) **Able-bodied adults without dependents (ABAWDs).** ABAWDs who are members of eligible households receiving food benefits must be exempt from, or comply with work requirements to be eligible to participate as a member of any food benefit household for longer than three months, consecutive or otherwise, during any 36-month period. It is the worker's responsibility to explain to the applicant the household member's work requirements and responsibility. At each application the worker must establish that each adult household member, per Section 273.24(a) of Title 7 of the Code of Federal Regulations (~~C.F.R.~~) (7 C.F.R. § 273.24(a)):

- (1) works continuously 20 hours or more per week, averaged monthly. The employment may be paid, in-kind, unpaid, or volunteer work with religious or community organizations;
- (2) participates in and complies 20 hours or more per week with:
 - (A) Workforce ~~Investment~~ Innovation and Opportunity Act (WIA)(WIOA) Program assignment;
 - (B) Trade Adjustment Assistance Program assignment; or
 - (C) Employment and Training (E&T) Program, not including job search. However, job search or job search training activities, when offered as part of other E&T program components, are acceptable as long as those activities comprise less than half the total required time spent in the components; or
- (3) meets an exemption from the work requirements per (b) of this Section.

(b) **Good cause for failure to meet the ABAWD work requirement.** When an ABAWD has good cause for failure to meet the required number of work or participation hours in a given month per (a) of this Section, the month does not count toward the time limit. Good cause applies to situations in which the person normally meets the ABAWD work requirement by working or participating in a work program, but does not due to circumstances beyond the person's control. Per 7 C.F.R. § 273.7(i) and Oklahoma Administrative Code (OAC) 340:50-5-92, circumstances beyond the person's control include, but are not limited to:

- (1) illness;
- (2) illness of another household member sufficiently serious to require the presence of the ABAWD;
- (3) unavailability of transportation; or
- (4) an unanticipated emergency.

(~~b~~c) **Exemptions from the work requirements.** Per 7 C.F.R. ~~§C.F.R. 273.7 or 7 C.F.R. §C.F.R. 273.24(c)~~, a person is exempt from the work requirement provision of the Supplemental Nutrition Assistance Program when the person is:

- (1) younger than 18 years of age or 50 years of age and older;
- (2) medically certified as physically or mentally unfit for employment. PersonsA person is medically certified as physically or mentally unfit for employment when he or she:

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- (A) ~~who are physically or mentally incapable of gainful employment either on a~~ receives permanent or temporary basis or participating in federal or state programs based on disability are considered exempt ~~benefits issued by governmental or private sources.~~
- (B) ~~claiming exemption as obviously mentally or physically unfit for employment, must, in the absence of physical evidence obtain~~ When it is not obvious that he or she is unfit, the person must provide documented evidence from medically qualified sources to substantiate the medical exemption.
- (i) Medically qualified sources may include, but are not limited to a:
- (I) ~~therapists~~ licensed or certified psychologist, therapist, counselor, or social worker;
- (II) ~~counselors~~ physician or physician's assistant; and
- (III) ~~medical social workers~~ nurse or nurse practitioner; or
- (IV) designated representatives of a physician's office.
- (ii) The documented evidence must indicate the person has a physical or mental condition that limits the person's ability to work.
- (~~C~~iii) ~~claiming~~ When the medical exemption is temporary exemption, the person is required to comply with work requirements when released by a medically qualified source to return to work; or
- (C) is chronically homeless;
- (3) a parent or other member of a household with responsibility for care of an incapacitated person of any age;
- (4) pregnant;
- (5) receiving or applied for unemployment insurance benefits;
- (6) a regular participant receiving treatment for drug or alcohol addiction in a rehabilitative program on a resident or non-resident basis;
- (7) an eligible student enrolled at least half-time in any recognized school, training program, or institution of higher education. This includes refugees participating in a refugee-specific training program approved, funded, or operated by the Office of Refugee Resettlement;
- (8) registered for, or participating in Temporary Assistance for Needy Families (TANF) Work;
- (9) employed a minimum of 30 hours per week or receiving weekly earnings that equal the minimum hourly rate under the Fair Labor Standards Act of 1938, as amended, multiplied by 30 hours; or
- (10) a parent or other adult included in the food benefit household with a minor child less than 18 years of age.
- (ed) **Participation without time limits.** Food benefit participation without time limits applies to a person who:
- (1) is exempt;
- (2) works continuously 20 hours or more per week, averaged monthly. The employment may be paid, in-kind, unpaid, or volunteer work with religious or community organizations; or

- (3) participates in, and complies with:
- (A) ~~WIA/WIOA~~ Program assignment;
- (B) Trade Adjustment Assistance Program assignment; or
- (C) E&T Program, not including job search. However, job search or job search training activities when offered as part of other E&T program components, are acceptable as long as those activities comprise less than half the total required time spent in the components.

(de) **Participation with time limits.** Persons who are not exempt or fail to comply with work participation requirements are eligible for only three months, consecutive or otherwise, during any 36-month period. Once the person reaches the three-month eligibility limit, eligibility can be regained for at least an additional three consecutive months when the person:

- (1) works 80 hours or more in any 30-day period; or
- (2) participates for 80 hours or more in, and complies with:
- (A) WIA Program assignment;
- (B) Trade Adjustment Assistance Program assignment; or
- (C) E&T Program, not including job search.

(ef) **Persons who regain eligibility.** A person can regain eligibility only one time for an additional three consecutive months during the 36-month period by meeting the requirements of (d)(e)(1) or (2) of this Section. A person who regains eligibility maintains eligibility by complying with the requirements listed in (e)(d) of this Section. If eligibility is subsequently lost, the person may receive food benefits only when he or she meets one of the exemptions listed in (b)(c) of this Section or the 36-month period expires.

(fg) **ABAWD work requirement waiver prohibition.** Per 7 C.F.R. § 273.24(f), states are allowed to request an ABAWD work requirement waiver in certain instances. Effective October 1, 2013, Section 241.3 of Title 56 of the Oklahoma Statutes prohibits the Oklahoma Department of Human Services from requesting an ABAWD work requirement waiver from the United States Department of Agriculture.

PART 9. WORK REGISTRATION

340:50-5-88. ~~Requirements after registration~~ Supplemental Nutrition Assistance Program (SNAP) Employment and Training (E&T) Program

~~Requirements after registration in the Job Search Project are applicable only to registrants in the Job Search Project human services center (HSC).~~ The Oklahoma Department of Human Services (DHS) operates a voluntary SNAP E&T Program through a contracted service provider for adults receiving SNAP food benefits per Section 273.7(e)(4) of Title 7 of the Code of Federal Regulations. The SNAP E&T Program intent is to help food benefit recipients, especially able-bodied adults

without dependents (ABAWD), become involved in meaningful work-related activities that lead to paid employment and enable them to achieve or maintain economic self-support.

(1) **Employment and Training (E&T) Program Referral and assessment.** The intent of the Supplemental Nutrition Assistance Program (SNAP) E&T Program is to ensure all able-bodied food benefit recipients are involved in meaningful work-related activities which will lead to paid employment and a decreased dependency on assistance programs. The Oklahoma Department of Human Services (OKDHS) is responsible for assisting and directing persons in E&T activities which enable them to achieve or maintain economic self support. These activities include registration for E&T, employment-related evaluations and assessment, employability planning, counseling, job developing, and job placement. The worker sends a referral to the contracted service provider to initiate the intake process.

(A) All work registrants not exempted from work registration who live in the designated SNAP E&T HSC office boundaries or have not been exempted from E&T activity must participate in the SNAP E&T Program. Food benefit recipients exempted from work registration or from E&T may participate in the SNAP E&T Program as a volunteer. After receiving a referral from the worker, contracted staff schedules referred work registrants for an orientation and comprehensive assessment.

(B) The E&T requirement applies each time a registrant loses a work registration exemption, re-enters SNAP after a period of absence, or each 12 months, whichever occurs first. Following orientation and assessment, each participant has an assessment interview with contracted staff to explore the participant's employment and training needs and barriers, communication and employment-related skills, education and employment history, and career interests.

(C) If a work registrant becomes exempt from work registration at any point during the E&T process, E&T requirements no longer apply. Participants are then enrolled in a work readiness workshop and have access to resource center activities.

(D) When a work registrant moves from a non-E&T HSC into the Job Search Project HSC boundaries, the E&T is initiated for work registrants immediately following receipt and review of the case file. When a work registrant moves from the Job Search Project HSC boundaries into a non-E&T HSC boundaries, E&T requirements no longer apply.

(2) **SNAP E&T exemptions component assignments.** Mandatory work registrants not exempted from work registration may be exempted from the SNAP E&T Program if the registrant: Once Supplemental Nutrition Assistance Program (SNAP) E&T participants complete the intake process and work readiness workshop, they are enrolled in an E&T component. SNAP E&T Program components

include job search, educational services, vocational training, Workfare for able-bodied adult without dependents (ABAWD) only, and job retention services.

(A) resides an unreasonable distance from the HSC or potential employer. A distance is considered unreasonable if the round-trip exceeds two hours by public or private transportation. **Job Search component.** Job search is a component that provides structured activities to help participants seek and obtain suitable employment.

(B) is a migrant or seasonal farm worker away from his or her home base and following the work stream; **Educational services component.** Participants are placed in an educational services component when they do not have a high school diploma or equivalency certificate, have literacy issues, or need to learn or improve English language skills.

(C) lacks adequate child care; **Vocational services component.** Participants may receive vocational training when their assessments indicate training is needed to enhance employability or industry-specific training is needed as part of a job placement program.

(D) has physical or mental problems; **Workfare component.** Workfare is a work component only available to non-exempt ABAWDs. A participant is assigned to work in a public service or private non-profit agency to obtain skills necessary to enhance employability or develop skills required for job placement.

(E) is 55 years of age or older and working under Title V of the Older American Act; or **Job retention component.** A participant is assigned to job retention classes when assessments indicate case management services, coaching, and peer support could help them maintain employment and succeed in the workplace.

(F) is homeless as defined in OAC 340:50-5-29.

(3) **E&T classification Supportive services.** Participants are classified into four groups. Supportive services are provided to participants when necessary and directly related to their ability to participate in the SNAP E&T component. DHS authorizes payments for supportive services that may include, but are not limited to, covering the cost of:

(A) **Job ready.** The registrant does not have substantial barriers to employment, child care under special circumstances. When child care is needed after assessment, the contracted service provider assists the client in completing a child care application. The application is sent to the SNAP E&T coordinator to determine eligibility per Oklahoma Administrative Code (OAC) 340:40;

(B) **Not job ready.** This classification is assigned when the food benefit work registrant has barriers that require services not available through the SNAP E&T Program. If this classification is assigned, the person's worker or food benefit E&T worker finds

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services to eliminate these barriers to employment. clothing;

(C) **Job attached.** The registrant is temporarily laid off or expects to return to work within 60 calendar days. This classification is assigned for only 60 calendar days. At the end of the 60 calendar day period, the registrant, if still unemployed, is reassessed and reclassified to a different category. uniforms;

(D) **Exempt.** This classification is assigned if the registrant meets any of the conditions listed in paragraph (2) of this subsection. tools;

(E) personal safety items;

(F) books or training manuals;

(G) transportation, such as bus tickets, public transportation passes, taxi cabs, sharing rides, or gas vouchers; or

(H) other equipment deemed necessary for participation.

(4) **SNAP E&T component assignments Contractor responsibility.** Participants classified as job ready are assigned to an E&T component as described in (A) through (C) of this paragraph. The contracted service provider is responsible for tracking participation and informing the SNAP E&T coordinator of the participation status and outcome performance measures of all referred persons.

(A) **Job Search.** Participants assigned to this component are required to contact a minimum of 24 employers within an eight week period or two four week periods. One eight week period is eight consecutive weeks of job search with a follow up meeting after the first four weeks. A two four week job search period has a period of time between the two job search periods. One follow up interview is required each four weeks. When a referred person fails to participate in SNAP E&T following a referral, contracted staff notifies AFS SNAP E&T coordinator within 10-calendar days of the non-participation.

(i) A job contact is defined as a registrant presenting himself or herself as available and applying for work.

(ii) Appointments are scheduled on Form 08FB020E, Supplemental Nutrition Assistance Program (SNAP) Employment and Training Letter.

(iii) The job search assignment is given to the registrant in writing on Form 08FB022E, Job Search Plan. This form is also used to schedule follow up interviews and used by the registrant to report job contacts. Job contacts are reported in writing and the registrant must attest that the signed statement is true. Employers contacted by the registrant are not required to provide written confirmation of the contact, but the registrant is required to sign the statement attesting he or she made the contacts.

(iv) If an E&T participant is referred to a job contact by the food benefit E&T worker and does

not make this contact, the E&T worker initiates conciliation per (6)(A) of this Section.

(v) If an E&T participant does not accept a job offered to him or her without good cause, the food benefit E&T worker initiates conciliation per (6)(A) of this Section.

(B) **Workforce Investment Act (WIA) component.** A participant assigned to a WIA component is eligible for all the services available through WIA. A participant assigned to this component has completed the job search component without finding a job or is identified by the E&T worker as a person who can benefit from the services available through WIA. When the component is assigned, the participant is provided Form 08TW003E, Interagency Referral and Information, to take to WIA. The E&T participant is responsible for returning to the E&T worker Form 08TW003E signed by a representative of WIA. When the non-participant is an ABAWD who reached his or her food benefit receipt time limit per OAC 340:50-5-64, the SNAP E&T coordinator notifies the worker to close food benefits for the ABAWD.

(C) **Oklahoma Employment Security Commission (OESC) component.** A participant assigned to this component is eligible for all the services available at OESC. A participant assigned to this component is an E&T participant the E&T worker has determined would benefit from these services. When this component is assigned, the E&T worker gives the participant Form 08TW003E to take to OESC. The E&T participant is responsible for returning to the E&T worker Form 08TW003E signed by a representative of OESC.

(5) **E&T related expenses.** A participant in the SNAP E&T Program may receive reimbursement up to \$25 per month for E&T activity if another agency is not reimbursing the participant for the same type of activity. Reimbursement is \$3 for a half day, four hours or less, and \$6 for a full day, more than four hours.

(A) The food benefit E&T worker gives Form 08FB023E, Supplemental Nutrition Assistance Program Employment and Training Participation Report, to the E&T participant to complete Part 1 and return to the HSC during the first week of each month

(B) A work registrant with a child under 12 years of age required to participate or who volunteer in the SNAP E&T Program is eligible for a maximum child care payment of \$200 per month per child paid to the child care provider. See OAC 340:50-5-97 for voucher authorized child care for the SNAP E&T Program.

(6) **Failure to comply.**

(A) A registrant who fails to keep a scheduled E&T interview or fails to comply with E&T requirements and does not meet the good cause provision in (7) of this Section, is given the opportunity to comply through a conciliation period. The purpose of conciliation is to resolve disputes in an informal fashion

and avoid invoking penalties. The conciliation period starts the day after noncompliance with E&T requirements is determined and lasts for no more than ten calendar days.

(B) If the registrant has not responded to the conciliation process by the tenth calendar day, the ten-day advance notice is sent. The adverse action is taken for noncompliance of E&T requirements. This notice is sent no later than the last day of the conciliation period.

(C) To comply with conciliation or show a good faith effort to comply, the participant during the conciliation period must:

- (i) be assessed or assigned, if he or she failed to be assessed or assigned;
- (ii) complete the balance of job contacts or at least three verified contacts, if he or she failed to complete job search component; or
- (iii) provide Form 08TW003E, if he or she failed to return Form 08TW003E from the WIA or OESC component.

(D) If conciliation has failed, mandatory disqualification periods are imposed. The disqualification period for households whose non-compliant E&T registrant is the head of household does not exceed the lesser of the duration of ineligibility listed in (i) through (iii) of this paragraph or 180 calendar days. For all other non-compliant E&T registrants, disqualification periods remain in effect until the later of the date the household member complies with the work rules or is disqualified for the:

- (i) first violation, one month;
- (ii) second violation, three months; or
- (iii) third or subsequent violation, six months.

(E) The disqualification cannot be ended unless the required household member meets the criteria in (6)(D) of this subsection, leaves the household, or becomes exempt from work registration.

(i) If any household member who failed to comply with E&T joins another household as the head of household, the entire new household is ineligible for the remainder of the disqualification period.

(ii) If the member who failed to comply with E&T joins another household where he or she is not the head of the household, the person is considered an ineligible household member.

(F) Households and persons disqualified for failure to comply with E&T requirements may request a fair hearing and continue participation.

(G) If the participant fails to comply with E&T requirements and meets the definition of head of household, the food benefits are closed.

(H) If the participant fails to comply with E&T requirements and does not meet the definition of head of household, that person is removed from the case. His or her income continues to be counted.

(I) For purposes of failure to comply with work requirements, the head of household is defined in OAC 340:50-5-90.

(J) The principal wage earner is the household member, including excluded members, who has the greatest earned income in the two months prior to the violation.

(7) **Good cause.** Good cause includes circumstances beyond the registrant's control, such as, but not limited to:

- (A) illness;
- (B) illness of another household member requiring the presence of the registrant;
- (C) a household emergency;
- (D) unavailability of transportation; or
- (E) lack of adequate child care for children ages 6 through 11.

(8) **Suitable work.** Any employment offered is considered suitable:

(A) if the wage offered is at least the highest of the applicable federal minimum wage, the applicable state minimum wage, or 80% of the federal minimum wage, if neither the state nor federal minimum wage applies;

(B) if the employment offered is on a piece rate basis and the average hourly wage the employee can reasonably expect is at least equal to the applicable hourly wages specified;

(C) if the registrant, in order to be hired or to continue working, is not required to join, resign from, or refrain from joining any legitimate labor organization;

(D) if the work offered is not at a site subject to a strike or lockout at the time of the offer unless the strike has been enjoined under the Labor Management Relations Act (Taft Hartley) or an injunction has been issued under Section 10 of the Railway Labor Act; or

(E) unless the registrant demonstrates or the worker determines the:

- (i) risk to health and safety is unreasonable;
- (ii) household member is physically or mentally unfit to perform the employment as documented by medical evidence or other reliable information;
- (iii) employment offered within the first 30 calendar days of registration is not in the registrant's major field of experience;
- (iv) distance from the registrant's home to the place of employment is unreasonable based on the expected wage and the time and cost of daily commuting. Commuting time cannot exceed two hours daily; or
- (v) working hours or nature of the employment interferes with the registrant's religious observations, convictions, or beliefs.

(95) **Monitoring SNAP E&T monitoring responsibilities.** The Family Support Services Division SNAP Section staff monitor E&T coordinator provides oversight and

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monitors the contracted service provider's performance in the operation of the SNAP E&T Program.

340:50-5-97. Voucher-authorized child care for Employment and Training (E&T) activities [REVOKED]

~~Eligible food benefit recipients who live in a Supplemental Nutrition Assistance Program (SNAP) Employment and Training (E&T) human services center boundary may receive voucher authorized child care for E&T activities if child care services are necessary for the parent or caretaker to participate in the E&T activities. Participants are eligible for a maximum of 12 full time days or 24 part time days in an eight week period per child.~~

- ~~(1) Child care services are available whether the parent or caretaker is a required or voluntary participant.~~
- ~~(2) In two parent or two caretaker families, both parents may participate in E&T activities simultaneously and receive voucher authorized child care unless one parent or caretaker has been exempted to care for a child(ren) under six years of age.~~
- ~~(3) Child care services are only purchased from licensed and contracted out of home child care facilities.~~
- ~~(4) SNAP E&T participants are predetermined eligible for voucher authorized child care and are approved with a zero family share co payment.~~
- ~~(5) At the end of each calendar month, the client submits to the E&T worker a completed Form 08FB022E, Job Search Plan.~~
- ~~(6) An overpayment is written for any voucher authorized child care used by the client for which he or she was not eligible.~~
- ~~(7) The Family Support Services Division (FSSD) SNAP Section monitors a random selection of cases quarterly to ensure the integrity of the program.~~

SUBCHAPTER 7. FINANCIAL ELIGIBILITY CRITERIA

PART 3. INCOME

340:50-7-22. Income exclusions

~~Only the payments~~The worker excludes income listed in this Section ~~are excluded~~ from the household's countable income, from income of disqualified members whose income is counted, ~~or~~and from the income of ineligible aliens who would otherwise be household members. No other income is excluded.

- (1) **In-kind income.** In-kind income is any gain or benefit that is not in the form of money payable directly to the household, including non-monetary or in-kind benefits, such as meals, clothing, public housing, or produce from a garden.
- (2) **Vendor payments.** Vendor payments are payments in money on behalf of a household when a person or organization outside the household uses its own funds to make a

direct payment to either a household's creditors or a person or organization providing a service to the household.

(3) **Educational assistance.** Educational assistance including grants, work-study, scholarships, fellowships, educational loans on which payment is deferred, veteran's education benefits, and the like are exempt ~~if receipt is contingent upon the student regularly attending school and the money received is intended to offset the costs of education and expenses as identified by the institution, school, program, or other grantor.~~ If the money is not intended to be a reimbursement, as described in paragraph (7) of this Section, and is a gain to the client, it is considered income.

(4) **Family Support Assistance Payment Program.** Family Support Assistance Payment Program payments provided by Developmental Disabilities Services ~~Division (DDSD)~~(DDS) are excluded.

(5) **Income excluded by law.** Income excluded by law ~~isare:~~

(A) reimbursements from the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, ~~Public Law (P.L.) 91-646, § 216~~. Such payments are:

- (i) payments to persons displaced due to the acquisition of real property;
- (ii) relocation payments to a displaced home owner toward the purchase of a replacement dwelling ~~if~~when the owner purchased and occupied the dwelling within one year following displacement; and
- (iii) replacement housing payments to displaced persons not eligible for a home owner's payment;

(B) payments received:

- (i) under the Alaska Native Claims Settlement Act, ~~Public Law (P.L.) 92-203 § 21(a)~~;
- (ii) under the Sac and Fox Indian Claims Agreement, ~~Public Law (P.L.) 94-189~~;
- (iii) from the disposition of funds to the Grand River Band of Ottawa Indians, ~~Public Law (P.L.) 94-540~~;
- (iv) by members of the Confederated Tribes of the Mescalero Reservation, ~~Public Law (P.L.) 95-433~~;
- (v) under the Maine Indian Claims Settlement Act of 1980 to members of the Passamaquoddy and the Penobscot Nation, ~~Public Law (P.L.) 96-420~~; or
- (vi) by an individual as a lump sum or a periodic payment via the Cobell settlement per the Claims Resolution Act of 2010, ~~Public Law (P.L.) 111-291 § 101(f)(2)~~;

(C) any payment to volunteers under Title II, Retired and Senior Volunteer Program (RSVP), foster grandparents and others, of the Domestic Volunteer Services Act of 1973, ~~Public Law (P.L.) 93-113~~ as amended;

(D) income derived from certain submarginal land of the United States ~~which is held in trust for certain Indian tribes~~, ~~Public Law (P.L.) 94-114, § 6~~;

(E) Indian per capita payments distributed from judgment awards and trust funds made ~~pursuant to per~~

P.L. 98-64. Also excluded is any interest or investment income accrued on such funds while held in trust or any purchases made with judgment funds, trust funds, interest, or investment income accrued on such funds. Any per capita payments, headrights of the Osage tribe, income from mineral leases or other tribal business ventures are excluded, ~~as long as when~~ they meet the distribution requirements ~~as~~ stated in this paragraph. Any interest or income derived from the funds after distribution is considered as ~~any~~ other income. The per capita exclusion applies per person rather than per family;

(F) income up to \$2,000 per year received by individual Indians, ~~which is~~ derived from leases or other uses of individually-owned trust or restricted lands. The income exclusion applies to calendar years beginning January 1, 1994. ~~Any remaining~~ Remaining disbursements from the trust or restricted lands are considered as income;

(G) allowances, stipends, earnings, compensation in lieu of wages, grants, and other payments made for participation in the Workforce ~~Investment Innovation and Opportunity Act (WIIA)~~ Investment Innovation and Opportunity Act (WIOA) of 2014, or other federally-funded workforce training program to persons of all ages and student status with the exception of income paid to persons 19 years of age and older for on-the-job training. This income is treated as any other earned income;

(H) payments, allowances, or earnings to persons participating in programs under Title I of the National and Community Service Act, such as University Year for Action (UYA), Senior Companion Program, AmeriCorps Volunteers in Service to America (VISTA), and other AmeriCorps Programs; are not included as income for purposes of determining food benefit eligibility and benefit level;

(I) payments or allowances made under any federal law for the purpose of energy assistance, Low Income Home Energy Assistance Program (LIHEAP) and utility payments, and reimbursements made by the Department of Housing and Urban Development (HUD) and the Farmers Home Administration (FmHA);

(J) the amount of the mandatory salary reduction of military service personnel used to fund the G.I. Bill;

(K) all funds that are paid to persons under the Community Service Employment Program under Title V, P.L. 100-175, ~~This program is~~ authorized by the Older Americans Act. Each state and various organizations receive ~~some~~ Title V funds. These organizations include:

- (i) Experience Works;
- (ii) National Council on Aging;
- (iii) National Council of Senior Citizens;
- (iv) American Association of Retired Persons (AARP);
- (v) ~~U.S.~~ Forest Service;

- (vi) National Association for Spanish Speaking Elderly;
- (vii) National Urban League;
- (viii) National Council on Black Aging; and
- (ix) National Council on Indian Aging;

(L) Earned Income Tax Credit (EITC) payments received as part of a tax refund and also EITC advance payments received as part of a paycheck, ~~{P.L. 100-435}~~;

(M) refunds of the state EITC as a result of filing a state income tax return;

(N) payments made from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the In Re Agent Orange product liability litigation, M.D.L. No. 381 (E.D.N.Y.);

(O) payments received under the Civil Liberties Act of 1988. These payments are made to persons of Japanese ancestry ~~who~~ whose ancestors were detained in ~~internment~~ internment camps during World War II;

(P) payments made from the Radiation Exposure Compensation Trust Fund as compensation for injuries or deaths resulting from the exposure to radiation from nuclear testing and uranium mining;

(Q) payments for the fulfillment of a Plan for Achieving Self-Support (PASS) under Title XVI of the Social Security Act;

(R) payments made to persons ~~because of their status as~~ who were victims of Nazi persecution;

(S) funds distributed by the Federal Emergency Management ~~Assistance~~ Agency (FEMA) due to a disaster or an emergency to persons directly affected by ~~the events~~ such. This exclusion also applies to comparable disaster assistance provided by states, local governments, and disaster assistance organizations. For payments to be excluded, the disaster or emergency must be declared by the President of the United States;

(T) monetary allowances as described in Section 1823(c) of Title 38 of the United States Code (U.S.C.) provided to certain persons who are children of Vietnam War veterans;

(U) Disaster Unemployment Assistance paid to persons unemployed as a result of a major disaster; ~~and~~

(V) benefits paid to certain veterans and the spouses of veterans who served in the military of the Government of the Commonwealth of the Philippines during World War II by the Filipino Veterans Equity Compensation Fund; and

(W) money deposited into or withdrawn from a qualified Oklahoma Achieving a Better Life Experience (ABLE) Program account per Sections 4001.1 through 4001.5 of Title 56 of the Oklahoma Statutes or a qualified ABLE Program account set up in any other state per the ABLE Act of 2014, (26 U.S.C. § 529A) is excluded as income when the client:

- (i) provides documents to verify the account meets exemption criteria;

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- (ii) verifies money deposited in the account does not exceed the annual federal gift tax exclusion amount per 26 U.S.C. § 2503(b). Any money deposited in the account in the calendar year in excess of the annual federal gift tax exclusion amount is considered as countable income in the amount deposited; and
- (iii) verifies withdrawals from the account are used to pay qualified disability expenses. Money withdrawn for reasons other than to pay qualified disability expenses is considered as income for the month of withdrawal.
- (6) **Payments which are not considered income.**
- (A) The payments in (i) through (iii) of this paragraph are not considered as income.
- (i) Monies withheld from any income source to repay a prior overpayment from that same source.
- (ii) Monies voluntarily or involuntarily returned to repay a prior overpayment received from that same income source.
- (iii) Child support payments received by Temporary Assistance for Needy Families (TANF) recipients ~~that are~~ and sent to Oklahoma Child Support Services (OCSS) to maintain TANF eligibility.
- (B) Monies withheld or returned to repay overpayments in federal, state, or local means-tested assistance programs are counted when they are withheld or returned to repay overpayments resulting from intentional program violation as established by the agency administering the program.
- (i) In the Supplemental Nutrition Assistance Program (SNAP), willful misrepresentation is considered as intentional program violation.
- (ii) The State Supplemental Payment to the Aged, Blind, and Disabled and TANF programs define intentional program violation using the terms restitution, fraud, and willful misrepresentation.
- (iii) The Social Security Administration (SSA) and Veterans Benefits Administration programs define intentional program violation as fraud. Supplemental Security Income (SSI) is a means-tested program within SSA.
- (7) **Reimbursements.**
- (A) Reimbursements for past or future expenses to the extent they do not exceed actual expenses and do not represent a gain or benefit to the household are not considered. Examples ~~are~~ of reimbursements ~~for~~ may include:
- (i) job or training-related expenses, such as travel, per diem, uniforms, and transportation to and from job or training ~~sites.~~ However, ~~if these expenses are not reimbursements, they are considered income;~~
- (ii) out-of-pocket expenses incurred by volunteers in the course of ~~their~~ work;
- (iii) medical or dependent care; and
- (iv) services provided by Title XX of the Social Security Act.
- (B) When a reimbursement, including a flat allowance, covers multiple expenses, each expense does not have to be separately identified as long as none of the reimbursement covers normal living expenses. The ~~reimbursement~~ amount of ~~the reimbursement~~ that exceeds the actual incurred expenses is counted as income. A reimbursement is not considered to exceed actual expenses unless the provider or household indicates the amount is excessive.
- (C) The worker excludes any amount the employer adds to the employee's gross income as a benefit allowance to pay for a reimbursable expense, such as insurance or dependent care. When the monthly benefit allowance exceeds the monthly expense and the employer:
- (i) includes the excess in the employee's pay each month, the worker counts the excess benefit allowance as earned income; or
- (ii) retains any excess until the end of the year and then provides a yearly refund to the employee, the worker excludes the refund as income as it is considered a non-recurring lump sum payment per (10)(C) of this Section.
- (8) **Money received for third parties.** ~~Money received and used~~ The worker excludes money the household receives and uses for the care and maintenance of a third-party beneficiary who is not a household member ~~is not considered.~~
- (A) ~~If~~ When the intended beneficiaries of a single payment ~~are both~~ include household and non-household members, any identifiable portion of the payment intended and used for the care and maintenance of the non-household member is excluded.
- (B) ~~If~~ When the non-household member's portion cannot be readily identified, as in TANF cash-assistance payments, the payment is evenly prorated among intended beneficiaries. The exclusion is applied to the non-household member's pro rata share or the amount actually used for the non-household member's care and maintenance, whichever is less.
- (9) **Earnings of a child.** Earned income of a child who is head of his or her own household is counted. The earned income of an elementary or high school student 17 years of age ~~or~~ and younger, ~~who is~~ under parental control of an adult household member is excluded. This exclusion continues to apply during temporary interruptions in school attendance due to semester or vacation breaks, provided the child's enrollment ~~will resume~~ resumes following the break. ~~If~~ When the child's earnings cannot be differentiated from those of other household members, the total earnings are prorated equally among the working members, and the child's prorated share is excluded.
- (10) **Other types of excluded income.**
- (A) **Loans.** All loans, including loans from private as well as commercial institutions, are excluded as

~~income. Verification of the income~~ When the household states someone is loaning the household money to meet expenses, a statement signed by both parties is required indicating the payment is a loan ~~is required and must be repaid. When the household states it receives loans on a recurrent or regular basis from the same source, the lender must sign an affidavit stating the payments are loans that must be repaid or that payments will be made in accordance with an established repayment schedule.~~

(B) **Irregular Income.** Exclude any income in the certification period that is received too infrequently or irregularly to be reasonably anticipated that is \$30 or less per quarter.

(C) **Non-recurring lump sum payments.** Exclude money received in the form of non-recurring lump sum payments, including, but not limited to: income tax refunds, rebates, credits, retroactive lump sums from SSA, SSI, public assistance, Railroad Retirement pensions, ~~or~~ other payments, or retroactive lump sum insurance settlements.

(D) **Cost of self-employment.** Exclude the cost of producing self-employment income per Oklahoma Administrative Code 340:50-7-30.

(E) **Income of non-household members.** The income of non-household members who have ~~are~~ not been disqualified or ~~are not~~ ineligible aliens is not considered available to the household.

(F) **Charitable contributions.** Exclude cash contributions to a household from one or more private non-profit charitable organizations, not to exceed \$300 in a federal fiscal year quarter. For the purposes of this provision a quarter includes these specific months:

- (i) October, November, December;
- (ii) January, February, March;
- (iii) April, May, June; and
- (iv) July, August, September.

(G) **Department of Housing and Urban Development's (HUD) Family Self-sufficiency Program (FSS) escrow accounts.** Families participating in the HUD FSS program may withdraw money from ~~their~~ escrow accounts prior to completion of the program. This money is excluded as income.

(H) **Individual Development Account (IDA).** Any funds deposited in an IDA operated under the Assets for Independence Act and the interest that accrues is excluded as income.

340:50-7-29. Income inclusions

(a) **Sources of income considered.** The worker considers all household income, unless specifically excluded per Section 273.9(c) of Title 7 of the Code of Federal Regulations (~~C.F.R.~~) (7 § C.F.R. 273.9(c)) and Oklahoma Administrative Code (OAC) 340:50-7-22, in determining monthly gross income. Income is classified as earned or unearned.

- (1) When one or more household members are absent from the home, before deciding whether to consider the

absent household member's income, the worker must determine if the person returns to the home for part of the month.

(A) Per OAC 340:50-5-2, the worker does not include the absent member in the benefit amount and only counts the portion of his or her income that he or she makes available to the rest of the household when the household member does not return for part of the month.

(B) When the household member returns for part of each month, the worker includes him or her in the benefit amount and counts all of his or her income unless excluded per OAC 340:50-7-22.

(2) Per OAC 340:50-5-5, the household has the option of including a child receiving a foster payment; that includes a payment for kinship care, or a Developmental Disability Services (DDS) room and board payment in the food benefit. When the household chooses not to include the child ~~receiving a foster care payment~~ in the food benefit, the worker does not count the child's income, including the foster or DDS room and board payment.

(3) When the household adopts a child previously in the custody of the Oklahoma Department of Human Services (DHS) and receives an adoption subsidy payment for the child, the worker includes the child in the food benefit and counts the child's income, including the adoption subsidy payment.

(4) When a member of the household becomes the guardian of a child and receives a guardianship payment from DHS, the payment is considered as income. The child for whom the payment is received must be included in the food benefit.

(b) **Earned income.** Per 7 C.F.R. ~~§C.F.R.~~ 273.9(b)(1), earned income is income a household receives in the form of wages, commission, self-employment, or training allowances, and for which a person puts forth physical labor. Temporary disability insurance payments and temporary workers' compensation payments are considered earned income when payments are employer-funded and the person remains employed. The types of earnings listed in (1) through (4) of this subsection, including money from the sale of whole blood or blood plasma or a DDS payment to an extended family care provider for services rendered in addition to the child's room and board payment, are considered earned income.

(1) **Wages.** Wages and salaries include sick pay paid by the employer to an employee who plans to return to work when recovered, excess benefit allowance payments, and wages ~~garnished~~ garnished or diverted to pay a third party for a household's expenses. Countable wages for military personnel include any allowance included on the earnings statement, such as the Basic Allowance for Housing (BAH) and the Basic Allowance for Subsistence (BAS).

(2) **Self-employment.** Refer to OAC 340:50-7-30 for self-employment income procedures.

(3) **Title I payments of the Domestic Volunteer Services Act.** Countable earned income includes payments paid to a household member under Title I of the Domestic

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Volunteer Services Act of 1973 as amended per Public Law (P.L.) 93-113, unless excluded per OAC 340:50-7-22.

(4) **On-the-job training (OJT).** The worker counts income earned in OJT positions as earned income. This includes OJT provided per Section 3(44) of the Workforce Innovation and Opportunity Act of 2014, P.L. 113-128 for persons 19 years of age or older.

(c) **Unearned income.** In general, unearned income is income a household receives and is not in the form of wages, self-employment, or training allowances, and for which a person does not put forth physical labor. The income listed in (1) through (6) of this subsection, while not all inclusive, are considered unearned per 7 C.F.R. § 273.9(b)(2).

(1) **Assistance payments.** The worker counts payments from a federally-aided public assistance program, such as Supplemental Security Income (SSI), Temporary Assistance for Needy Families (TANF), or assistance programs based on need, such as State Supplemental Payments, as unearned income.

(A) A household's food benefit amount does not increase when the ~~benefit received from another program is~~ public assistance benefit the household receives under a federal, state, or local means-tested public assistance program is reduced, suspended, or ~~terminated~~ closed because ~~of the public assistance program imposed a penalty imposed for due to an intentional program violation determined as fraud or a household member's failure to comply with a requirement of that program.~~

(i) To impose a food benefit sanction, the person must be certified for Supplemental Nutrition Assistance Program (SNAP) benefits at the time of the failure to comply and receiving regular benefits from the other program at the time fraud occurred or the household failed to comply with a substantive program requirement.

(ii) ~~The other program must be a~~ Examples of means-tested, federal, state, or local welfare or public assistance program governed by welfare or public assistance laws or regulations distributes public funds, such as programs include SSI and TANF.

(iii) Substantive requirements are behavioral requirements of that program designed to improve the well-being of the household. For TANF, this includes:

(I) complying with TANF Work requirements per OAC 340:10-2, OAC 340:10-2-2 explains the TANF penalty considered for Supplemental Nutrition Assistance Program (SNAP) when the household fails to comply with TANF Work activities;

(II) cooperating to obtain child support per OAC 340:10-10-5;

(III) providing a Social Security number per OAC 340:10-12-1;

(IV) ensuring school-age children regularly attend school per OAC 340:10-13-1;

(V) verifying children meet immunization requirements per OAC 340:10-14-1; and

(VI) not using the TANF benefit in a prohibited business per 340:10-1-3.

(iv) Procedural requirements that do not trigger a penalty include failing to:

(I) provide verification;

(II) complete an interview; or

(III) complete a benefit renewal.

(iv) When a worker is not able to obtain the necessary information and cooperation from another federal, state, or local means-tested welfare, or public assistance program to comply with the provision in (A) of this paragraph, DHS is not held responsible. The worker must make a good faith effort to get the needed information and record the details and results of this effort in the case file.

(~~iv~~v) The worker does not reduce, suspend, or ~~terminate~~ close the household's current food benefit amount when the benefits under another assistance program are decreased.

(~~iii~~vii) When the worker adds eligible members to the food benefit, the benefit must be adjusted regardless of whether the household is prohibited from receiving benefits for the additional member under another federal, state, ~~or~~ local welfare, or public assistance means-tested program.

(~~iv~~viii) Changes in household circumstances not related to the penalty imposed by another federal, state, local welfare, or public means-tested assistance program are not affected by the provision in (A) of this paragraph.

(~~v~~ix) The application of the provision in (A) of this paragraph applies for the duration of the imposed penalty or until DHS cannot determine the amount of the penalty. For example, when the other program benefit closes or the person becomes ineligible for a non-penalty related reason, the worker stops imposing the food benefit sanction.

(x) SNAP sanctions extending beyond one year must be reviewed at least annually to determine if the sanction continues to apply.

(B) The provision in (A) of this paragraph does not apply to persons or households subject to disqualification from SNAP for noncompliance with a comparable work requirement per Title IV of the Social Security Act or an unemployment compensation work requirement.

(2) **Pension and Social Security.** Annuities, pensions, retirement, veterans' or disability benefits, workers' or unemployment compensation, survivors' or Social Security benefits, and strike benefits are unearned income. The worker considers disability payments as:

(A) unearned income when the person is no longer considered an employee of the company and an agency outside of the company pays the disability benefits; and

(B) earned income when the person is still considered an employee of the company and the company pays the disability benefits.

(3) **Support and alimony.** The worker counts support and alimony payments paid directly to the household from non-household members as unearned income. The worker also counts money deducted or diverted to a third party to pay a household expense as unearned income when the court order directs the payment be made to the household. The worker does not count money the court order states must be paid to a third party as income.

(4) **Grants, dividends, royalty, and interest payments.** Payments from government sponsored programs, such as Agricultural Stabilization and Conservation Service Programs, grants, dividends, royalties, interest, and all other direct money payments from any source construed to be a gain or profit are considered as income. The worker treats income from these sources as unearned income. The household must provide proof of income from these sources so income can be averaged to determine monthly countable income.

(5) **Monies withdrawn or dividends that are or could be received by a household from trust funds.** Dividends the household has the option of either receiving as income or reinvesting in the trust are considered income in the month they become available to the household.

(6) **Department of Veteran's Affairs (VA) Aid and Attendance.** When a person receives VA Aid and Attendance income and does not pay someone outside of the food benefit household to care for him or her, this is countable income. Any portion of the VA Aid and Attendance paid to someone outside of the food benefit household for care is excluded.

(d) **Income of disqualified or ineligible excluded household members.** Per OAC 340:50-5-10.1, provides a complete list of reasons for disqualification of excluded household members are termed as disqualified or ineligible. The worker counts the income of disqualified persons and unqualified aliens as indicated in (1) and (2) of this subsection. The worker does not consider the needs of a disqualified or ineligible household member when determining the household's size for purposes of assigning a benefit level to the household or comparing the household's monthly income with the income eligibility standard per 7 C.F.R. § 273.11(c)(2)(iv).

(1) **Income of a person disqualified for failure to comply with food benefit Employment and Training (E&T) Program requirements, a fleeing felon disqualification, or willful misrepresentation or fraud.** Disqualified household members. ~~A~~The worker counts the disqualified household member's income of a person disqualified for failure to comply with food benefit E&T Program requirements, a fleeing felon disqualification, or willful misrepresentation or fraud, is counted in its entirety as available to the remaining household members per 7 C.F.R. § 273.11(c)(1)(i). The worker does not prorate utility, medical, dependent care, child support expenses, and/or excess shelter deductions.

Per OAC 340:50-5-10.1, disqualified household members are those excluded for:

(A) committing an intentional program violation per Oklahoma Administrative Code (OAC) 340:50-5-7 or 340:50-15-25;

(B) meeting fleeing felon criteria per OAC 340:50-5-10.1; or

(C) being a probation or parole violator per OAC 340:50-5-10.1.

(2) ~~Income of persons disqualified for reasons other than willful misrepresentation, a fleeing felon disqualification, or failure to comply with E&T Program requirements.~~ **Ineligible household members.** The worker prorates the income of persons disqualified for reasons other than those stated in (1) of this subsection ineligible household members among all household members per 7 C.F.R. § 273.11(c)(2)(ii).

(A) Per OAC 340:50-5-10.1, ineligible household members are those excluded because they do not meet a program requirement, such as:

(i) failure to obtain or refusal to provide a Social Security number per OAC 340:50-5-68;

(ii) not being a citizen or qualified alien per OAC 340:50-5-67; or

(iii) being an able-bodied adult without dependents and not meeting work requirements per OAC 340:50-5-64.

(B) ~~A~~The worker counts a pro rata share of the ineligible household member's income of a disqualified person is considered as income available to the remaining members. ~~The worker calculates the pro rata share~~ by first subtracting the allowable income exclusions per OAC 340:50-7-22 from the disqualified ineligible member's income and dividing the income evenly among the eligible household members, including and the disqualified ineligible member.

(BC) The worker counts all but the disqualified ineligible member's share as income available to the remaining household members. The earned income deduction, per OAC 340:50-7-31 and DHS Appendix C-3, Maximum Food Benefit Allotments and Standards for Income and Deductions, applies to the prorated income attributed to the household when it was earned by the disqualified ineligible member.

(CD) The portion of the household's allowable shelter, child support, and dependent care expenses paid by or billed to the disqualified ineligible member is divided evenly among the household members, including the disqualified ineligible member. All but the disqualified ineligible member's share is considered a deductible shelter expense for the remaining household members, with the exception of utility expenses per 7 § C.F.R. 273.9(d)(6)(iii)(F). When the household is responsible for utility expenses, the household is allowed the full utility standard for which it qualifies per OAC 340:50-7-31.

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~~(E)~~ The portion of the household's allowable shelter, child support, and dependent care expenses paid by or billed to the ~~disqualified ineligible~~ member is divided evenly among the household members, including the ~~disqualified ineligible~~ member. All but the ~~disqualified ineligible~~ member's share is considered a deductible shelter expense for the remaining household members, with the exception of utility expenses per 7 C.F.R. ~~§ C.F.R.~~ 273.9(d)(6)(iii)(F). When the household is responsible for utility expenses, the household is allowed the full utility standard for which it qualifies per OAC 340:50-7-31.

~~(3) **Determining eligibility and benefit level.** The worker does not consider the needs of a disqualified or ineligible household member when determining the household's size for purposes of assigning a benefit level to the household or comparing the household's monthly income with the income eligibility standard per 7 § C.F.R. 273.11(e)(2)(iv).~~

340:50-7-30. Self-employed households

(a) **Person considered self-employed.** A person is considered self-employed when:

- (1) he or she declares himself or herself to be self-employed;
- (2) there is an employer/employee relationship and the employer does not withhold income taxes or Federal Insurance Contributions Act (FICA), even ~~if~~when required by law to do so; or
- (3) the employer withholds taxes and the person provides proof he or she files taxes as self-employed.

(b) **Self-employment income.** Self-employment income received by household members whose income is derived from a self-employment enterprise owned solely or in part by the household member or when the household member works for an employer, but is considered self-employed per (a) of this Section, ~~are~~is treated per the ~~procedures listed in paragraphs (1) through (10) of this subsection.~~

(1) **Capital gains.** The worker counts as income the proceeds from the sale of capital goods or equipment and calculates it in the same manner as a capital gain for federal income tax purposes. Even though a percentage of the proceeds from the sale of capital goods or equipment are taxed for federal income tax purposes, the worker counts the full amount of capital gain as income.

(2) **Profit sharing.** Households who operate S corporations, general or limited partnerships, or limited liability companies may receive profit sharing that is reported on the household's personal income tax return. When a household member:

- (A) actively participates in the operations, the income from profit sharing is considered part of the household's self-employed earned income; or
- (B) does not actively participate in the operations, the income from profit sharing is considered part of the household's unearned income.

(3) **Self-employed farm income.** To be considered a self-employed farmer, the farmer must receive or anticipate receiving annual gross proceeds of \$1,000 or more from the farming enterprise.

(A) Farming is defined as cultivating or operating a farm for profit either as owner or tenant.

(B) A farm includes stock, dairy, poultry, fish, fruit, ~~and~~ truck farms, ~~and~~or plantations, ranches, ranges, ~~and~~or orchards.

(i) A fish farm is an area where fish are grown or raised, ~~and where they are~~ artificially fed, protected, and cared for, and does not include an area where they are only caught or harvested.

(ii) A plant nursery is a farm for purposes of this definition.

~~(C) A loss of income for a self-employed farmer cannot be used to offset~~Per Section 273.11(a)(2)(ii) of Title 7 of the Code of Federal Regulations (7 C.F.R. § 273.11(a)(2)(ii)), when the cost of producing self-employment farm income from other household ~~exceeds~~ the income. ~~When a self-employed farmer reports a loss instead of a profit on the business received, the worker does not deduct the loss from~~offsets the losses ~~against other countable household income by:~~

(i) first offsetting the losses against other self-employment income; and

(ii) then offsetting any remaining farm self-employment losses against the total amount of earned and unearned income received by the household after applying the earned income deduction per Oklahoma Administrative Code (OAC) 340:50-7-31(a)(2).

(4) **Monthly self-employment income.** Self-employment income received on a monthly basis, ~~but which that~~ represents a household's annual support, is normally averaged over a 12-month period. ~~if~~When the averaged amount does not accurately reflect the household's actual monthly circumstances because the household ~~has~~ experienced a substantial increase or decrease in business, the worker calculates the self-employment income based on anticipated earnings.

(5) **Seasonal self-employment income.** Self-employment income intended to meet the household's needs for only part of the year is averaged over the period of time it is intended to cover. For example, the income of self-employed vendors who work only in the summer and supplement their income from other sources during the balance of the year is averaged over the summer months rather than a 12-month period.

(6) **Annualized self-employment income.** Self-employment income ~~which that~~ represents a household's annual support must be annualized over a 12-month period, even ~~if~~when the income is received in a shorter period of time. For example, self-employment income received by crop farmers must be averaged over a 12-month period ~~if~~when the income represents the farmer's annual support.

(A) When the household's self-employment income has been received for less than a year, the

income must be averaged over the period of time received and the monthly amount projected for the coming year.

(B) When the household's self-employment income has been received for a short time and there is insufficient data to make a reasonable income projection, the worker does not consider income from this source until the benefit renewal or certification renewal month. At benefit renewal or certification renewal, the worker averages the income over the number of months received until a full year's information is available.

(7) **Determining net monthly annualized self-employment income.** When the household has business expenses associated with its self-employment income, the business expenses must be deducted before determining ~~whether~~^{if} the household meets the maximum gross income standards ~~shown on~~^{shown on} Oklahoma Department of Human Services (~~OKDHS~~)(DHS) Appendix C-3, Maximum Food Benefit Allotments and Standards for Income and Deductions. When the household does not have business expenses, the gross self-employment income is used.

(A) When the household ~~has~~ filed an income tax return on its self-employment income for the most recent year, the worker uses the ~~net~~^{gross} self-employment income shown on the income tax return, subtracts 50 percent of the income for claimed business expenses, and divides the net self-employment income by the number of months to be averaged per 7 C.F.R. § 273.11(b)(3)(iv).

(B) When the household did not file an income tax return on its self-employment income for the most recent year, the worker uses (i) through (iii) of this subparagraph to determine the net monthly self-employment income.

(i) The worker computes gross self-employment income, including capital gains, using the household's self-employment business records or employer records, ~~if~~^{when} applicable.

(ii) ~~If~~^{When} the household declares incurred business expenses, the worker subtracts 50% percent of the gross self-employment income as business expenses per 7 C.F.R. § 273.11(b)(3)(iv). ~~If~~^{When} the household did not incur business expenses, a business expense deduction is not given.

(iii) The worker then divides the net self-employment income by the number of months to be averaged.

(C) The worker adds monthly net self-employment income to all other earned income received by the household. When the household reports a loss instead of a profit on the business, the worker does not deduct the loss from other household income.

(i) The worker adds the total monthly earned income, less the earned income deduction ~~according to OKDHS~~^{per DHS} Appendix C-3 to all other monthly income received by the household.

(ii) The worker subtracts the standard deduction, dependent care, and shelter costs as for any other household per OAC 340:50-7-31 to determine the monthly net income of the household.

(8) **Anticipated income.** When a household who would normally have the self-employment income annualized experiences a substantial increase or decrease in income, the worker does not calculate self-employment income on the basis of prior earnings, such as income tax returns. Instead, the worker calculates the self-employment income using only the income that can reasonably be anticipated to project future earnings. The worker uses procedures in (b)(7)(B) and (C) of this Section to determine net monthly self-employment income.

(9) **Household with income from boarders.** A household that operates a commercial boarding house may be considered a food benefit household and self-employed ~~as shown in paragraph~~^{per} (7) of this subsection. A household with boarders or roomers that is not a commercial boarding house may receive food benefits ~~as shown in subparagraphs~~^{per} (A) through (C) of this paragraph.

(A) The worker excludes a person paying a reasonable amount for room and board from the household and counts payments from the boarder as self-employment income when determining the household's eligibility and benefit level.

(i) The income from a boarder includes all direct payments to the household for room and meals, including contributions to the household for part of the household shelter expense.

(ii) The worker does not count expenses paid directly by a boarder to someone outside the household as income to the household.

(B) The worker excludes 50% percent of the boarder payment as the cost of doing business.

(C) The worker includes the net income from self-employment with other earned income minus the earned income deduction.

(i) The worker computes the shelter cost incurred by the household, even ~~if~~^{when} the boarder contributes part of the shelter expense, to determine if the household qualifies for a shelter deduction.

(ii) The shelter and utility cost must not include any expense billed to and directly paid by the boarder to a third party.

(10) **Income from rental property.** The worker considers income received from rental property as self-employment income.

(A) The worker treats rental income as earned income ~~if~~^{when} a member of the household actively manages the property an average of at least 20 hours per week.

(B) When a household member does not actively manage the property at least 20 hours each week, the worker considers the income as unearned. The person is eligible for business expenses ~~described at paragraph~~^{per} (7) of this ~~Section~~^{subsection}.

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340:50-7-31. Deductions

(a) **Deductible expenses.** Per, Households are allowed certain deductible expenses from income as described in (1) through (6) of this subsection and per 273.9(d) of Title 7 of the Code of Federal Regulations (7 C.F.R. § 273.9(d)). The household reports current medical, dependent care, legally-binding child support, and shelter expenses at certification, mid-certification renewal, and certification renewal. The household must also report current shelter costs when the household moves.

(1) **Standard deduction.** All households are allowed a standard deduction per Oklahoma Department of Human Services (DHS) Appendix C-3, Maximum Food Benefits Allotments and Standards for Income and Deductions.

(2) **Earned income deduction.** Households with earned income are allowed an earned income deduction per DHS Appendix C-3 to cover the cost of state and local income taxes, pensions, union dues, and work related expenses. Refer to Oklahoma Administrative Code (OAC) 340:50-7-30 for information regarding business expenses for self-employed persons.

(3) **Medical expense deduction.** A medical expense deduction is only allowed for household members meeting the definition of elderly or disabled per OAC 340:50-5-4. For these household members, medical expenses exceeding \$35 per month are deductible when verified. The \$35 is subtracted from medical expenses once per household, not per person, when the household has more than one elderly or disabled member.

(A) **Allowable medical expenses.** Allowable medical expenses must be prescribed or approved by a state licensed or qualified practitioner and include:

- (i) medical and dental care, including psychotherapy and rehabilitation services provided by a licensed practitioner or other qualified health professional authorized by state law;
- (ii) hospitalization or outpatient treatment, nursing care, and nursing home care, including payments by the household for a person who was a household member immediately prior to entering a hospital or nursing home provided by a facility recognized by the state;
- (iii) prescription drugs and other over-the-counter medication,—including insulin, when approved by a licensed practitioner or other qualified health professional authorized by state law. Costs of medical supplies, sick-room equipment, including rentals, or other prescribed equipment are also included;
- (iv) health, dental, and hospitalization policy premiums;
- (v) Medicare premiums and any cost-sharing or spend-down expenses incurred by Medicare or SoonerCare (Medicaid) recipients;
- (vi) dentures, hearing aids, and prosthetics;
- (vii) eye glasses prescribed by a licensed practitioner, ~~and securing and maintaining a seeing eye or hearing dog, including the cost of dog food and veterinarian bills;~~

(viii) reasonable cost of lodging and transportation to obtain medical treatment or services. Lodging costs are allowed when the elderly or disabled member is required to spend the night away from home to receive medical services. Reasonable transportation costs are based on the type of transportation used. When the elderly or disabled member:

- (I) uses his or her own vehicle, the state's current mileage reimbursement is allowed;
- (II) uses public transportation, the actual cost of the transportation is allowed; or
- (III) pays a non-household member for transportation, the amount charged by the person is allowed;

(ix) maintaining an attendant, homemaker, home-health aide, child care services, or housekeeper due to age, infirmity, or illness. When this expense also qualifies as a dependent care expense per (4) of this subsection, it is considered a medical expense rather than a dependent care expense. Additionally, when the household furnishes a majority of the caretaker's meals, an amount equal to one allotment is added to the medical expense for meals provided. The allotment used is the amount in effect at certification; and

(x) costs associated with all service animals specially trained to serve the needs of elderly or disabled program participants. This includes maintenance costs, such as veterinary bills, food, and other expenses for these service animals.

(B) **Medical expenses not allowed.** Expenses not allowed include:

- (i) costs associated with special diets;
- (ii) premiums for health and accident insurance policies, such as those payable in lump sum settlements for death or dismemberment;
- (iii) premiums for income maintenance policies, such as those that continue mortgage or loan payments while the beneficiary is disabled;
- (iv) items that can be purchased with food benefits, such as dietary supplements; and
- (v) the cost of meals or other incidentals when the person spends the night away from home to receive medical services.

(C) **Medical expense verification requirements.** Households are required to report and verify medical expenses at certification and certification renewal. Households are not required to report changes in medical expenses during the certification period.

(i) When a household voluntarily reports a reduction in medical expenses that will decrease the food benefit allotment, no verification is needed. However, the change requires notice of adverse action per OAC 340:50-9-5.

(ii) When a household voluntarily reports additional medical expenses that will increase the food benefit allotment, the household must verify

the additional expenses before the worker changes the medical expense deduction.

(iii) When the additional medical expenses are one-time expenses, such as hospital costs, dental expenses, or the purchase of prescription eyeglasses, the expense is only allowed when the person reports and verifies the expense before it becomes past due. When a portion of the expense will be paid by a vendor or insurance payment, the worker does not allow the expense until the amount owed by the person is verified. Once verified, the household may choose to:

(I) deduct the entire expense in the month incurred or when it becomes due;

(II) average the expense over the remaining months of the certification period; or

(III) average the expense over the scheduled length of a payment plan.

~~(iiiiv)~~ When the worker finds out about a change from a source other than the household, the change is acted on when verified upon receipt, such as when the worker is notified via data exchange of a Medicare premium change. The worker does not contact the household for additional information. When the change requires household contact for additional information or verification, the worker does not make the change.

~~(ivv)~~ When a household reports but does not verify an anticipated medical expense, the worker informs the household the expense will be allowed when the household provides verification. ~~Upon verification, a household may elect average the expense over the remaining months of the certification period or to have the expense deducted for the next effective month only.~~

~~(D) When medical expenses vary. When the household's on going medical expenses vary from month to month, the worker determines the anticipated expense amount by averaging at a minimum, the past two month's expenses.~~

(4) **Dependent care.** Dependent care is payment for the actual cost for the care of a child or other dependent when necessary for a household member to seek, accept, or continue employment or to attend training or education preparatory to employment.

(A) The deduction applies regardless of whether the household member is subject to the Supplemental Nutrition Assistance Program Employment and Training requirements.

(B) When the expense also qualifies as a medical expense, it is considered a medical expense rather than a dependent care expense.

(C) There is no maximum dependent care deduction. The total reported by the client is an allowable expense as long as it meets the criteria in this Section.

(D) Dependent care is only verified when the expenses claimed actually result in a deduction and

other information available to the worker is inconsistent with the household's claim that it incurs a dependent care expense.

(5) **Legally-binding child support.** A deduction is allowed for verified legally-binding child support payments paid by a household member to or for a non-household member, including payments made to a third party on behalf of the non-household member.

(6) **Shelter costs.** A household is allowed a shelter deduction when the monthly shelter cost exceeds 50 percent of the household's income after all other deductions are allowed. The shelter deduction cannot exceed the maximum amount allowed per DHS Appendix C-3, unless the household includes an elderly or disabled member. Households with an elderly or disabled member receive an excess shelter deduction for the monthly cost exceeding 50 percent of the household's income after the deductions listed in (1) through (6) of this subsection are allowed. When the household includes a non-household member or disqualified member, refer to (b)(4) and (5) of this Section to determine whether to prorate shelter costs.

(A) **Allowable rent or mortgage costs.** Allowable rent or mortgage costs for the shelter occupied by the household include, the:

- (i) monthly rent or mortgage payment, or other continuing charges leading to the ownership of the shelter, such as loan repayments for the purchase of a mobile home, including interest on such payments;
- (ii) charge for renting or buying the land on which a mobile home is located;
- (iii) property taxes, state and local assessments, and insurance on the structure. A mobile home is taxed as part of the property tax when the land is owned or being purchased;
- (iv) personal property tax for unregistered mobile homes on rented land; or
- (v) monthly vehicle payment when a homeless household lives in the vehicle.

(B) **Expenses not considered as shelter costs.** The worker does not consider as shelter costs, the cost for:

- (i) insuring furniture or personal belongings when paid separately from the insurance on the home;
- (ii) vehicle registration or a tag for a mobile or motor home; or
- (iii) personal property tax except as allowed per (6)(A)(iv) of this subsection.

(C) **Allowable utility costs.** When the household incurs utility expenses, ~~the worker determines which of the~~ it is eligible for one of three standard utility allowances ~~applies to the household's expenses~~ based on criteria in (i) through (iii) of this subparagraph. ~~A household incurring an allowable utility expense receives the total amount of the~~ The applicable utility standard amount is specified per DHS Appendix C-3.

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(i) The standard utility allowance (SUA) is ~~a single standard~~ based on annual averages that include costs for heating or cooling; and cooking fuel, electricity, basic ~~telephone~~ service, water, sewage, and garbage. This includes households that receive Low Income Heat Energy Assistance Payments (LIHEAP).

(I) The household is eligible for the SUA when the household is billed for heating or cooling during the year. Households billed less often than monthly for heating costs, such as butane or propane may continue to use the utility standard between billing months.

(II) When a household reports they no longer incur a heating or cooling expense, but still have a utility expense, the standard must be changed to the basic utility allowance (BUA) or telephone standard.

(III) When a household's heating or cooling expenses are partially reimbursed or paid by an excluded payment, such as a vendor payment, Housing and Urban Development (HUD), or Farmers Home Administration (FmHA) payment, the household remains eligible for the SUA.

(ii) The BUA includes utility charges the household incurs other than for heating and/or cooling, such as cooking fuel, water, sewage, garbage collection, and basic ~~telephone~~ service.

(iii) The telephone standard is used when the household is not entitled to use the SUA or BUA, but has a ~~telephone~~ cost.

(D) **When shelter costs for an unoccupied home are allowed.** Shelter costs for an unoccupied home may be allowable when the household; is temporarily away from home because of; illness, a disaster or casualty loss to the home, or to attend an employment or training opportunity.

(i) For the cost of a vacated home to be included in shelter costs the:

(I) household must intend to return to the home;

(II) current occupants of the home, if any, must not claim the shelter costs during the household's absence; and

(III) home must not be rented or leased during the household's absence.

(ii) A household that has ~~both~~ an occupied home and an unoccupied home is only allowed one standard utility deduction.

(b) **Expense calculation.** The worker calculates a household's expenses based on the expenses the household expects to be billed for during the certification period. The worker anticipates expenses based on the most recent month's bills unless the household is reasonably certain a change will occur.

(1) **Billing fluctuations.** The household may elect to average expenses when the billed amount fluctuates

monthly, is billed less often than monthly, or as in the case of some medical expenses, the expense changes throughout the certification period.

(2) **When expenses are owed but not paid.** The household is allowed a deduction in the month the expense is billed or otherwise becomes due, regardless of when the household intends to pay the expense. A particular expense may be deducted only once.

(3) **Reimbursed expenses.** The portion of an expense paid by an excluded reimbursement or vendor payment is not deductible. The amount left after deducting the excluded payment is deductible and includes HUD and FmHA rent and utility payments. Expenses are only deductible when the service is provided by someone outside of the household and the household makes a monetary payment for the service.

(4) **One-time expenses.** The household may choose to average one-time expenses over the entire certification period in which they are billed per 7 C.F.R. § 273.10(d)(3). When the household reports a one-time expense during the certification period, the household may choose to:

(A) deduct the entire expense for the next effective month; or

(B) average the expense over the remaining months in the certification period beginning with the next effective month. When the household is certified for 24 months and the one-time expense was incurred in the:

(i) first 12 months of the certification period, the household may elect to deduct the expense in one month, average the expense over the remaining months in the first 12 months of the certification period or average the expense over the remaining months in the certification period;

(ii) the second 12 months of the certification period, the household may elect to have the expense deducted in one month or averaged over the remaining months in the certification period.

(5) **When the household includes a disqualified household member.** When the household includes a disqualified household member per OAC 340:50-5-10.1 ~~expense calculation depends on the disqualification reason.~~

~~(A) Disqualification for failure to comply with food benefit Employment and Training (E&T) Program requirements, a fleeing felon disqualification, or willful misrepresentation or fraud.~~

~~When the household member is disqualified because of failure to comply with food benefit E&T Program requirements, a fleeing felon disqualification, or willful misrepresentation or fraud, the remaining household members are eligible for all allowable income deductions. The worker does not prorate allowable deductions because the disqualified member's income is counted in its entirety per OAC 340:50-7-29(d).~~

~~(B) Disqualification for other reasons~~**When the household includes an ineligible household member.** ~~When the household member is disqualified for a reason~~

other than those included in (A) of this paragraph includes an ineligible household member per OAC 340:50-5-10.1, the worker prorates the allowable deductions evenly between the household members, including the disqualified ineligible member. The remaining household members are not eligible for the disqualified member's portion of the expenses, except for utility expenses because the disqualified ineligible member's income is also prorated per OAC 340:50-7-29(d). When the household is responsible for utility expenses, the household is allowed the full utility standard deduction for which it qualifies per Oklahoma Administrative Code OAC 340:50-7-31(a)(6)(C).

(57) **When the household includes a non-household member.** When the household shares deductible expenses with a non-household member, the worker only deducts the amount the household actually pays or contributes toward household expenses with the exception of the utility expenses. When the household pays part of the utility expenses, the household is allowed the full utility standard deduction for which it qualifies per OAC 340:50-7-31(a)(6)(C). When the payments or contributions cannot be differentiated, the worker prorates the expenses evenly among persons actually paying or contributing to the expense and deducts only the household's pro rata share with the exception of the utility expenses.

PART 5. DETERMINATION OF INCOME

340:50-7-45. Income

(a) The methods in this Part are used to estimate income. The worker uses the method(s) that will best predict income for the current and future months. Actual income is used for the current and prior month, if known prior to teleprocessing the certification. When an extra check is received in the initial month due to a third or fifth week and the income is ongoing, it is converted to anticipated income. In the month of application, the anticipated income may be less than a full month's wages. In this case, use the actual or actual anticipated income for the month of application. For the remaining months of the certification period, the income is averaged and converted to a monthly amount to be used. If the household income is received more often than monthly, the income for future months of the certification period must be converted to a monthly amount, if the conversion represents the income anticipated to be received by the household.

(b) **Household income.** Household The worker counts all income means income from all sources excluding only those items described in OAC 340:50-7-22. The income considered is that income which is expected to be received the household expects to receive during the certification period of certification except for income sources excluded per Oklahoma Administrative Code (OAC) 340:50-7-22. When an applicant or recipient reports no income and/or the household's expenses such as rent or mortgage, utilities, other payments, or miscellaneous personal expenses exceed the income, the worker must determine with the household how these needs are met.

(eb) **Income verification.** Gross The worker verifies the gross, non-exempt income is verified for all households prior to certification. In cases where When all attempts to verify income have been are unsuccessful because the person or organization providing the income fails to cooperate with the household, the worker determines the amount to be used calculates income based on the best available information.

(1) **Method of verifying income.** The worker uses documentary evidence as the primary source of verification per Section 273.2(f) of Title 7 of the Code of Federal Regulations. If other types of verification are used, the worker must document in the case why an alternate source was needed. Documentary evidence consists of a written confirmation of a household's circumstances. The household has primary responsibility for providing documentary evidence. The worker must assist the household when requested, when the household is willing, but unable to obtain the documentary evidence.

(A) Documents which can be used to that verify earned income include, but are not limited to:

- (i) pay stubs;
- (ii) employee W-2 forms;
- (iii) wage tax receipts;
- (iv) state or federal income tax returns;
- (v) self-employed bookkeeping credits;
- (vi) sales or expenditure records;
- (vii) employer wage records;
- (viii) statements from an employer;
- (ix) Oklahoma Employment Security Commission (OESC) statements; or
- (x) Oklahoma Tax Commission statements.

(B) Verification of other types of Documents that verify unearned income, documents, or records generally available from the applicant include, but are not limited to:

- (i) award letters;
- (ii) benefit payment checks;
- (iii) correspondence on benefits;
- (iv) income tax records;
- (v) support and alimony payments as evidenced by court order;
- (vi) divorce or separation papers; or
- (vii) contribution checks.

(C) Other Alternate income verification sources of income verification include, but are not limited to:

- (i) State Data Exchange (SDX) system screens;
- (ii) Beneficiary and Earnings Data Exchange (BENDEX) system screens;
- (iii) OESC wage records and unemployment compensation screens;
- (iv) union records;
- (v) workers' compensation records;
- (vi) information received from the Department of Veterans Affairs records; or
- (vii) tax records.

(2) **Unreported income.** When there is an indication other income which has not been reported is available

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~~to the household, the~~The worker must exploreexplores the possibilitiespossibility of unreported income when situations described in this subsection occur.

~~(A) When the applicant states he or she has no earnings or other income and~~The household may have unreported income when:

~~(i) the applicant or recipient is employable and does not report earnings;~~

~~(ii) the household reports zero income;~~

~~(iii) the household reports household expenses, paid or unpaid that exceeds the amount of income reported. Household expenses may include rent or mortgage payments, utility payments, car payment, or other personal expenses;~~

~~(iv) it appears he or she a household member may be eligible for other benefits, such as Social Security, Supplemental Security Income (SSI), unemployment compensation, or public assistance, it may be necessary to verify the applicant is not receiving income from such sources; or~~

~~(v) other questionable situations occur.~~

~~(3B) Other required verification. When verifying income is exempt as a loan~~the household states someone is loaning the household money to meet expenses, a simple statement signed by both parties which indicates indicating the payment is a loan and must be repaid is sufficient verification. ~~If~~When the household states it receives paymentloans on a recurrent or regular basis from the same source, ~~but claims the payments are a loan, the worker must require the provider of the loan must sign a~~ notarized affidavit which states that states the payments are being madeloans that must be repaid or that payments will be made in accordance with an established repayment schedule.

340:50-7-46. Converting to monthly income

(a) **Converting income.** When a full month's income is anticipated but is receivedthe household receives income more often than monthly, the worker converts the income is converted to a monthly amount as indicated in (1) through (5) of this subsection. When the amounts to be converted differ, such as fluctuating daily, weekly, or biweekly amounts, ~~an average is obtained and the average is multiplied by 4.3 or 2.15 whichever is applicable~~the worker averages the income per (c) of this Section. ~~Cents are carried~~The worker carries cents through all steps and then ~~rounded~~rounds the monthly income amount to the nearest dollar when the monthly amount is determined. ~~One with one cent through 49 cents are rounded down and 50 cents through 99 cents are rounded up. The worker must exercise extreme caution when determining whether income is received twice per month or biweekly, every two weeks.~~

(1) **Daily. Income**The worker converts income received on a daily basis is ~~converted~~ to a weekly amount, ~~then multiplied by 4.3 only when~~When there is a consistency in days worked each week and a regularity of pay dates, the worker multiplies the weekly income

by 4.3. When there is no consistency, refer to (5) of this subsection for irregular income processing.

(2) **Weekly. Income**The worker multiplies income received weekly is multiplied by 4.3.

(3) **Twice a month. Income**The worker multiplies income received twice a month is multiplied by 2.

(4) **Biweekly. Income**The worker multiplies income received every two weeks is multiplied by 2.15.

(5) **Irregular income. Income**The worker does not convert income received at irregular intervals is ~~not converted~~by 4.3, 2, or 2.15, when there is no consistency in the work offered or when pay is received. Instead, the worker adds all irregular income received in the calendar month together to arrive at a monthly average. When more than one month of irregular income is available, the worker totals the income and divides it by the number of months used.

(b) **Anticipating income.** For the purpose of determining the household's eligibility and monthly benefit allotment, the worker takes into account the income already received by the household and any anticipated income the household ~~can be~~is reasonably certain to receive during the certification period per Section 273.10(c)(1) of Title 7 of the Code of Federal Regulations (7 C.F.R. § 273.10).

(1) **Application month income.** In the application month of application, the household's anticipated income may be less than a full month's wages. In this case, ~~use~~the worker uses actual or actual anticipated income for the month of application. When the person receives an extra paycheck in the application month due to a third or fifth week and the income is ongoing, the worker converts the income to anticipated income for the application month. For the remaining months of the certification period, the worker averages and converts the income to a monthly amount.

~~(2) Uncertain income. If~~The worker does not count income when the date and amount of income that will to be received or when it will be received is uncertain, ~~that portion of the household's income is not counted. For example,~~Examples of uncertain income include, when a household's anticipated income is from a new source, such as a new job, and the date and amount of the first paycheck is not known or when a household member recently applied for public assistance, or unemployment benefits, may be uncertain as to the time and the amount of and does not know if or when the initial payment may be made.

(A) The worker does not consider the anticipated payment is ~~not considered~~unless there is reasonable certainty concerning the month the payment will be received and the amount of the payment.

(B) The payment is disregarded if there is no way to determine the amount of the payment.

~~(C) If the exact amount of the~~When some, but not all, household income is not known, ~~that~~the portion of it which that can be anticipated with reasonable certainty must be considered as income.

~~(DC)~~ In cases where the receipt of income is When the worker can reasonably anticipate income receipt, but the monthly amount may fluctuate, the household worker may elect to have their average the income averaged per (c) of this Section.

~~(ED)~~ Households are advised to report all changes in gross monthly income as required.

(23) **Income received in the past 30-calendar days.** Income received during the past 30-calendar days may be used as an indicator of income anticipated to be available to the household during the next certification period. Past income is not used to anticipate future income for any month in which an income change in income has occurred, can be anticipated, or employment has terminated.

(34) **Regular employment.** When the head of the household or other members of the household have regular employment, income from previous months is usually a good indicator of the amount of income that can be anticipated into anticipate for the application month of application and subsequent months. If information supplied by ~~When~~ the household or collateral contact indicates that supplies information indicating future income will differ substantially from the previous month's income, the worker uses the information to make a reasonable estimate of the anticipated income. The method used to determine the income is fully documented in the case record.

(45) **Withheld wages.** Wages withheld at the request of the employee are considered income to the household in the month the wages would otherwise be paid by the employer. Wages withheld by the employer as a general practice, even if when in violation of the law, are not counted as income to the household; unless the household anticipates that it will ask for and receive an advance, or the household anticipates that it will receive income from previously held wages. Advances on wages are counted as income when they can be reasonably anticipated.

(c) **Averaging income.** Households, except for destitute and migrant or seasonal farm worker households, may have their income averaged per 7 C.F.R. § 27310(c)(3). To determine the household's eligibility, the worker adds all other income is added to this the averaged monthly income then the and subtracts applicable income exclusions and deductions are applied in the normal manner.

(1) **Fluctuating income.** Households with fluctuating income may elect to have the income averaged.

(A) If When the household indicates the most recent 30-calendar days income is representative of anticipated future earnings, it is appropriate to use the worker uses this income for computing to compute gross monthly income.

(B) When the household indicates the most recent 30-calendar days of income is not representative of anticipated future income, the worker uses averages additional months of income to arrive at compute a representative anticipated monthly gross income.

(C) Income that is received more often than monthly is converted to a monthly income prior to

determining a monthly average. The number of months used to arrive at the average income need not be the same as the number of months in the certification period. For example, if fluctuating income for the past 30-calendar days and the month of application are known and, with reasonable certainty, are representative of the income fluctuations anticipated for the coming months, the income for the two months may be averaged and projected over the certification period.

(2) **Employment contract and self-employment.** ~~Households which~~ When households derive their annual income by contract or self-employment derive their annual income in a period of time shorter than one year, must have that the worker annualizes the income annualized over a 12-month period, provided the income from the contract is not received on an hourly or piece work basis. These households may include school employees, sharecroppers, farmers, and other self-employed households. These provisions do not apply to migrant or seasonal farm workers or to contracted employees who receive income on an hourly or piece work basis.

(d) **SSA/SSI Income from the Social Security Administration (SSA).** When using the Beneficiary and Earnings Data Exchange System (BENDEX) or the State Data Exchange System (System) (SDX) to verify Social Security (SSA) benefits or Supplemental Security Income (SSI), see OAC 340:65-3-4 the worker drops any cents from the gross benefit amount.

SUBCHAPTER 9. ELIGIBILITY AND BENEFIT DETERMINATION PROCEDURES

340:50-9-1. Determining the food benefit allotment

(a) **Cases with unverified deductible expenses.**

(1) **Food benefits without deductions.** ~~If When~~ a deductible expense that must be verified per Oklahoma Administrative Code (OAC) 340:50-7-31 cannot be verified before within the 30-day processing standard for applications expires, the worker determines the household's benefit level without giving a deduction for the claimed, but unverified expense. If the household:

(A) is eligible without allowing the expense, an allotment that does not reflect deduction of the expense is approved within 30 calendar days after the application is filed; or

(B) chooses to claim expenses for an unoccupied home, the worker verifies the household's utility expenses for the unoccupied home and uses the appropriate utility standard.

(2) **Benefits delayed When the household is ineligible unless deductible expense is allowed.** ~~If When~~ a deductible expense cannot be verified before the 30-day processing standard for applications expires and the household is ineligible unless the expense is allowed, the household worker:

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~~(A) denies the application is held pending or denied on the 30th day when the worker gave the household at least 10-calendar days to verify the expense;~~
~~or~~

~~(B) delays making a decision until the 10-calendar day verification period expires.~~

(b) **Determining household eligibility.** ~~The worker determines the household's eligibility based on gross or net monthly income standards per (3) or (4) of this subsection unless the household is considered a categorically eligible household per OAC 340:50-11-113(a) and (2) of this subsection. When changes in household composition or other circumstances occur, households certified under gross income standards may become subject to net income standards during the certification period or vice versa. The worker is required to change one changes the income standard to the other when any change is made making other changes to adjust the household's eligibility, benefit level, or certification period, or at certification renewal, whichever is earlier.~~

(1) Income and expense calculation. ~~The worker calculates the household's gross income before subtracting deductible expenses to arrive at the net monthly income for the household.~~

~~(A) In calculating net monthly income, cents are used in determining. The worker calculates each source of each person's monthly gross income and the household's monthly dependent care, shelter, legally binding child support payments, or medical expense. When the monthly amount of each person's source of income or each of the household's expenses is established, and at all other steps of the net income computation separately for each person, using dollars and cents, and then rounds cents are rounded to the nearest dollar. The worker rounds one cent through 49 cents down and 50 cents through 99 cents up.~~

~~(B) Due to changes in household composition or circumstances, households certified under gross income standards may become subject to net income standards during the certification period or vice versa. The worker is required to change one income standard to the other when any change is made to adjust the household's eligibility, benefit level, or certification period, or at certification renewal, whichever is earlier. The worker uses the same rounding method for each deductible expense. Deductible expenses are subtracted from gross income to arrive at the net monthly household income. Deductible expenses may include dependent care, shelter, legally-binding child support payments, or medical expenses.~~

(2) Categorically eligible households. ~~Per Section 273.2(j) of Title 7 of the Code of Federal Regulations (7 C.F.R § 273.2) and OAC 340:50-11-113(a), categorically eligible households in which all household members receive Temporary Assistance for Needy Families (TANF) or Supplemental Security Income (SSI) are not subject to the gross or net income standards per (3) or (4) of this subsection.~~

~~(+3) Households without elderly or disabled members. If the household does not include an elderly or disabled member, and are not considered categorically eligible per (2) of this subsection are not eligible for food benefits when the household's total gross monthly income and household size are the first basis for determining eligibility exceeds the gross monthly income standard by household size on Table I of the Oklahoma Department of Human Services (DHS) Appendix C-3, Maximum Food Benefit Allotments and Standards for Income and Deductions. The household is not eligible if the total gross income exceeds the Maximum Gross Income Standard for the appropriate household size as shown on Oklahoma Department of Human Services (OKDHS) Appendix C-3, Maximum Food Benefit Allotments and Standards for Income and Deductions. After meets the gross income standard and non-financial conditions of eligibility are established per OAC 340:50-5, the worker computes the household's net food benefit monthly income is computed and compared to the Maximum Net Income Standard for the appropriate household size as shown on OKDHS Appendix C-3 to determine eligibility. If When the net food benefit income does not exceed this standard the net income by household size on the food benefit allotment chart on the Appendix C-3, the household is determined eligible. The worker follows steps in (A) through (H) are used to determine the household's net food benefit monthly income.~~

~~(A) Add gross monthly income earned by all household members per (1) of this subsection including any net self-employment income minus the earned income exclusions per OAC 340:50-7-30 to determine the household's total gross earned income.~~

~~(B) Multiply the total gross earned income by Subtract the appropriate earned income deduction according to the OKDHS per DHS Appendix C-3 and subtract that amount to determine the net monthly earned income. The household is not eligible for the earned income deduction is not allowed on any portion of income earned under a work supplementation or support program that is attributable to public assistance.~~

~~(C) Add the net monthly earned income and the total monthly unearned income of all household members, minus income exclusions per OAC 340:50-7-22.~~

~~(D) Subtract the standard deduction as shown in OKDHS per Appendix C-3.~~

~~(E) Subtract monthly dependent care expenses. A dependent care deduction cannot be is not allowed for when dependent care expenses which are reimbursed or paid for under an employment and training (E&T) program or other source.~~

~~(F) Subtract verified legally-binding child support payments made to someone outside the food benefit household.~~

~~(G) Add together the allowable shelter expenses, including the appropriate utility standard, to determine the household's total shelter costs. Subtract~~

from the total shelter costs 50% percent of the adjusted income, the household's monthly income after all of the deductions given in subparagraphs (A) through (F) of this paragraph have been are subtracted. The remaining amount, if any, is the excess shelter costs. ~~If~~When there are no excess shelter costs, the net monthly income has been is determined. ~~If~~When there are excess shelter costs, proceed to the next step. (H) ~~To apply the excess shelter costs, subtract excess shelter costs from the adjusted income if the total of excess shelter costs does not exceed the maximum shown in OKDHS Appendix C-3.~~IfWhen the total of the shelter costs exceeds exceed the standard maximum shelter cost deduction shown in ~~OKDHS~~DHS Appendix C-3, only the amount not exceeding the standard maximum shelter cost deduction is deducted.

(24) Households with an elderly or disabled member.

When a household that includes an elderly or disabled member meets the non-financial conditions of eligibility per OAC 340:50-5, the household's net food benefit monthly income, and household size are the basis for determining eligibility. The worker compares the household's net food benefit monthly income is compared to the Maximum Net Income Standards for the appropriate household size as shown on ~~OKDHS~~Table II of Appendix C-3. ~~If~~When the net food benefit income does not exceed this standard, the household is determined eligible. The worker follows steps listed in (A) through (D)(H) of this paragraph are used to determine the household's net food benefit income if the household includes an elderly or disabled member.

(A) Add gross monthly income earned by all household members per (1) of this subsection including any net self-employment income minus the earned income exclusions per procedures at OAC 340:50-7-30, to determine the household's total gross earned income.

(B) ~~Multiply the total gross earned income by~~Subtract the appropriate earned income deduction from ~~OKDHS~~per DHS Appendix C-3 and subtract that amount to determine the net monthly earned income. The household is not eligible for the earned income deduction is not allowed on any portion of income earned under a work supplementation or support program that is attributable to public assistance.

(C) Add the net monthly earned income and the total monthly unearned income of all household members, minus income exclusions per OAC 340:50-7-22.

(D) Subtract the standard deduction as shown in ~~OKDHS~~DHS Appendix C-3.

(E) Subtract medical expenses that exceed \$35 for elderly or disabled household members only. ~~Thirty five dollars is subtracted~~The worker subtracts the \$35 only once for the household rather than for each household member.

(F) Subtract monthly dependent care expenses. A dependent care deduction cannot be is not allowed

~~for~~when dependent care expenses that are reimbursed or paid for under an E&T program or other source.

(G) Subtract verified legally-binding child support payments made to someone outside the food benefit household.

(H) Add together the allowable shelter expenses, including the appropriate utility standard, to determine the household's total shelter costs. Subtract from the total shelter costs 50% percent of the adjusted income, the household's monthly income after all of the deductions in (A) through (G) of this paragraph have been are subtracted. The remaining amount, if any, is the excess shelter costs.

(i) ~~If~~When there are no excess shelter costs, the net monthly income has been is determined.

(ii) ~~If~~When there are excess shelter costs, go to the next step.

~~(I) To apply the excess shelter costs, subtract excess shelter costs from the adjusted income to determine the net monthly income.~~

(c) Food benefit allotment.

(1) Initial month proration.

(A) Initial month means the first month the household is certified for food benefits following any period during which the household was not certified. Food benefit allotments for an initial month are prorated from the date of application.

(i) ~~Proration of benefits from the application date applies to the new case if one food benefit household separates into two or more food benefit households.~~

(ii) Migrant and seasonal farm worker's food benefits are not prorated when the household has received food benefits in the prior month.

(iii) For the initial month, the worker considers the household's circumstances for the entire application month of application, even though the food benefit allotment is based on the day of the month the household applies for benefits.

(iv) Per OAC 340:65-3-5(4)(5), Temporary Assistance for Needy Families (TANF) cash assistance payments are also prorated from the application date of application. When the worker certifies the household for TANF and food benefits for the same month, the worker uses ~~OKDHS~~DHS Appendix B, Prorated TANF and Food Benefits: Proration Benefit Payment Form, or the formula: (31 minus the application date) x monthly benefit divided by 30 to determine TANF countable income for the initial month.

(B) The prorated benefit is rounded down to the lower dollar. ~~If~~When the answer prorated food benefit is less than \$10, the household is denied worker denies food benefits for the application month of application but certified and certifies the household for the next month. ~~If the household applies on the 31st day of the month, use the 30th for the application date for purposes of this provision.~~Households that apply

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~~after the 15th of the month are issued the prorated benefits for the month of application and the benefits for the first full future month on the same day.~~

(C) When the worker certifies the household for the month following the month of initial application because the household failed to furnish necessary information, the worker:

- (i) changes the application date to the date the household furnishes the information to DHS; and
- (ii) prorates benefits are prorated from the new application date the household furnished the information. The application date becomes the date information was furnished to OKDHS.

(2) **Monthly benefit.** The monthly benefit for all months except the initial month is the ~~amount~~ food benefit allotment listed on ~~OKDHS~~ DHS Appendix C-3 for the appropriate household size and net income.

(d) **Certification periods.** ~~Definite~~ Certification periods are established for each eligible household to receive benefits. ~~At the of each~~ When the certification period ends, entitlement to food benefits is established based upon a newly completed the household must complete a new application, an interview be interviewed, and provide required verification ~~provided~~ per OAC 340:50-3-2 and 340:50-3-3, before the worker determines continuing eligibility. Under no circumstances are benefits continued beyond the end of a certification period without completion of a certification renewal.

(1) **Month of application.** The month of application is the first month in the certification period for initial applicants ~~if~~ when eligibility is determined within the 30-day period.

(A) Because of anticipated changes, a household may be eligible for the application month, but ineligible for the subsequent month. In this situation, the worker certifies the household is certified for the application month only.

(B) ~~If~~ When the worker determines a household is ~~found to be ineligible and is denied benefits~~ for the application month, but is eligible for subsequent months, a new application is not needed, ~~and the~~ The worker denies benefits for the application month and certifies food benefits effective the month following the application month.

(2) **Missed interview.** ~~During the application process,~~ When a household who did not appear for their first misses the scheduled interview, the household may request a new interview date be scheduled through the 30th day following their application date. Refer to OAC 340:50-9-4 for information regarding delayed applications to determine the proration date of the food benefit allotment when applications are delayed.

(3) **Information furnished after the application is denied.** When the worker denies an application because the household did not provide the requested information and the applicant furnishes the required information to determine eligibility within the second 30-calendar day

period, a new application is not required. The worker certifies food benefits using the date the household provides required information or verification as the application, certification, and proration date.

(e) **Length of certification periods.** The worker assigns the longest certification period possible based on the predictability of the household's circumstances.

(1) **One month.** The worker assigns a one-month certification to:

- (A) households eligible only for the application month; and
- (B) migrant farm worker households; in the work stream, who apply before the 16th of the month.

(2) **Two months.** The worker assigns a two-month certification to:

- (A) households eligible only for the certification month and subsequent month; and
- (B) migrant farm worker households; in the work stream, who apply after the 15th of the month.

(3) **Twelve months.**

(A) The worker assigns a 12-month certification period to households at certification unless the household:

- (i) ~~the~~ household includes an able-bodied adult without dependents (~~ABAWD~~) member who is not meeting the work requirement or is not otherwise exempt. Refer to OAC 340:50-5-64 for participation time limits; or
- (ii) ~~all adult household members are elderly or disabled with no earned income~~ meets criteria in (1), (2), or (4) of this subsection.

(B) These households are required to complete a ~~benefit~~ mid-certification renewal at six-month intervals. ~~They~~ and are known as semi-annual reporting households.

(4) **Twenty-four months.** The worker assigns a 24-month certification period to households when all adult members are elderly or disabled with no earned income. These households are required to complete a ~~benefit~~ mid-certification renewal at 12-month intervals. ~~They~~ and are known as annual reporting households.

340:50-9-5. Changes after application and during the certification period

(a) **Change reporting requirements.** Section 273.12 of Title 7 of the Code of Federal Regulations (7 ~~C.F.R.~~ C.F.R. 273.12) contains change reporting requirements after application and during the certification period described in (a) through (i) of this Section.

(b) **Applicant households.** Applicant households must report all changes related to their food benefit eligibility and benefit amount. Households must report changes that occur after the interview but before the date of the notice of eligibility, within 10-calendar days of the date of the notice.

(c) **Annual reporting households.** Annual reporting households are households in which all adult members are elderly or disabled with no earned income.

(1) **Certification period.** A 24-month certification period is automatically assigned to annual reporting households. Annual reporting households must complete a mid-certification renewal between certification periods to report current household circumstances.

(2) **Change reporting between renewal periods.** Between the mid-certification renewal and certification renewal reporting months, the household must report gross income changes when the household's income exceeds the maximum gross income scale for household size shown on Form 08MP006E, Information for Benefit Renewal, within 10 calendar days of the change occurring by the 10th of the month following the month the change occurred. The maximum gross income scale is based on 130 percent of the monthly poverty income guidelines.

(3) **Action taken on reported changes.** The worker must act on all changes reported by households.

(A) The computer system determines if the change results in an increase, decrease, or no change in benefits.

(B) Between the mid-certification renewal and certification renewal months, the changes the worker makes do not decrease or close benefits until the mid-certification renewal is due unless the:

- (i) household's income increase exceeds the maximum gross income scale for household size shown on Form 08MP006E;
- (ii) household requested benefit closure; ~~or~~
- (iii) worker has information about the household's circumstances considered verified upon receipt per (g) of this Section; ~~or~~
- (iv) a household member is identified as a fleeing felon or probation violator per 7 C.F.R. § 12(a)(5)(vi) and Oklahoma Administrative Code (OAC) 340:50-5-10.1(a)(3).

(C) The computer system applies all changes that increase benefits.

(d) **Mid-certification renewal for annual reporting households.** Annual reporting households are sent notification in the 11th month of certification that the mid-certification renewal is due. The notice explains methods the household may choose to complete the renewal and required verification needed. An interview is not required.

(1) **When the mid-certification renewal is due.** The household must complete the benefit renewal and provide required verification by the last day of the 12th month of certification.

(2) **Completion of mid-certification renewal.** The worker reviews benefit renewal information and verification provided to determine completeness and continued eligibility.

(A) When the renewal is complete and the household remains eligible, the worker acts on all reported changes and the computer system applies any increase or decrease in benefits.

(i) When the household fails to provide sufficient information regarding a deductible expense requiring verification, the worker processes the

mid-certification renewal without regard to the deduction.

(ii) When benefits are decreased, an advance notice is sent per Appendix B-2, Deadlines for Case Actions.

(B) When the household is no longer eligible, the worker closes food benefits effective the next advance-notice deadline date per Appendix B-2.

(C) When the renewal is incomplete, the computer system closes food benefits effective the next advance-notice deadline date per Appendix B-2.

(3) **When benefits may be reopened.** Food benefits may be reopened following closure when criteria is met per (i) of this Section.

(e) **Semi-annual reporting households.** Food benefit households are considered semi-annual reporting households unless they meet criteria per (b) or (f) of this Section.

(1) **Certification period.** A 12-month certification period is automatically assigned to semi-annual reporting households.

(2) **Change reporting between renewal periods.** Between the mid-certification renewal and certification renewal reporting months, the household must report within 10-calendar days of the change occurring when:

- (A) the household's gross income exceeds the maximum gross income scale for household size shown on Form 08MP006E. The maximum gross income scale is based on 130 percent of the monthly poverty income guidelines; and
- (B) a decrease in work hours below an average of 20 hours per week or 80 hours per month occurs for any household member meeting the able-bodied adults without dependents (ABAWD) work rules per ~~Oklahoma Administrative Code (OAC) 340:50-5-64.~~

(3) **Action taken on reported changes.** The worker must act on all changes reported by households.

(A) The computer system determines if the change results in an increase, decrease, or in no change in benefits.

(B) Between mid-certification renewal and certification renewal months, the changes the worker makes do not decrease or close food benefits until the mid-certification renewal is due unless ~~the~~:

- (i) the household's income increase exceeds the maximum gross income scale for household size shown on Form 08MP006E;
- (ii) the household requested benefit closure;
- (iii) the worker has information about the household's circumstances considered verified upon receipt per (g) of this Section; ~~or~~
- (iv) an ABAWD must be removed from the food benefit household because he or she does not meet the ABAWD work rule per OAC 340:50-5-64; or
- (v) a household member is identified as a fleeing felon or probation violator per 7 C.F.R. § 27312(a)(5)(vi) and OAC 340:50-5-10.1(a)(3).

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- (C) The computer system applies all changes that increase benefits.
- (f) **Mid-certification renewal for semi-annual reporting households.** Semi-annual reporting households are sent notification in the fifth month of certification that the mid-certification renewal is due. An interview is not required.
- (1) **When the mid-certification renewal is due.** The household must complete the benefit renewal and provide required verification by the last day of the sixth month of certification.
- (2) **Completion of mid-certification renewal.** The worker reviews benefit renewal information and verification provided to determine completeness and continued eligibility.
- (A) When the renewal is complete and the household remains eligible, the worker acts on all reported changes and the computer system applies any increase or decrease in benefits.
- (i) When the household fails to provide sufficient information regarding a deductible expense requiring verification, the worker processes the mid-certification renewal without regard to the deduction.
- (ii) When benefits are decreased, the worker sends an advance notice per Appendix B-2, Deadlines for Case Actions, deadline dates.
- (B) When the household is no longer eligible, the worker closes food benefits effective the next advance-notice deadline date per Appendix B-2.
- (C) When the renewal is incomplete, the computer system closes food benefits effective the next advance-notice deadline date per Appendix B-2.
- (3) **When benefits may be reopened.** Food benefits may be reopened following closure when criteria is met per (h) of this Section.
- (g) **Change reporting households.** Change reporting households are assigned a certification period other than 12 or 24 months. These households are required to report changes within 10 calendar days of the change occurring by the 10th of the month following the month the change occurred.
- (1) **Household characteristics.** Households not approved for a 12- or 24-month certification period include households approved for:
- (A) expedited services for one or two months because the interview and/or verification was postponed per OAC 340:50-3-2; and
- (B) a three- or four-month certification period because the household includes one or more ABAWDs that do not meet the work rule per OAC 340:50-5-64.
- (2) **Required change reporting.** These households must report changes in:
- (A) sources of income;
- (B) unearned income of \$50 per month or more;
- (C) earned income of more than \$100 per month;
- (D) household composition, such as an addition or loss of a household member;
- (E) residence and shelter costs; and
- (F) the legal obligation to pay child support.

(3) **Action taken on case changes.** The worker must act on changes reported by the household within 10-calendar days of the date the household reported the change and provided necessary verification.

(A) When the household fails to report a change within the 10-calendar day period and, as a result, receives benefits to which it is not entitled, an overpayment claim is referred to Adult and Family Services (AFS) Benefit Integrity and Recovery per OAC 340:50-15.

(B) When the worker fails to take timely action on a reported change and benefits are lost, the worker supplements the household's food benefits.

(4) **Changes that increase benefits.** When the household reports a change that increases benefits the household must verify the information before the worker makes the change. The worker gives the household 10-calendar days to verify the information.

(5) **Changes that decrease or close benefits.** ~~Food benefits are closed when~~ When the household reports a change in household circumstances causes a household to be ineligible for that decreases or closes food benefits, the worker gives or sends the household Form 08AD092E, Client Contact and Information Request, giving the household 10-calendar days to provide verification of the change. When the household provides required verification, the worker reduces or closes food benefits based on the verification provided. When the household does not provide required verification, the worker closes the food benefits based on the household's failure or refusal to provide verification.

(A) When a household's benefit decreases or closes, an advance notice of adverse action is required unless exempt from such a notice for a reason listed in (i) or (ii) of this ~~subsection~~ subparagraph. Per 7 C.F.R. § 273.13, advance notice of adverse action is considered timely when the notice is mailed at least 10-calendar days before the action becomes effective. The household retains its right to a fair hearing and continuation of benefits when a fair hearing is requested within 10-calendar days of the change notice. ~~Advance~~ An adverse action notice is not required, may be mailed just prior to the date the household receives or would have received benefits when the:

(i) Oklahoma Department of Human Services (DHS) receives a clear written statement signed by a responsible household member;

(I) stating the household no longer wishes to receive food benefits; or

(II) giving information that requires closure or reduction of food benefits and stating that ~~he or she~~ the household understands the food benefit will be reduced or closed; or

(ii) ~~the~~ worker closes or reduces food benefits per (i) of this Section.

(B) When an advance notice is required, the benefit decrease or closure is effective the next advance

notice deadline date per Appendix B-2. When the household reports a change:

- (i) 10-calendar days or more before the advance-notice deadline per Appendix B-2, the worker decreases or closes the food benefit effective the first of the following month; or
- (ii) less than 10-calendar days before the advance-notice deadline per Appendix B-2, the worker must take action before the advance-notice deadline the following month.

(C) When a reported change increases food benefits, the worker makes the change by the non-advance-notice deadline date per Appendix B-2.

(h) **Changes considered verified upon receipt.** Verified upon receipt means the information is not questionable and the provider is the primary source of the information. For example, when DHS receives Social Security and Supplemental Security Income verification through data exchange with the Social Security Administration (SSA), it is considered verified upon receipt because SSA is the primary source. When the worker receives information considered verified upon receipt, he or she makes the change within 10-calendar days of notification using Appendix B-2 deadline dates.

(i) **When benefits may be reopened following closure.** The food benefit may be reopened following closure using current eligibility information when:

- (1) DHS did not administer policy and procedures correctly. The food benefit is reopened effective the first day of the month of closure;
- (2) the household fails to complete the mid-certification renewal timely, but provides all required verification by the first day of the month of closure. The food benefit is reopened effective the first day of the month of closure; or
- (3) the household fails to complete the mid-certification renewal timely, but provides all required verification by the last day of the month of closure. The food benefit is reopened and prorated from the date the household completes the mid-certification renewal ~~is completed~~ and provides all required verification.

(j) **Notice requirements.** DHS is required to send a notice to the household when food benefits increase, reduce, or close.

(1) Advance notice of adverse action required. Prior to reducing or closing food benefits during the certification period, per 7 C.F.R. § 273.13, the worker must provide timely advance notice unless circumstances described in (k) of this Section occur.

(A) Advance notice of adverse action is considered timely when the notice is mailed at least 10-calendar days before the action becomes effective. Refer to Appendix B-2, Deadlines for Case Actions, for advance notice processing deadlines.

(B) When the household reports a change:

- (i) 10-calendar days or more before the advance notice of adverse action deadline, the worker decreases or closes the food benefit effective the first of the following month. For example, when the household reports a change on May 18th, the effective date of the change is June 1st; or

- (ii) less than 10-calendar days before the advance notice of adverse action deadline per Appendix B-2, the worker decreases or closes the food benefit effective the first of the month after the following month. For example, when the household reports a change on May 25th, the effective date of the change action is July 1st.

(2) Notice requirement when benefits increase. When a reported change increases food benefits, the worker makes the change by the non-advance notice deadline date per Appendix B-2. When the change is reported after the non-advance notice deadline, the worker supplements food benefits.

(3) Advance notice of adverse action not required. Advance notice of adverse action is not required for actions (1) through (8) of this subsection per 7 C.F.R. § ~~C.F.R.~~ 273.12(e) and 7 C.F.R. § ~~C.F.R.~~ 273.13(b).

(4A) Mass changes. When DHS initiates mass changes because of changes or requirements in federal or state law, the computer system closes benefits by the non-advance-notice deadline per Appendix B-2. In these situations, the individual notification requirement is waived and AFS mails generic notices to the affected households informing them of the changes that are about to be made.

(2B) Deceased household members. When the worker determines, based on reliable information, that all members of the household are deceased, the worker closes benefits by the non-advance-notice deadline per Appendix B-2.

(3C) Moved out of state. When the worker determines, based on reliable information, the household moved out of state, the worker closes benefits by the non-advance-notice deadline per Appendix B-2.

(4D) Unfinished issuance certification. When the unfinished issuance process is used at certification, the worker adjusts the benefit to take into account changes anticipated at the time of certification. The certification notice informs the household of all benefit changes included in this process.

(5E) Disqualified household member. When the only household member is disqualified for an intentional program violation or fraud per OAC 340:50-15-25, food benefits are closed by the non-advance-notice deadline per Appendix B-2. When there is more than one person in the household, the benefits of the remaining household members are reduced or closed because of the disqualification of that household member by the non-advance-notice deadline per Appendix B-2.

(6F) Facility loses approval. When a household's food benefit closes because the drug or alcohol treatment center or group home facility where the household resides is no longer approved, the worker closes benefits by the non-advance-notice deadline per Appendix B-2.

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(7C) Household provides written statement.

The worker closes or reduces benefits by the non-advance-notice deadline per Appendix B-2 when the household provides a written statement:

- (A) stating the household no longer wishes to receive food benefits; or
- (B) requesting closure or reduction in food benefits to avoid or repay an overpayment.

(8H) Case transfer. When the worker closes food benefits in one case in order to transfer the food benefits to another case without a decrease or disruption in benefits, the worker closes benefits by the non-advance-notice deadline per Appendix B-2.

(k) Action on changes when fair hearings are requested.

When a household requests a fair hearing within 10-calendar days of the date shown on the adverse action notice, the household may continue to receive food benefits at the same level pending the outcome of the hearing per 7 § C.F.R. 273.15(k). Refer to OAC 340:2-5 for fair hearing procedures.

SUBCHAPTER 11. SPECIAL PROCEDURES

PART 1. HOUSEHOLDS ENTITLED TO EXPEDITED SERVICE

340:50-11-1. Criteria

These criteria apply to all households making an initial application for food benefits, including residents of approved drug and alcohol treatment centers and group homes. Per 273.2(i) of Title 7 of the Code of Federal Regulations, households entitled to expedited services include households:

- (1) with less than \$150 gross income when liquid resources do not exceed \$100;
- (2) with migrant or seasonal farm workers considered destitute when liquid resources do not exceed \$100; and
- (3) whose combined monthly gross income and liquid resources are less than the household's monthly rent or mortgage and/or ~~utilities~~ applicable utility standard per Oklahoma Administrative Code 340:50-7-31(a)(6)(C).

PART 12. CATEGORICALLY ELIGIBLE HOUSEHOLDS

340:50-11-111. Categorically eligible household

(a) **Purpose.** This Part includes the requirements for establishing categorically eligible households for the Supplemental Nutrition Assistance Program (SNAP) per Section 273.2(j)(2) of Title 7 of the Code of Federal Regulations.

(b) **Definitions.** The following words and terms, when used in this Part, shall have the following meaning, unless the context clearly indicates otherwise:

- (1) **"Categorically eligible household"** means:
 - (A) any household, as defined in Oklahoma Administrative Code (OAC) 340:50-11-20, in which all members receive or are authorized to receive:

- (i) Temporary Assistance for Needy Families (TANF) cash assistance; or

- (ii) a combination of Supplemental Security Income (SSI) and TANF cash assistance;

(B) any household in which all members receive or are authorized to receive SSI; or

(C) any household in which members receive or are authorized to receive services through ~~the 2-1-1 Oklahoma Marriage Initiative~~ except as excluded in (d) of this Section.

(2) **"Authorized to receive"** means the person ~~has been~~ was determined eligible for benefits and ~~has been~~ was notified of this determination even though the benefits have not yet been received.

(c) **Suspended, recouped, or benefit not issued.** The fact that TANF or SSI benefits were suspended, recouped, or are less than the minimum amount paid has no impact on a determination of categorical eligibility.

(d) **Ineligible households.** A household is not classified as a categorically eligible household when the:

- (1) entire household is institutionalized and the institution is not listed at OAC 340:50-5-25 as an institution where residents may participate in SNAP; or
- (2) household contains a sponsored alien.

340:50-11-113. Financial eligibility factors

(a) When all household members meet categorical eligibility per Oklahoma Administrative Code (OAC) 340:50-11-111(b)(1)(A) through (B), they are not subject to income limits of the Supplemental Nutrition Assistance Program (SNAP). Income for the household must be verified.

(b) Households authorized to receive services through ~~the 2-1-1 Oklahoma Marriage Initiative (OMI)~~ are subject to the income limits ~~as shown on~~ OAC 340:50-9-1(b) and the applicable table of the Oklahoma Department of Human Services Appendix C-3, Maximum Food Benefit Allotments and Standards for Income and Deductions (Maximum gross income standards without elderly/disabled members or Maximum net income standards for households with elderly/disabled members that when they are not pure SSI and/or TANF households).

(c) Households with a person who is determined to have an intentional program violation (IPV) in SNAP are subject to income limits ~~at OAC 340:50-7~~ per OAC 340:50-9-1(b) and the applicable table of Appendix C-3.

SUBCHAPTER 15. OVERPAYMENTS AND FRAUD

PART 1. OVERPAYMENTS

340:50-15-1. Scope and applicability

(a) **Scope and applicability.** The scope and applicability of overpayment procedures contained in this Subchapter apply to ~~recipients of~~ Supplemental Nutrition Assistance Program (SNAP) food ~~benefits~~ benefit issuance. Section 273.16 of Title

7 of the Code of Federal Regulations (7 C.F.R. §~~C.F.R.~~ 273.16) contains federal requirements regarding disqualification for intentional program violations and 7 C.F.R. §~~C.F.R.~~ 273.18 contains federal requirements regarding overpayment claims against households.

(b) **Overpayment claim definition.** A ~~Supplemental Nutrition Assistance Program (SNAP)~~ food benefit overpayment occurs when a household receives more food benefits than it is entitled to receive or when benefits are trafficked.

(c) **Persons responsible for repaying an established overpayment claim.** Refer to Oklahoma Administrative Code (OAC) 340:50-15-6 for repayment procedures. Persons responsible for repaying an established overpayment claim include:

- (1) every adult included in the food benefit allotment, when the overpayment or benefit trafficking occurred; and
- (2) a person connected to the household, such as an authorized representative or other individual, when the person trafficked benefits or caused the overpayment.

(d) **Overpayment referral.** When the worker determines an overpayment occurred, the worker sends an overpayment referral to Adult and Family Services (AFS) Benefit Integrity and Recovery (BIR) for overpayment classification and establishment. The overpayment referral consists of a completed Form 08OP005E, Report of Food Benefit (FB) Overissuance, and supporting documents. Reasons to submit an overpayment referral to AFS BIR include, but are not limited to, when:

- (1) the household:
 - (A) failed to provide the Oklahoma Department of Human Services with correct or complete information;
 - (B) failed to report changes in household circumstances per OAC 340:50-9-5;
 - (C) chose to continue to receive benefits pending a fair hearing decision and the:
 - (i) ~~the~~ fair hearing decision finds the household ineligible or eligible for fewer benefits; or
 - (ii) household withdraws the fair hearing request after food benefits were reopened or increased, pending the outcome of the hearing; or
 - (D) trafficked SNAP food benefits per OAC 340:50-15-25;
- (2) the worker:
 - (A) incorrectly computed the household's income or deductions or otherwise issued an ~~incorrect~~ excess benefit allotment;
 - (B) failed to take prompt action on a change reported by the household resulting in an over-issuance;
 - (C) incorrectly applied ~~policy or procedures~~ rules that resulted in an over-issuance or issuing benefits to an ineligible household;
 - (D) incorrectly issued or renewed food benefits to an ineligible household; or
 - (E) failed to reduce food benefits because the household's public assistance benefits changed;
- (3) the computer system incorrectly issued benefits to a household;

- (4) an AFS SNAP Quality Control staff discovered the over-issuance during a quality control review; or
- (5) the Oklahoma Inspector General (OIG) Investigative Unit discovered an over-issuance.

(e) **Overpayment classification and claim establishment.** Per OAC 340:50-15-4, AFS BIR staff classifies an overpayment as an inadvertent household error, intentional program violation ~~or fraud~~, or agency error and establishes the overpayment claim per ~~procedures in~~ OAC 340:50-15-3. Refer to OAC 340:50-15-2 for instances when an overpayment claim is not required.

(f) **Development of repayment plan.** After AFS BIR staff verifies and calculates the overpayment claim, ~~he or she~~ staff establishes the claim by notifying the debtor household of the overpayment debt. Once established, AFS BIR staff develops a repayment plan with the household per ~~procedures in~~ OAC 340:50-15-6.

(g) **Disqualification penalty.** When a person commits an intentional program violation ~~or fraud~~, the person is disqualified from receiving food benefits for a period of time per OAC 340:50-15-25, in addition to being responsible for repaying the overpayment debt.

340:50-15-3. Overpayment claim procedures

(a) **Overpayment determination.** Overpayments are calculated by Adult and Family Services (AFS) local county office or support center staff and are referred to AFS Benefit Integrity and Recovery (BIR) for final determination.

(1) When the household failed to report earned income in a timely manner per Oklahoma Administrative Code (OAC) 340:50-9-5, the worker does not subtract an earned income deduction from gross earnings when calculating the overpayment amount.

(2) AFS local county office or support center staff documents the circumstances causing the overpayment and the calculations used to determine the over-issuance amount on Form 08OP005E, Report of Food Benefit (FB) Overissuance, and sends Form 08OP005E and supporting documentation to AFS BIR staff for claim establishment.

(3) When Office of Inspector General (OIG) staff determines ~~the overpayment occurred because of a~~ trafficking-related offense occurred, ~~he or she~~ AFS BIR staff bases the overpayment amount on the value of the trafficked benefits. Per Section 273.18(c) of Title 7 of the Code of Federal Regulations, the value of the trafficked benefits is determined by:

- (A) the household member or authorized representative's admission;
- (B) adjudication; or
- (C) OIG's documentation that formed the basis for the trafficking determination.

(b) **Overpayment claim establishment.** AFS BIR staff is responsible for evaluating overpayment referrals, establishing overpayment claims, and referring overpayment claims to OIG when fraudulent intent is suspected. An overpayment claim is considered established on the date AFS BIR staff sends the overpayment notice to the household.

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- (1) When fraudulent intent is not suspected, AFS BIR staff:
 - (A) establishes the overpayment claim and classifies it as an inadvertent household or agency error per OAC 340:50-15-4;
 - (B) notifies the household and worker per (d) and (e) of this Section; and
 - (C) sets up a repayment plan with the household per OAC 340:50-15-6.
- (2) When fraudulent intent is suspected, AFS BIR staff sends the overpayment referral to OIG to determine whether fraudulent intent occurred. The overpayment claim is not established and notices are not sent until OIG completes its investigation and releases the claim back to AFS BIR. Refer to OAC 340:50-15-25 for procedures when overpayments are referred for an intentional program violation determination.
- (c) **Claim establishment time frame.** The amount of time included in an overpayment claim varies.
 - (1) When AFS BIR classifies an overpayment as an inadvertent household error or agency error, the established overpayment claim does not cover more than 12 months prior to the month in which the overpayment was discovered unless a court orders the household to pay restitution for an additional time period.
 - (2) When an intentional program violation is determined, the established overpayment time frame may cover up to six years prior to the date the overpayment was discovered.
- (d) **Household notification.** AFS BIR staff sends the household:
 - (1) the Notification of Food Benefit Overpayment notice;
 - (2) page 1 of Form 08OP005E showing the overpayment over-issuance amount; and
 - (3) Form 08OP118E, Food Benefit Repayment Agreement.
- (e) **County office notification.** After claim establishment, AFS BIR staff sends the county office:
 - (1) a copy of the Notification of Food Benefit Overpayment notice sent to the client;
 - (2) the completed Form 08OP005E; and
 - (3) the County Notification of Overpayment notice.
- (2) failed to report changes in household circumstances per Oklahoma Administrative Code (OAC) 340:50-9-5; or
- (3) received benefits or more benefits than it was entitled to receive pending a fair hearing decision.
- (b) **Overpayment claim classified as agency error.** AFS BIR staff classifies an overpayment claim as an agency error when the DHS action or failure to take action caused the over-issuance. Instances of agency errors that may result in an overpayment include, but are not limited to, when:
 - (1) AFS staff:
 - (A) failed to take prompt action on a change reported by the household that resulted in an over-issuance;
 - (B) incorrectly computed the household's income or deductions, or otherwise issued an ~~incorrect~~ excess benefit allotment;
 - (C) incorrectly issued or renewed food benefits to an ineligible household;
 - (D) incorrectly applied policy or procedure that resulted in an over-issuance or issuing benefits to an ineligible household; or
 - (E) failed to reduce food benefits because the household's public assistance benefits changed; or
 - (2) the computer system incorrectly issued benefits to a household.
- (c) **Overpayment claim classified as intentional program violation.** An overpayment claim is classified as an intentional program violation when it is determined that a person intentionally gave false information or withheld facts in order to receive food benefits or trafficked benefits for cash or non-food items.
 - (1) An intentional program violation is determined through:
 - (A) an administrative disqualification hearing conducted by DHS Legal Services Appeals Unit staff;
 - (B) the accused person signing Form 08OP016E, Administrative Disqualification Hearing Waiver; or
 - (C) a court decision. When the court decision is a deferment, the prosecutor asks the accused person to sign Form 19MP002E, Disqualification Consent Agreement.
 - (2) Instances of intentional program violation that may result in an overpayment claim include, but are not limited to, when an adult household member:
 - (A) made a false or misleading statement, or misrepresented, concealed, or withheld facts; or
 - (B) committed an act that constitutes a violation of the Supplemental Nutrition Assistance Program, relative to the use, presentation, transfer, acquisition, receipt, or possession of food benefits.

340:50-15-4. Overpayments by classification

(a) **Overpayment claim classified as inadvertent household error.** Adult and Family Services (AFS) Benefit Integrity and Recovery (BIR) staff classifies an overpayment claim as an inadvertent household error when the Supplemental Nutrition Assistance Program (SNAP) food benefit over-issuance was caused by a misunderstanding or unintended error on the part of the household. Instances of inadvertent household error that may result in an established overpayment claim include, but are not limited to, when the household inadvertently:

- (1) failed to provide the Oklahoma Department of Human Services (DHS) with correct or complete information;

340:50-15-6. Development of repayment

(a) **Repayment of established overpayment claims.** Households must make repayment on all established Supplemental Nutrition Assistance Program (SNAP) food benefit overpayment claims regardless of the reason or classification for the overpayment. Adult and Family Services (AFS) Benefit Integrity and Recovery (BIR) staff initiates collection efforts

against all adult household members included in SNAP food benefits during the overpayment time.

(1) AFS BIR staff may initiate collection efforts from two separate households for the same claim.

(2) AFS BIR staff may use any repayment option per (c) of this Section to collect the overpayment claim from any adult:

(A) who was in the household at the time of the overpayment and who is not currently a member of a household undergoing allotment reduction; or

(B) connected to the household, such as an authorized representative or other individual when the person trafficked benefits or caused the overpayment.

(b) **Repayment plan time frames.** After AFS BIR staff establishes the overpayment, he or she mails the household the Notification of Food Benefit Overpayment notice and Form 08OP118E, Food Benefit Repayment Agreement. Form 08OP118E informs the household of the responsibility to repay the overpayment and explains the acceptable debt repayment methods. The household is responsible for completing and returning Form 08OP118E within the appropriate time frame.

(1) The SNAP food benefit overpayment claim is considered delinquent when, within 30-calendar days of the date shown on the Notification of Food Benefit Overpayment notice, the household does not:

(A) pay the claim in full; or

(B) complete and return Form 08OP118E. AFS BIR staff must approve the repayment plan proposed by the household.

(2) The SNAP overpayment claim is not considered delinquent when, within 30-calendar days of the date shown on the Notification of Food Benefit Overpayment notice, the:

(A) household's food benefit allotment reduction begins; or

(B) household is undergoing recoupment to repay a previous SNAP overpayment claim at the time AFS BIR staff mails the Notification of Overpayment notice.

(3) When allotment reduction stops because the SNAP food benefit closes for any reason, the household must repay the debt in full or contact AFS BIR to request a repayment arrangement, within 30-calendar days of benefit closure unless food benefits are reopened.

(c) **Repayment options.** Form 08OP118E informs the client of available repayment options and advises the client not to send cash through the mail. Repayment options include repaying the overpayment claim:

(1) in one lump sum by personal check, money order, cashier's check, or Electronic Benefit Transfer (EBT) debit with a signed statement;

(2) in regular monthly installments, when he or she has an approved repayment agreement on file with AFS BIR. Payment may be made by personal check, money order, cashier's check, or approved EBT debit with a signed statement.

(3) by applying any lost benefit due the household toward the food benefit overpayment claim per Oklahoma Administrative Code 340:50-11-46;

(4) by authorizing a voluntary payment through a debit from the EBT Access account. The client or the household's authorized representative must mail, fax, or email a signed statement to AFS BIR giving permission for the debit before BIR staff debits the account; ~~or~~

(5) ~~by applying expunged food benefits toward the food benefit overpayment claim when known and identified. Expunged food benefits are benefits remaining in an EBT account the household has not accessed for one year;~~

(6) by allotment reduction. Allotment reduction is an involuntary method of collecting SNAP overpayment claims by reducing the monthly benefit amount a household receives. AFS BIR staff does not reduce benefits for the initial month of certification or use other involuntary collection methods against household members while the benefit allotment is reduced. When AFS BIR staff establishes an:

(A) agency error or inadvertent household error overpayment claim, he or she reduces the household's monthly benefit allotment by 10 percent or \$10, whichever is greater. The client may request a higher reduction up to its monthly allotment; or

(B) intentional program violation overpayment claim, he or she reduces the household's monthly benefit allotment by 20 percent or \$20, whichever is greater. The household may request a higher reduction up to its monthly allotment; or

(7) by court ordered restitution.

(d) **Recalculation of debt.** AFS BIR staff recalculates the household's overpayment claim balance, when he or she becomes aware that some or all of the issued benefits within the overpayment period were expunged. Finance and Administration Electronic Payment Services staff expunges food benefits remaining in a household's EBT account when the household has not accessed the account for one year.

(de) **Monthly statement.** A monthly statement computer-generates to the household around the 20th day of each month, informing the household of the remaining debt obligation.

(ef) **Reconsideration of repayment plan.** The client may request reconsideration of the repayment plan by submitting information regarding changes in family and financial circumstances directly to AFS BIR. AFS BIR staff makes adjustments to the repayment plan when circumstances warrant.

(fg) **Consequences of a delinquent claim.** When an overpayment claim becomes delinquent, AFS BIR staff ~~may~~**must** refer it to the Treasury Offset Program (TOP) for collection per (g) of this Section or use other involuntary collection actions including, but not limited to:

(1) referrals to collection and/or other similar private and public sector agencies;

(2) state tax refund and lottery offsets;

(3) wage garnishments;

(4) property liens; and

(5) small claims court.

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(gh) **Referrals for TOP.** AFS BIR staff refers delinquent overpayment claims to TOP for collection when criteria in (1) of this subsection is met. Debts are collected in TOP through interception of federal monies including, but not limited to, federal income tax refunds, Social Security Administration (SSA) benefits, and federal employee wages. The client may be responsible for paying any collection or processing fees charged by the federal government.

- (1) TOP criteria are, the:
 - (A) amount owed must be at least \$25;
 - (B) claim is delinquent by 180-or more calendar days and legally enforceable;
 - (C) claim is not part of a bankruptcy stay, under litigation, or under review per (3) of this subsection; and
 - (D) the debtor is not a current SNAP recipient in Oklahoma whose claim is not being collected through allotment reduction or under an approved repayment plan.

(2) At least 60-calendar days before referring an overpayment claim to TOP, AFS BIR staff notifies the person of the intended referral. AFS BIR staff mails the 60-calendar day notice to the address provided by TOP. Information contained in the notice includes:

- (A) the debtor's Social Security number;
- (B) the citation of the statutory authority for the offset;
- (C) instructions on how to avoid the TOP referral;
- (D) the right to request a review of the intended action per (3) of this subsection;
- (E) information regarding all TOP exemptions and restrictions;
- (F) information regarding spousal protection from the offset; and
- (G) the debtor's right to review applicable records.

(3) **Request for review of intended action.** To consider a request timely, the person being referred to TOP must request a review of the intended action in writing, within 60-calendar days of the date AFS BIR staff sends the 60-calendar day letter. The person's contention that the claim is not past due or legally enforceable is the basis for the review.

- (A) A claim is not past due and legally enforceable when the person provides proof:
 - (i) the claim is paid in full;
 - (ii) the person cited for the offset is not the person who owes the claim;
 - (iii) that substantiates bankruptcy action; or
 - (iv) the household's benefit allotment is currently being reduced to repay the debt.
- (B) AFS BIR staff conducts the requested review and sends the person written notification of the review decision within 30-calendar days of the request. The review decision notice informs the person requesting the review:
 - (i) if the debt is past due and legally enforceable;
 - (ii) if the overpayment is, or is not being referred to TOP; and

(iii) of his or her right to appeal the decision by requesting another review from the Food and Nutrition Services (FNS) Regional Office within 30-calendar days of the date on the review decision letter. The notice includes the FNS Regional Office address and the contact person's name.

(C) When, after review, AFS BIR staff finds the debt is past due and legally enforceable, the person may avoid referral to TOP by paying the overpayment claim in full or setting up an acceptable repayment agreement with AFS BIR staff.

(hi) **Case record retention.** The Oklahoma Department of Human Services is mandated to retain case records containing overpayments for three years from the date:

- (1) the overpayment debt is paid in full; or
- (2) no further action is taken to collect the debt because of reasons, such as when the client dies or files bankruptcy that discharges the debt.

PART 3. FRAUD/INTENTIONAL PROGRAM VIOLATION

340:50-15-25. Cases referred for intentional program violation determination

(a) **Cases referred for an administrative disqualification hearing (ADH).** Oklahoma Department of Human Services (DHS) Office of Inspector General (OIG) staff refers cases to the DHS Legal Services Appeals Unit to conduct an ADH to determine if the client committed an intentional program violation. The cases referred contain documentary evidence of intentional program violation, but do not warrant civil or criminal prosecution.

(b) **Waiving ADH.** OIG staff gives a client suspected of an intentional program violation the option to waive his or her rights to an ADH. The client must complete and sign Form 08OP016E, Administrative Disqualification Hearing Waiver, to request a waiver. A waiver of the hearing subjects the client to the same penalties as if the hearing process determined intentional program violation.

(c) **Penalties for intentional program violation.** When the ADH results in an intentional program violation determination or the client waives his or her right to the hearing process, Adult and Family Services (AFS) Benefit Integrity and Recovery BIR staff imposes a disqualification penalty.

- (1) AFS BIR staff sends Form 08AD019E, Program Penalty/Disqualification Notice, to the disqualified member. Form 08AD019E includes information regarding the remaining household members' eligibility.
- (2) The disqualification period for a person is one year for the first violation, two years for the second violation, and permanently for the third violation.

(A) Any person disqualified for intentional program violation prior to April 1, 1983, is considered to have one previous disqualification, regardless of the number of previous disqualifications.

(B) A person is disqualified for a period of 10 years when an ADH decision finds the person made a

fraudulent statement or representation with respect to identity or place of residence in order to receive multiple, simultaneous Supplemental Nutrition Assistance Program (SNAP) food benefits.

(C) The disqualification period begins the first, possible effective month following the date AFS BIR staff mails Form 08AD019E. Once the disqualification period begins, it runs continuously until the end of the period imposed, regardless of whether the household remains eligible for food benefits during the person's disqualification period.

(D) AFS BIR staff removes the disqualified person from the household size or closes the SNAP food benefit based on ~~fraud~~ intentional program violation when it is a one person household. Per Oklahoma Administrative Code (OAC) 340:50-7-29(d)(1), the worker counts the total gross income of the disqualified person in determining the remaining household members eligibility and allows all applicable deductions for the remaining household members.

(E) A client must repay the SNAP food benefit overpayment claim regardless of any disqualification penalty imposed. AFS BIR staff sends Form 08OP118E, Food Benefit Repayment Agreement, to notify the household of the need to make a repayment plan and the repayment options available to the client per OAC 340:50-15-6.

(d) **Cases determined by a court.** AFS BIR staff refers all cases suspected of intentional program violation to OIG to determine if court action is feasible.

(1) When OIG staff refers the person for court action, AFS BIR staff must not discuss the overpayment claim with the household until court action is complete or AFS BIR staff notifies the worker of needed action. Local county staff forwards further information or directs client inquiries regarding the overpayment to AFS BIR staff.

(2) A court of appropriate jurisdiction may find one or more persons in the household guilty of obtaining food benefits by fraudulent means. The court may charge the person with either a misdemeanor or felony.

(3) Disqualification penalty procedures for court and ADH determined cases are the same, except for (A) through (D) of this paragraph.

(A) The court may specify the length of the disqualification. Court-specified periods of disqualification ~~override~~ may supersede (c)(2) of this Section.

(B) A person determined by a federal, state, or local court to have committed intentional program violations of trading SNAP food benefits for firearms, ammunition, explosives, or controlled substances is subject to disqualification:

- (i) for two years for the first offense and permanently for the second offense involving the sale of a controlled substance for SNAP food benefits; and
- (ii) permanently for the first offense involving the sale of firearms, ammunition, or explosives for SNAP food benefits.

(C) A person convicted in a federal, state, or local court of trafficking SNAP food benefits for an aggregate amount of \$500 or more is permanently disqualified from SNAP participation. Per Section 271.2 of Title 7 of the Code of Federal Regulations and Section 243 of Title 56 of the Oklahoma Statutes (56 O.S. § 243), the definition of trafficking means:

- (i) the buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits issued and accessed via electronic benefit transfer (EBT) cards, card numbers, and personal identification numbers (PINs) or by manual voucher and signature for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone;
- (ii) the exchange of firearms, ammunition, explosives, or controlled substances, per Section 802 of Title 21 of the United States Code, for SNAP benefits;
- (iii) purchasing a product with SNAP benefits that has a container requiring a return deposit with the intent of obtaining cash by discarding the product and returning the container for the deposit amount, intentionally discarding the product, and intentionally returning the container for the deposit amount;
- (iv) purchasing a product with SNAP benefits with the intent of obtaining cash or consideration other than eligible food by reselling the product, and subsequently intentionally reselling the product purchased with SNAP benefits in exchange for cash or consideration other than eligible food;
- (v) intentionally purchasing products originally purchased with SNAP benefits in exchange for cash or consideration other than eligible food;
- (vi) attempting to buy, sell, steal, or otherwise affect an exchange of SNAP benefits issued and accessed via EBT cards, card numbers, PINs, or by manual voucher and signatures, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone; or
- (vii) the possession of stolen SNAP EBT cards.

(D) A person is disqualified from participation in SNAP for a 10-year period when the person is found to have made a fraudulent statement or representation with respect to identity or place of residence in order to receive multiple benefits simultaneously under SNAP.

(4) The court may also stipulate a repayment plan. The repayment plan cannot be renegotiated. AFS BIR staff may refer the case back to the district attorney's office ~~if~~ when the client fails to comply with the repayment plan.

(5) Per 56 O.S. § 243(B)(5), any district attorney who enters into a deferred adjudication or who negotiates for a deferred sentence with a defendant charged with fraud

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must present the defendant with a disqualification consent agreement as part of the deferred adjudication or sentence.

[OAR Docket #17-491; filed 6-23-17]

TITLE 340. DEPARTMENT OF HUMAN SERVICES CHAPTER 65. PUBLIC ASSISTANCE PROCEDURES

[OAR Docket #17-492]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 3. Eligibility for Benefits

340:65-3-2.1 [AMENDED]

340:65-3-5 through 340:65-3-6 [AMENDED]

340:65-3-7 and 340:65-3-8 [AMENDED]

(Reference WFs 16-05 and 17-09)

AUTHORITY:

Director of Human Services; and Sections 162, 167, and 241.1 of Title 56 of the Oklahoma Statutes (56 O.S. §§ 162, 167, and 241.1); Sections 8621 through 8624 of Title 42 of the United States Code, Section 5N of Public Law 113-186, and the Child Care Development Block Grant Act of 2014.

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Subchapter 3. Eligibility for Benefits

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The proposed revisions to Chapter 65, Subchapter 3 amend the rules to: (1) update and clarify information regarding the type of assistance the worker provides when requested and interview information; (2) increase timely application processing time to 60- calendar days for Low Income Home Energy Assistance Program (LIHEAP) winter heating and summer cooling to match LIHEAP rule changes; (3) add processing time limits for State Supplemental Payment; (4) update and clarify information regarding Temporary Assistance for Needy Families cash assistance certifications for additional persons and proration of benefits; (5) update and clarify debit card and direct deposit procedures and remove outdated secondary cardholder information; (6) remove notice requirement for a denial when an applicant dies; (7) change the Child Care Subsidy renewal time frame from six to 12 months and remove the interview requirement for renewals based on a

protective or preventive need factor to match Child Care Subsidy emergency rules; (8) update benefit renewal notification information and policy citations; and (9) simplify language and update terminology.

CONTACT PERSON:

Dena Thayer, Programs Administrator, Office of Intergovernmental Relations and Policy, Department of Human Services, PO Box 25352, Oklahoma City, OK 73125, 405-521-4326.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2017:

SUBCHAPTER 3. ELIGIBILITY FOR BENEFITS

340:65-3-2.1. Counting days for providing proof, interview dates, and application time limits

When counting days for providing proof, interview dates, and application time limits, the worker does not count the first day in the time period ~~but does count~~ The worker counts the last day in the time period unless the Oklahoma Department of Human Services (~~OKDHS~~)(DHS) is not open for business on that date. When ~~the office~~DHS is not open on the last day of the time period, the worker gives the client is given until the next business day to comply with eligibility requirements.

(1) **Providing proof.** ~~When~~The worker gives the client must provide information at least 10-calendar days to provide proof, when needed, to verify his or her situation before receiving eligibility to receive or continuing continue to receive benefits, ~~the worker gives the client at least ten calendar days to provide needed proof.~~ The worker assists the client in obtaining necessary proof, when requested. The worker's assistance may range from explaining how or where to obtain proof to obtaining the proof when the client is unable to do so. The worker is not required to obtain proof for a client who is able, but unwilling to do so.

(2) **Interview date.** When the client must be interviewed, the worker sets the earliest possible interview date allowing for sufficient mail delivery time when the client cannot be reached by ~~telephone~~ phone.

(A) ~~For~~When the client applies for Supplemental Nutrition Assistance Program (SNAP) when the client food benefits and appears eligible for expedited services, the worker completes the interview must be completed within seven calendar days or, when identity is verified, may postpone the interview per Oklahoma Administrative Code (OAC) 340:50-3-2. The interview date for households ineligible when the household does not appear eligible for expedited services, must be scheduled the worker schedules the interview no later than the 20th calendar day from the application date of application.

(B) ~~Every effort is made to interview a person applying for~~When the client applies for Child Care Subsidy benefits, the worker interviews the client on the request date per OAC 340:40-3-1, when possible.

since the earliest approval date ~~benefits are approved~~ is the date the client completes the interview is completed and provides all necessary proof is provided.

(3) **Application time limits.** Refer to OAC 340:65-3-5 for application processing time limits. To be considered timely, the worker must certify or deny an application:

- (A) no later than the last business day of the time limit. ~~When the time limit ends on a day OKDHS; or~~
- (B) when DHS is not open for business closed on the last day of the time limit, the client has until the next open business day to comply with eligibility requirements.

340:65-3-5. Application process

The worker certifies or denies an application received online or in the local county office within time limits specified in paragraph (1) of this Section.

(1) **Application processing time limits.** An application must be processed within program specific time limits. Refer to Oklahoma Administrative Code (OAC) 340:65-3-2.1, when the last day of the time limit falls on a day the Oklahoma Department of Human Services (~~OKDHS~~) (DHS) is not open for business. The time limits are:

- (A) Temporary Assistance for Needy Families (TANF) - 30-calendar days;
- (B) Title IV-E Foster Care - 30-calendar days;
- (C) ~~Energy Crisis Assistance Program (ECAP) - 48 hours;~~
- (~~D~~) Supplemental Nutrition Assistance Program (SNAP) - 30-calendar days unless the household is eligible for expedited service. When the household is eligible for expedited service, the application must be completed within seven-calendar days per OAC 340:50-11-4;
- (D) State Supplemental Payment (SSP) for:
 - (i) persons categorically related to Aid to the Aged - 30-calendar days; and
 - (ii) persons categorically related to Aid to the Blind or Disabled - 60-calendar days;
- (E) SoonerCare (Medicaid) benefits for:
 - (i) persons categorically related to Aid to the Aged - 30-calendar days;
 - (ii) persons categorically related to Aid to the Blind or Disabled - 60-calendar days;
 - (iii) Optional Tuberculosis (TB) Coverage group - 45-calendar days; and
 - (iv) persons requesting long-term care services - 45-calendar days;
- (F) TANF Emergency Assistance - five working days;
- (G) Low Income Home Energy Assistance Program (LIHEAP) ~~— 10 calendar days of per~~ OAC 340:20-1-14:
 - (i) 60-calendar days of the date of application when all required proof is provided at the time of application date for winter heating and summer cooling; or

(ii) ~~hand delivering or mailing Form 08AD092E, Client Contact and Information Request, to the applicant requesting required proof no later than 18 hours of the application date for an Energy Crisis Assistance Program (ECAP) application involving a life-threatening medical situation or 48 hours for all other ECAP applications;~~

- (H) Refugee Medical Assistance - 30-calendar days; and
- (I) Child Care subsidy benefits - two-business days from the date the interview is completed and required proof is provided or, ~~if~~ when not provided, within 30-calendar days.

(2) **Delayed applications.** When it is not possible to process the application timely, the worker sends the applicant Form 08MP038E, Client Notice of Action Taken, advising the reason for the delay and the applicant's hearing rights. An application is not denied when it cannot be processed timely due to:

- (A) the applicant's failure or delay in providing needed information because of circumstances beyond the applicant's control of the applicant that result in failure or delay on the part of the applicant to provide needed information;
- (B) an examining physician's failure or delay on the part of an examining physician to supply in supplying needed information;
- (C) ~~failure or delay on the part of the Social Security Administration Administration's failure or delay~~ in making a disability decision; or
- (D) ~~administrative or other emergency that could not reasonably be controlled by the worker worker's~~ failure to take timely action.

(3) **Certification for cash assistance.** When all conditions of TANF eligibility are established for the application month of application, certification is effective ~~from the date of application date~~ and benefits are prorated ~~from the date of application per (5) of this Section.~~ When all conditions of SSP eligibility ~~are~~ established for the application month of application, certification is effective from the first day of the month and the SSP is not prorated.

- (A) ~~Certification cannot be effective prior to the application date.~~
- (~~B~~) When an application is taken for a TANF and all other conditions of eligibility are determined prior to a child's entry to the home, the applicant requests benefits for an additional person after the application date, but before certification, the worker approves benefits for the additional person effective on the same date cannot be prior to the actual date of entry as the assistance unit.
- (B) When a TANF recipient requests benefits for an additional person after certification, the recipient must complete a new application for the additional benefit. When eligible, the worker prorates benefits for the additional person from the application date per (5) of this Section.

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(C) A retroactive payment may be authorized for any month ~~the worker establishes eligibility is established prior to the current month.~~ An application denied in error must have payment authorized for the period eligibility is established. ~~The applicant is not penalized if the certification is delayed beyond the time limit for disposition due solely to OKDHS failure to take timely action.~~

(D) A certification is valid even ~~if~~when a month of ineligibility is determined between application and ~~authorization~~the date the certification action is taken. An applicant, who is ineligible for the month of application ~~but is and~~ eligible for a subsequent month, is certified effective the first day of the subsequent month.

(4) **Notice of ineligibility.** When an applicant is ineligible, a computer-generated ~~denial~~ notice is sent to the applicant ~~providing the effective date and explaining the reason for ineligibility. If the applicant is dissatisfied with the action taken, the~~The applicant may request a fair hearing within the period of time specified in the notice.

(5) **Proration of TANF benefits.** ~~The proration of~~When eligible, the worker certifies a TANF benefits applies when the applicant is determined eligible during the month of application from the application date and prorates the initial month's benefit, unless the applicant applied on the first day of the month or received a TANF benefit for the previous month and is eligible to be reopened per OAC 340:65-5-6. Certification is effective from the date of application. Proration also applies ~~when~~for the first month the worker adds an additional person is added to an existing case open TANF cash assistance benefit. The family is eligible for the full TANF benefit effective the following month, ~~if~~when applicable.

(A) ~~For the month of application only, the TANF benefits are prorated from the date of application. The TANF benefits the recipient would be eligible to receive if proration did not apply must be determined prior to the computation. The worker refers to Schedule IX on Appendix C-1, Maximum Income, Resource, and Payment Standards, to determine the full monthly TANF benefit before computing the prorated benefit.~~

(B) ~~The formula used to determine worker uses Appendix B, Prorated TANF and Food Benefit Payment, to compute the prorated benefit amount is or the formula: 31 - application date x full monthly TANF money benefit ÷ 30 = the prorated payment. The prorated payment is rounded down to the lower dollar amount.~~

(i) ~~If~~When the prorated benefit is ~~below less than~~ \$10, the family is not eligible for a money payment, but is eligible for SoonerCare (Medicaid) benefits for the entire month.

(ii) When food benefits are ~~requested~~certified at the same time or after the TANF certification in the TANF case for the month the TANF payment is prorated, the food benefit unearned income is

automatically updated to show the TANF benefit before proration.

(iii) ~~The notification to the client is computer-generated and client notice shows the benefit amount for the initial month and following month.~~

340:65-3-6. ~~Payment method for Temporary Assistance for Needy Families (TANF) and State Supplemental Payment (SSP) benefits~~Cash assistance payment procedures

(a) **Payment method choices.** The Oklahoma Department of Human Services (DHS) issues ~~TANF and SSP~~cash assistance benefits through a contractor on a debit card or by direct deposit. DHS initially issues the benefit on a debit card.

(1) After the first benefit issues, the recipient may continue to receive benefits by debit card or change the payment method to direct deposit.

(2) The recipient may switch between direct deposit and debit card as needed.

(b) **Debit card procedures.** Debit card procedures are listed in (1) through ~~(7)~~(6) of this ~~paragraph~~subsection.

(1) Unless the applicant was previously issued a debit card, it is issued to the applicant after the application is placed in application status or after benefits are approved.

(A) A debit card issues after the application is placed in application status when the applicant was previously issued a client number. DHS assigns a client number to a person after he or she is approved for a DHS benefit or when the person has an open child support case with DHS Child Support Services (CSS).

(B) When the applicant does not have a client number, the debit card issues after the worker certifies the TANF or SSP benefit.

(C) DHS does not issue a debit card to an applicant when he or she was previously issued a debit card. When the applicant states he or she no longer has the debit card, the applicant must call 1-888-401-9843, the contractor's customer service ~~telephone~~phone number, to obtain a replacement card.

(2) Once the applicant receives the debit card, he or she must call the customer service ~~telephone~~phone number located on the back of the debit card to activate the card and choose a personal identification number (PIN).

(3) Initial and replacement debit cards are mailed to the applicant or recipient's mailing address along with information regarding:

(A) the customer service ~~telephone~~phone number the applicant must call to activate the debit card or to report a lost or stolen card;

(B) how to make purchases using the debit card or get cash from participating automated teller machine (ATM) locations;

(C) free services, including two free ATM withdrawals per calendar month from ~~the Bank of Oklahoma and Transfund banking locations~~MoneyPass ATMs, and fees;

- (D) how to request an ~~alternate~~ companion cardholder or switch to direct deposit; and
 - (E) the website address where the applicant may access his or her account balance and transaction information.
- (4) The recipient is eligible for a free replacement card once every 12 months upon request. The recipient is charged a fee when he or she requests a replacement card more than once every 12 months. The debit card expires every three years and a free replacement is sent to recipients with open benefits.
- (5) ~~The recipient may choose another person to be a secondary cardholder for the benefits. When there is a substitute payee for the TANF benefit per Oklahoma Administrative Code (OAC) 340:65-5-66, the substitute payee is the secondary cardholder.~~
- (A) ~~The recipient and the secondary cardholder must complete and sign a Secondary Cardholder Request form and return it to the address listed on the form before a debit card is issued to the secondary cardholder.~~
 - (B) ~~The recipient obtains the Secondary Cardholder Request form by contacting the customer service telephone number located on the back of the debit card or downloading the form from www.eppi-card.com.~~
 - (C) ~~After the secondary cardholder receives the debit card, he or she must choose a PIN number to access benefits.~~
- (6) ~~When the recipient advises the (DHS) staff informs the worker that he or she did not receive the debit card, the worker checks to see if the recipient's address changed. ~~If~~ When the address changed, the worker updates the system with the correct address. The recipient must call the customer service ~~telephone~~ phone number to request a replacement card.~~
- (7) ~~When the recipient fails or refuses to activate his or her debit card within 90-calendar days, the benefits are expunged from the debit card and returned to DHS.~~
- (A) Upon notification of expunged benefits, the worker contacts the recipient to offer assistance in pinning the debit card.
 - (i) When the worker is unable to reach the recipient by ~~telephone~~ phone, the worker sends Form 08AD092E, Client Contact and Information Request, and gives the recipient 10-calendar days to contact the worker.
 - (ii) When the worker is able to talk to the recipient, the worker determines why the recipient did not pin the debit card and offers assistance. The worker advises the recipient to pin the debit card within 10-calendar days and let the worker know when it is pinned so he or she can restore expunged benefits to the debit card. If the client does not contact the worker within 10-calendar days to reissue the expunged benefits, the worker sends Form 08AD092E and gives the client 10-calendar days to respond.

- (B) The funds may be reloaded on the recipient's debit card if he or she pins the debit card and requests DHS reissuance within 365-calendar days of the issuance date.
 - (C) When the recipient fails or refuses to pin the debit card within 10-calendar days of issuing Form 08AD092E, the worker closes the ~~TANF or SSP~~ cash assistance benefit due to non-cooperation. When the:
 - (i) ~~TANF~~ Temporary Assistance for Needy Families (TANF) cash assistance benefit closes due to non-cooperation, the assistance unit's SoonerCare (Medicaid) benefit closes. When the recipient wants to continue to receive SoonerCare (Medicaid) benefits, he or she must reapply through the Oklahoma Health Care Authority's online enrollment system; ~~and~~ or
 - (ii) ~~SSP~~ State Supplemental Payment cash assistance benefit closes due to non-cooperation, the recipient's SoonerCare (Medicaid) benefit remains open.
 - (D) The recipient's ~~TANF or SSP~~ cash assistance benefit may be reopened when the recipient pins the debit card and notifies the worker within 30-calendar days of closure.
- (c) **Electronic benefit transfer (EBT) transaction restrictions.** ~~Electronic benefit transfer~~ EBT transaction means the use of a credit or debit card service, automated teller machine, point-of-sale terminal, or access to an online system for the withdrawal of funds or the processing of a payment for merchandise or service. Per Section 4004 of the Middle Class Tax Relief and Job Creation Act of 2012, Section 608(a) of Title 42 of the United States Code (42 U.S.C. § 608(a)(12)), and Section 241.4 of Title 56 of Oklahoma Statutes, no debit or EBT card containing state or federal funds from programs including, but not limited to, TANF may be used in any transaction in any:
- (1) liquor store. The term liquor store means any establishment that sells exclusively or primarily intoxicating liquor. The term does not include a grocery store that sells both intoxicating liquor and groceries, including staple foods per Section 3(r) of the Food and Nutrition Act;
 - (2) casino, gambling casino, or gaming establishment except for:
 - (A) a grocery store that sells groceries, including staple foods per 7 U.S.C. § 2012, and also offers, or is located within the same building or complex as an establishment offering casino, gambling, or gaming activities; or
 - (B) any other establishment offering casino, gambling, or gaming activities incidental to the principal purpose of the business;
 - (3) retail establishment that provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment; or
 - (4) retail establishment whose principal business is that of selling cigarettes, cigars, or tobacco products.
- (d) **Direct deposit procedures.** ~~Direct deposit procedures are listed in (1) through (7) of this paragraph.~~

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- (4) When the recipient prefers to receive benefits through direct deposit, he or she must complete and sign the direct deposit form, provide a voided check or a savings account deposit slip, and return them to the address on the form.
- (A1) To obtain the direct deposit form, the recipient calls the customer service ~~telephone~~ phone number located on the back of the debit card, downloads a direct deposit form from the ~~www.epicard.com~~ www.goprogram.com website, or obtains one from the worker.
- (B2) After receiving the completed form and confirming account information, the contractor has five-business days to enter direct deposit information in the system.
- (C3) Benefits are changed to direct deposit for the next payment due after direct deposit information is entered in the system.
- (D4) Funds cannot be transferred from a debit card to direct deposit.
- (e) **Benefit issuance.** After the initial issuance, the recipient's cash assistance benefit is deposited in the recipient's checking or savings account ~~on the first banking day of each month~~ or loaded on the recipient's debit card ~~on the first day of each month~~.
- (1) The funds are available for withdrawal after deposit.
 - (2) After the monthly benefit is deposited in the recipient's account or loaded on the debit card, DHS is not responsible if someone other than the payee withdraws the funds. Banking regulations govern withdrawals.
 - (3) Recipients are encouraged to be prudent about giving withdrawal privileges or debit card access to other people.
- (f) **Issuance problem procedures.** When problems occur with direct deposit or debit card deposits, procedures for dealing with these problems are listed in (1) through (5) of this subsection.
- (1) When the recipient provides incorrect account information, the ~~TANF or SSP~~ cash assistance benefit cannot be deposited in the recipient's bank account. The contractor's staff attempts to contact the recipient to obtain current banking information. When the recipient fails to provide current information or five calendar days lapse without contact, the contractor converts the payment method to a debit card. The recipient must complete a new direct deposit form and provide current account information before another attempt is made to issue benefits through direct deposit.
 - (2) When a deposit is not made to the recipient's direct deposit account or loaded on the debit card, the recipient must report the problem to the contractor's customer service ~~telephone~~ phone number. The contractor handles any communication with banking institutions or debit card vendors and then contacts the recipient regarding resolution.
 - (3) When the recipient dies while receiving benefits, questions may arise concerning unspent funds in the recipient's bank account or on his or her debit card.
- (A) When the client is not eligible for a payment made after death to the recipient's debit card or bank account, an overpayment may be established against the estate.
- (i) DHS notifies the debit card contractor to expunge the funds from the debit card, when possible.
 - (ii) Payments made by direct deposit, cannot be expunged or retrieved.
- (B) When there are unused benefits on the debit card at the time of death for which the recipient was entitled and someone contacts DHS to request these benefits, he or she is advised to contact the customer service phone number located on the back of the recipient's debit card to request the funds. When unused funds remain in a bank account, the person must contact the financial institution to request the funds.
- (4) When the recipient's cash assistance benefit closes due to transfer of eligibility to another ~~TANF or SSP~~ cash assistance case, the payment method is automatically transferred to the new case provided the client number of the payee in the closed and new case is the same. When the recipient's cash assistance benefit closes and he or she later reapplies and is approved with the same client number, the previously chosen payment method is used to issue the cash assistance benefit. The recipient must call the contractor's customer service ~~telephone~~ phone number to change the payment method or to update bank account information.
- (5) When the payee for the cash assistance benefit changes for any reason, the new payee is assigned a new client number unless one was previously issued to him or her.
- (A) The new payee is considered an applicant. Refer to (a) and (b) of this Section regarding payment methods and initial payments.
 - (B) The new payee does not have access to benefits issued prior to the payee change.

340:65-3-7. ~~Denial of application~~ Application denial

(a) ~~If~~ When the applicant is unwilling to cooperate in establishing eligibility, or ~~if~~ when eligibility cannot be established, the worker denies the application. A computer-generated denial notice ~~of denial~~ is sent to the applicant or his or her representative except in the case of death. ~~In case of an applicant's death, the worker sends a letter to the applicant's authorized representative or nearest relative.~~

(1) Refer to Oklahoma Administrative Code (OAC) 340:65-3-2 for the definition of what constitutes an application for each program.

(2) Before denying an application with incomplete documentation, the worker must provide the applicant Form 08AD092E, Client Contact and Information Request, giving him or her at least 10-calendar days to provide the missing proof. ~~When the applicant requests~~ requested, the worker provides assistance in obtaining necessary proof, ~~the worker must assist the applicant.~~ The worker's assistance may range from explaining how or where to

obtain proof to the worker obtaining the proof when the client is unable to do so. The worker is not required to obtain proof for a client who is able, but unwilling to do so.

(3) When an applicant verbally asks to withdraw his or her application before the worker determines eligibility is ~~determined~~, the worker asks the applicant to put the withdrawal request in writing. The worker denies the application based on the reason given by the applicant.

(4) When the worker is unable to locate the applicant to complete the application, he or she denies the application.

(5) The applicant may request a fair hearing within the specified time of the notice when he or she disagrees with the action taken. Refer to OAC 340:2-5 for fair hearing procedures.

(b) A new application is not required when, after denial, the household completes the application process and is determined eligible within 60-calendar days of the initial application date. When eligibility is not determined the household does not complete the application process by the 30th day following denial, ~~if~~when specified by the program, benefits are prorated from the date eligibility is determined.

340:65-3-8. Determination of continuing eligibility

(a) **Determination of continuing eligibility.** ~~Determining continuing~~The worker determines continued eligibility is a process that ~~must be carried out~~ at appropriate intervals. ~~The appropriate interval for reviewing eligibility depends on the type of benefit received.~~ The worker is responsible for:

- (1) ~~advising/informing~~ the recipient at each contact of his or her responsibility to report changes within 10-calendar days of the date the change becomes known;
- (2) ~~making contact with~~contacting the recipient when possible changes are indicated to ensure continuing eligibility;
- (3) synchronizing the renewal dates for all benefits received by the household when possible; and
- (4) determining continuing eligibility.

(b) **Benefit renewal time frames.** The periodic renewal time frame varies depending on the program.

(1) A benefit renewal must be completed at six-month intervals with a:

- (A) Temporary Assistance for Needy Families (TANF) recipient due to:
 - (i) pending required immunizations per Oklahoma Administrative Code (OAC) 340:10-14-1;
 - (ii) payment standard reductions because of program violations per OAC 340:10-3-57(g) or (h);
 - (iii) hardship extension approvals per OAC 340:10-3-56(a)(2)(E);
 - (iv) earned income per OAC 340:10-3-31 through 340:10-3-40; or
 - (v) the exemption of a work-eligible person ~~exempt~~ from TANF Work activities because of his or her incapacity or to care for a disabled family member living in the household per OAC 340:10-2-1; or

- (B) ~~child care recipient per OAC 340:40-9-1~~; ~~or~~
- (~~C~~) food benefit recipient subject to a mid-certification renewal per OAC 340:50-9-5(~~+~~d) and (~~+~~e).

(2) A benefit renewal must be completed at 12-month intervals, unless an earlier renewal date is warranted, with a:

- (A) TANF recipient unless (b)(1)(A) of this Section applies;
- (B) State Supplemental Payment (SSP) recipient;
- (C) child care recipient ~~who is receiving TANF or SSP benefits~~ per OAC 340:40-9-1;
- (D) food benefit household subject to an annual mid-certification renewal per OAC 340:50-9-5(~~g~~(b) and (~~h~~(c));
- (E) food benefit household whose Supplemental Nutrition Assistance Program (SNAP) certification renewal must be completed at 12-months-month intervals per OAC 340:50-9-6; or
- (F) SoonerCare (Medicaid) recipient per OAC 317:35.

(3) The worker completes a SNAP certification renewal at 24-month intervals for households subject to an annual mid-certification renewal per OAC 340:50-9-5(~~g~~(b) and (~~h~~(c)).

(c) **Benefit renewal notification.** The recipient is ~~sent notification~~receives a notice when the benefit renewal is due, advising/informing the recipient he or she must complete the benefit renewal within a certain specified time frame in order to continue receiving benefits.

(1) The worker sends Form 08AD092E, Client Contact and Information Request, to:

- (A) SoonerCare (Medicaid) ~~long term~~ ~~care and other recipient groups not in online enrollment~~ recipients for whom DHS determines eligibility per OAC 317:35-5-63 when they are not eligible to submit their renewals through okdhslive.org;
- (B) SSP recipients; and
- (C) TANF recipients.

(2) ~~The~~A computer-generated notice titled "Renew My Benefits" is sent to:

- (A) child care recipients; and
- (B) ~~SoonerCare (Medicaid) recipients in the online enrollment population~~; and
- (~~C~~) food benefit recipients due for mid-certification renewal and

(~~3~~) ~~The computer generated notice titled "Continue My SNAP Benefits" is sent to food benefit recipients due for certification renewal.~~

(d) **Signature requirements.** The recipient, guardian, or a person acting on the recipient's behalf, such as an authorized representative or a person with power-of-attorney, must sign the benefit renewal for all programs except TANF. TANF renewals must be signed by the recipient. ~~If~~When the recipient is living/lives with his or her spouse, both must sign the TANF renewal.

(e) **Interview requirements.** ~~Whether an interview is required for a benefit~~Benefit renewal varies interview requirements vary depending on the program.

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- (1) A face-to-face interview is required for the:
- (A) TANF program; or
 - (B) Supplemental Security Income-Disabled Children's Program (SSI-DCP) service plan renewal per ~~OAC 340:70-8-1~~ OAC 340:15-3-1.
- (2) A telephone or face-to-face interview is required at SNAP certification renewal except for (e)(3)(C) of this Section.
- (3) An interview is not required for:
- (A) any of the SoonerCare (Medicaid) programs as long as the client signed and completed the renewal is complete, including the signature, provided all required proof provided, and none of the information is questionable. When information is not complete or is questionable necessary, the worker contacts the recipient to obtain required proof complete the renewal;
 - (B) ~~the~~ Child Care Subsidy program renewals ~~unless the child care recipient receives child care benefits because of a protective or preventive reason per OAC 340:40-7-8; or~~
 - (C) food benefit households completing a:
 - (i) mid-certification renewal, at six- or 12-month intervals; or
 - (ii) SNAP certification renewal when all household members are elderly or disabled and there is no earned income in the household per OAC 340:50-3-2(a)(2).
- (f) **Eligibility determination.** The worker determines eligibility after the benefit renewal is signed, all required proof is provided, an interview, if required, is conducted, and all information evaluated.
- (1) ~~The eligibility determination worker may be to:~~
 - (A) complete the benefit renewal without changes;
 - (B) complete the benefit renewal with changes; or
 - (C) close the benefit or benefits.
 - (2) ~~Benefits closed may be reopened when~~ When benefits close and the recipient provides required proof by the last day of the month of closure, benefits may be reopened.

[OAR Docket #17-492; filed 6-23-17]

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

[OAR Docket #17-493]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 3. Child Protective Services
Part 1. Purpose, Definitions, and Hotline Protocol
340:75-3-120 [AMENDED]
340:75-3-130 [AMENDED]
Part 5. Investigative Findings and Appeals
340:75-3-530 [AMENDED]
Subchapter 6. Permanency Planning
Part 1. General Provisions
340:75-6-4 [AMENDED]
Part 5. Permanency Planning Services
340:75-6-31 [AMENDED]

Part 7. Family and Child Individualized Services Planning Components
340:75-6-40.1 [AMENDED]
340:75-6-40.4 [AMENDED]
340:75-6-40.9 [AMENDED]
Part 8. Child Welfare Specialist Role
340:75-6-50 [AMENDED]
Part 11. Permanency Planning and Placement Services
340:75-6-85.2 [AMENDED]
340:75-6-85.5 [AMENDED]
340:75-6-89 [AMENDED]
340:75-6-91 [AMENDED]
Subchapter 8. Therapeutic Foster Care and Developmental Disabilities Services
Part 1. Therapeutic Foster Care
340:75-8-6 through 340:75-8-7 [AMENDED]
340:75-8-11.1 through 340:75-8-12 [AMENDED]
Subchapter 11. Child Welfare Community-Based Residential Care
Part 17. Contracted Community-Based Residential Care Providers
340:75-11-230 [AMENDED]
340:75-11-233.1 [AMENDED]
340:75-11-237 [AMENDED]
340:75-11-239 through 340:75-11-240 [AMENDED]
Part 27. Residential Maternity Services
340:75-11-320 [AMENDED]
Part 33. Contracted Level D Plus and Level E Placements
340:75-11-360 [AMENDED]
Subchapter 13. Other Child Welfare Services and Medical Services for Children in Out-of-Home Care
Part 1. Eligibility for Substitute Care Services and Claims for Payment
340:75-13-9 [AMENDED]
Part 5. Clothing Purchases
340:75-13-45 [AMENDED]
Subchapter 16. Behavioral Health Treatment Services
Part 1. Inpatient Behavioral Health Treatment Services
340:75-16-29 [AMENDED]
340:75-16-31 [AMENDED]
340:75-16-35 [AMENDED]
(Reference WF 17-06 and 15-01)

AUTHORITY:

Director of Human Services; Section 162 of Title 56 of the Oklahoma Statutes (56 O.S. § 162).

Chapter 75 Subchapter 3: 10A O.S. § 1-4-203, Child Abuse Prevention and Treatment Act, 42 United States Code (U.S.C.) § 5101 et seq.,

Chapter 75 Subchapter 3: 10 O.S. §§ 175.20 and 402; 10A O.S. §§ 1-1-101, 1-1-102, 1-1-105, 1-2-101, 1-2-102, 1-2-105, 1-6-102, and 1-6-105; 21 O.S. §§ 748, 748.2, and 1040.13a; HBs 1078 and 1273; SBs 292 and 535.

Chapter 75 Subchapter 6: 10 O.S. § 40.6; 10A O.S. §§ 1-1-102, 1-4-204, 1-4-705, 1-4-707, 1-4-803 through 1-4-805, 1-4-704, 1-4-812, 1-7-103, 1-7-106, 1-7-107, 1-7-110, 1-9-119; 70 O.S. § 1-101 et seq.; Multiethnic Placement Act 1994 Public Law 103-82, Interethnic Adoption Provisions 1996, Individuals with Disabilities Education Act, Education of All Handicapped Children Act, 20 U.S.C. §§ 1400 through 1461, and 25 U.S.C. 1915.

Chapter 75 Subchapter 6: 10 O.S. §§ 7700-102, 7700-204; 10A O.S. §§ 1-1-102, 1-1-105, 1-4-203, 1-4-204, 1-4-704, 1-4-706, 1-4-707, 1-4-709, 1-4-807, 1-4-809, 1-4-811, 1-4-901, 1-4-902, 1-4-904, 1-4-907, 1-4-908, 1-7-103, 1-7-106, 1-9-107; 70 O.S. § 1-101, 2601 through 2605, 3230; 20 U.S.C. §§ 1400 through 1461; 22 U.S.C. § 7102; 42 U.S.C. §§ 671 and 673; HBs 1078, 1320, and 2069; SBs 762 and 763.

Chapter 75 Subchapter 7: 10A O.S. § 1-9-119; 68 O.S. § 2358.5-1.

Chapter 75 Subchapter 8: 10A O.S. §§ 1-1-105, 1-2-101, 1-6-102, 1-7-105, and 1-9-119; and HB 1078 and SB 763.

Chapter 75 Subchapter 11: 10A O.S. §§ 1-2-101, 1-3-102, 1-6-107, 1-7-103, 1-7-105, and 1-9-110; 70 O.S. § 1-113; and HBs 1078 and 1273.

Chapter 75 Subchapter 13: 10A O.S. § 1-4-203.

Chapter 75 Subchapter 16: 10A O.S. § 1-1-105; 43A O.S. §§ 5-502 and 5-513; and HB 1078.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

January 6, 2017

COMMENT PERIOD:

February 1, 2017 through March 3, 2017

PUBLIC HEARING:

March 9, 2017

ADOPTION:

March 14, 2017

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

March 16, 2017

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 13, 2017

FINAL ADOPTION:

June 13, 2017

EFFECTIVE:

September 15, 2017

SUPERSEDED EMERGENCY ACTIONS:

Superseded rules:

- Subchapter 3. Child Protective Services
 - Part 1. Purpose, Definitions, and Hotline Protocol
 - 340:75-3-120 [AMENDED]
 - 340:75-3-130 [AMENDED]
- Subchapter 6. Permanency Planning
 - Part 1. General Provisions
 - 340:75-6-4 [AMENDED]
 - Part 5. Permanency Planning Services
 - 340:75-6-31 [AMENDED]
 - Part 7. Family and Child Individualized Services Planning Components
 - 340:75-6-40.1 [AMENDED]
 - 340:75-6-40.4 [AMENDED]
 - 340:75-6-40.9 [AMENDED]
 - Part 8. Child Welfare Specialist Role
 - 340:75-6-50 [AMENDED]
 - Part 11. Permanency Planning and Placement Services
 - 340:75-6-85.2 [AMENDED]
- Subchapter 8. Therapeutic Foster Care and Developmental Disabilities Services
 - Part 1. Therapeutic Foster Care
 - 340:75-8-6 through 340:75-8-7 [AMENDED]
 - 340:75-8-11.1 through 340:75-8-12 [AMENDED]
- Subchapter 11. Child Welfare Community-Based Residential Care
 - Part 17. Contracted Community-Based Residential Care Providers
 - 340:75-11-230 [AMENDED]
 - 340:75-11-233.1 [AMENDED]
 - 340:75-11-237 [AMENDED]
 - 340:75-11-239 through 340:75-11-240 [AMENDED]
 - Part 27. Residential Maternity Services
 - 340:75-11-320 [AMENDED]
 - Part 33. Contracted Level D Plus and Level E Placements
 - 340:75-11-360 [AMENDED]
- Subchapter 13. Other Child Welfare Services and Medical Services for Children in Out-of-Home Care
 - Part 5. Clothing Purchases
 - 340:75-13-45 [AMENDED]
- Subchapter 16. Behavioral Health Treatment Services
 - Part 1. Inpatient Behavioral Health Treatment Services
 - 340:75-16-29 [AMENDED]
 - 340:75-16-31 [AMENDED]
 - 340:75-16-35 [AMENDED]

Gubernatorial approval:

February 29, 2016

Register publication:

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16-370

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The proposed revisions to Chapter 75 Subchapter 3, amend the rules to: (1) clarify the review procedure for substantiated findings of child abuse or neglect appeals; and (2) revise definitions and protocols for child protective services to comply with statutory changes following passage of House Bills (HBs) 1078 and 1273 (2015) and Senate Bills (SBs) 292 and 535 (2015).

The proposed revisions to Chapter 75 Subchapter 6, amend child permanency planning definitions and rules to: (1) comply with statutory changes following passage of HBs 1078, 1320, and 2069 (2015); SBs 762 and 763 (2015) along with federal law per House Resolution 4980 (2014); (2) update policy prohibiting use of corporal punishment by school personnel; (3) change approval requirements on overnight travel out of Oklahoma and the

United States (U.S.); and (4) revise preventative child care subsidy policy to comply with federal requirements.

The proposed revisions to Chapter 75 Subchapter 8, amend therapeutic foster care (TFC) rules to: (1) comply with statutory changes per HB 1078 (2015) and SB 763 (2015); and (2) align with foster care rules.

The proposed revisions to Chapter 75 Subchapter 11, amend community-based residential care (CBRC) rules to: (1) comply with statutory requirements per HBs 1078 (2015) and 1273 (2015); and (2) implement core strategy approved by Pinnacle Plan Co-Neutrals regarding maltreatment in care (MIC).

The proposed revisions to Chapter 75 Subchapter 13, amend the rules to: (1) align rule with Statute regarding responsibility for providing required documentation; and (2) update clothing authorization policy to reflect the Pinnacle Plan priority to increase resource parent reimbursement rates.

The proposed revisions to Chapter 75 Subchapter 16, amend rules for mental health treatment services to comply with statutory requirements per HB 1078 (2015).

CONTACT PERSON:

Dena Thayer, Programs Administrator, Legal Services - Policy, Oklahoma Department of Human Services, PO Box 25352, Oklahoma City, Oklahoma 73125, 405-521-4326.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2017:

SUBCHAPTER 3. CHILD PROTECTIVE SERVICES

PART 1. PURPOSE, DEFINITIONS, AND HOTLINE PROTOCOL

340:75-3-120. Definitions and substantiation protocol

(a) **Legislative intent.** Legislative intent per Section 1-1-102 of Title 10A of the Oklahoma Statutes (10A O.S. § 1-1-102) states, "...it is the purpose of the laws relating to children alleged or found to be deprived to...intervene in the family only when necessary to protect a child from harm or threatened harm."

(b) **Definitions.** Terms used by Oklahoma Department of Human Services (DHS) Child Welfare Services (CWS) not found in the Oklahoma Children's Code are defined in Oklahoma Administrative Code (OAC) 340:75-3-120 Instructions to Staff. The following words and terms, when used in the Oklahoma Children's Code, 10A O.S. §§ 1-1-105, 1-2-105, and 1-6-105, 21 O.S. §§ 748, 748.2, and 1040.13a, or in this Subchapter have the following meanings unless the context indicates otherwise:

"Abandonment" means the:

- (A) willful intent by words, actions, or omissions of the person responsible for the child's (PRFC) health, safety, or welfare (PRFC) not to return for a child; or
- (B) failure to maintain a significant parental relationship with a child through visitation or communication, such as incidental or token visits or communication are not considered significant; or
- (C) failure to respond to notice of deprived proceedings.

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"Abuse" means harm or threatened harm ~~or failure to protect from harm or threatened harm~~ to a child's health, safety, or welfare by a PRFC; including, non-accidental physical or mental injury; or sexual abuse or sexual exploitation; however, nothing prohibits a parent from using ordinary force as a means of discipline including, but not limited to, spanking, switching, or paddling.

"Age-appropriate or developmentally-appropriate" means:

(A) activities or items that are generally accepted as suitable for children of the same age or level of maturity or that are determined to be developmentally-appropriate for a child, based on the development of cognitive, emotional, physical, and behavioral capacities that are typical for an age or age group; and

(B) in the case of a specific child, activities or items that are suitable for that child based on the developmental stages attained by the child with respect to the cognitive, emotional, physical, and behavioral capacities of the specific child.

"Assessment" means a comprehensive review of child safety and evaluation of family functioning and protective capacities conducted in response to a child abuse or neglect referral that does not allege a serious and immediate safety threat to a child.

"Behavioral Healthhealth" means mental health, substance use or abuse, or co-occurring mental health and substance use or abuse diagnoses, and the continuum of mental health, substance use or abuse, or co-occurring mental health and substance use or abuse treatment.

"Child" means any unmarried person younger than 18 years of age, including an infant born alive.

"Commercial sex" means any form of commercial sexual activity, such as sexually explicit performances, prostitution, participation in the production of pornography, performance in a strip club, or exotic dancing; or display per 21 O.S. § 748.

"Custodian" means an individual other than a parent, legal guardian, or Indian custodian, to whom legal custody of the child ~~has been~~was awarded by the court. As used in the Oklahoma Children's Code, the term "custodian" does not mean DHS.

"Dependency" means a child who is homeless or without proper care or guardianship through no fault of his or her parent, legal guardian, or custodian.

"Drug-endangered child" means a child who is at risk of suffering physical, psychological, or sexual harm as a result of the use, possession, distribution, manufacture, or cultivation of controlled dangerous substances; or the attempt of any of these acts by a PRFC per this Section and 10A O.S. § 1-1-105.

(~~1~~A) This term includes circumstances wherein the PRFC's substance use or abuse interferes with ~~that person's~~his or her ability to parent and provide a safe and nurturing environment for the child.

(~~2~~B) The term also includes newborns who test positive for a controlled dangerous substance with the exception of those substances administered under the care of a physician.

(~~3~~C) Upon receipt of a report that a child may be abused, neglected, or drug-endangered, DHS conducts a safety analysis, per 10A O.S. § 1-2-102.

"Emergency custody" means court-ordered custody of a child prior to adjudication of the child.

"Failure to protect" means ~~the PRFC:~~

(A) ~~had knowledge or could have predicted that the child would be:~~

(i) ~~in imminent danger or a high risk situation;~~

~~or~~

(ii) ~~with a person who has a history of abusive, neglectful, or violent behavior; and~~

(B) ~~failed to show regard for the child's need for safety; failure to take reasonable action to remedy or prevent child abuse or neglect, and includes the conduct of a non-abusing parent or guardian who knows the identity of the abuser or the person neglecting the child, but lies, conceals, or fails to report the child abuse or neglect, or otherwise take reasonable action to end the abuse or neglect.~~

"Foster parent" means any person maintaining a therapeutic, emergency, specialized community home, tribal, kinship, or foster family home; responsible for providing care, supervision, guidance, rearing, and other foster care services to a child.

"Harm or threatened harm" means any real or threatened physical, mental, or emotional injury or damage to the body or mind of a child that is not accidental including, but not limited to:

(A) physical abuse;

(B) sexual abuse or sexual exploitation;

(C) neglect;

(D) failure or omission to provide protection;

(E) abandonment; or

(F) dependency.

"Heinous and shocking abuse" means any aggravated physical abuse that results in serious bodily, mental, or emotional injury. Serious bodily injury means, but is not limited to, injury that involves:

(A) substantial risk of death;

(B) extreme physical pain;

(C) protracted disfigurement;

(D) loss or impairment of a function of a body member, organ, or mental faculty;

(E) an injury to an internal or external organ or the body;

(F) bone fractures;

(G) sexual abuse or sexual exploitation;

(H) chronic abuse including, but not limited to, physical, emotional, or sexual abuse; or sexual exploitation that is repeated or continuing;

(I) torture including, but not limited to, inflicting, participating in, or assisting in inflicting intense physical or emotional pain upon a child repeatedly over a period of time for the purpose of coercing or terrorizing a child, or for the purpose of satisfying the craven, cruel, or prurient desires of the perpetrator or another person; or

(J) any other similar aggravated circumstance.

"Heinous and shocking neglect" means chronic neglect that includes, but is not limited to:

- (A) chronic neglect that includes, but is not limited to, a persistent pattern of family functioning in which the caregiver has not met or sustained the basic needs of a child, ~~that~~ which results in harm to the child;
- (B) neglect that resulted in a diagnosis of the child as an ~~inorganic~~ failure to thrive;
- (C) an act or failure to act by a parent that results in:
 - (i) serious physical or emotional harm;
 - (ii) sexual abuse or sexual exploitation;
 - (iii) the death or near death of a child or sibling;
 - or
 - (iv) presents an imminent risk of serious harm to a child; or

(D) any other similar aggravating circumstance.

"Human trafficking" means modern-day slavery that includes, but is not limited to, extreme exploitation and the denial of freedom or liberty of an individual for purposes of deriving benefit from that individual's commercial sex act or labor.

"Human trafficking for commercial sex" means:

- (A) recruiting, enticing, harboring, maintaining, transporting, providing, or obtaining, by any means, another person through deception, force, fraud, threat, or coercion for purposes of engaging the person in a commercial sex act;
- (B) recruiting, enticing, harboring, maintaining, transporting, providing, purchasing or obtaining, by any means, a minor for purposes of engaging the minor in a commercial sex act; or
- (C) benefiting, financially or by receiving anything of value, from participating in a venture that has engaged in an act of trafficking for commercial sex.

"Infant" means a child 12 months of age or younger.

"Investigation" means a response to an allegation of abuse or neglect that involves a serious and immediate threat to the safety of the child making it necessary to determine:

- (A) the current safety of the child and the risk of subsequent abuse or neglect;
- (B) whether child abuse or neglect occurred; and
- (C) whether the family needs prevention and intervention-related services.

"Near death" means a child is in serious or critical condition as verified by a physician, a registered nurse, or other licensed health care provider. Verification of the medical condition of a child may be given in person or by telephone, mail, ~~electronic mail~~ email, or facsimile.

"Neglect" means the failure of or omission by the PRFC to:

- (1) provide the child with adequate:
 - (A) nurturance and affection, food, clothing, shelter, sanitation, hygiene, or an appropriate education;
 - (B) medical, dental, or behavioral health care;
 - (C) supervision or appropriate caretakers; or
 - (D) special care made necessary by the child's physical or mental condition; or

(2) protect the child from exposure to:

- (A) the use, possession, sale, or manufacture of illegal drugs;
- (B) illegal activities;
- (C) sexual acts or materials that are not age-appropriate; or
- (D) abandonment.

"Person responsible for the child's (PRFC) health, safety, or welfare (PRFC)" means:

- (A) the child's parent, legal guardian, custodian, or foster parent. Per 10A O.S. § 1-1-105, a custodian is an individual other than a parent, legal guardian, or Indian custodian to whom legal custody of the child has been awarded by the court;
- (B) a person 18 years of age or older with whom the child's parent cohabitates or any other adult residing in the home of the child;
- (C) an agent or employee of a public or private residential home, institution, facility, or day treatment program per 10 O.S. § 175.20;
- (D) an owner, operator, or employee of a child care facility, per 10 O.S. § 402, whether the home is licensed or unlicensed; or
- (E) a foster parent maintaining a therapeutic, emergency, specialized community, tribal, kinship, or foster family home responsible for providing care, supervision, guidance, rearing, and other foster care services to a child.

"Physical abuse" means an injury resulting from punching, beating, kicking, biting, burning, or otherwise harming a child. Even though the injury is not an accident, the PRFC may not have intended to hurt the child.

- (A) The injury may result from:
 - (i) extreme physical punishment inappropriate to the child's age or condition;
 - (ii) a single episode or repeated episodes that range in severity from significant bruising to death; or
 - (iii) any action including, but not limited to, hitting with a closed fist, kicking, inflicting burns, shaking, or throwing the child, even when no injury is sustained but the action places the child at risk of grave physical danger.

(B) Minor injury of a child older than 10 years of age is not considered physical abuse unless the actions that caused the injury placed the child in grave physical danger.

"Protective custody" means custody of a child taken by law enforcement or designated employee of the court, without a court order.

"Reasonable parental discipline" means parental use of ordinary force as a means of discipline including, but not limited to, spankings, switching, or paddling that does not result in bodily injury to the child.

"Risk" means the likelihood that an incident of child abuse or neglect will occur in the future.

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"Risk factors" means family behaviors and conditions that suggest the caregivers are likely to maltreat their child in the future.

"Safety analysis" means DHS action taken by DHS in response to a report of alleged child abuse or neglect that may include an assessment or investigation based upon an analysis of the information received according to priority guidelines and other criteria adopted by DHS.

"Safety evaluation" means evaluation of a child's situation by DHS, using a structured, evidence-based tool to determine if the child is subject to safety threats.

"Safety threat" means the threat of serious harm due to child abuse or neglect occurring in the present or in the very near future and without the intervention of another person, a child would likely or in all probability sustain severe or permanent disability or injury, illness, or death.

"Sexual abuse" means any sexual activity, including sexual propositioning between the PRFC and child or any acts committed or permitted by the PRFC including, but not limited to:

- (A) rape;
- (B) sodomy;
- (C) incest; and
- (D) lewd or indecent acts or proposals to a child.

"Sexual exploitation" means allowing, permitting, or encouraging a child to engage in:

- (A) allowing, permitting, encouraging, or forcing a child to engage in prostitution, as defined by law, by any person 18 years of age or older or by a PRFC; or
- (B) allowing, permitting, or encouraging, or engaging in the lewd, obscene, or pornographic, as defined by law, photographing, filming, or depicting of the child in those acts by a PRFC.

"Trafficking in persons" means sex trafficking or severe forms of trafficking in persons.

- (A) "Sex trafficking" means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act; and
- (B) "Severe forms of trafficking in persons" means:
 - (i) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or
 - (ii) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

"Youth" means a child 13 through 17 years of age.

(c) **Substantiation of child abuse and neglect allegations.** Specific guidelines in conjunction with the definitions in this Section and OAC 340:75-3-120 are utilized in substantiating abuse or neglect.

340:75-3-130. Child Abuse and Neglect Hotline

(a) **Child Abuse and Neglect Hotline (Hotline).** Per Section 1-2-101 of Title 10A of the Oklahoma Statutes (10A O.S. § 1-2-101), the Oklahoma Department of Human Services

(DHS) established a statewide, centralized hotline that operates 24 hours per day to receive child abuse or neglect reports at 1-800-522-3511. An allegation of child abuse or neglect reported in any manner to a DHS county office is immediately referred to the Hotline.

(b) **Hotline tracking system.** Per 10A O.S. § 1-2-101, DHS maintains a system to track the number of calls the Hotline received and the number of:

- (1) calls screened out;
- (2) referrals assigned; ~~and~~
- (3) calls received by persons unwilling to disclose basic personal information including, but not limited to, first and last name; and
- (34) unsubstantiated or ruled out allegations.

(c) **Screening Hotline reports.** Each report received at the Hotline is screened to determine whether the allegations meet the definition of child abuse or neglect and are within the scope of child protective services (CPS) assessment or investigation, per 10A O.S. §§ 1-1-101 et seq. and Oklahoma Administrative Code (OAC) ~~340:75-340:75-3~~. When the allegations are not appropriate for CPS, the reporter may be provided an explanation as to why an assessment or investigation will not be conducted and, when appropriate, where a referral may be made to assist the family.

(d) **Time limitations for accepting reports for assessment or investigation.** CPS intervention is limited to current situations as the CPS focus is on identifying and protecting children presently at risk or who will be at risk ~~if~~ when safety measures are not put in place.

- (1) When a report is received that alleges abuse or neglect that is not recent, information is obtained to determine if there is reason to believe the child or other children may presently be at risk or in present danger.
- (2) When information does not indicate a child is presently at risk or in present danger, CPS intervention may not be warranted.

(e) **Disposition of the screened out report.** When a report is received that is not appropriate for CPS, however, services are needed, DHS may make a referral to a DHS or outside resource for emergency food, shelter, medical services, or counseling.

(f) **Response to reporter concerning a screened out report.** The reporter may be informed of the decision to screen out the referral and the reason for the decision.

(g) **DHS response to reports of child abuse or neglect.** Per 10A O.S. § 1-2-105, DHS responds to an accepted report of child abuse or neglect by initiating an assessment of the family or an investigation of the report in accordance with priority guidelines. The primary purpose of the assessment or investigation is the protection of the child. For ~~investigations or assessments or investigations~~, DHS gives special consideration to the risks of any minor child, including a child with a disability, who is vulnerable due to his or her inability to communicate effectively about abuse, neglect, or any safety threat.

(h) **Prioritization of child abuse and neglect reports.** Per 10A O.S. § 1-2-105, DHS prioritizes reports of alleged child abuse or neglect based on the severity and immediacy of the alleged harm to the child and assigns a response time.

(1) **Priority I reports.** A Priority I report indicates the child is in present danger and at risk of serious harm or injury. Allegations of abuse and neglect may be severe and conditions extreme. The situation is responded to immediately, the same day the report is received.

(2) **Priority II reports.** Priority II is assigned to all other reports. The response time is established based on the vulnerability and risk of harm to the child. Priority II assessments or investigations are initiated within two_ to 10_ calendar days from the date the report is accepted for assessment or investigation.

(i) **Accepted report assigned as assessment or investigation.**

(1) An assessment is conducted when a report meets the abuse or neglect guidelines but does not constitute a serious and immediate safety threat to a child.

(2) An investigation is conducted when:

(A) a report meets the abuse or neglect guidelines and constitutes a serious and immediate threat to the safety of a child per 10A O.S. § 1-1-105;

(B) there have been three or more reports accepted for assessment or investigation regarding the family per 10A O.S. § 1-2-102;

(C) the family has been the subject of a deprived petition per 10A O.S. § 1-2-102; or

(D) the child ~~has been~~ was diagnosed with fetal alcohol syndrome or DHS determines the child meets the definition of "drug-endangered child" ~~as defined in~~ per 10A O.S. § 1-1-105 and OAC 340:75-3-450.

(j) **Referral recordings.** Per 10A O.S. § 1-2-101(A)(5), DHS electronically records each referral received by the ~~hot line~~ Hotline and retains the recordings securely for ~~90 calendar days~~ 12 months.

~~(1) The recordings are confidential and subject to disclosure only in those cases in which criminal charges related to the referral have been filed pursuant to the requirements of 10A O.S. § 1-6-102(E) or when otherwise ordered by the court.~~

~~(2) When~~ when the court orders the disclosure of the referral, DHS redacts any information identifying the reporting party unless otherwise ordered by the court.

PART 5. INVESTIGATIVE FINDINGS AND APPEALS

340:75-3-530. Appeal process for substantiated findings of child abuse or neglect

(a) **Purpose.** The Child Abuse Prevention and Treatment Act (CAPTA), Section 5101 et seq. of Title 42 of the United States Code, requires the Oklahoma Department of Human Services (DHS) to provide an appeal process for persons who disagree with a substantiated finding of child abuse or neglect. The appeal process:

(1) provides individuals with a substantiated finding of child abuse or neglect an opportunity for due process;

(2) serves as a quality assurance mechanism to assess findings compliance with child protective services (CPS)

standards, per Oklahoma Administrative Code (OAC) 340:75-3-120 and 340:75-3-130; and

(3) provides substantiated findings review by Child Welfare Services (CWS) personnel not involved in any other stage of the case.

(b) **Eligibility criteria.**

(1) An individual may be eligible to request an appeal when the individual is a person responsible for the child's health, safety, or welfare (PRFC), per OAC 340:75-3-120 in an investigation involving abuse or neglect allegations and the investigation results in a substantiated finding regarding the PRFC.

(2) An eligible individual may request a review through the appeal process when:

(A) no deprived petition is filed; or

(B) ~~no existing deprived petition is amended; or~~

~~(C) a deprived petition is filed and the court case is dismissed prior to adjudication.~~

(3) An individual meeting the requirements in (1) and (2) of this subsection is not eligible for a review through the appeal process when:

(A) other court action is filed or a court order is issued concerning the alleged child abuse or neglect including any:

(i) ~~any~~ permanent protective orders issued against the PRFC that includes the alleged child victim(s); or

(ii) ~~any~~ pending or concluded criminal court proceedings; or

(B) another DHS program-specific review is pending or ~~has been~~ was conducted regarding:

(i) a child death or near-death; or

(ii) any substantiated finding of an out-of-home care investigation ~~that was~~ completed by a child welfare (CW) specialist or an Office of Client Advocacy (OCA) investigator.

(c) **Tribal Investigations not eligible for DHS appeal process.** The DHS appeal process applies only to investigations conducted by DHS. ~~Investigations of child~~ Child abuse or neglect ~~investigated~~ investigations by a tribal representative or on tribal land are not eligible for the DHS appeal process.

(d) **Procedures for appeal process.** The procedures for the appeal process are outlined in (1) through (4) of this subsection.

(1) **Notification to PRFC.** Upon substantiation of abuse, neglect, or both, the CW specialist notifies the PRFC of the finding by mailing Forms 04KI019E, Notification Concerning Finding(s) of Child Abuse/Neglect, and 04KI020E, Request for Appeal of Substantiated Findings of Child Abuse or Neglect, provided the criteria in OAC 340:75-3-530 are met. Forms 04KI019E and 04KI020E are:

(A) mailed within 10_ calendar days of substantiation of abuse or neglect;

(B) mailed to the PRFC's last known address;_

(i) Form 04KI019E informs the PRFC of:

(I) any substantiated child abuse or neglect finding in the investigation; and

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- (II) the date of the abuse or neglect referral, allegation, and finding without identifying the reporting party; ~~and,~~
- ~~(III) demographic information;~~
- (ii) Form 04KI020E specifies:
- (I) the PRFC may file an appeal by mailing a request to CWS Appeals Program Unit within 15-calendar days from the postmark on the envelope containing Form 04KI020E; and
- (II) failure to submit the appeal request within 15-calendar days from the postmark on the envelope containing Form 04KI020E results in the finding becoming final and the PRFC waives any right to appeal this finding in the future, unless good cause is established per OAC 340:75-3-530; and
- (C) not mailed to the PRFC when case records reflect notification may place family members at risk.
- (2) **Conditions of good cause.** A PRFC is granted a review despite failure to make a timely response, provided good cause is established including, but not limited to, severe illness or other disabling condition.
- (3) **Response to appeal request from PRFC.** When the PRFC requests a review within the required time, the Appeals Program Unit responds to the PRFC through written notice within 10-calendar days following receipt of the PRFC's request for review. The Appeals Program Unit notifies the PRFC:
- (A) of the right to provide additional information through written statements that must be submitted within 30-calendar days from the postmark on the envelope containing the notification that the appeal was accepted for review;
- (B) that failure to submit additional information within 30-calendar days results in a waiver of this right, unless good cause is established per OAC 340:75-3-530; and
- (C) that verification of legal representation must be established when the PRFC requests an attorney be notified of the determination results. Verification is established by a statement of representation on official letterhead from the attorney.
- (4) **Review Procedure.** Within 120-calendar days following acceptance of the PRFC's timely request for a review; or a late request for a review when good cause was established per OAC 340:75-3-530, the CWS Appeals ~~Committee~~Panel (Panel) determines ~~whether~~if the substantiated finding of abuse or neglect meets substantiation protocol per OAC 340:75-3-120.
- (A) The decision to uphold, modify, or reverse the original finding of abuse or neglect is determined by reviewing:
- (i) Form 04KI003E, Report to District Attorney, that includes Form 04KI030E, Assessment of Child Safety, attachments, and relevant CWS information including child welfare history and referrals; and
- (ii) all written documents submitted by the PRFC.
- (B) When the Appeals Program Unit determines the finding failed to meet the criteria for substantiation per OAC 340:75-3-120, the ~~committee~~Panel determines if the preliminary decision by the Appeals Program Unit:
- (i) ~~determines whether the preliminary decision~~ was based upon lack of credible evidence to support the allegations of child abuse, neglect, or both; or
- (ii) ~~determines whether the preliminary decision~~ is based upon a lack of documentation by the child welfare (CW) specialist.
- (I) When a lack of documentation exists, the Appeals Program Unit sends notification to the district director, approving supervisor, and CW specialist that information is missing and requests the information be added to the report or scanned into the KIDS file cabinet.
- (II) After notification by the Appeals Program Unit, the district director reopens and reassigns the investigation.
- (III) The assigned CW specialist adds the additional information to the report within 15-calendar days of the reassignment and sends notification to the Appeals Program Unit ~~upon completion~~when completed.
- (IV) The Appeals Program Unit reconsiders the PRFC appeal with the additional information and upholds, modifies, or upholds/reverses the finding as appropriate.
- (C) The Appeals Program Unit ~~modifies the~~enters a modified finding in KIDS, when appropriate, ~~in~~ KIDS.
- (i) When the substantiation finding is appropriate, but the allegation in KIDS is incorrect, the ~~chair on the appeals committee~~Panel chairperson ensures the inappropriate allegation is marked as an improper entry and the correct allegation is added ~~along~~ with the substantiated finding.
- (ii) Forms 04KI019E, Notification Concerning Finding(s) of Child Abuse/Neglect, and 04KI020E are mailed to the PRFC with the corrected allegations with the substantiated finding.
- (D) The Appeals Program Unit provides written notification of the final determination of the finding within 120-calendar days following acceptance of the PRFC's request for a review to the:
- (i) PRFC who requested the review;
- (ii) district director;
- (iii) regional deputy director ~~for the region~~;
- (iv) CW supervisor;
- (v) CW specialist;
- (vi) district attorney's office in the county where the finding originated, when the finding is reversed;
- (vii) tribe, when applicable; and

(viii) Child Care Services, when applicable.

SUBCHAPTER 6. PERMANENCY PLANNING

PART 1. GENERAL PROVISIONS

340:75-6-4. Definitions

The following words and terms when used in Section 1-1-105 of Title 10A of the Oklahoma Statutes (10A O.S. § 1-1-105) or in this Subchapter have the following meanings unless the context clearly indicates otherwise:

"Age-appropriate or developmentally-appropriate" means:

- (A) activities or items that are generally accepted as suitable for children of the same age or level of maturity or that are determined to be developmentally-appropriate for a child, based on the development of cognitive, emotional, physical, and behavioral capacities that are typical for an age or age group; and
- (B) in the case of a specific child, activities or items that are suitable for that child based on the developmental stages attained by the child with respect to the cognitive, emotional, physical, and behavioral capacities of the specific child.

"Alleged father" means *a man who alleges himself to be, or is alleged to be, the genetic father or a possible genetic father of a child, but whose paternity has not been determined.* The term does not include a presumed father.—~~per~~ 10 O.S. § 7700-102.

"Child Advocacy Center/advocacy center" means an entity that is an associate or full member in good standing ~~of~~with the National Children's Alliance.

"Concurrent permanency planning" means when indicated, the implementation of two plans for a child entering out-of-home placement. One plan focuses on reuniting the parent and child; the other seeks to find a permanent out-of-home placement for the child and both plans are pursued simultaneously.

~~"Independent Living program"~~ means a program specifically designed to assist a child in Oklahoma Department of Human Services (OKDHS) custody ~~or an Indian tribe in developing and enhancing the skills and abilities necessary for successful adult living, per Part 13 of OAC 340:75-6.~~

"Kinship care" means full-time care of a child by a kinship relation.

"Kinship relation" means relatives, stepparents, or other responsible adults who have a bond or tie with the child and to whom have been ascribed a family relationship role with the child or the child's parent.

"Multidisciplinary team" means any team of three or more persons involved in the provision of services, treatment, or both, to a child and the child's family and who meet to assess the progress on the treatment and service plan.

"Permanent guardianship" means a judicially created relationship between a child, a kinship relation of the child, or other adult pursuant to per 10A O.S. 1-4-709.

"Presumed father" means a man who, by operation of law ~~under Section 7700-204 of Title 10 of the Oklahoma Statutes per 10 O.S. § 7700-204,~~ is recognized as the father of a child until that status is rebutted or confirmed in a judicial proceeding. A man is presumed the father of a child when:

- (A) he and the mother of the child are married to each other and the child is born during the marriage;
- (B) he and the mother of the child were married to each other and the child is born within ~~three hundred (300)-calendar~~ days after the marriage is terminated by death, annulment, declaration of invalidity, dissolution of marriage, or after decree of separation;
- (C) before the birth of the child, he and the mother of the child married each other in apparent compliance with law, even if the attempted marriage is or could be declared invalid, and the child is born during the invalid marriage or within 300-~~calendar~~ days after its termination by death, annulment, declaration of invalidity, or after a decree of separation, or dissolution of marriage;
- (D) after the birth of the child, he and the mother of the child married each other in apparent compliance with law, whether the marriage is or could be declared invalid, and he voluntarily asserted his paternity of the child; and:
 - (i) the assertion is in a record with the Oklahoma State Department of Health, Division of Vital Records or ~~OKDHS/DHS;~~
 - (ii) he agreed to be and is named as the child's father on the child's birth certificate; or
 - (iii) he promised in a record to support the child as his own; or
- (E) for the first two years of the child's life, he resided in the same household with the child and openly held out the child as his own.

"Reasonable and prudent parent standard" means the standard characterized by careful and sensible parental decisions that maintain the health, safety, and best interests of a child while at the same time encouraging the emotional and developmental growth of the child. This standard is used by the child's caregiver when determining whether to allow a child to participate in extracurricular, enrichment, cultural, and social activities. For purposes of this definition, the term "caregiver" means a foster parent with whom a child in foster care has been placed, a representative of a group home where a child has been placed, or a designated official for a residential child care facility where a child in foster care has been placed.

"Risk" means the ~~conditions in the child's home that put the child in danger of abuse, neglect, or both~~ likelihood that an incident of child abuse or neglect will occur in the future.

"Safety threat" means the threat of serious harm due to child abuse or neglect occurring in the present or in the very near future and without the intervention of another person, a child would likely or in all probability sustain severe or permanent disability or injury, illness, or death.

"Sibling" means a biologically or legally related brother or sister of a child.

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"Successful adulthood program" means a program specifically designed to assist a child in Oklahoma Department of Human Services (DHS) custody or tribal custody in developing and enhancing the skills and abilities necessary for successful adult living, per 10A O.S. § 1-9-107.

"Trafficking in persons" means sex trafficking or severe forms of trafficking in persons:

(A) "sex trafficking" means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act; and

(B) "severe forms of trafficking in persons" means:

(i) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or

(ii) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

"Young adult" means a person age 18 through 22 years of age who is eligible to participate in the Successful Adulthood program.

"Youth" means a child 13 through 17 years of age.

PART 5. PERMANENCY PLANNING SERVICES

340:75-6-31. Permanency planning for the child in Oklahoma Department of Human Services (OKDHS)(DHS) custody

(a) **Legislative intent.** Pursuant to Per Section 1-1-102 of Title 10A of the Oklahoma Statutes (10A O.S. § 1-1-102), whenever it is necessary for a child to be placed outside of the home pursuant to per the Oklahoma Children's Code, it is the intent of the Legislature that:

- (1) each child be assured of the care, guidance, and supervision in a permanent home or foster home that serves the best interests of the child including, but not limited to, the development of the moral, emotional, spiritual, mental, social, educational, and physical well-being of the child; and
- (2) permanent placement is achieved as soon as possible for the child.

(b) **Permanency planning and placement preferences.** The purpose of permanency planning is to develop an appropriate plan addressing the child's immediate and long-term needs for safety, permanency, and well-being. Permanency planning begins immediately when a child is placed in OKDHS/DHS custody and continues until the child is living in a permanent home and the Child Welfare/child welfare (CW) case is closed.

(c) **Efforts to place the child with a suitable relative.** In accordance with Per 10A O.S. § 1-4-706, every effort is made to place the child with a suitable relative of the child.

(d) **Consideration given to child's initial out-of-home placement.** Careful planning and consideration is given to the child's initial placement so that in the event reunification fails or is delayed, the first placement made is the best available

placement to provide permanency for the child per 10A O.S. § 1-4-706.

(e) **Concurrent permanency planning.** Pursuant to Per 10A O.S. § 1-4-706, when a child is removed from the custody of the child's parent, OKDHS/DHS immediately assesses the need for permanency planning with the intention that permanency occurs for the child at the earliest opportunity.

(f) **Permanency hearing.** Permanency hearings are held as required per 10A O.S. § 1-4-811, and in accordance with per Oklahoma Administrative Code (OAC) 340:75-1-18.1.

(g) **Permanency plan preferences.** The permanency plan preferences in order are:

- (1) reunite the child with the child's parent or legal guardian;
- (2) terminate parental rights and place the child for adoption;
- (3) establish guardianship; or
- (4) provide a planned alternative permanent placement provided a child is 16 years of age or older.

(h) **Reunification.** In most situations, the initial permanency plan is to reunite the child with the family. Per 10A O.S. § 1-7-103, the child may be returned to the home of the parent or legal guardian from whom the child was removed with prior court approval. When the permanency plan is reunification, services are implemented until:

- (1) the child is returned home, the family home has stabilized, and the court case is dismissed; or
- (2) it is determined the conditions that necessitated intervention have not been corrected, although sufficient time and services have been provided.

(i) **Exceptions to reunification as the preferred permanency plan.** Exceptions to reunification as the preferred permanency plan include:

- (1) voluntary relinquishment of parental rights by all parents, biological, legal, presumed, and alleged;
- (2) a Petition for Termination of parental rights is filed; or
- (3) the court finds reasonable efforts to reunite the child and family are not required as outlined in 10A O.S. § 1-4-809 and OAC 340:75-1-18.4.

(j) **Priority for reunification with the custodial parent or placement with the non-custodial parent.** When the child's parents do not live together, the priority for reunification is primarily with the custodial parent; however, a home assessment may be conducted regarding the noncustodial parent to assess the possibility of placement or custody with the noncustodial parent, when appropriate.

(k) **Placement with the noncustodial parent.** The court may place the child with the noncustodial parent when it is in the best interests of the child pursuant to per 10A O.S. § 1-4-707. When the child is placed with the noncustodial parent, the court may order the noncustodial parent to assume:

- (1) sole custodial responsibilities for the child; or
- (2) custody of the child under OKDHS/DHS protective supervision.

(l) **Final permanency order.** Pursuant to Per 10A O.S. § 1-4-707, when the court orders the noncustodial parent to

assume sole custodial responsibilities for the child, the court may also:

- (1) order reasonable visitation and the payment of child support by the child's other parent; and
- (2) terminate its jurisdiction in the deprived action by entering a final permanency order determining custody, visitation, and child support. The final permanency order:
 - (A) remains in full force and effect and controls custody or child support orders entered in an administrative or district court initiated prior to, or during the pendency of the deprived action until it is modified by a subsequent court order; and
 - (B) may be docketed and filed in the prior, existing, or pending administrative or district court action; or
 - (C) when there is no administrative or district court action in existence, the surviving order may be used as the sole basis for opening a new administrative or district court action.
- (m) **Adoption.** When a child cannot return safely to his or her own home, in most cases adoption is the preferred permanency plan.
- (n) **Legal guardianship.** A guardianship may be the permanency plan for a child, when reunification and adoption have been ruled out.
 - (1) A guardianship is not preferred over adoption because this option does not provide the same level of family permanency. The court may establish a permanent guardianship between a child and a relative or other adult per ~~Section 1-4-709 of Title 10A of the Oklahoma Statutes~~ 10A O.S. § 1-4-709, when the guardianship is in the child's best interest.
 - (2) Subject to the availability of funds, financial assistance is available to the legal guardian, provided the eligibility requirements per OAC 340:75-6-31.4 are met.
- (o) **Planned alternative permanent placement.** ~~Per 10A O.S. § 1-4-811, a permanency plan of planned alternative permanent placement may be appropriate for a child is limited to a child 16 years of age or older when OKDHS/DHS documents a compelling reason for the court to determine that returning home, or placement of the child for adoption or guardianship is not in the child's best interests.~~
- (p) **Successful adulthood plan.** Every child 14 years of age or older has a transition plan to successful adulthood, per OAC 340:75-6-110.
- (q) **Notice of rights.** Every child 14 years of age or older is provided a notice of rights per OAC 340:75-6-110.
- (~~r~~) **Emancipation.** The federal definition of emancipation is the age at which the child reaches majority. In Oklahoma, 18 years of age is the age of emancipation.

PART 7. FAMILY AND CHILD INDIVIDUALIZED SERVICE PLANNING COMPONENTS

340:75-6-40.1. Child's individualized service plan

(a) **Child's individualized service plan (ISP) requirements.** Per Section 1-4-704 of Title 10A of the Oklahoma

Statutes (10A O.S. § 1-4-704), each ~~individualized—service plan~~ ISP specifically provides for the child's safety per state and federal law, and clearly defines what actions or precautions will or may be necessary to provide for the child's safety and protection. Forms 04KI005E, Child's Individualized Service Plan (ISP); 04KI012E, Individualized Service Plan (ISP); 04KI004E, Placement Provider Information; and 04KI014E, Individualized Service Plan (ISP) Progress Report, are the components of the case plan that comprise the child's ISP. The information contained in at least one of the reports includes:

- (1) the child's history, including identification of the problems or conditions leading to the deprived child adjudication;
- (2) identification of the specific services to be provided to the child including, but not limited to:
 - (A) educational;
 - (B) ~~vocational-educational~~ vocational education;
 - (C) medical; and
 - (D) drug or alcohol use or abuse treatment, or counseling, or other treatment services;
- (3) upon the court's request, the child's most recent available health and educational records including:
 - (A) the names and addresses of the child's health and educational providers;
 - (B) the child's grade-level performance;
 - (C) the child's school records;
 - (D) the child's immunization records;
 - (E) the child's known medical problems, including any known communicable diseases;
 - (F) the child's medications; and
 - (G) any other relevant health and education information;
- (4) a schedule of the frequency of services and the means by which delivery of the services is assured or, as necessary, the proposed means by which support services or other assistance is provided to enable the parent or the child to obtain the services;
- (5) the name of the child welfare (CW) specialist assigned to the case;
- (6) a projected date for the completion of the ISP;
- (7) performance criteria that measures the child's progress toward completion of the ISP including, but not limited to, time requirements for achieving objectives and addressing the identified problems;
- (8) the name and business address of the attorney representing the child;
- (9) when the child is placed outside of the home, ~~the ISP includes:~~
 - (A) the sequence and time requirements for services to be provided to the child and ~~if~~ when the child is placed in foster care, the services to be provided to the foster parent to facilitate the child's return home or to another permanent placement; and
 - (B) a description of the child's placement and explanation of whether the placement is the least restrictive, most family-like setting available, and in as close proximity as possible to the child's parent or

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legal guardian's home when the case plan is reunification, and how the placement is consistent with the child's best interests and special needs;

(10) a description of the ~~independent-living~~successful adulthood plan for the child ~~16~~14 years of age or older ~~that specifies~~specifying how the objectives will be met including:

- (A) education, vocational, or employment planning;
- (B) health care planning and medical coverage;
- (C) transportation including, when appropriate, assisting the child in obtaining a driver license;
- (D) money management;
- (E) planning for housing;
- (F) social and recreational skills; and
- (G) establishing and maintaining connections with the child's family and community;

(11) when the child is in placement due solely or in part to the child's behavioral health or medical health issues, diagnostic and assessment information, specific services relating to meeting the child's applicable behavioral health and medical care needs, and desired treatment outcomes;

(12) a plan and schedule for regular and frequent visitation for the child and each child's parent or legal guardian and siblings, unless the court has determined that visitation, even ~~if~~when supervised, would be harmful to the child; and

(13) a plan for ensuring the child's educational stability while the child is in out-of-home placement, including:

(A) assurances the child's placement considers the appropriateness of the current educational setting and the proximity to the school in which the child was enrolled at the time of placement; and

(B) when appropriate, an assurance that ~~OKDHS~~DHS has coordinated with appropriate local educational agencies to ensure the child remains in the school in which the child was enrolled at the time of placement; or

(C) ~~if~~when remaining in the school in which the child was enrolled at the time of placement is not in the child's best interests, assurances by ~~OKDHS~~DHS and the local educational agencies to provide immediate and appropriate enrollment in a new school with all of the child's educational records provided to the school; and

(14) the permanency plan for the child, the reason for selection of the plan, and a description of the steps taken by ~~OKDHS~~the Oklahoma Department of Human Services (DHS) to finalize the plan. ~~When~~When the permanency plan is adoption or legal guardianship, ~~OKDHS~~DHS describes, at a minimum, child-specific recruitment efforts, such as relative searches conducted and the use of state, regional, and national adoption exchanges to facilitate the child's orderly and timely placement, whether in or outside of the state.

(b) **Child's ISP amended when child committed for inpatient behavioral health or substance use or abuse**

treatment. Per 10A O.S. § 1-4-704, when the child is committed for inpatient behavioral health or substance use or abuse treatment ~~pursuant to~~per the Inpatient Mental Health and Substance Abuse Treatment of Minors Act, the ISP is amended as necessary and appropriate, including, but not limited to, identification of the treatment and services to be provided to the child upon the child's discharge from inpatient behavioral health or substance use or abuse treatment.

340:75-6-40.4. Individualized Service Plan (ISP)

(a) ~~Written individualized Service Plan (ISP) requirement.~~ Form 04KI012E, Individualized Service Plan (ISP), and Form 04KI013E, Individualized Service Plan (ISP) Dispositional Report, are components of the case plan. Per Section 1-4-704 of Title 10A of the Oklahoma Statutes (10A O.S. § 1-4-704), ~~the~~the Oklahoma Department of Human Services (~~OKDHS~~DHS):

- (1) prepares and maintains a written ~~individualized service plan~~ISP for the child who is adjudicated deprived;
- (2) furnishes the plan to the court within 30-calendar days after the adjudication; and
- (3) makes a copy of the ISP available to each party to the case including any applicable tribe or court-appointed special advocate.

(b) **ISP preparation, content, disputes, and modifications.** Per 10A O.S. § 1-4-704, the ISP is based upon a comprehensive assessment and evaluation of the child and family and is developed with the participation of the child, when appropriate, and the child's parent, legal guardian, legal custodian, attorney, guardian ad litem, and tribe, when applicable. The health and safety of the child is the paramount concern in the ISP development.

(1) When any part of the ISP is disputed or not approved by the court, an evidentiary hearing may be held and the court determines the content of the ISP in accord with the evidence presented and in the best interests of the child.

(2) The ISP is signed by:

- (A) the child's parent or parents or legal guardian;
- (B) the attorney for the child's parent or parents or legal guardian;
- (C) the child's attorney;
- (D) the child's guardian ad litem, ~~if~~when any, that may be a court-appointed special advocate;
- (E) a representative of the child's tribe;
- (F) the child, when possible; and
- (G) ~~OKDHS~~DHS.

(3) Each ISP is individualized and specific to each child and the child's family.

(4) The ISP is written in simple and clear English. ~~When~~When English is not the principal language of the child's parent, legal guardian, or custodian, and the person is unable to read or comprehend the English language, the ISP is written, to the extent possible, in the person's principal language ~~to the extent possible~~.

(5) The ISP may be modified based on changing circumstances consistent with the correction of the conditions that led to the child's adjudication ~~of the child~~

or other conditions inconsistent with the child's health, safety, or welfare ~~of the child.~~

(6) The ISP is measurable, realistic, and consistent with other court-ordered requirements.

(c) **ISP content for the parent or legal guardian.** Per 10A O.S. § 1-4-704, the ISP for the parent or legal guardian includes, but is not limited to:

(1) a history of the child and family, including identification of the problems or conditions leading to the deprived child adjudication and changes each parent must make for the child to safely remain in, or return to the home;

(2) the permanency plan for the child, the reason for selection of that plan, and a description of the ~~OKDHS-DHS~~ steps to finalize the permanency plan;

(3) identification of time-limited reunification services provided to the parent, legal guardian, legal custodian, stepparent, other adult person living in the home, or other family members;

(4) a schedule of the frequency of services and the means by which delivery of the services is assured or, as necessary, the proposed means by which support services or other assistance is provided to enable the parent or child to obtain the services;

(5) the name of the child welfare specialist assigned to the case;

(6) a projected date for the ISP completion;

(7) performance criteria that measures the child and family progress toward completion of the ISP including, but not limited to, time requirements for achieving objectives and addressing the identified problems;

(8) the sequence and time requirements for services provided to the parent to facilitate the child's return home;

(9) a description of services or resources requested by the child's parent or legal guardian since the date of the child's placement, and ~~whether~~ if those services or resources were provided and ~~if~~ when not, the basis for the denial of the services or resources;

(10) efforts to be made by the child's parent and ~~OKDHS-DHS~~ to enable the child to return to his or her home;

(11) a plan and schedule for regular and frequent visitation for the child and the child's parent or legal guardian and siblings, unless the court determined visitation, even ~~if~~ when supervised, would be harmful to the child;

(12) provisions for the child's safety, ~~in accordance with~~ per state and federal law, and clearly defined actions or precautions necessary to provide for the safety and protection of the child;

(13) the statement: TO THE PARENT: THIS IS A VERY IMPORTANT DOCUMENT. ITS PURPOSE IS TO HELP YOU PROVIDE YOUR CHILD WITH A SAFE HOME WITHIN THE REASONABLE PERIOD SPECIFIED IN THE PLAN. IF YOU ARE UNWILLING OR UNABLE TO PROVIDE YOUR CHILD WITH A SAFE HOME OR ATTEND COURT HEARINGS, YOUR PARENTAL AND CUSTODIAL DUTIES AND RIGHTS MAY BE RESTRICTED OR TERMINATED

OR YOUR CHILD MAY NOT BE RETURNED TO YOU; and

(14) whenever a child in ~~OKDHS-DHS~~ custody or under ~~OKDHS-DHS~~ protective supervision, is committed for inpatient behavioral health or substance use or abuse treatment pursuant to the Inpatient Mental Health and Substance Abuse Treatment of Minors Act, the ISP is amended as necessary and appropriate; including, but not limited to, identification of the treatment and services to be provided to the child and child's family upon the child's discharge from inpatient behavioral health or substance use or abuse treatment.

(d) **ISP for adoption or legal guardianship permanency plan.** ~~In accordance with~~ Per federal and state statutes, when the permanency plan is adoption or legal guardianship, ~~OKDHS-DHS~~ describes, at a minimum, child-specific recruitment efforts, such as; relative searches conducted and the use of state, regional, and national adoption exchanges to facilitate the orderly and timely placement of the child, whether in or outside of the state.

(e) **ISP for ~~Independent Living (IL)~~ successful adulthood youth.** Federal law requires the initiation of an ~~IL~~ successful adulthood plan for the ~~child~~ youth in ~~OKDHS-DHS~~ custody and out-of-home placement upon reaching ~~16-14~~ years of age, ~~per Part 13 of OAC 340:75-6~~ Oklahoma Administrative Code 340:75-6-110. This plan includes a description of how the following objectives will be met:

- (1) education, vocational, or employment planning;
- (2) health care planning and medical coverage;
- (3) transportation including, where appropriate, assisting the child in obtaining a driver license;
- (4) money management;
- (5) planning for housing;
- (6) social and recreational skills; and
- (7) establishing and maintaining connections with the child's family and community.

340:75-6-40.9. Termination of parental rights

(a) **Effect of termination of parental rights.** Per Section ~~1-4-904~~ 1-4-906 of Title 10A of the Oklahoma Statutes (10A O.S. § ~~1-4-904~~ 1-4-906), the termination of parental rights (TPR) terminates the parent-child relationship including the parent's right to:

- (1) custody of the child;
- (2) visit the child;
- (3) control the child's training and education;
- (4) consent to the child's adoption;
- (5) the child's earnings; and
- (6) inherit from or through the child; although, termination of parental rights does not affect the child's right to inherit from the parent.

(b) **Legal grounds for termination of parental rights.**

(1) Per 10A O.S. § 1-4-904, a court may not terminate a parent's parental rights unless the child is adjudicated deprived prior to, or concurrent with the termination of parental rights proceedings, and the court makes the finding that TPR is in the child's best interests.

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(2) Per 10A O.S. § 1-4-901, a petition or motion for TPR may be filed by the district attorney or by the attorney for the child alleged to be or adjudicated deprived.

(3) Per 10A O.S. § 1-4-904 the court may terminate parental rights on the grounds listed in subparagraphs (A) through (Q) of this paragraph.

(A) **Consent.** The parent may consent to termination of his or her parental rights by signing a voluntary consent form to relinquish parental rights.

(i) The written, voluntary consent, signed under oath, recorded before a judge of a court of competent jurisdiction, is not revocable unless the parent can provide clear and convincing evidence that the consent was executed by reason of fraud or duress.

(ii) In any proceeding for a voluntary TPR to an Indian child, the parent's consent may be withdrawn for any reason at any time prior to the entry of a final decree of termination. Any consent given prior to, or within 10-calendar days after, the birth of the Indian child is not valid.

(B) **Abandonment.** The court may find that the parent who is entitled to custody of the child has abandoned the child.

(C) **Abandonment of an Infant.** The court may find that the child, 12 months of age or younger, was abandoned.

(D) **Non-compliance with voluntary placement agreement.** The court may find that the child's parent:

(i) voluntarily placed physical custody of the child with the Oklahoma Department of Human Services (DHS) or a child-placing agency for out-of-home placement;

(ii) has not complied with the placement agreement; and

(iii) has not demonstrated during the child's period of voluntary out-of-home placement, a firm intent to resume physical custody of the child or make other permanent legal arrangements for the child's care.

(E) **Failure to correct ~~conditions~~condition(s).** The court may find that the parent failed to correct ~~conditions~~condition(s) that led to the child's adjudication as a deprived child although the parent was given at least three months to correct the ~~conditions~~condition(s).

(F) **Same conditions - another child.** The court may find that another child of a parent whose parental rights to any other child have been terminated and the conditions that led to the prior TPR have not been corrected.

(G) **Failure to support.** The court may find that the non-custodial parent has willfully failed, refused, or neglected to contribute to the child's support for at least six out of the last 12 months immediately preceding the filing of the termination petition or motion:

(i) as specified by a court order for child support, or

(ii) according to the parent's financial ability to support the child, when an order for child support does not exist. Incidental or token support is not construed or considered when determining if the parent has maintained or contributed to the child's support.

(H) **Certain criminal convictions.** ~~The court may find a parent has a~~ conviction in a criminal action in any state, of any of the following acts:

(i) permitting a child to participate in pornography;

(ii) rape or rape by instrumentation;

(iii) lewd molestation of a child underyounger than 16 years of age;

(iv) child abuse or neglect;

(v) enabling child abuse or neglect;

(vi) causing the death of a child as a result of the physical or sexual abuse or chronic abuse or chronic neglect of the child;

(vii) causing the death of the child's sibling as a result of the physical or sexual abuse or chronic abuse or chronic neglect of the child's sibling;

(viii) murder of any child or aiding or abetting, attempting, conspiring, or soliciting to commit murder of any child;

(ix) voluntary manslaughter of any child;

(x) a felony assault that resulted in serious bodily injury to the child or another child of the parents; or

(xi) murder or involuntary manslaughter of the child's parent or aiding or abetting, attempting, conspiring, or soliciting to commit murder of the child's parent.

(I) **Heinous or shocking abuse or neglect.** The court may find that a parent has abused or neglected the child or the child's sibling or failed to protect the child or sibling from abuse or neglect that is heinous or shocking.

(J) **Prior abuse or neglect.** The court may find that a parent has previously abused or neglected the child or the child's sibling, or failed to protect the child or sibling from abuse or neglect and the child or sibling has been subjected to subsequent abuse.

(K) **Rape by the parent.** The court may find the child was conceived as a result of a rape perpetrated by the parent whose rights to the child are sought to be terminated.

(L) **Incarceration.** ~~The parent's incarceration in and of itself is not sufficient to deprive a parent of parental rights.~~ The court may find the parent whose rights are sought to be terminated is incarcerated, and continuation of parental rights willwould result in harm to the child based on the consideration of the factors, including, but not limited to, the:

(i) duration of incarceration and its detrimental effect on the parent-child relationship;

- (ii) previous convictions resulting in involuntary confinement in a secure facility;
- (iii) history of criminal behavior, including crimes against children;
- (iv) age of the child;
- (v) evidence of abuse or neglect or failure to protect the child or siblings of the child by the parent;
- (vi) current relationship between the parent and child; and
- (vii) manner in which the parent has exercised parental rights and duties in the past. The parent's incarceration in and of itself is not sufficient to deprive a parent of parental rights.

(M) **Behavioral health illness or incapacity.** The court must find the factors in ~~units~~ (i) and (ii) ~~of this subparagraph~~ exist:

- (i) ~~the~~The parent has a diagnosed cognitive disorder, an extreme physical incapacity, or a medical condition, including behavioral health that renders the parent incapable of adequately and appropriately exercising parental rights, duties, and responsibilities within a reasonable time, considering the age of the child; and
- (ii) ~~allowing~~Allowing the parent to have custody ~~will~~would cause the child actual harm or harm in the near future.

- (I) A parent's refusal or non-compliance with treatment, therapy, medication, or assistance for the condition can be used as evidence.
- (II) A finding that a parent has a diagnosed cognitive disorder, an extreme physical incapacity, or a medical condition, including behavioral health or substance dependency, does not in, and of itself, deprive the parent of parental rights.

(N) **Prior adjudication of same conditions.** The court may find the:

- (i) condition that led to the deprived adjudication has been the subject of a previous deprived adjudication of this child or a sibling of this child; and
- (ii) parent has been given an opportunity to correct the conditions that led to the determination of the initial deprived child.

(O) **Substantial erosion of parent-child relationship.** The court may find a substantial erosion of the relationship between the parent and child exists caused at least in part by:

- (i) the parent's serious or aggravated neglect of the child, physical or sexual abuse, or sexual exploitation of the child;
- (ii) a prolonged and unreasonable absence of the parent from the child; or
- (iii) an unreasonable failure by the parent to visit or communicate in a meaningful way with the child.

(P) **Lengthy foster care of child 4 years of age and older.**

- (i) The court may find:
 - (I) a child 4 years of age and older at the time of placement, has been placed in foster care by DHS for 15 of the most recent 22 months, preceding the filing of the TPR petition or motion; and
 - (II) at the time of the filing of the TPR petition or motion, the child cannot be safely returned to the home of the parent.
- (ii) A child is considered to have entered foster care on the earlier of the adjudication date, or the date ~~that is~~ 60-calendar days after the date the child is removed from ~~the~~his or her home.

(Q) **Lengthy foster care of a child younger than 4 years of age.**

- (i) The court may find a child younger than 4 years of age at the time of ~~the filing of the TPR petition or motion~~placement:
 - (I) has been placed in foster care by DHS for at least six of the 12 months preceding the filing of the TPR petition or motion; and
 - (II) the child cannot be safely returned to the home of the parent.
- (ii) A child is considered to have entered foster care on the earlier of the adjudication date or the date 60-calendar days after the date the child is removed from his or her home.
- (iii) The court may consider:

- (I) circumstances of the failure of the parent to develop and maintain a parental bond with the child in a meaningful, supportive manner; and
- (II) whether allowing the parent to have custody would likely cause the child actual serious psychological harm or harm in the near future as a result of the removal of the child from the substitute caregiver due to the existence of a strong, positive bond between the child and caregiver.

(c) **Mandatory petition or motion for TPR.** Per 10A O.S. § 1-4-902, the district attorney is required to file a petition or motion to terminate the parent-child relationship and parental rights with respect to a child or joins in the petition or motion, ~~if~~when filed by the child's attorney in any of the circumstances detailed in ~~paragraphs~~ (1) through (4) ~~of this subsection.~~

(1) **The child is in out-of-home care for 15 out of the most recent 22 months.** Prior to the end of the fifteenth month, the child has been placed in foster care by DHS for 15 of the most recent 22 months. The child is considered to have entered foster care on the earlier date:

- (A) of adjudication as a deprived child; or
- (B) 60-calendar days after the date on which the child is removed from the home;

(2) **The child is determined to be an abandoned infant.** A petition or motion to ~~termination~~terminate parental rights is filed no later than 60-calendar days after the child is judicially determined to be an abandoned infant;

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(3) **Reasonable efforts to reunite are not required due to certain felony convictions of the parent.** No later than 60-calendar days after the court determines that reasonable efforts to reunite are not required due to a parent's felony conviction of a ~~parent~~ of any of the following acts:

- (A) permitting a child to participate in pornography;
- (B) rape, or rape by instrumentation;
- (C) lewd molestation of a child ~~under~~ younger than 16 years of age;
- (D) child abuse or neglect;
- (E) enabling child abuse or neglect;
- (F) causing the death of a child as a result of the physical or sexual abuse or chronic abuse or chronic neglect of the child;
- (G) causing the death of a sibling of the child as a result of the physical or sexual abuse or chronic abuse or chronic neglect of the child's sibling;
- (H) murder of any child or aiding or abetting, attempting, conspiring in, or soliciting to commit murder of any child;
- (I) voluntary manslaughter of any child;
- (J) a felony assault that resulted in serious bodily injury to the child or another child of the parent; or
- (K) murder or voluntary manslaughter of the child's parent or aiding or abetting, attempting, conspiring in, or soliciting to commit murder of the child's parent; or

(4) **The parent has made no measurable progress in correcting conditions.** No later than 90-calendar days after the court ~~has~~ ordered the individualized service plan, if the parent has made no measurable progress in correcting the conditions that caused the child to be adjudicated deprived.

(d) **District attorney not mandated to file petition or motion to terminate parental rights under certain conditions.** Per 10A O.S. § 1-4-902, when any of the conditions in ~~paragraphs~~ (1) through (3) exist, the district attorney is not mandated to file a petition or motion for termination of parental rights.

- (1) At the option of DHS or by order of the court, the child is properly cared for by a relative;
- (2) DHS has documented a compelling reason for determining that filing a petition to terminate parental rights would not serve the child's best interests ~~that~~ and may include consideration that the:
 - (A) parents or legal guardians have maintained a relationship with the child and the child would benefit from continuing the relationship;
 - (B) child, who is 12 years of age and older objects to the termination of the parent-child, legal relationship;
 - (C) child's foster parents are unable to adopt the child because of exceptional circumstances that do not include an unwillingness to accept legal responsibility for the child; but are willing and capable of providing the child with a stable and permanent environment, and the removal of the child from the

physical custody of the foster parents would be seriously detrimental to the emotional well-being of the child because the child has substantial psychological ties to the foster parents;

(D) child is not capable of achieving stability when placed in a family setting; or

(E) child is an unaccompanied, refugee minor and the situation regarding the child involves international legal issues or compelling foreign policy issues; or

(3) DHS has not provided to the child's family, consistent with the time period in the state case plan, services that the state deems necessary for the safe return of the child to the child's home, when reasonable efforts to reunite are required to be made with respect to the child.

(~~ee~~) **Parental rights not terminated at trial.** ~~Per 10A O.S. § 1-4-908, when~~ When parental rights are not terminated at trial, the court schedules a permanency hearing within 30-calendar days, per 10A O.S. § 1-4-908. The failure of parental rights to be terminated at trial does not:

- (1) deprive the court of the court's continuing jurisdiction over the child, nor
- (2) require reunification of the child with the parent when the child is adjudicated deprived.

(~~df~~) **Adoption consent authority when parental rights terminated.** ~~Per 10A O.S. § 1-4-907, when~~ When the court terminates parental rights and the child's custody is placed with DHS, the court must vest DHS with the authority to place the child, and consent to the child's adoption, per 10A O.S. § 1-4-907.

PART 8. CHILD WELFARE SPECIALIST ROLE

340:75-6-50. Education

(a) **Education assurance.** A child in the custody or care of the Oklahoma Department of Human Services (DHS) is provided access to an education including teaching, educational materials, and books, per Section 1-7-105 of Title 10A of the Oklahoma Statutes (10A O.S. § 1-7-105).

(~~ab~~) **Schooling** Education assurance required for the Title IV-E eligible child. ~~Per Section 1-7-103 of Title 10A of the Oklahoma Statutes 10A O.S. § 1-7-103, Oklahoma Department of Human Services (OKDHS) DHS is required to assure the that a child who has attained~~ attains the minimum age for compulsory school attendance and ~~who~~ is eligible for a Title IV-E foster care payment is:

- (1) enrolled in an institution that provides elementary or secondary education;
- (2) instructed in elementary or secondary education in any legally authorized education program;
- (3) in an independent-study elementary or secondary education program; or
- (4) incapable of attending school on a full-time basis due to a documented medical condition supported by regular updates.

(~~bc~~) **Health and education records provided to court.** Per 10A O.S. § 1-4-704, the child's most recent available health and

educational records are provided to the court ~~upon~~ the court's request including, but not limited to:

- (1) the names and addresses of the child's health and educational providers;
- (2) the child's grade-level performance;
- (3) the child's school record; ~~and~~
- (4) the child's immunization record;
- (5) the child's known medical problems including communicable diseases;
- (6) the child's medications; and
- (7) any other relevant health and education information.

(~~e~~) **Individuals with Disabilities Education Act (IDEA).** The child with disabilities in Oklahoma, including the child in ~~OKDHS~~DHS custody, has the statutory right to receive special education and related services from birth through 21 years of age as mandated by Title 70 O.S. Oklahoma School Code and the Education of All Handicapped Children Act, codified at Sections 1400-1461 of Title 20 (U.S.C.) Sections 1400-1461 of the United States Code. ~~The act~~IDEA specifies that each child with a disability ~~three years~~ 3 to 22 years of age receives specialized services to meet the child's needs. The child with disabilities has the basic rights ~~listed in paragraphs (1) through (3)~~to:

- (1) a Free Appropriate Public Education (FAPE);
- (2) an education in the least restrictive setting possible; and
- (3) an Individualized Education ~~Plan~~Program (IEP).

(~~e~~) **Parents' rights regarding educational requests.** Parents and surrogate parents, including ~~Bridge resource~~foster parents acting in place of the parents, have the right to examine the child's complete school records. In addition, the school system is obligated to provide notice to the parent when the school system refuses to take actions requested by the parent. The notice informs the parent of each procedure available to the parent under IDEA and must be written in the parent's native language.

(~~e~~) **ResourceFoster or surrogate parents acting in place of the parents.** When the parent is unable, unavailable, or unwilling to participate in the child's school arrangements, foster parents may act in place of the parent to represent the child's educational interests. ~~OKDHS~~DHS employees and other public agency employees may not act in place of a parent or sign an IEP. ~~Placement providers, who volunteer to~~Volunteers who serve as surrogate parents for children in placements other than foster care, are required to complete training through the Oklahoma State Department of Education.

(~~g~~) **Oklahoma's Promise.** DHS provides parents, resource parents and legal guardians of foster youth with information on Oklahoma's Promise, formerly known as the Oklahoma Higher Learning Access Program (OHLAP) including, but not limited to, eligibility, application guidelines, academic requirements, and any other information required by Oklahoma's Promise for participation in the program.

(~~h~~) **Corporal punishment by school.** DHS and the resource parent do not authorize school personnel to administer corporal punishment to a child in DHS custody. The resource parent does not authorize corporal punishment by school

personnel, but refers school personnel to the CW specialist to establish alternative discipline methods, per Oklahoma Administrative Code 340:75-7-38.

PART 11. PERMANENCY PLANNING AND PLACEMENT SERVICES

340:75-6-85.2. Diligent search for relatives and kin

(a) **Placement preference.** When the Oklahoma Department of Human Services (~~OKDHS~~)DHS determines that placement with the noncustodial parent is not in the child's best interests, preference, per Section 1-7-106 of Title 10A of the Oklahoma Statutes (10A O.S. § 1-7-106), is given to relatives and persons who have a kinship relationship with the child, who are determined suitable, capable, and willing to serve as caretakers for the child per Section 1-7-106 of Title 10A of the Oklahoma Statutes (10A O.S. § 1-7-106).

(1) ~~OKDHS~~DHS reports to the court what diligent efforts were made to secure the placement per 10A O.S. § 1-4-204.

(2) In cases where the Indian Child Welfare Act (ICWA) applies to the child, ~~the placement preferences in OAC 340:75-19-14~~per 10 O.S. § 40.6 are followed.

(b) **Due diligence to identify and notify relatives.** ~~Per 10A O.S. § 1-4-203, within~~Within 30-calendar days of the removal of a child, ~~OKDHS~~DHS exercises due diligence to identify the child's relatives, per 10A O.S. § 1-4-203. Notice is provided by ~~OKDHS~~DHS to each grandparent, ~~and~~ other adult relatives ~~as the court directs of the child, and parents of the child's siblings per 471(a)(29) of Title IV-E of the Social Security Act (42 U.S.C. § 671(a)(29)).~~ Relatives are not notified when notification is not in the ~~the~~ child's best interests due to past or current family or domestic violence. The notice advises the relative:

(1) the child ~~has been~~was or is being removed from the custody of the child's parent or parents;

(2) of the options under applicable law to participate in the care and placement of the child, including any options that may be lost by failing to respond to the notice ~~or become involved with the child;~~ and

(3) of the requirements to become a foster family parent and the additional services and supports available for children placed in the home.

(~~c~~) **Efforts required for children 16 years of age or older with a planned alternative permanent living arrangement placement.**

(1) Per 10A O.S. § 1-4-811, DHS documents and presents compelling reasons to the court at each permanency hearing of the intensive, ongoing, and, as of the date of the hearing, unsuccessful efforts made to:

(A) return the child home; or

(B) place the child with a fit and willing relative, including adult siblings, a legal guardian, or an adoptive parent; and

(C) find biological family members for the child utilizing search technology, including social media.

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(2) DHS documents at each permanency hearing the steps taken, including inquiry of the child in an age-appropriate manner, to ensure the:

(A) foster family home of the child or facility where the child is placed uses the reasonable and prudent parent standard; and

(B) child has regular, ongoing opportunities to engage in age-appropriate or developmentally-appropriate activities.

(3) When a planned alternative permanent placement is the court-ordered permanency plan for the child, at each permanency hearing the court:

(A) asks the child about the permanency outcome the child desires; and

(B) makes a judicial determination as of the date of the hearing, why a planned alternative permanent placement is the best permanency plan for the child and provides compelling reasons why it continues to not be in the child's best interests to return home, be placed for adoption with a legal guardian, or placed with a fit and willing relative.

340:75-6-85.5. Supervision only cases

(a) The court may order, per Section 1-4-707 of Title 10A of the Oklahoma Statutes, the child placed under the Oklahoma Department of Human Services (~~OKDHS~~)DHS protective supervision:

(1) in the home of the parent or legal guardian with whom the child was residing at the time the events or conditions arose that brought the child within the jurisdiction of the court; or

(2) with the noncustodial parent, ~~if~~when available, upon completion of a home assessment.

(b) In supervision only cases, the court may issue written orders specifying:

(1) when the noncustodial parent assumes custody, reunification services be provided to the parent or legal guardian from whom the child ~~has been~~was or is being removed;

(2) services be provided solely to the parent who is assuming physical custody of the child to allow ~~that~~the parent to later obtain legal custody without court supervision;

(3) services be provided to both parents, in which case the court at a subsequent hearing, ~~determines at a subsequent hearing,~~ which parent, if either, will have custody of the child;

(4) the alleged father must cooperate with establishing paternity as a condition for the child's continued placement, when the child is ordered into the home of a father whose paternity has not been established;

(5) a person residing in the home, vacate the child's home indefinitely or for a specified period within 48 hours of the order;

(6) that the child's parent or legal guardian prevent a particular person from having contact with the child;

(7) conduct to be followed by any person living in the home that is in the child's best interests ~~of the child; and~~

(8) the order placing the child under ~~OKDHS~~DHS supervision in the child's own home ~~will remain~~remains in effect for a one-year period ~~of one year~~ with extension or reduction of the supervision period ~~of supervision~~ in appropriate circumstances; and

(9) when a child cannot be placed in the parent's home, placement of the child in a relative's temporary custody.

340:75-6-89. Travel outside the ~~county, state, or United States~~

(a) ~~Travel outside the child's county of placement or Oklahoma.~~ The child in Oklahoma Department of Human Services (~~OKDHS~~)DHS custody may travel ~~out of the child's county of placement or~~outside Oklahoma with the placement provider or a DHS-approved person ~~approved by OKDHS.~~

(1) Prior DHS approval ~~from OKDHS~~ is not required for the child to accompany the placement provider or DHS-approved person when ~~the~~ travel does not involve an overnight stay.

(2) When ~~the~~ travel involves an overnight stay, the placement provider contacts ~~OKDHS~~DHS for prior approval for the child's travel outside ~~the county of placement or~~ Oklahoma.

(b) ~~Travel outside the United States.~~ ~~OKDHS~~DHS and judicial approval is required before the child in ~~OKDHS~~DHS custody travels outside the United States.

340:75-6-91. Child care services for ~~Child Welfare Services (CWS) clients~~parents with a child in Oklahoma Department of Human Services (DHS) custody

(a) ~~Preventive child care services.~~ Preventive child care services enable the child to be in a protective environment a specified number of hours per day and days per week as determined by Child Welfare Services (CWS).

(1) Preventive child care services may be provided to the family with an active CWS case when the:

(A) child is determined unsafe due to the existence of present or impending danger; and

(B) family is in the process of reunification in an active permanency planning case.

(2) The family is not required to establish financial eligibility as preventive child care can be provided for income eligible or non-income eligible families.

(b) ~~Child care services for employment, education, and training purposes.~~

(1) ~~CWS clients~~Parents with a child in DHS custody who need child care for education, training, or employment purposes are required to meet the eligibility requirements in Oklahoma Administrative Code (OAC) 340:40-7.

(2) ~~CWS clients~~Parents with a child in DHS custody apply for ~~non-preventive~~trial reunification child care services through Oklahoma Department of Human Services(~~OKDHS~~)DHS Adult and Family Services, as a co-payment may be required.

(3) ~~Bridge resource~~Resource parents requesting child care are required to meet the eligibility requirements in OAC 340:75-7-65.

(c) **Child care provider program options.**

(1) The ~~client~~parent may choose a family child care home regardless of star level.

(2) ~~The client may not choose a child care~~Child care subsidy benefits are not paid by DHS when the:

(A) ~~that~~child care program does not have a valid contract with ~~OKDHS~~DHS;

(B) ~~in which the client~~parent, his or her spouse, or child's parent or stepparent, has an ownership interest;

(C) ~~home in which the child resides;~~

(D) ~~home in which the client also works during the hours his or her child is in care~~parent works in the child care home during the same hours the child attends child care;

(D) ~~parent chooses more than one child care program to provide service to a child on the same day;~~

(E) ~~provider who~~program does not allow parental access during the hours the ~~provider~~program cares for children;

(F) ~~provider who receives~~program is receiving state or federal funds, such as Head Start, Early Head Start, or public schools, and ~~does is~~ not charge~~charging~~ all parents for the hours the subsidy payment is requested. Early Head Start programs are exempt from this rule; and

(G) ~~provider~~program caring for a school-age child during the regular school day when the student could be attending a public or private school during those hours; or

(H) ~~center that~~program is a one star facility, unless there are no ~~centers~~programs with a higher star status in the community or special exception criteria are met. Special exception criteria are:

(i) the child was already approved for care at the one star ~~center~~program prior to January 1, 2003, or prior to the ~~provider's~~program's star status being reduced to one star. The child:

(I) can remain at the one star ~~facil-~~ity~~program~~, unless the child stops attending the ~~facility~~program for more than 30-calendar days; and

(II) may be approved at the same one star ~~facility~~program again when the only reason the child did not attend for more than 30-calendar days was due to a school break or circumstances beyond the family's control, such as the child's illness;

(ii) care is requested for the child residing in the same home as a child already approved for care as described in ~~(e)(1)(i) of this subsection~~(c)(H)(i) in the same one star child care ~~center~~program; or

(iii) the parent or guardian demonstrates there is no other child care option that meets the family's needs.

(d) **Child care services**subsidy benefits for the child with disabilities. ~~The~~A child with disabilities is potentially eligible for the higher special needs rate for child care subsidy benefits. Each child with disabilities requires a separate and specific certification of the child care program.

(1) ~~Each child with disabilities requires a separate and specific certification of the child care provider.~~

(2) ~~The child with disabilities is defined as a child receiving:~~

(A) ~~receiving~~ Supplemental Security Income (SSI). This includes a child whose SSI payment stops because of financial reasons, but who still meets the medical definition of disability as determined by the Social Security Administration;

(B) ~~receiving~~ SoonerStart early intervention services; or

(C) ~~receiving~~ special education services provided ~~in accordance with~~per an Individualized Education ~~Plan~~Program (IEP), by the ~~local~~child's school district; or

(D) ~~whose SSI payment stops because of financial reasons but who still meets the medical definition of disability as determined by the Social Security Administration.~~

(2) When the child with disabilities is 13 years of age or older, the parent must provide a statement from a licensed health care professional verifying the child is physically or mentally incapable of self-care as age-appropriate before care is approved and annually at review. Subsidized child care benefits are not approved when the licensed health care professional states the child is capable of self-care as age-appropriate.

(e) **Overpayment of child care.** ~~OKDHS~~DHS seeks repayment for any child care that ~~has been~~was received or paid in error per OAC 340:40-15-1.

SUBCHAPTER 8. THERAPEUTIC FOSTER CARE AND DEVELOPMENTAL DISABILITIES SERVICES

PART 1. THERAPEUTIC FOSTER CARE

340:75-8-6. General requirementsRequired protocol for contracted therapeutic foster care placement providers~~contractors~~

~~Contracted~~therapeuticTherapeutic foster care (TFC) placement providers~~contractors~~ must:

(1) maintain a written case record on each child that documents all services provided or obtained for the child while in placement;

(2) implement and review an individualized treatment plan for each child in placement, with documented input from the child's assigned Child Welfare Services (CWS) specialist, according to the requirements set forth in the Oklahoma Department of Human Services (DHS) contract;

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- (3) assume responsibility for maintenance of basic needs of each child placed;
- (4) accept responsibility for a reasonable knowledge of the child's whereabouts at all times.

(A) When a child:

- (i) is removed by anyone without authorization;
- (ii) is taken into custody by law enforcement officials;
- (iii) runs away; or
- (iv) otherwise cannot be accounted for, the TFC contractor ~~contractor~~ immediately ~~notify by phone~~ notifies, the:

(I) assigned CWS specialist or CWS supervisor. CWS staff follows protocol and completes runaway notifications, per Oklahoma Administrative Code (OAC) 340:75-6-48.3; and

(II) ~~contract liaison; and~~

(III) ~~police~~ local law enforcement with the child's physical description, last known location, any known possible locations, and the child's special needs that may enhance the urgency to locate the child. The TFC contractor contacts the TFC contract liaison for assistance when encountering any difficulty contacting the CWS specialist or CWS supervisor.

(B) The contractor submits a written incident report to the child's assigned CWS specialist describing the circumstances and files a copy in the child's case record;

(5) ensure the child receives all needed routine, specialized, and emergency medical care in a timely manner provided by a medical provider who accepts Medicaid payment. ~~Prior consultation and consent from DHS and the child's parent(s) are not required for routine and ordinary medical care. Provision of all medical or dental care is documented in the contractor's case record, including notification and attempts of notification in emergency situations per OAC 340:75-6-88. Prior consultation and consent from DHS and the child's parent or parents are obtained per OAC 340:75-6-88:~~

(A) ~~for emergency medical care. When the appropriate DHS authority cannot be contacted and the situation is life threatening, the contractor has authority to obtain emergency care and treatment, and notifies DHS at the earliest possible time; DHS authorizes the TFC foster parent and TFC administrator in writing, through the placement provider agreement, to consent to routine and ordinary medical care and treatment needed by the child in DHS custody upon the advice of a licensed physician, per OAC 340:75-6-88.~~

(B) ~~for any extraordinary medical procedure, such as surgery and invasive procedures; and Prior consultation and consent from DHS, the child's parent(s) or guardian, and the court, when applicable, as set out by Section 1-3-102 of Title 10A of the Oklahoma Statutes (10A O.S. § 1-3-102), are required for:~~

(i) emergency medical care. When appropriate DHS staff cannot be located and the situation is life-threatening, the provider obtains emergency care and treatment and notifies DHS at the earliest possible time; and

(ii) any extraordinary medical care and treatment, such as surgery, general anesthesia, blood transfusions, or invasive or experimental procedures requires consent of the:

(I) child's parent or guardian, when the child is in DHS emergency or temporary custody;

(II) court of jurisdiction, when the child is in DHS emergency or temporary custody, and the treatment is related to the abuse or neglect, or the parent or guardian is unavailable or will not consent; or

(III) court of jurisdiction, when the child is in DHS permanent custody.

(C) ~~before administering any new psychotropic medication when a separate and specific consent is requested by a physician or medical facility; The provider must comply with DHS policy for the administration of prescribed psychotropic medication found in OAC 340:75-6-88.~~

(D) The contractor agrees to immediately report all emergency medical care to the child's assigned CWS specialist and to document the manner of report and response in the child's case record. The contractor ensures that CWS specialists, parents, and guardians are advised of physician recommendations regarding the use of psychotropic medications and the contractor must comply with DHS policy, per OAC 340:75-6-88. Neither DHS, a foster parent, nor TFC contractor staff may consent to a child in DHS custody undergoing an abortion or sterilization procedure, initiating termination of life support, or implementing a "do not resuscitate" order;

(6) notify the assigned CWS specialist or specialists and the TFC contract liaison of any accidental or non-accidental injuries sustained by the child, per OAC 340:75-3-400 and 340:75-6-88;

(7) ensure the child's religious and cultural observances, practices, or beliefs comply with OAC 340:75-6-49;

(8) develop and implement written policy and procedures regarding each child's access to legal counsel, court-appointed special advocate (CASA), DHS staff, phone, email, mail, and visitation, per OAC 340:75-6-30 and 340:75-11-237. The policy must ensure the:

(A) child has the right to interact with the child's attorney, guardian ad litem, CASA, and DHS staff in a manner and setting assuring confidentiality;

(B) child's attorney, guardian ad litem, and CASA have the opportunity to meet with the child, observe the child in appropriate settings, including the child's current placement, and review the child's documents.

reports, records, and other information relevant to the court case; and

(C) foster parent is advised of his or her right to submit a report to the court for presentation at the review hearing to assist the court in reviewing the child's placement and status;

(9) develop and implement written policy and procedures regarding the maintenance and safeguarding of each child's clothing, personal items, property, and funds while placed;

(10) ensure the completion of a clothing and personal item inventory for each child entering and leaving placement and ensure each child leaves the placement with all of his or her clothing and personal items;

(11) obtain prior approval from the CWS county of jurisdiction specialist any time the child travels overnight outside of the county of placement or Oklahoma, per OAC 340:75-6-89;

~~(12) develop and implement written policy and procedures defining situations in which any person, other than family members previously approved by the CWS county of jurisdiction specialist, may take the child away from the placement on a day pass, not to exceed six hours, without supervision of the placement provider.~~

~~(A) The TFC contractor does not allow a child any overnight visitation without the prior planning and documented written approval of the child's assigned CWS county of jurisdiction specialist. Overnight visitation with peers is considered time outside of the direct supervision of the TFC parent.~~

~~(i) The TFC contractor is responsible for:~~

~~(I) completing an evaluation of the appropriateness of the overnight plan;~~

~~(II) submitting the overnight plan to the assigned CWS county of jurisdiction specialist and supervisors;~~

~~(III) securing written confirmation of the plan from the assigned CWS county of jurisdiction specialist and supervisors; and~~

~~(IV) documenting the results in the child's case.~~

~~(ii) Assigned CWS specialist or specialists and supervisors are responsible for reviewing the overnight plan developed and submitted by the TFC contractor.~~

~~(B12) The TFC contractor does not secure any placement without the prior planning and documented written approval of the CWS specialist.~~

~~(C13) When when the TFC contractor utilizes volunteers, the contractor's policy for approval and utilization use of volunteers must, at a minimum, require criminal history and sex offender registry checks;~~

~~(1314) develop and implement written policy and procedures that prohibit the utilization of any child in DHS custody for commercial purposes;~~

~~(1415) submit written reports to the child's CWS county of jurisdiction specialist or specialists describing the child's stay in placement, progress toward meeting the~~

identified treatment plan, education, and medical care as requested for court hearings, and file a copy of the reports in the child's case record;

~~(1516) develop and implement written policy and procedures for discipline that comply with OAC 340:75-7-38 and Sections 1-7-105 of Title 10A of the Oklahoma Statutes (10A O.S. § 1-7-105);~~

~~(1617) ensure each employee and TFC parent is trained in an approved passive physical restraint curriculum defined in OAC 340:75-11-237;~~

~~(1718) develop and implement written policy and procedures requiring the TFC contractor, and all employees of the contractor, having a reason to believe any child in placement has been subject to abuse or neglect to report the matter to the Oklahoma Child Abuse and Neglect Hotline (Hotline) the same day of the incident. Failure to report is a misdemeanor pursuant to and failure to report with prolonged knowledge is a felony per 10A O.S. § 1-2-101;~~

~~(1819) develop and implement written policy that prohibits possession or use of tobacco and tobacco products by any child in placement, and prohibits the use of tobacco or tobacco products by employees of the TFC contractor in the presence of any child in placement;~~

~~(1920) develop and implement written policy and a system for resolution of grievances by any child placed and by the TFC parent regarding the substance or application of any written or unwritten policy or rule, decision, act, or omission of the TFC contractor, or employees or agents of the contractor, per OAC 340:2-3-49 and 340:2-3-50;~~

~~(2021) afford the TFC parent the same rights as all foster parents in Oklahoma, per 10A O.S. § 1-9-119;~~

~~(2122) develop and implement written policy and procedures regarding communicable disease, per OAC 340:75-1, Part 9;~~

~~(2223) develop and implement written policy and procedures that certify compliance in providing or continuing to provide a drug-free workplace per the Drug-Free Workplace Act of 1988;~~

~~(2324) develop and implement written policy and procedures to maintain confidentiality with regard to children in placement in order to comply with DHS rules regarding the protection, use, and release of client information, per 10A O.S. § 1-6-102 and Part 3 of OAC 340:75-1;~~

~~(2425) plan and coordinate each child's discharge with the child's CWS assigned specialist or specialists, when different, and provide a minimum of 4872-business hours-notice to discharge, except in medical or psychiatric emergencies. On-site crises crisis intervention must be provided prior to any emergency discharge. The TFC contractor's recommendation for discharge is approved by a child's CWS specialist prior to the contractor's implementation of the discharge plan;~~

~~(2526) submit a written discharge summary to the child's CWS specialists within 30-calendar days of the child's discharge and file a copy in the child's case record. The discharge summary includes:~~

~~(A) a summary of treatment services;~~

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- (B) child's progress on the treatment plan;
 - (C) reason for discharge; and
 - (D) recommendations for future placements and services for the child's treatment needs;
- (2627) ensure compliance with:
- (A) minimum licensing standards per Child Care Services licensing standards for child-placing agencies; and
 - (B) staffing requirements per DHS Placement Agreement for TFC;
- (2728) develop and implement written policy and operating procedures regarding corrective discipline procedures for employees;
- (2829) ensure the foster parent maintains a current Life Book for each child, regardless of the child's age; that documents the child's stay in care, and provides continuity throughout the child's life, per OAC 340:75-7-37;
- (2930) develop and implement written policy and operating procedures to govern the foster parent's maintenance and administration of prescription and non-prescription medication to each child in placement, including transporting prescription and non-prescription medication when the child receives medication any place other than the TFC home, such as respite placements, family visits, and medication administered during school hours;
- (3031) develop written policy and operating procedures regarding the use of physical force for behavior management of any child placed.
- (A) The use of mechanical restraints and the use of medication for behavior management are prohibited in the care and treatment of the child in DHS custody.
 - (B) The use of physical force is permitted when it is necessary for the protection of the child or others consistent with an approved passive physical restraint curriculum, such as when the child's behavior poses an immediate danger or threat of danger to self or others and other methods have been exhausted; and
- (3132) develop and implement written policy, operating procedures, and supervision guidelines regarding the use of solitary confinement and separation programs, such as restricting the child to his or her own room for a cooling off period. The duration of room restriction is specified at the time of assignment and is consistent with the child's chronological age, developmental level, behavioral, emotional, and medical needs, and availability of supervision;
- (33) for each scheduled review hearing, coordinate with the CWS specialist and the foster parent for a youth 14 through 17 years of age to ensure the youth's availability to respond to the court's inquiry, in person, by phone, or by other electronic means, about the youth's plan for skills development and transition to successful adulthood;
- (34) assist the CWS specialist and foster parent with ensuring youth in the eighth, ninth, or tenth grades are enrolled in the Oklahoma's Promise, formerly known as the Oklahoma Higher Learning Access Program or OHLAP, and provide foster parents with information on eligibility, application guidelines, and academic requirements for the program; and

(35) for any youth 16 years of age or older, assist the CWS specialist and youth, as needed, to remedy concerns of identity theft or fraudulent use of the youth's identity noted through a review of the youth's credit report provided by DHS.

340:75-8-7. Contracted therapeutic foster care services

- (a) **Contractor rules.** Therapeutic foster care (TFC) contractors meet Oklahoma Health Care Authority (OHCA) rules as described in Parts 1, 3, and 5 of the Oklahoma Administrative Code (OAC) 317:30-3 and Part 83 of OAC 317:30-5.
- (b) **TFC services.** Contracted TFC services are based on the child's assessed needs and are provided consistent with the goals and objectives of the child's treatment plan (TP) per OAC 317:30-5-241.2 and ~~OAC 317:30-5-742.2~~ and include:
- (1) individual therapy;
 - (2) family therapy. The TFC contractor:
 - (A) works with the parent or parents or placement provider to whom a child in TFC will be discharged;
 - (B) seeks to support and enhance the child's relationship with family members, including siblings;
 - (C) arranges for and encourages regular contact and visitation between the child and parent or parents and other family members; and
 - (D) engages the child's parent or parents and siblings in visitation and family therapy with the child, when the case plan is reunification. The TFC contractor provides consultation, support, and technical assistance to the TFC parent in the implementation of the child's TP;
 - (3) group rehabilitative treatment. ~~When provided, group~~ Group rehabilitative treatment includes education and supportive services may be part of the child's TP to provide needed services, such as basic living skills, social skills redevelopment, interdependent/independent living, or services for successful adulthood, self-care, lifestyle change, recovery principles, and other similar services; Thirty minutes of individual therapy, family therapy, or both, may be provided in lieu of one hour of group rehabilitative treatment when group treatment services are part of the child's treatment plan but are temporarily unavailable;
 - (4) substance use or abuse or chemical dependency therapy, as needed, by a child with behavioral or emotional problems directly related to substance use or abuse; A minimum of two hours of education and prevention therapy per 90-calendar day period is recommended, based on individual needs, for a child who does not have behavioral or emotional problems directly related to substance use or abuse;
 - (5) basic living skills redevelopment provided by the TFC parent;
 - (6) social skills redevelopment provided by the TFC parent;
 - (7) crisis behavior management and redirection services to ensure therapeutic contract staff are available for response 24 hours a day, seven days a week. Response

includes providing face-to-face or ~~telephone~~ phone intervention during a crisis to stabilize the child's behavior and prevent placement disruption. Face-to-face intervention must be utilized prior to a child's placement in a higher level of care, unless there is an ~~eminent~~ imminent safety risk. Crisis behavior management and redirection services are consistent with the goals and objectives of the child's TP;

(8) collaboration with Child Welfare Services (CWS) specialists in the completion of the youth's basic life skills assessment and the development of the youth's ~~Independent Living (IL)~~ successful adulthood plan; and

(9) ~~successful adulthood plan~~ services in compliance with the ~~IL~~ Oklahoma Successful Adulthood program administered by the Oklahoma Department of Human Services (DHS), per ~~Part 13 of OAC 340:75-6~~ 340:75-6-110.

(c) **TFC contractor requirements.** TFC contractors are required to provide services and meet requirements as identified in OAC 340:75, ~~OAC 317:30-5-740~~, 317:30-5-740.1 and the residential behavioral management services (RBMS).

(1) Specialized treatment services to augment the required services provided by the TFC contractor may be obtained when a child experiences severe functional impairment, exhibiting the need for additional treatment beyond the required TFC services. The specialized treatment services are provided by a Medicaid behavioral health contractor other than the TFC contractor and require prior OHCA authorization;

(2) The CWS specialist is required to participate in the coordination of all requests for additional treatment services for a child in a TFC placement with the TFC contractor. In requesting additional services from a licensed PhD psychologist in private practice, the CWS specialist considers the:

- (A) duration, intensity, and frequency of the child's behaviors;
- (B) child's specialized treatment needs including, but not limited to, sexual perpetration, long-term substance use or abuse, and highly sexualized behaviors;
- (C) number of crises requiring an on-site response; and
- (D) child's progress on his or her TFC treatment plan.

340:75-8-11.1. ~~Contract~~ Coordinated foster care in therapeutic foster care homes

(a) **Purpose.** A therapeutic foster care (TFC) contractor may utilize certified TFC homes to provide ~~contract~~ coordinated foster care (CFC) to children in the legal custody of, or who are voluntarily placed with, the Oklahoma Department of Human Services (DHS) or a child in the legal custody of an Indian tribe with a DHS tribal agreement. CFC placements by TFC contractors are submitted for approval to DHS TFC program staff prior to admission to CFC placement in a specified home. Approval may be contingent upon availability of funds.

(b) **Population served.** Children matching one of the following criteria may be considered for CFC placement in a TFC home, when a child:

(1) placed in TFC, no longer requires TFC level of care and steps down to a traditional foster care level in the current placement;

(2) needs traditional foster care placement in the same home with a sibling, is placed in the home on TFC level of care;

(3) needs placement in traditional foster care in the same home with his or her parent, who is in DHS or tribal custody, and is placed on a TFC level of care; ~~or~~

(4) needs to return to a home where he or she was previously placed, following an unsuccessful permanency effort, such as trial adoption or trial reunification;

(5) appears to meet criteria for placement in TFC and needs immediate placement when Oklahoma Healthcare Authority (OHCA) approval is not available because the placement need developed outside OHCA business hours or the business day closed without a return call from OHCA. The contractor may assist with immediate placement of the child. This placement is documented and reimbursed through the contractor's resource family partnership (RFP) contract for placement of traditional foster care placements or by placement in CFC. OHCA approval must be obtained the following business day after placement. Once OHCA approval is obtained, the child is admitted to TFC. When OHCA denies TFC placement, the contractor and Child Welfare Services (CWS) specialist immediately coordinate to ensure a new placement referral is initiated for placement in the appropriate level of care. The child may not remain in a TFC home more than three-business days when denied by OHCA for TFC placement;

(6) a child needing traditional foster care level is placed with a specific TFC home due to the home's unique characteristics that meet the child's needs. This placement requires prior approval of the TFC contractor, TFC program staff, and RFP program staff or CWS foster care staff. Examples of unique characteristics include the ability to communicate with the child in a language other than English, specialized medical training, and wheelchair accessible housing and transportation; or

(7) a TFC home may be considered for kinship placement as needed. The home must be approved for joint certification as a kinship foster home per Oklahoma Administrative Code (OAC) 340:75-7-19.

(c) **CFC admission procedure.** All admissions to CFC must have prior approval from TFC program staff and are subject to availability of funds. For any child meeting criteria for CFC placement in the home, a contractor with an open contract for supported foster care homes may also provide traditional foster care level placement in the TFC home through the resource family partner contract.

(1) Step down from TFC level of care: The TFC contractor notifies the child's ~~Child Welfare Services (CWS)~~ specialist and CWS supervisor when the child is determined to no longer meet TFC level of care criteria and is

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appropriate to step down to traditional foster care. The TFC contractor and CWS staff determine the most appropriate placement option for the child, including possible CFC placement in the current TFC placement. When the child's team determines that remaining in the child's current TFC home as a CFC level placement is the best placement option for the child, the contractor submits the request to TFC program staff for approval, prior to placement.

(2) DHS may request the TFC contractor consider a CFC placement for the child meeting criteria as sibling to a TFC child, a child of a parent placed in TFC, or a child returning to placement after failed permanency placement. When in agreement with the request for CFC placement, the TFC contractor submits the request to TFC program staff for approval prior to placement.

(3) The request for CFC placement is submitted by the TFC contractor to TFC program staff and includes, but is not limited to, the:

- (A) child's name, date of birth, and KK number;
- (B) county of jurisdiction and the CWS specialist's name and phone number;
- (C) identification of the criteria for CFC placement for a:

- (i) child stepping down from TFC, include the date of anticipated step down;
- (ii) child whose parent is in TFC or sibling placements, include the name and date of placement of the TFC sibling or parent; and
- (iii) return to previous placement, include the child's previous placement and discharge dates from the home of proposed placement;

(D) description of any special care or behavioral health needs for the child considered for CFC placement, and the proposed foster parent's training or skills to meet those needs;

(E) name of each proposed foster parent and Form 04FT006E, ~~Contracted~~ Coordinated Placement Resource Report, needed to create the family resource in KIDS;

(F) work schedule of each proposed foster parent and planned use of child care while the proposed foster parent is working;

(G) names, ages, and genders of all children currently living in the home and their relationships to the proposed foster parents;

(H) number of bedrooms in the home and how the bedrooms will be allocated with an additional child or children in the home; and

(I) summary of previous abuse and neglect referrals and all plans of compliance or corrective action plans.

(4) TFC program staff provides a written response for the approval or denial of the request. Email approval is a valid written response. The response is maintained in the child's file and in the foster home file when placement is completed.

(5) At the time of CFC placement, the TFC contractor provides written notification of the placement date to DHS TFC program staff and the CWS specialist by submitting Form 04FT004E, Notice of Child's Location.

(6) The CWS specialist documents the child's CFC placement in KIDS.

(d) **The CFC discharge procedure.**

(1) Discharge planning is coordinated between TFC contractor staff and the child's CWS specialist.

(2) Discharges from CFC are reported to DHS program staff and the child's CWS specialist within five-business days from the date of discharge by submitting Form 04FT004E, ~~Notice of Child's Location.~~

(3) The contractor averts disruption when possible through the use of additional services, respite, disruption prevention meetings, and other identified methods to stabilize placement. When a placement disruption results in plans to transfer the child to a different CFC resource home, a new request and DHS program staff approval is required. The child must meet CFC criteria for placement in a new TFC home.

(4) The CWS specialist is notified immediately of all changes in the child's location, including respite, within one-business day of the date of the change in location by submitting Form 04FT004E, ~~Notice of Child's Location.~~

(e) **CFC respite.** The TFC contractor ensures resource homes have access to both planned and unplanned respite care providers for children placed in CFC. Respite care may be utilized for the same reasons and time periods specified, per OAC 340:75-8-11 for respite care for a child in TFC placement. Any respite provider must be fully informed of a child's special needs and have skills or training to meet those needs prior to assuming care of the child while ensuring the safety and well-being of all children in the home. Respite for children placed in CFC may be provided by accessing ~~one of the following options:~~

- (1) a TFC home in compliance with all certification requirements;
- (2) identification and approval of an alternate caregiver, per OAC 340:75-7-65(i); or
- (3) a traditional foster care resource, when available, by coordinating with the child's CWS resource staff. When utilizing a traditional foster care resource for respite, the contractor is responsible for payment of the daily board rate directly to the ~~Bridger resource~~ foster family providing care for the child. The payment rate is the same daily rate as a traditional foster care maintenance payment per Appendix C-20, Child Welfare Services (CWS) Rates Schedule, including any difficulty of care rate in effect for the child.

(f) **~~CFC~~TFC contractor requirements for CFC.**

(1) The ~~CFC~~TFC contractor must:

(A) provide 24-hour support services to homes providing CFC placements including crisis intervention, consultation, training, and referral to services as needed;

(B) comply with policies and procedures established for TFC placements regarding management of

a CFC placement child's property, allowance, funds, and life books;

(C) ensure the TFC contractor or subcontractor staff, CFC foster parents, respite providers, and alternate ~~care-givers~~caregivers comply with DHS policy regarding discipline, behavior management, and corporal punishment per OAC 340:75-7-38;

(D) provide written reports to the child's CWS specialist on a quarterly basis, or more frequently when requested by DHS or the ~~Court~~court. The report includes:

- (i) a summary of progress and overall adjustment made in the placement, during or following visitation with the child's ~~parents/siblings~~parents, siblings, and important connections;
- (ii) the child's strengths and behavioral concerns;
- (iii) medical or psychological appointments and outcomes; and
- (iv) the child's identified need for additional services;

(E) coordinate with the child's CWS specialist to make referrals and obtain needed services for the child; and

(F) participate in all DHS initiated staffings, meetings, or both regarding the child and may choose to attend court proceedings for the child. The court may mandate TFC contractor attendance to some court proceedings.

(2) The TFC contractor staff must:

(A) immediately report to the Oklahoma Child Abuse and Neglect Hotline at 1-800-522-3511, any allegations or suspicions of abuse or neglect of a child ~~as provided by state law~~per 10A O.S. § 1-1-105 and DHS policy; and must ensure CFC foster parents understand and acknowledge that failure to report is a misdemeanor offense, failure to report with prolonged knowledge is a felony, and upon conviction, is punishable ~~as prescribed by law~~per 10A O.S. § 1-2-101, and may result in discontinued use of the home to provide placement for children in DHS custody;

(B) cooperate with DHS on any referral regarding alleged abuse or neglect assessed or investigated per DHS policy and state law. No new placements are assigned to the home until the assessment or investigation is completed and a finding is made regarding the allegations. The TFC contractor is notified by DHS program staff or a CFC liaison of the assessment conclusion or investigation finding and jointly determines if a written plan of compliance, training, or assessment is needed prior to the home's continued use ~~of the home~~;

(C) establish a procedure to address and document a response to concerns in a CFC foster home that do not warrant a referral for an abuse or neglect assessment or investigation. Examples of this type of

concern include, but are not limited to, a foster parent's judgment or supervision, disciplinary practices, non-compliance with policy or contract, unacceptable housing standards, inadequate clothing provisions for the child, or a lack of involvement in the child's education or independent living skills. When documented efforts to address these issues do not remove the concerns, DHS has the right to decline the use of the home.

(3) TFC contractor makes the child's records and resource file available for review by CWS specialists or TFC program staff.

(g) **Foster parent supports for CFC.**

(1) **Child care.** OAC 340:75-7-65(a) and (c) provide for the availability of child care subsidy benefits for a child placed in a CFC foster home while the foster parent is employed outside of the home for at least 20 hours weekly.

(2) **Travel reimbursement.** OAC 340:75-7-65(s) provides for CFC parent reimbursement for a child's transportation that meets specific criteria.

(3) **Difficulty of care (DOC) reimbursement.** OAC 340:75-7-53 provides for the availability of DOC reimbursement for a child in CFC placement based on the child's extraordinary physical, mental, or emotional needs per Appendix C-20.

(4) **Insurance for the foster home.** Liability insurance is provided for CFC foster families for damages caused by the child in DHS custody according to the policy terms. Foster families have the right to receive a copy of the liability insurance policy per Section 1-9-119 of Title 10A of the Oklahoma. Foster parents are responsible for deductibles.

(h) **Child safety.**

(1) The ~~CFCTFC~~TFC contractor ensures:

(A) the foster parent takes all necessary steps to provide for the safety of children in placement;

(B) the foster parent knows where the child is at all times. In the event a child is removed by anyone without authorization, taken into custody by law enforcement officials, leaves without authorization (runs away), or otherwise cannot be located, the TFC contractor and foster parent ~~agree that the CWS specialist, supervisor, or both and police are immediately notified by telephone and participate in any requests to assist in locating the child. The contractor places a written report in the child's case records with a copy to the CW specialist describing the circumstances surrounding the incident~~immediately follow protocol in OAC 340:75-8-6(4) to notify CWS staff and law enforcement;

(C) DHS is notified of any changes in the ~~contracted~~coordinated foster family circumstances that may affect the child's safety or stability in placement, including changes in finances, location, health, relationships, or household members;

(D) the CFC home ~~does not move additional people into the home without prior DHS approval of the contractor and notice to DHS program staff and TFC~~

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contractor comply with OAC 340:75-7-18 to immediately complete assessment of new household members; and

(E) the CFC home is not providing routine child care as a licensed or unlicensed child care provider.

(2) The ~~CFC~~TFC contractor, the foster parent, or both obtain DHS permission before taking a child in DHS custody out-of-state for an overnight stay.

(3) The CFC contractor immediately notifies DHS of any:

(A) charges or arrests of any foster parent or household member and any criminal investigation of a foster parent or household member; or

(B) proceeding for a protective order filed by or against any member of the household.

(4) CWS specialist reports all concerns for abuse or neglect in a CFC home to the Oklahoma Child Abuse and Neglect Hotline at 1-800-522-3511.

(5) The CWS specialist reports to the TFC contractor for evaluation and response, all contract and policy violations, and concerns for child safety and well-being that do not meet criteria for abuse or neglect referral. The TFC contractor reports resolution of the concerns to the CWS worker within 15-calendar days of the report of violations or concerns.

340:75-8-12. Responsibilities of area resource therapeutic foster care (TFC) coordinators

Therapeutic foster care (TFC) contractors receive referrals for the placement of children in Oklahoma Department of Human Services custody or tribal custody in TFC homes from the regional resource coordinator (RRC)-TFC placement coordinator or other entity designated by TFC program staff. RRC staff areThe TFC placement coordinator is responsible for the referral process of children to TFC contractors.

SUBCHAPTER 11. CHILD WELFARE COMMUNITY-BASED RESIDENTIAL CARE

PART 17. CONTRACTED COMMUNITY-BASED RESIDENTIAL CARE PROVIDERS

340:75-11-230. Purpose, legal basebasis, and definitions

(a) Purpose

(1) The Community Based Residential Care community-based residential care (CBRC) program serves children in Oklahoma Department of Human Services (OKDHS)(DHS) custody or tribal custody whose treatment needs cannot be met in a family setting, but whose treatment needs do not require inpatient psychiatric care.

(2) OKDHS(DHS) contracts for different levels of care of CBRC placements that vary according to the level of restriction and intensity of treatment in order to meet

the different intensity and individualized treatment needs of children.

(b) Legal basebasis.

(1) Section 1-7-103 of Title 10A of the Oklahoma Statutes (10A O.S. § 1-7-103) requires OKDHS(DHS) review and assess each child in OKDHS(DHS) custody to determine the type of placement consistent with the child's treatment needs in the nearest geographic proximity as possible to the child's home.

(2) 10A O.S. § 1-9-110 requires OKDHS(DHS), to the extent of funds available, directly, or by grant or contract, to implement a diversity of community-based residential careCBRC for children who are alleged or adjudicated deprived. When a child is placed with a non-custodial parent, the non-custodial parent's home is construed to be the child's home community. Community-based careCBRC is care in a:

(A) foster family home;

(B) group home;

(C) community residential center; or

(D) similar non-secure facility consistent with the individualized treatment needs of the child and provided, whenever practical, in or near the child's home community.

(c) **Definitions.** The following words and terms, when used in this Subchapter, shall have the following meaning meanings, unless the context clearly indicates otherwise:

(1) **"Age-appropriate"** or **"developmentally-appropriate"** means:

(A) activities or items that are generally accepted as suitable for children of the same age or level of maturity or that are determined to be developmentally-appropriate for a child, based on the development of cognitive, emotional, physical, and behavioral capacities that are typical for an age or age group; and

(B) in the case of a specific child, activities or items that are suitable for that child based on the developmental stages attained by the child with respect to the cognitive, emotional, physical, and behavioral capacities of the specific child, per 10A O.S. § 1-1-105.

(2) **"Behavioral health"** means mental health, substance use or abuse, or co-occurring mental health and substance use or abuse diagnoses, and the continuum of mental health, substance use or abuse, or co-occurring mental health and substance use or abuse treatment.

(3) **"Community-based services"** or **"community-based programs"** mean services or programs, which maintain community participation or supervision in their planning, operation, and evaluation. Community-based services and programs may include, but are not limited to, emergency shelter, crisis intervention, group work, case supervision, job placement, recruitment and training of volunteers, consultation, medical, educational, home-based services, vocational, social, preventive and psychological guidance, training, counseling, early intervention and diversionary substance use or abuse treatment, sexual abuse treatment, transitional living.

successful adulthood, and other related services and programs.

(4) **"Corrective action plan (CAP)"** means steps, actions, or strategies taken to correct or address behaviors or conditions associated with abuse, neglect, or areas of concern related to an individual employee of a facility.

(5) **"Facility"** means a place, an institution, a building or part thereof, a set of buildings, or an area whether or not enclosing a building or set of buildings, used for the lawful custody and treatment of children.

(6) **"Facility action step (FAS)"** means all actions, steps, or strategies to correct or address areas of concern identified within a facility including, but not limited to, the culture of care, services, or contract compliance.

(7) **"Facility services plan (FSP)"** means a yearly, progressive document specific to each facility identifying issues impacting child safety within the facility's culture of care including, but not limited to, hiring, training, supervision, services, or contract compliance. The FSP includes all CAPs, FASs, notices to comply, and written plans of compliances related to the specific facility.

(8) **"Group home"** means a residential facility licensed by OKDHS/DHS to provide full-time care and community-based services for more than five but fewer than 13 children.

(9) **"Intensive treatment services (ITS)"** means a contracted ~~eight-bed~~ six-bed program that provides 72-hour crisis intervention services for children in OKDHS/DHS custody to prevent inpatient admission.

(10) **"Notice to comply"** means a formal written notice sent to a facility to indicate a CAP or FAS was not completed within agreed upon timeframes.

(11) **"Mental health"** means behavioral health, substance use or abuse, or co-occurring mental health and substance use or abuse diagnoses, and the continuum of mental health, substance use or abuse, or co-occurring mental health and substance use or abuse treatment.

(12) **"Normalcy"** means the emotional developmental growth of the child is encouraged by allowing the child to participate in age-appropriate and developmentally-appropriate extracurricular, enrichment, cultural, and social activities, using a reasonable and prudent parent standard.

(13) **"Plan for immediate safety"** means actions taken to immediately control any significant and clearly observable condition that is present and is endangering or threatening to endanger a child in a residential facility.

(14) **"Reasonable and prudent parent standard"** means the standard characterized by careful and sensible parental decisions that maintain the health, safety, and best interests of a child while at the same time encouraging the emotional and developmental growth of the child. This standard is used by the child's caregiver when determining whether to allow a child to participate in extracurricular, enrichment, cultural, and social activities, per 10A O.S. § 1-1-105.

(A) For purposes of this definition, the term "caregiver" means a foster parent with whom a child in foster care has been placed, a representative of a group

home where a child has been placed or a designated official for a residential child care facility where a child in foster care has been placed.

(B) Each facility must assure that at least one employee is designated and authorized to apply the reasonable and prudent parent standard to decisions involving the participation of a child in age-appropriate or developmentally-appropriate activities. The authorized facility employee is provided with training on how to use and apply the reasonable and prudent parent standard.

(15) **"Residential child care facility"** means a 24-hour residential facility where children live together with or are supervised by adults who are not their parents or relatives, per 10A O.S. § 1-1-105.

(16) **"Runaway"** means the child in OKDHS/DHS custody or tribal custody is not present in a placement, such as foster care, therapeutic foster care, group home, or specialized community home, and does not have permission to be absent.

(17) **"Serious emotional disturbance"** means a disability persisting for six months or longer as defined by the most-recently published version of the Diagnostic and Statistical Manual of Mental Disorders or International Classification of Disease whereby the child exhibits psychotic symptoms of a serious mental illness or difficulties that interfere or limit social, behavioral, cognitive, communicative, or adaptive skills.

(18) **"Sexual exploitation"** means per 10A O.S. § 1-1-105:

(A) allowing, permitting, encouraging, or forcing a child to engage in prostitution, as defined by law, by any person 18 years of age or older or by a person responsible for the health, safety, or welfare of a child; or

(B) allowing, permitting, encouraging, or engaging in the lewd, obscene, or pornographic, as defined by law, photographing, filming, or depicting of a child in those acts by a person responsible for the health, safety, and welfare of the child.

(19) **"Written plan of compliance"** means the formal accountability process for facilities and when not adhered to within 30-calendar days results in adverse contract actions.

340:75-11-233.1. Placement services

The purpose of ~~Children and Family Services Division (CFSD) Placement Section~~ Child Welfare Services Specialized Placement and Partnerships Unit is to:

(1) ensure that children in Oklahoma Department of Human Services (OKDHS/DHS) custody or tribal custody are placed in the least restrictive community-based residential care (CBRC) placement that most appropriately meets their treatment needs;

(2) ensure equal access to CBRC placement resources by children in OKDHS/DHS custody or tribal custody statewide; and

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(3) maintain the waiting list of children in ~~OKDHS~~DHS or tribal custody who need CBRC placements when the need for CBRC placements exceeds the availability of CBRC placements.

340:75-11-237. Rights of ~~children~~ a child in community-based residential care (CBRC)

(a) Child's rights.

(1) A child is not subjected to unreasonable silence rules, group punishment for inappropriate individual acts, profanity, verbal abuse, or threats of unnecessary or unauthorized physical force by staff, or "make work"; provided that nothing herein prevents a child from performing routine housekeeping tasks or maintenance work directly related to a vocational program, such as specific skill training.

(2) Except in situations that pose a serious threat to the child's life or health, a child has the right to refuse medications. Refused medications cannot be administered unless a court order is obtained authorizing forcible administration. Necessary medication prescribed by a physician may be forcibly administered by staff trained in medication administration and who are familiar with the child's condition.

(3) A child:

(A) is not punished by:

- (i) physical force;
- (ii) deprivation of nutritious meals;
- (iii) deprivation of family visits; or
- (iv) solitary confinement;

(B) has the opportunity to participate in physical exercise daily;

(C) has daily access to a shower;

(D) is allowed his or her own clothing or individualized clothing that is clean per Oklahoma Administrative Code (OAC) 340:110-3-154.1;

(E) has constant access to writing material and may send mail without limitation, censorship, or prior reading;

(F) may receive mail without prior reading, except that mail may be opened in the presence of the child, without being read, to inspect for contraband or when authorized by the court for the protection of the child;

(G) has access to email, mail, social media, and phone calls with family and friends that are not monitored or restricted unless for the child's protection. Denial of email, mail, social media, phone contact, or visitation with family members occurs only by order of the court when it is determined contact with a specifically identified family member is not in the child's best interest per OAC 340:75-6-30;

(H) has a right to communicate and to visit with his or her family on a regular basis and to communicate with persons in the community provided the communication or visitation is in the child's best interest;

(I) has timely access to medical care as needed;

(J) is provided access to educational programs, including teaching, educational materials, and books;

(K) has a right to access his or her attorney; and

(L) has access to grievance and appeal procedures, per OAC 340:2-3-45 through 340:2-3-49.

(4) A child's visitation with family is not contingent upon the child's behavior and family visitation is not denied by the CBRC.

(5) A child's behavioral health needs are met, protected, and served through the provision of guidance, counseling, and treatment programs staffed by competent, professionally qualified persons.

(a**b**) All ~~community-based residential care (CBRC)~~CBRC programs, whether operated by Oklahoma Department of Human Services (~~OKDHS~~)DHS or under contract with ~~OKDHS~~DHS, must comply with Section 1-7-105 of Title 10A of the Oklahoma Statutes, OAC 340:110-3-154.1, and OAC 340:110-3-154.2.

(1) A child:

(A) is not punished by:

- (i) physical force;
- (ii) deprivation of nutritious meals;
- (iii) deprivation of family visits; or
- (iv) solitary confinement;

(B) has the opportunity to participate in physical exercise daily;

(C) is allowed his or her own clothing or individualized clothing that is clean per OAC 340:110-3-154.1;

(D) has constant access to writing material and may send mail without limitation, censorship, or prior reading;

(E) may receive mail without prior reading, except that mail may be opened in the presence of the child, without being read, to inspect for contraband or if authorized by the court for the protection of the child;

(F) has a right to communicate and to visit with his or her family on a regular basis and to communicate with persons in the community provided the communication or visitation is in the best interest of the child;

(G) has timely access to medical care as needed;

(H) is provided access to educational programs, including teaching, educational materials, and books;

(I) has a right to access to his or her attorney; and

(J) has access to grievance and appeal procedures, per OAC 340:2-3-45 through 340:2-3-49.

(2) A child's behavioral health needs are met, protected, and served through the provision of guidance, counseling, and treatment programs staffed by competent, professionally qualified persons.

(3) The use of mechanical restraints and medication for behavior management are prohibited in ~~OKDHS~~DHS operated and contracted programs. The use of physical force, when authorized, is the least force necessary under the circumstances and is permitted only with an approved, non-pain producing, passive, physical restraint-positive, youth development curriculum:

(A) for self-protection;

- (B) to separate children who are fighting;
- (C) to restrain children in danger of inflicting harm to themselves or others; or
- (D) to deter children who are in the process of leaving the facility without authorization.

(42) ~~The passive physical restraint approved, non-pain producing, passive, positive, youth development curriculum includes:~~

(A) ~~graded alternatives using a combination of psychological and physical techniques to ensure safety with emphasis toward:~~

- (i) ~~the reduction of injury de-escalation of the situation;~~
- (ii) ~~de-escalation of the situation elimination of abuse to persons with acting out behavior; and~~
- (iii) ~~elimination of abuse to persons with acting out behavior injury reduction; and~~

(B) ~~physical contact aspects are utilized only when the child's behavior poses an immediate imminent danger or threat of danger to self or others and when all other methods have been were exhausted. Physical contact may only last until the imminent danger has passed.~~

(53) ~~CBRC placements providing care and treatment for children in OKDHS DHS custody or tribal custody are not locked for the purpose of deprivation of liberty or for disciplinary purposes. CBRC placements may be locked for the purpose of security from external forces.~~

(b) ~~The child's visitation with family is not contingent upon the child's behavior and family visitation is not denied as a consequence for acting out behavior.~~

(c) ~~Denial of visitation, mail, or phone contact with family members occurs only by order of the court, when it is determined visitation, mail, or phone contact with a specifically identified family member is not in the child's best interests, per OAC 340:75-6-30.~~

340:75-11-239. ~~Contract~~Child welfare (CW) facility liaison's general responsibilities for children placed in community-based residential care (CBRC) and CBRC placement providers

~~Contract~~CW facility liaisons have ~~general responsibilities~~responsibility for assisting CW specialists with placement of children in Oklahoma Department of Human Services (DHS) custody into CBRC, ensuring the safety of children in Oklahoma Department of Human Services DHS or tribal custody placed in community-based residential care (CBRC) placements, monitoring CBRC contract compliance, and supporting and linking ~~and for all~~ CBRC placement providers, assigned CW specialists, and community partners.

340:75-11-240. General requirements for contracted community-based residential care (CBRC) placement providers

All contracted ~~community based residential care (CBRC)~~CBRC providers must:

(1) maintain a written case record on each child that documents all services provided or obtained for the child while in placement;

(2) implement and review an individualized treatment plan for each child in placement, with documented input ~~offrom~~ the child's ~~Child Welfare (CW) county of jurisdiction worker~~assigned child welfare (CW) specialist, according to the requirements set forth in the Oklahoma Department of Human Services (~~OKDHS~~)DHS contract;

(3) assume responsibility for basic needs maintenance of each child placed;

(4) ensure the safety, supervision, protection, and provision of necessary medical or psychological care and treatment for each child receiving services from the facility or provider is individualized to the child's specific needs. The placement provider or facility must cooperate with any inspection, investigation, evaluation, plan for immediate safety, or corrective action plan made by DHS or the Office of Client Advocacy and provide all ongoing assistance necessary to ensure child safety, protection, and well-being;

(45) accept responsibility for a reasonable knowledge of the child's whereabouts at all times.

(A) When a child:

- (i) is removed by anyone without authorization;
- (ii) is taken into custody by law enforcement officials;
- (iii) runs away; or
- (iv) otherwise cannot be accounted for, the provider immediately notifies by phone the:

(I) ~~CW county of jurisdiction worker~~child's assigned CW specialist. The child's CW specialist follows protocol and completes runaway notifications, per Oklahoma Administrative Code (OAC) 340:75-6-48.3;

(II) ~~facility~~ CW ~~CBRC~~ CW facility liaison; and

(III) ~~police~~law enforcement.

(B) The provider submits a written report to the child's ~~CW county of jurisdiction worker~~assigned CW specialist describing the circumstances surrounding the incident and files a copy in the child's case record;

(56) ensure the child timely receives all needed routine, specialized, and emergency medical care provided by a medical provider who accepts Medicaid payment.

(A) DHS authorizes the CBRC facility administrator in writing, through the placement provider agreement, to consent to routine and ordinary medical care and treatment needed by the DHS custody child upon the advice of a licensed physician, per OAC 340:75-6-88.

(AB) ~~Prior~~ Prior consultation and consent from ~~OKDHS~~DHS, the child's parent(s) or guardian, and the court, ~~if~~when applicable, as set out by Section

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1-3-102 of Title 10A of the Oklahoma Statutes (10A O.S. § 1-3-102), are required for:

- (i) emergency medical care. When appropriate ~~OKDHS~~DHS staff cannot be located and the situation is life-threatening, the provider obtains emergency care and treatment and notifies ~~OKDHS~~DHS at the earliest possible time; and
- (ii) any extraordinary medical care and treatment, such as surgery, general anesthesia, blood transfusions, or invasive or experimental procedures, ~~or the provision of psychotropic medications and~~ requires consent of the:

(I) ~~consent of the~~ child's parent or guardian, if/when the child is in DHS emergency or temporary custody of ~~OKDHS~~; or

(II) ~~consent of the~~ court of legal jurisdiction, if/when the child is in the DHS emergency or temporary custody of ~~OKDHS~~, and the treatment is related to the abuse or neglect, or the parent or guardian is unavailable or will not consent; or

(III) ~~consent of the~~ court of jurisdiction, if/when the child is in the DHS permanent custody of ~~OKDHS~~.

~~(B)~~ C The provider must comply with DHS policy for the administration of prescribed psychotropic medication found in OAC 340:75-6-88.

~~(C)~~ D ~~Prior consultation and consent from OKDHS and the child's parent(s), is not required for routine and ordinary medical care.~~ Provision of all medical or dental care is documented in the provider's case record, including notification and attempts of notification in emergency situations;

~~(6)~~ 7 notify the ~~CW county of jurisdiction worker assigned CW specialist~~ and the ~~contract CW facility~~ liaison of any accidental or non-accidental injuries sustained by the child;

~~(7)~~ 8 ensure that the religious and cultural observations of the child comply with OAC 340:75-6-49.

(A) The provider arranges transportation to the nearest place of worship of the child's choice. On-site voluntary religious services are acceptable.

(B) Exceptions to this requirement are made for non-funded contracts with ~~faith-based~~ CBRC providers that require the child's and parent(s)' agreement for the child to attend a specific place of worship as a requirement for admission;

~~(8)~~ 9 develop and implement written policy and procedures regarding each child's access to legal counsel, court-appointed special advocate (~~CASA~~), ~~OKDHS~~DHS staff, phone, email, mail, and visitation, per OAC 340:75-11-237 ~~and 340:75-6-30~~;

~~(9)~~ 10 develop and implement written policy and procedures regarding securing and safeguarding each child's property and funds, the disbursement of allowances, and items allowed and not allowed into the placement;

~~(10)~~ 11 ensure each child is discharged with all personal items and clothing;

~~(11)~~ 12 obtain prior approval from the ~~CW county of jurisdiction worker assigned CW specialist~~ any time the child travels overnight outside of the county of placement per OAC 340:75-6-89;

~~(12)~~ 13 develop and implement written policy and procedures defining situations in which any person, other than family members previously approved by the ~~CW county of jurisdiction worker assigned CW specialist~~, may take the child away from the placement on a day pass, not to exceed six hours, without supervision of the provider. The provider:

(A) does not allow a child any overnight visitation, except with peers per OAC 340:75-7-37, without prior planning and documented written approval of the child's ~~CW county of jurisdiction worker assigned CW specialist~~. A home study is:

(i) ~~completed on the overnight visitation resource, either by a CW worker in the county where the resource is located or by the contractor if the contractor is a licensed child placing agency; and~~

(ii) approved by the CW county of jurisdiction worker and supervisor prior to the child's overnight visitation;

(B) does not secure any placement without prior planning and documented written approval ~~of from~~ the ~~CW county of jurisdiction worker~~ child's assigned ~~CW specialist~~; and

(C) when utilizing volunteers, ensures the provider's policy for approval and utilization of volunteers complies with OAC 340:2-35-4;

~~(13)~~ 14 develop and implement written policy and procedures that prohibit the utilization of children for commercial purposes;

~~(14)~~ 15 submit written reports to the child's ~~CW county of jurisdiction worker assigned CW specialist~~ describing the child's stay in placement, progress toward meeting identified treatment goals, education, and medical care on a quarterly basis, or more frequently if/when requested for court hearings, and file a copy of the reports in the child's case record;

~~(15)~~ 16 develop and implement written policy and procedures for discipline that comply with OAC 340:75-7-38, and ~~Section 1-7-105 of Title 10A of the Oklahoma Statutes~~ 10A O.S. § 1-7-105 that prohibit the use of solitary confinement, separation programs, use of mechanical restraints, and administration of medicine as discipline or control.

(A) Room restriction may be utilized in the child's own room for a cooling off period not to exceed 60 minutes.

(B) The duration of the restriction is specified at the time of the assignment;

~~(16)~~ 17 ensure all employees are trained in an approved, non-pain producing, passive, physical restraint positive youth development curriculum per OAC 340:75-11-237;

~~(17)~~ 18 develop and implement written policy and procedures that require the contractor, and all employees of the contractor, having reason to believe any child in placement

has been subjected to physical abuse, neglect, or both, to report the matter to the ~~OKDHS Office of Client Advocacy~~ DHS Child Abuse and Neglect Hotline (Hotline).

(A) The provider makes the report to the ~~Office of Client Advocacy Hotline~~ the same day of the incident or ~~the next working day if an incident occurs evenings, weekends, or holidays~~ on the date the incident becomes known to the provider.

(B) Failure to report is a ~~criminal~~ misdemeanor of a felony, failure to report with prolonged knowledge is a felony, and upon conviction, is punishable under per 10A O.S. § 1-2-101;

~~(18)19~~ develop and implement written policy that prohibits:

(A) possession of or use of tobacco and tobacco products by children in placement; and

(B) use of tobacco or tobacco products by the provider, employees of the provider, or visitors in the presence of children in placement, ~~and designates clearly marked smoking areas outside of the children's placement and treatment areas~~;

~~(19)20~~ develop and implement written policy and procedure for the resolution of grievances by recipients of the services provided under the contract regarding the substance or application of any written or unwritten policy or rule of the contractor, or any decision, act, or omission of the contractor, or employees or agents of the contractor. The contractor:

(A) utilizes a grievance system in compliance with OAC 340:2-3-45 through 340:2-3-47 and 340:2-3-61 through 340:2-3-64; and

(B) submits policy regarding the resolution of grievances, and any subsequent revisions, to the Office of Client Advocacy for approval prior to the placement of any child, per OAC 340:2-3-45;

~~(20)~~ develop and implement written policy and procedures in accordance with OAC 340:75-1-120;

(21) develop and implement written policy and procedures that certify compliance in providing or continuing to provide a drug-free workplace in accordance with the Drug-Free Workplace Act of 1988;

(22) develop and implement written policy and procedures to maintain strict standards of confidentiality regarding children in placement in compliance with ~~OKDHS~~ DHS requirements regarding the absolute protection, use, and release of personal client information consistent with 10A O.S. § 1-6-107 and OAC 340:75-1-42 through 340:75-1-46, and professional standards. The contractor agrees to hold confidential all personal information about children served, including lists of names, addresses, photographs, records of evaluation, and all other records about each child;

(23) submit monthly and annual reports to ~~the Children and Family Services Division (CFSD) CBRC programs manager~~ Child Welfare Services (CWS) Specialized Placements and Partnerships Unit (SPPU) program staff to provide an overview of the provider's activities.

(A) The monthly report includes:

(i) information on each child's progress toward goals and objectives;

(ii) significant behavior events, including descriptions of delinquent acts committed and the legal and judicial consequences of the delinquent acts committed by each child;

(iii) each child's ~~absent without leave (AWOL) days~~ unapproved absence from the facility and duration of the time away;

(iv) total bed days utilized;

(v) each child's leave days utilized;

(vi) total number of children served during the month, the number of children served who are also adjudicated delinquent, and the total number of children served who are adjudicated delinquent and in the custody of Office of Juvenile Affairs;

(vii) number of children admitted during the month;

(viii) number of children discharged during the month and the reasons for those discharges; and

(ix) vacancies in contract mandated staffing requirements, and other significant program events.

(B) The annual report, due within ~~60-calendar~~ 60-calendar days after the end of the contract year, includes the information listed in ~~OAC 340:75-11-240(23)(A)(A)~~ of this paragraph for the contract year;

(24) plan and coordinate each child's discharge with the ~~child's CW county of jurisdiction worker~~ assigned CW specialist and provide a minimum of ~~48 hours~~ 48-hour notice to discharge, except in medical or psychiatric emergencies. Contractor's recommendation for discharge is approved by the ~~child's CW county of jurisdiction worker~~ assigned CW specialist prior to the provider's implementation of the discharge plan;

(25) submit a written discharge summary to the ~~child's CW county of jurisdiction worker~~ assigned CW specialist within ~~30-calendar~~ 30-calendar days of discharge and file a copy in the child's case record, including a summary of treatment services, child's progress on treatment goals, reason for discharge, and recommendations for future placements and services for the child's treatment needs;

(26) ensure all staff comply, as applicable, with the minimum licensing standards defined in the ~~Oklahoma Child Care Services standards for child placing agencies~~ licensing standards for child care facilities or ~~OKDHS~~ DHS Publication No. 86-78, Licensing Requirements for Residential Child Care Facilities, ~~or OAC 340:75-11-286~~;

(27) ensure all staff comply with the staffing requirements mandated in the contract that are in addition to the minimum staffing requirements in ~~OKDHS~~ DHS Publication No. 86-78.

~~(A) If~~ When the provider's actual staffing ~~pattern~~ ratio differs from the requirements set forth in the contract, the provider submits a written plan to the ~~CBRC programs manager~~ CWS SPPU program staff that defines the proposed staffing pattern of the contractor, timeframe for the differing ratio, and

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clearly illustrates how each of the staffing functions ~~are~~ provided;

~~(B) The provider's proposed staffing pattern requires written approval of the CBRC programs manager prior to implementation of the provider's proposed staffing pattern;~~

(28) fill vacant positions required by the ~~OKDHS~~DHS contract within 30-calendar days of the position becoming vacant. The contractor notifies the ~~CBRC programs manager~~CWS SPPU program staff in writing:

(A) when contractually required positions are vacant;

(B) of updates during the selection process; and

(C) of the effective hiring date for these positions;

(29) develop and implement written policy regarding corrective discipline ~~procedures~~ for employees;

(30) notify the ~~CBRC programs manager~~CWS SPPU program staff immediately by phone, and in writing within ~~two working days~~one business day, per OAC 340:110-3-152(f), of any critical incidents ~~that may have grave consequences~~, such as:

(A) the death of a child ~~or employee caused by murder, suicide, or accident;~~

(B) the death of an employee caused by murder, suicide, or accident;

(C) severe injury to a child as a result of abuse, neglect, or maltreatment by a service provider, employee, or another child, or accident;

~~(D)~~ misappropriation of state or federal funds by an employee of a private or public service agency that receives these funds;

~~(E)~~ a violent crime committed by a child against another person; or

~~(F)~~ any event that occurs in the facility that gains or is likely to gain media attention;

(31) ~~provide 60 day notice to the local school board prior to the opening of the facility per 70 O.S. § 1-113, when required by terms of the OKDHS contract to provide an on-site educational program, when required by terms of the DHS contract and provide a 60-calendar day notice to the local school board prior to the opening of the facility per 70 O.S. § 1-113; and~~

(32) maintain a current Life Book, in a format separate from the provider's case record, for each child placed, regardless of the child's age, that documents the child's stay in care and provides continuity throughout the child's life, per OAC 340:75-7-37. The provider:

(A) when the child's Life Book is not provided by the ~~CW county of jurisdiction worker~~child's assigned CW specialist, initiates and maintains a Life Book with current information about the child while in placement including, but not limited to:

- (i) placement name and address;
- (ii) date of admission and discharge;
- (iii) educational history;
- (iv) medical history;
- (v) awards and achievements;
- (vi) photographs; and

(vii) family information; and

(B) gives the Life Book to the child and ~~CW county of jurisdiction worker~~the child's assigned CW specialist when the child is discharged; and

(33) ensure that at least one employee of the facility is designated and authorized to apply the reasonable and prudent parent standard to decisions involving the participation of a child in age-appropriate or developmentally-appropriate activities and the authorized employee is provided with training on how to use and apply the reasonable and prudent parent standard.

PART 27. RESIDENTIAL MATERNITY SERVICES

340:75-11-320. Non-funded and funded contracted residential maternity services placements

(a) Contracted residential maternity services placements provide residential care and treatment for pregnant youth in Oklahoma Department of Human Services (~~OKDHS~~)DHS custody or tribal custody, regardless of age. The youth may return to the residential maternity services placement postpartum not to exceed 45-calendar days, except with the Child Welfare Services (CWS) Specialized Placements and Partnerships Unit (SPPU) approval of the Children and Family Services Division (CFSD) Community Based Residential Services (CBRC) programs manager.

(b) Children served are pregnant youth in ~~OKDHS~~DHS custody or tribal custody, regardless of age, who require a supportive living environment with direction and guidance ~~but are not appropriate for~~and whose needs exceed foster family care due to difficulty in sustaining relationships with parental figures.

(c) Youth ~~not appropriate for placement~~behaviors that are not appropriate for residential maternity services are violent, aggressive, destructive to self, others, or property, engage in eriminal or delinquent behaviors, violence, aggressiveness, destructive behavior to self, others, or property, engagement in criminal or delinquent acts, or require other behaviors requiring intensive supervision and services.

(d) Non-funded and funded contracted residential maternity services for pregnant youth include:

(1) group therapy, as needed, that focuses on maintenance issues and daily living ~~matters~~skills;

(2) individual treatment, as needed;

(3) parenting skills training to enhance the youth's capability to function as a parent. A specific plan for the delivery of those services is delineated in the contractor's written policy;

(4) active teaching and redevelopment of the youth's basic living and social skills. At minimum, the focus is on the restoration of skills for:

(A) personal health and hygiene;

(B) maintenance of the living environment, including food preparation;

(C) money management;

(D) job skills readiness, acquisition, and retention;

- (E) community awareness and mobility, including the use of community resources; and
- (F) socialization skills and techniques, including communication;
- (5) developing and implementing policy and procedures for the delivery of ~~independent living (IL)~~ successful adulthood skills training, using an approved curriculum for teaching ~~IL~~ successful adulthood skills;
- (6) assisting in the provision of federally mandated ~~IL~~ successful adulthood services that include coordinating with the ~~Child Welfare (CW) county of jurisdiction worker~~ assigned child welfare (CW) specialist to ensure:
 - (A) the ~~Daniel Memorial or Ansell Casey Life Skills~~ life skills assessment is completed ~~on~~ with each youth ~~age 16~~ 14 years of age or older and ~~implementing the IL~~ successful adulthood plan produced by this assessment is ~~implemented~~; and
 - (B) each youth ~~age 15~~ 14 years of age or older attends one community contractor ~~IL~~ successful adulthood seminar each year;
- (7) ensuring the youth applies for Medicaid upon ~~his~~ her 18th birthday, ~~if~~ when the youth remains in placement in voluntary care to complete ~~her~~ secondary education per Oklahoma Administrative Code (OAC) 340:75-6-110;
- (8) providing 24-hour on-call and on-site crisis intervention and behavior management services, as needed;
- (9) arranging prenatal, delivery, and postpartum care for the youth by a local physician or clinic; and
- (10) ensuring a licensed dietitian or nutritionist is on staff or available as a consultant in menu planning that meets the United States Department of Agriculture ~~(USDA)~~ or Oklahoma State Department of Health standards for pregnant teenagers or adult women.
- (e) The youth ~~is~~ may be eligible for an emergency clothing authorization for maternity clothing after initial placement in a funded, maternity residential services placement and quarterly emergency clothing authorizations when the youth is placed in a non-funded, maternity residential services placement, per OAC 340:75-13-45.
- (f) When the youth is in the Home Bound educational program, the contractor provides additional educational services at a minimum of two hours per day during the school term.
- (g) Contracted residential maternity services placements are provided in a setting licensed as a child-placing agency ~~group home~~ or residential child care facility that is not located in a hospital, either medical or psychiatric, or a psychiatric residential treatment center.
- (h) The contractor:
 - (1) does not provide 24-hour awake supervision of children in placement;
 - (2) completes a written incident report describing any extreme behavioral incident or major rule violation, including the contractor's response, submits the original to ~~the CBRC programs manager~~ CWS SPPU program staff and a copy to the ~~child's CW county of jurisdiction worker~~ assigned CW specialist, CW facility liaison, and files a copy in the child's case record;

- (3) meets the staffing guidelines defined in the ~~OKDHS~~ DHS contract;
- (4) complies with ~~children's~~ child's rights per OAC 340:75-11-237;
- (5) complies with all general requirements per OAC 340:75-11-240;
- (6) maintains documentation for funded programs of each child's ~~absent without leave (AWOL)~~ unapproved absence from the program and leave days set forth in the contract and reports leave days on Form 04CB002E, CFSD CWS Claim for Purchase of Residential Care;
- (7) is ~~reimbursed~~ paid by ~~OKDHS~~ DHS for funded programs at a fixed daily rate, based upon actual utilization. The fixed daily rate is a blend of Title IV-E funds, per eligibility of each child served, and state funds. The contractor submits Form 04CB002E for ~~reimbursement~~ payment to ~~CFSD Administrative Services Unit~~ CWS Contracting and Acquisition Unit; and
- (8) receives referrals for the placement of youth from ~~the contract liaison~~ the assigned CW specialist through the CW facility liaison.

PART 33. CONTRACTED LEVEL D PLUS AND LEVEL E PLACEMENTS

340:75-11-360. Contracted Level D plus (+) and Level E placements

- (a) Contracted Level D+ and Level E services include:
 - (1) structured group therapy, a minimum of two hours per week for each child;
 - (2) individual therapy, a minimum of one hour per week for each child;
 - (3) family visitation, when the case plan is reunification;
 - (4) family therapy, when deemed appropriate by the ~~Child Welfare (CW) county of jurisdiction worker~~ assigned child welfare (CW) specialist;
 - (5) substance use or abuse or chemical dependency therapy within a group or individual counseling or therapy session for each child, as needed;
 - (6) psychological or psychiatric intervention for each child through direct contact with a psychologist or psychiatric consultant or the contractor's designated therapy counseling staff;
 - (7) behavior redirection 24-hours a day, seven days a week to ensure safety, meet the goals and objectives of the treatment plan, and respond to any behavioral crisis of the child. The contractor ensures that staff are available to respond in a crisis to stabilize the child's behavior and prevent placement disruption;
 - (8) active teaching and redevelopment of the child's basic living and social skills, both on-site and in the community. At minimum, the focus is on the restoration of skills for:
 - (A) personal health and hygiene;
 - (B) maintenance of the living environment, including food preparation;

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- (C) money management;
 - (D) job skills readiness, acquisition, and retention;
 - (E) community awareness and mobility, including the use of community resources; and
 - (F) socialization skills and techniques, including communication;
- (9) developing and implementing policy and procedures for delivery of ~~independent living~~ successful adulthood skills training to youth, using an approved curriculum for teaching ~~H-successful adulthood~~ skills;
- (10) assisting in the provision of federally mandated ~~H-successful adulthood~~ services that include coordinating with the ~~CW county of jurisdiction worker~~ assigned CW specialist to ensure:
- (A) the ~~Daniel Memorial or Ansell Casey Life Skills~~ life skills assessment is completed ~~on~~ with each youth ~~age 16~~ 14 years of age or older and implementing the ~~H-successful adulthood~~ plan produced by this assessment; and
 - (B) each youth ~~age 15.5~~ 14 years of age or older attends one community contractor ~~H-successful adulthood~~ seminar each year;
- (11) ensuring the youth applies for Medicaid (~~Sooner-Care~~) upon his or her ~~18th~~ 18th birthday, ~~if~~ when the youth remains in placement in voluntary care to complete his or her secondary education per Oklahoma Administrative Code (OAC) 340:75-6-115.9-340:75-6-110;
- (12) providing 24-hour awake supervision of each child;
- (13) providing 24-hour on-call and on-site crisis intervention and behavior management services to each child, as needed. Emergency or crisis intervention services include face-to-face encounters with the child to resolve acute emotional dysfunction by providing intervention resolution and stabilizing functions through triage screening, planning, and documentation;
- (14) providing a nine-month, on-site educational program for each child in a Level D+ placement;
- (15) providing recreation services for each child in a Level E placement; and
- (16) providing a 12-month, on-site educational program for each child in a Level E placement.
- (b) Contracted Level D+ and Level E placements are provided in a setting licensed as a child-placing agency ~~group home~~ or residential child care facility that is not located in a hospital, either medical or psychiatric, or psychiatric residential treatment center.
- (c) The contractor:
- (1) complies with Part 105 of OAC 317:30-5 for residential behavior management services in group settings and non-secure diagnostic and evaluation centers;
 - (2) provides clothing, after initial placement of a child. Emergency funds for clothing may be accessed per OAC 340:75-13-45;
 - (3) completes a written incident report describing any extreme behavioral incident or major rule violation, including the contractor's response, submits the original to the ~~Children and Family Services Division (CFSD) Community Based Residential Services programs~~ manager Child Welfare Services (CWS) Specialized Placements and Partnerships Unit (SPPU) and a copy to the ~~child's CW county of jurisdiction worker~~ assigned CW specialist, CW facility liaison, and files a copy in the child's case record;
- (4) meets the staffing guidelines defined in the Oklahoma Department of Human Services (~~OKDHS~~) (DHS) contract;
- (5) complies with ~~children's~~ child's rights per OAC 340:75-11-237;
- (6) complies with all general requirements per OAC 340:75-11-240;
- (7) maintains documentation of each child's ~~absent without leave (AWOL)~~ unapproved absence from the facility and leave days defined in the contract and reports leave days on Form 04CB002E, ~~CFSD~~ CWS Claim for Purchase of Residential Care;
- (8) establishes a procedure to address and document a response to concerns in Level D+ and Level E placements that do not warrant a referral for an abuse or neglect assessment or investigation. Examples of this type of concern include, but are not limited to, an employee's judgment or supervision, disciplinary practices, non-compliance with policy or contract, unacceptable housing standards, inadequate clothing provisions for the child, or a lack of involvement in the child's education or independent living skills. When documented efforts to address these issues do not remove the concerns, DHS has the right to impose adverse contract actions or decline use of the facility;
- (9) ~~is reimbursed~~ paid by ~~OKDHS~~ DHS at a fixed daily rate for the total number of beds specified in the ~~OKDHS~~ DHS contract. The fixed daily rate is a blend of Title IV-E and Title XIX federal funds, per eligibility of each child served, and state funds; and
- (10) ~~submits~~ Form 04CB002E for reimbursement payment to ~~CFSD Administrative Services~~ CWS Contracting and Acquisition Unit.
- (d) Children served in Level D+ and Level E placements.
- (1) The primary goal of Level D+ and Level E services is the remediation of emotional or behavioral disorders or behavioral problems through ~~a focus on~~ clinical interventions.
 - (2) Level D+ placements are less restrictive treatment intensive placements than Level E placements or psychiatric inpatient care and are available for children with severe emotional ~~disorders~~ or behavioral disorders.
 - (3) Children served in Level D+ placements exhibit a wide range of ~~serious~~ severe emotional ~~disturbances~~ and behavioral disorders as described in OAC 317:30-5-240.1, but are less physically or sexually aggressive than children served in Level E placements.
 - (4) Level E placements are the most restrictive treatment intensive placements available for children outside of a psychiatric facility.
 - (5) In general, children served are ~~male or female~~:
 - (A) ~~12~~ 13 to 18 years of age in Level D+ and Level E placements; and

(B) 13 to 18 years of age in Level E placements. Each contractor serves a specifically defined target population of children.

(6) The contractor receives referrals for the placement of children from ~~CFSD Placement Section~~ CWS SPPU through the ~~contract~~ CW facility liaison.

(e) Children served in Level E placements designated for victims of sexual exploitation.

(1) The primary goal of a Level E facility designated for victims of sexual exploitation is to address the unique needs of survivors and assist victims in gaining an understanding of the victimization process, empower survivors, and prepare children for reintegration into a family or a successful adulthood living environment.

(2) Services provided in designated Level E facilities for victims of sexual exploitation include a protected environment, specified cognitive behavioral therapy, individualized therapeutic services, and positive behavioral supports.

(3) Per Section 1-9-123 of Title 10A of the Oklahoma Statutes (10A O.S. § 1-9-123), DHS immediately reports to law enforcement, and in no case later than 24 hours, after receiving information on a child or youth who has been identified as sex trafficking victim, per 10 O.S. § 1-1-105.

SUBCHAPTER 13. OTHER CHILD WELFARE SERVICES AND MEDICAL SERVICES FOR CHILDREN IN OUT-OF-HOME CARE

PART 1. ELIGIBILITY FOR SUBSTITUTE CARE SERVICES AND CLAIMS FOR PAYMENT

340:75-13-9. Birth verification

No later than ~~15-calendar~~ days after the ~~filing of a petition and order placing a child in custody of Oklahoma Department of Human Services (OKDHS) the Child Welfare (CW) worker requests emergency custody hearing, when a petition is filed, the parent, custodian, or legal guardian provides a certified copy of the child's birth certificate, to the Child Welfare (CW) specialist per Section 1-4-203 of Title 10A of the Oklahoma Statutes. Upon receipt, the CW worker—specialist files the certificate copy in the paper case record and scans it into the KIDS File Cabinet. If a certified copy of the birth certificate is needed by the youth or caregiver, the original is provided and the copy retained. Upon~~ When the child's discharge child is discharged from OKDHS Oklahoma Department of Human Services custody, if and the original birth certificate or certified copy remains in the paper case record, the original or certified copy is given to the youth child or caregiver.

PART 5. CLOTHING PURCHASES

340:75-13-45. Clothing purchases for children

(a) **Clothing accompanies child.** The Child Welfare (CW) worker obtains the child's clothing, and any other items that have personal meaning to the child, from the parent(s) at the time of initial placement in out-of-home care. Clothing purchased for or accompanying the child belongs to that child. The CW worker and placement provider ensure the clothing accompanies the child ~~if~~ when the child moves from one placement to another.

(b) **Clothing purchase authorization amounts.** The amounts designated as clothing authorizations are set out in Oklahoma Department of Human Services (~~OKDHS~~) (DHS) Appendix C-20, ~~Children and Family Services Division Child Welfare Services Rates Schedule, as amended from time to time, as approved by the Oklahoma Commission for Human Services~~ DHS Director.

(c) **Use of Supplemental Security Income (SSI) or Social Security Administration (SSA) funds before clothing authorizations.** A child who is a recipient of SSI or SSA benefits is not eligible to receive clothing authorizations. Instead a spend-down must be completed against the child's trust account or the payee must supply the clothing with the SSI or SSA benefits.

(d) **Types and uses of clothing authorizations.**

(1) **One-time startup authorization.**

(A) A one-time startup authorization ~~is~~ may be issued for a child at initial placement into:

- (i) foster family care;
- (ii) ~~paid and non-paid kinship care;~~
- (iii) ~~therapeutic foster care (TFC); and~~
- (iv) ~~emergency foster care (EFC) after the child has been in care 30 days a kinship home that is not receiving foster care maintenance payments.~~

(B) Another one-time startup authorization may be issued when ~~OKDHS~~ DHS subsequently ~~obtains custody of the child and the child reenters any of the placements listed in OAC 340:75-13-45(1)(A)~~ places a child into another kinship home that is not receiving foster care maintenance payments.

(2) **Emergency clothing authorizations.** Authorized staff in each county may provide emergency clothing authorizations not more than four times in any twelve-month period. An emergency clothing authorization may not be issued within ~~90-calendar~~ days of the issuance of a one-time startup authorization or a previous emergency clothing authorization.

(A) The child's CW ~~worker~~ specialist requests an emergency clothing authorization four times a year for a child placed in a:

- (i) non-paid kinship home;
- (ii) non-funded group home; or
- (iii) ~~Developmental Disabilities Services Division (DDSD) and CW grand staffed placement, such as therapeutic community home, home with daily living supports, and agency companion home; or~~

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- (iv) psychiatric facility, such as an acute or residential treatment center (RTC), in-state or out-of-state.
- (B) Emergency authorizations may be provided for a child:
- (i) ~~initially placed into voluntary foster care, excluding voluntary care after the age of 18;~~
 - (ii) ~~residing in youth services shelters without adequate clothing;~~
 - (iii) ~~residing in OKDHS operated shelters in need of special sizes or articles of clothing not available in bulk purchase stock;~~
 - (iv) ~~who lost clothing as a result of being absent without leave (AWOL) or due to a disaster, such as fire, flood, and similar natural disasters;~~
 - (v) ~~placed into a new foster home who has been in continuous custody without sufficient clothing provided by the previous placement provider;~~
 - (vi) ~~leaving out of home care for independent living status;~~
 - (vii) ~~returning from placement through Interstate Compact on the Placement of Children (ICPC), without sufficient clothing, into out of home placement;~~
 - (viii) ~~placed for adoption without sufficient clothing. This does not include a child who is in a foster home where the foster parent is adopting the child;~~
 - (ix) ~~who, due to special size or hard to fit clothing needs, requires additional clothing purchases;~~
 - (xiii) ~~residing in an OKDHS a DHS operated group home; and, if when applicable, her child; and~~
 - (xiv) ~~placed directly from inpatient psychiatric care into a DDS Developmental Disabilities Services (DDS) home prior to the availability of Supplemental Security Income (SSI) benefits;~~
 - (v) ~~placed in maternity residential services;~~
~~and~~
 - (vi) ~~on a case-by-case basis for exigent circumstances and with prior approval by the Child Welfare Services Operations and Business Processes Section Financial Operations administrator.~~
- (3) **Clothing authorization process.** The designated staff at the local OKDHS DHS office processes clothing authorizations through the AS400 Finance Division system. The authorization is provided to the placement provider who purchases the clothing through a vendor who accepts OKDHS DHS authorizations. The vendor submits the authorization to OKDHS DHS for payment.
- (4) **Clothing.**
- (A) The foster parent is responsible for providing adequate clothing for the child based on the child's needs, such as a minimum of a week's worth of clothing that is appropriate for the season and well-fitting. The foster parent maintains an inventory of clothing utilizing Form DCFS 11804FC004E, Clothing Inventory. ~~After the one time startup authorization,~~

- ~~the~~The clothing allowance is included in the monthly foster care ~~reimbursement~~ maintenance payment for a child who is in OKDHS DHS custody and placed in a:
- (i) foster family home;
 - (ii) paid kinship home; or
 - (iii) specialized community home.
- (B) ~~Clothing is made available to a child while placed in EFC per the OKDHS contract and the clothing remains with the EFC agency.~~
- (C) The clothing allowance is included in the daily ~~reimbursement~~ foster care maintenance payment rates per the OKDHS DHS contract for:
- (i) TFC; and
 - (ii) funded OKDHS DHS group homes and maternity homes.
- (DC) Clothing is purchased with SSI or Social Security Administration (SSA) benefits for a child who is in OKDHS DHS custody and placed in a DDS DDS foster home or non-paid kinship home.
- (5) **Interstate Compact on the Placement of Children (ICPC) placements.** The clothing allowances for a child in OKDHS DHS custody placed in foster care out-of-state through ICPC are:
- (A) included in the receiving state's monthly reimbursement; ~~or~~
 - (B) reimbursed by OKDHS when not included in the receiving state's monthly reimbursement. The foster parent may spend the equivalent of the monthly allowance, per OKDHS Appendix C 20. The foster parent obtains store receipts with the store's name and address that clearly identifies the items purchased. The foster parent sends the receipts to Children and Family Services Division Administrative Services Unit, P.O. Box 25352, Oklahoma City, OK 73125. Finance Division issues a warrant to the foster parent.
- (6) **Allowable clothing purchases.** Allowable purchases must meet the child's needs and include:
- (A) clothing;
 - (B) shoes; and
 - (C) disposable diapers.
- (7) **Disallowable clothing purchases.** The items not appropriate to purchase with clothing authorizations are any non-clothing item, such as:
- (A) ~~hair accessories~~ any food item;
 - (B) ~~jewelry~~ athletic equipment;
 - (C) cosmetics or personal grooming supplies;
 - (D) ~~athletic equipment~~ hair accessories;
 - (E) ~~any food item~~ haircuts;
 - (F) ~~haircuts~~ jewelry;
 - (G) ~~toys~~ non-prescription medication or supplies;
 - (H) school supplies; and
 - (I) ~~non-prescription medication or supplies~~ toys.

SUBCHAPTER 16. BEHAVIORAL HEALTH TREATMENT SERVICES

PART 1. INPATIENT BEHAVIORAL HEALTH TREATMENT SERVICES

340:75-16-29. Definitions

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

"Acute psychiatric facility care" per Oklahoma Administrative Code 317:30-5-95.22 means a facility care that provides inpatient mental behavioral health treatment including assessment, medical management, and monitoring to patients children requiring intensive treatment short-term, intensive treatment and stabilization. The acute Acute psychiatric facility care:

- (A) may be located is delivered in either a hospital or non-hospital setting psychiatric unit of a general hospital or a free-standing psychiatric hospital;
- (B) is secure; and
- (C) may use:
 - (i) physical, mechanical, or drug restraint ordered by the a physician, along in conjunction with treatment modalities; and
 - (ii) seclusion.

"Age-appropriate" or "developmentally-appropriate" per Section 1-1-105 of Title 10A of the Oklahoma Statutes (10A O.S. § 1-1-105) means:

- (A) activities or items that are generally accepted as suitable for children of the same age or level of maturity or that are determined to be developmentally-appropriate for a child, based on the development of cognitive, emotional, physical, and behavioral capacities that are typical for an age or age group; and
- (B) in the case of a specific child, activities or items that are suitable for that child based on the developmental stages attained by the child with respect to the cognitive, emotional, physical, and behavioral capacities of the specific child.

"Behavioral health" means mental health, substance use or abuse, or co-occurring mental health and substance use or abuse diagnoses, and the continuum of mental health, substance use or abuse, or co-occurring mental health and substance use or abuse treatment.

"Corrective action plan (CAP)" means steps, actions, or strategies taken to correct or address behaviors or conditions associated with abuse, neglect, or areas of concern related to an individual employee of a facility.

"Designated agent" means the entity contracted with the Oklahoma Health Care Authority (OHCA) to provide certain services to meet federal and state statutory obligations of the OHCA.

"Facility" means a place, an institution, a building or part thereof, a set of buildings, or an area whether or not enclosing a building or set of buildings used for the lawful custody and treatment of children.

"Facility action step (FAS)" means all actions, steps, or strategies to correct or address areas of concern identified within a facility including, but not limited to, the culture of care, services, or contract compliance.

"Facility services plan (FSP)" means a yearly, progressive document specific to each facility identifying issues that impact child safety within the facility's culture of care including, but not limited to, hiring, training, supervision, services, or contract compliance. The FSP includes all CAPs and FASs related to the specific facility.

"Inpatient review" means the process of conducting a formal evaluation by phone to determine whether a child requires acute psychiatric or residential treatment center (RTC) inpatient mental health treatment based on the medical necessity criteria established by OHCA.

"Inpatient reviewer" means the person who makes the determination whether a child in the custody of the Oklahoma Department of Human Services (OKDHS) meets the medical necessity criteria for acute psychiatric inpatient care or RTC treatment services.

"Institution" means a residential facility offering care and treatment for more than 20 residents.

"Medical necessity review" means an assessment of current and recent behaviors and symptoms to determine whether an admission for inpatient mental illness behavioral health or drug or alcohol dependence treatment constitutes the least restrictive level of care necessary. The review is performed by a licensed mental behavioral health professional.

"Minor" means any unmarried person younger than 18 years of age.

"Minor in need of treatment" means a person younger than 18 years of age who is in need of treatment, per Section 5-502 of Title 43A of the Oklahoma Statutes 43A O.S. § 5-502, and who:

- (A) has a demonstrable mental illness or who is drug or alcohol dependent and as a result of that mental illness or dependency is expected within the near future to inflict or attempt to inflict serious bodily harm to himself or herself or another person and has engaged in one or more recent overt acts or made significant recent threats that substantially support that expectation; or
- (B) has a demonstrable mental illness or is drug or alcohol dependent of sufficient severity to cause substantial impairment or disability in at least two of the major areas of functioning in the minor's:
 - (i) family relations;
 - (ii) school performance;
 - (iii) social interactions; or
 - (iv) ability to perform independently the basic tasks of personal hygiene, hydration and nutrition; or
 - (v) self-protection. A determination regarding the ability of the minor to perform independently, such tasks is based upon the age of the minor and the reasonable and appropriate expectation of the minor's ability to perform such tasks.

"Normalcy" means the emotional developmental growth of the child is encouraged by allowing the child to participate in age-appropriate and developmentally-appropriate extracurricular, enrichment, cultural, and social activities using a reasonable and prudent parent standard.

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"Notice to comply" means a formal written notice sent to a facility to indicate a CAP or FAS was not completed within agreed upon timeframes.

"Oklahoma Health Care Authority (OHCA)" means the state agency that administers medical programs reimbursed by the Title XIX Medicaid program; and is responsible for the establishment of medical necessity criteria and prior and continued authorization that determine whether an inpatient ~~mental health treatment~~ psychiatric service facility is reimbursed by Title XIX Medicaid.

"Plan for immediate safety" means actions taken to immediately control any significant and clearly observable condition that is present and endangering or threatening to endanger a child in a residential facility.

"Prior-authorization" means pre-approval by OCHA or its designated agent for inpatient behavioral health treatment for a child in Oklahoma Department of Human Services custody for an approved length of stay.

"Reasonable and prudent parent standard" means the standard characterized by careful and sensible parental decisions that maintain the health, safety, and best interests of a child while at the same time encouraging the emotional and developmental growth of the child. This standard is used by the child's caregiver when determining whether to allow a child to participate in extracurricular, enrichment, cultural, and social activities, per 10A O.S. § 1-1-105.

(A) For purposes of this definition, the term "care-giver" means a foster parent with whom a child in foster care has been placed, a representative of a group home where a child has been placed, or a designated official for a residential child care facility where a child in foster care has been placed.

(B) Each facility must assure that at least one employee is designated and authorized to apply the reasonable and prudent parent standard to decisions involving the participation of a child in age-appropriate or developmentally-appropriate activities. The authorized facility employee is provided with training on how to use and apply the reasonable and prudent parent standard.

"Residential child care facility" means a 24-hour residential facility where children live together with or are supervised by adults who are not their parents or relatives.

"Residential treatment center (RTC)" means a facility that provides residential—~~mental~~ behavioral health treatment to residents children who need longer term, more intensive treatment, and a more highly structured environment than is available in a family environment or other community-based alternatives. The RTC:

- (A) may be located in either a hospital or non-hospital setting;
- (B) must provide adequate supervision for residents because the RTC is not a secure facility; and
- (C) may use:
 - (i) physical, ~~mechanical~~, or drug restraint ordered by the physician, ~~along in conjunction~~ with treatment modalities; and
 - (ii) seclusion.

"Restraint" means a physical method or drug used to manage the child's behavior or restrict the child's freedom of movement and is not the standard treatment or dosage for the child's condition per OAC 317:30-5-95.

"Seclusion" means the involuntary confinement of a child alone in a room or area from which leaving is prevented and may only be used for management of behavior that jeopardizes the immediate safety of the child or others per OAC 317:30-5-95.

"Written plan of compliance" means the formal accountability process for facilities that when not adhered to within 30-calendar days, results in adverse contract actions.

340:75-16-31. Individualized ~~treatment~~ plan of care

~~Within ten~~ Per Section 5-513 of Title 43A of the Oklahoma Statutes, within 10-calendar days after the order authorizing ~~continued~~ admission of a minor for inpatient ~~mental health treatment~~ behavioral health services, the facility ensures that an individualized ~~treatment~~ plan of care is submitted to the court. The child is involved in determining the ~~treatment~~ plan of care when possible. The child's parent(s) and the ~~Child Welfare~~ assigned child welfare (CW) worker—specialist are involved to the maximum extent consistent with the treatment needs of the child.

(1) The court reviews the case every 30-calendar days as long as the child receives inpatient treatment. The assigned CW worker specialist ensures the court receives a written report from the facility regarding the child's progress within three-calendar days prior to any review hearing.

(2) The assigned CW worker specialist has on-site, face-to-face interaction with the child in acute and residential ~~mental inpatient~~ behavioral health treatment, in accordance with per Oklahoma Administrative Code 340:75-6-48.

340:75-16-35. Responsibilities of the inpatient ~~mental health treatment~~ behavioral health services Child Welfare (CW) facility liaison

(a) The county director or designee designates a Child Welfare (CW) worker to be a CW specialist from the Child Welfare Services (CWS) Specialized Placements and Partnerships Unit is assigned to the ~~mental health care treatment~~ each CWS contracted inpatient behavioral health service facility.

(b) The CW facility liaison responsibilities include:

(1) assessing and ensuring the safety of children receiving acute and residential behavioral health services per Oklahoma Administrative Code 340:75-11-239;

(2) having on-site interaction with the child at the ~~mental health treatment~~ inpatient behavioral health service facility at least every 31 days; and

(23) immediately notifying the child's assigned CW county of jurisdiction worker specialist when the child is absent without leave (AWOL) and ensuring the appropriate authorities are notified per OAC 340:75-6-48.3 from the facility without permission. The child's CW specialist

follows protocol and completes runaway notifications, per Oklahoma Administrative Code (OAC) 340:75-6-48.3.

[OAR Docket #17-493; filed 6-23-17]

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

[OAR Docket #17-494]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 6. Permanency Planning
- Part 8. Child Welfare Specialist Role
340:75-6-48.3 [AMENDED]
- Part 11. Permanency Planning and Placement Service
340:75-6-85 [AMENDED]
340:75-6-85.3 [REVOKED]
- Part 13. ~~Independent Living~~ Oklahoma Successful Adulthood
340:75-6-110 [AMENDED]
- Subchapter 8. Therapeutic Foster Care and Developmental Disabilities Services
 - Part 1. Therapeutic Foster Care
340:75-8-8 through 340:75-8-9 [AMENDED]
340:75-8-11 [AMENDED]
(Reference WF 17-14)

AUTHORITY:

Director of Human Services; Section 162 of Title 56 of the Oklahoma Statutes (56 O.S. § 162); Chapter 75 Subchapter 6: 10 O.S. § 40.6; 10A O.S. §§ 1-1-102, 1-1-105, 1-4-101, 1-4-204, 1-4-705, 1-4-707, 1-4-709 through 1-4-711, 1-4-803 through 1-4-805, 1-4-807, 1-4-811, 1-4-812, 1-7-103, 1-7-106, 1-7-107, 1-9-107, 1-9-119, 1-9-123, 2-3-101, and 2-9-101 through 2-9-116; 43 O.S. §§ 118 and 119; 20 U.S.C. §§ 1400 through 1461; 22 U.S.C. § 7102; 42 U.S.C. §§ 671 and 673; 25 U.S.C. 1915, Multiethnic Placement Act 1994 Public Law 103-82, Interethnic Provisions Act 1996, and 42 U.S.C. § 673; Chapter 75 Subchapter 8: 10A O.S. §§ 1-1-105 and 1-9-119, Multiethnic Placement Act 1994 Public Law 103-82.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

April 1, 2017

COMMENT PERIOD:

March 1, 2017 through March 31, 2017

PUBLIC HEARING:

March 31, 2017

ADOPTION:

April 1, 2017

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

April 1, 2017

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 13, 2017

FINAL ADOPTION:

June 13, 2017

EFFECTIVE:

September 15, 2017

SUPERSEDED EMERGENCY ACTIONS:

Superseded rules:

- Subchapter 6. Permanency Planning
- Part 8. Child Welfare Specialist Role
340:75-6-48.3 [AMENDED]
- Part 13. ~~Independent Living~~ Oklahoma Successful Adulthood
340:75-6-110 [AMENDED]
- Subchapter 8. Therapeutic Foster Care and Developmental Disabilities Services
 - Part 1. Therapeutic Foster Care
340:75-8-8 through 340:75-8-9 [AMENDED]
340:75-8-11 [AMENDED]
(Reference WF 17-15)

Gubernatorial approval:

February 29, 2016

Register publication:

33 Ok Reg 477

Docket number:

17-370

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The proposed revisions to Chapter 75 Subchapter 6 amend child permanency planning rules to update: (1) policy on runaway youth to comply with House Bill (HB) 1078 (2015) and Senate Bill (SB) 1200 (2016); (2) Independent Living policy to conform with federal requirements for the State Plan and HB 1078 (2015); and (3) placement considerations for a child in Oklahoma Department of Human Services (DHS) custody to comply with HB 2621 (2016).

The proposed revisions to Chapter 75 Subchapter 8 amend therapeutic foster care (TFC) rules to: (1) comply with statutory changes per HBs 1078 (2015) and 1273 (2015); (2) implement maltreatment in care core strategy approved by Pinnacle Plan Co-Neutrals; and (3) update placement considerations to comply with HB 2621 (2016).

CONTACT PERSON:

Dena Thayer, Programs Administrator, Legal Services - Policy, Oklahoma Department of Human Services, PO Box 25352, Oklahoma City, Oklahoma 73125, 405-521-4326.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2017:

SUBCHAPTER 6. PERMANENCY PLANNING

PART 8. CHILD WELFARE SPECIALIST ROLE

340:75-6-48.3. ~~Runaway or abducted children in Oklahoma Department of Human Services (OKDHS) custody or under OKDHS supervision~~ Children missing from care

(a) A child or youth missing from care is one who runs away, is abducted, or is otherwise absent from placement.

(b) ~~When~~ Per Section 1-9-123 of Title 10A of the Oklahoma Statutes (10A O.S. § 1-9-123) the Oklahoma Department of Human Services (DHS) takes appropriate steps when a child or youth in Oklahoma Department of Human Services ~~(OKDHS) DHS~~ custody or under DHS supervision runs away or is abducted, ~~OKDHS immediately takes steps to locate the child~~ missing from care or when DHS has reasonable cause to believe a child or youth is currently, or is at risk of being, a victim of sex trafficking, including a child or youth:

- (1) for whom DHS has an open case file, but who was not removed from the home;
- (2) who ran away from foster care and has not attained 18 years of age; or
- (3) who is not in foster care, but is receiving services.

(c) When notified a child or youth is missing from care, the child welfare (CW) specialist within 24 hours of notification, reports the child's or youth's status to the:

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- (1) appropriate law enforcement jurisdiction and requests the report be sent to the National Crime Information Center; and
 - (2) National Center for Missing and Exploited Children.
- (d) When a child or youth in DHS custody or under DHS supervision is missing from care, DHS:
- (1) immediately takes steps to locate the child or youth;
 - (2) determines the primary factors that contributed to the child or youth running away or otherwise being absent from placement;
 - (3) documents and responds, to the extent possible and appropriate, to those factors that contributed to the absence from care or runaway behaviors in the current and subsequent placements of the child or youth; and
 - (4) determines what the child or youth experienced while missing from care, including an appropriate screening to see if the child or youth is a possible victim of sex trafficking.
- (e) The CW specialist reports to appropriate law enforcement jurisdictions immediately and, in no case later than 24 hours, after receiving information on a child or youth who is identified as a sex trafficking victim, per 10A O.S. § 1-1-105.
- (f) Runaway juveniles from other states, with or without delinquent status, may be held in a detention facility, per 10A O.S. § 2-3-101 and the Interstate Compact for Juveniles Act, 10A O.S. §§ 2-9-101 through 2-9-116.

PART 11. PERMANENCY PLANNING AND PLACEMENT SERVICES

340:75-6-85. Placement considerations for the child in Oklahoma Department of Human Services (DHS) custody

- (a) **Legislative intent for the child placed outside the child's home.** Per Section 1-1-102 of Title 10A of the Oklahoma Statutes (10A O.S. § 1-1-102), when a child's placement outside of the home is necessary, pursuant to the per Oklahoma Children's Code, each child is assured care, guidance, and supervision in a permanent home or foster home that will serve serves the child's best interests including, but not limited to, the development of the child's moral, emotional, spiritual, mental, social, educational, and physical well-being. The child is entitled to a permanent home and placement in the least restrictive environment that meets the child's needs.
- (b) **Multiethnic Placement Act of 1994 DHS responsibility for the child's out-of-home placement.** DHS follows the provisions of the Multiethnic Placement Act of 1994 and the Interethnic Adoption Provisions of 1996, per Oklahoma Administrative Code (OAC) 340:75-1-9, unless the court finds that the Indian Child Welfare Act applies to the child. DHS has the duty to provide for the care and treatment of each child placed in DHS custody by an order of the court, per 10A O.S. § 1-7-103. DHS:
- (1) may place the child in a:
 - (A) kinship care home or other foster care home; or

- (B) group home, children's shelter, or any licensed facility established for the care of children when a kinship or foster care home is not available;
 - (2) gives priority to the child's noncustodial parent unless the placement is not in the child's best interests; and
 - (3) reviews and assesses the child to determine the type of placement and services consistent with the child's needs in the nearest geographic proximity to the child's home as possible.
- (c) **DHS responsibility for the child's out-of-home placement authority to determine the child's placement.** DHS has the duty to provide for the care and treatment of each child placed in DHS custody by an order of the court, per 10A O.S. § 1-7-103. DHS:
- (1) may place the child in:
 - (A) a kinship care home or other foster care home; or
 - (B) when no kinship or foster care home is available, a group home, children's shelter, or any licensed facility established for the care of children; DHS has the responsibility to determine if a placement is appropriate for the child in DHS custody and to remove the child from the placement when in the child's best interests, per 10A O.S. § 1-7-103, subject to the provisions of 10A O.S. §§ 1-4-804 and 1-4-805.
 - (2) gives priority to the child's placement with the child's noncustodial parent unless the placement is not in the child's best interests; and A request by a placement provider for immediate removal of the child is examined and assessed to determine if the situation can be resolved to prevent disruption of the child's placement.
 - (3) reviews and assesses the child to determine the type of placement and services consistent with the child's needs in the nearest geographic proximity to the child's home as possible.
- (d) **Relative placement preference if not with noncustodial parent Court's authority to approve or disapprove placement.** Per 10A O.S. § 1-4-204 and 10A O.S. § 1-7-106, when DHS determines that placement with the noncustodial parent is not in the child's best interests, preference is given to relatives and persons who have a kinship relationship with the child, and who are determined to be suitable, capable, and willing to serve as caretakers for the child. When the court determines it is in the child's best interests, the court may place the child in DHS legal custody. Per 10A O.S. § 1-4-803, when the child is placed in DHS custody, the court may not direct DHS to place the child in a specific home or placement, but may approve or disapprove a specific placement when it does not conform to statutory requirements and the child's best interests.
- (1) Per 10A O.S. § 1-4-204 and 10A O.S. § 1-7-106, every effort is made to place the child with a suitable relative of the child.
 - (2) DHS makes efforts to locate the relative, kinship relation, or resource parent who is best able to meet the child's long-term best interests.
 - (3) DHS per 10A O.S. § 1-4-204, reports to the court the diligent efforts made to secure the placement.

(4) DHS complies with ICWA placement preferences per OAC 340:75-19-14, when applicable to the child; and
 (5) When a child is not placed with a relative who has been considered for placement, DHS must advise the court, in writing on Form 04MP056E, Notice to the Court of Relative Denied Placement, the reasons why that relative was denied and the written reasons are made a part of the court record per 10A O.S. § 1-4-204 and documented in the Child Welfare Services case record.

(e) ~~Court's authority to approve or disapprove~~Determining the appropriate placement. ~~When the court determines it is in the child's best interests, the court may place the child in DHS legal custody. Per 10A O.S. § 1-4-803, when the child is placed in DHS custody, the court may not direct DHS to place the child in a specific home or placement, but may approve or disapprove a specific placement when it does not conform to statutory requirements and the child's best interests.~~

(1) Per 10A O.S. § 1-7-106, a placement is made that meets the treatment needs of the child and supports the permanency plans for the child and family.

(2) Per 10A O.S. § 1-4-204, when determining the appropriate placement for the child, DHS considers, but does not limit consideration to, the:

(A) person's ability to provide safety for the child including a willingness to cooperate with any restrictions placed on contact between the child and others and to prevent others from influencing the child in regard to allegations of the case;

(B) person's ability to support DHS efforts to implement the permanency plan for the child;

(C) person's ability to meet the child's physical, emotional, and educational needs, including the child's need to continue in the same school or educational placement;

(D) person who has the closest existing personal relationship with the child, when more than one person requests placement;

(E) person's ability to provide a placement for the child's sibling who is in need of placement or continuation in out-of-home care;

(F) wishes of the parent, the relative, and the child when appropriate;

(G) person's ability to care for the child as long as necessary and to provide a permanent home, when needed; and

(H) child's best interests.

(f) ~~DHS authority to change the child's~~Relative placement preference when not with noncustodial parent. ~~DHS has the responsibility to determine if a placement is appropriate for the child in DHS custody and to remove the child from the placement when in the child's best interests, per 10A O.S. § 1-7-103, subject to the provisions of 10A O.S. §§ 1-4-804 and 1-4-805. Per 10A O.S. §§ 1-4-204 and 1-7-106, when DHS determines that placement with the noncustodial parent is not in the child's best interests, preference is given to relatives and persons who have a kinship relationship with the child, and~~

who are determined to be suitable, capable, and willing to serve as caretakers for the child.

(1) Per 10A O.S. §§ 1-4-204 and 1-7-106, every effort is made to place the child with a suitable relative.

(2) DHS makes efforts to locate the relative, kinship relation, or resource parent who is best able to meet the child's long-term best interests.

(3) Per 10A O.S. § 1-4-204, DHS reports to the court the diligent efforts made to secure the placement.

(4) When applicable to the child, DHS complies with Indian Child Welfare Act (ICWA) placement preferences, per Oklahoma Administrative Code (OAC) 340:75-19-14, and reports the diligent efforts to secure placement to the court.

(5) When a child is not placed with a relative who was considered for placement, DHS must advise the court why the relative was denied listing the reasons on Form 04MP056E, Notice to the Court of Relative Denied Placement. The written reasons are made a part of the court record, per 10A O.S. § 1-4-204, and documented in the Child Welfare Services case record.

(g) ~~Placement in nearest geographic proximity to parent or school~~Sibling placement. ~~Per 10A O.S. § 1-4-707, unless the child is placed with relatives or in accordance with federal and state Indian Child Welfare Acts, the child is placed when possible, in the parent or legal guardian's county of residence to facilitate family reunification 10A O.S. §§ 1-4-204 and 1-7-107, when two or more siblings are removed and placed in foster care, every reasonable attempt is made to place the siblings together in the same temporary or permanent placement.~~

(1) ~~When an appropriate placement is not available in the parent or legal guardian's county of residence, the child is placed in an appropriate home in the nearest proximity to the parent or legal guardian's county of residence, the child's school district, or both, to facilitate family reunification and ensure educational consistency for the child.~~siblings are separated, the siblings are allowed contact or visitation with each other, when safe.

(2) ~~The child's placement is not intended to correspond in frequency to the parent or legal guardian's change of residence.~~safety and best interests of each child determine if joint placement, contact, or visitation is allowed.

(3) ~~When determining if the child is moved, DHS considers the potential harmful effects of disrupting the child's placement and the reason the parent or legal guardian changed residence.~~the child is a part of a sibling group, it is presumed that placement of the entire sibling group in the same placement is in the best interests of the child and siblings.

(4) Siblings may be separated when the court and DHS find:

(A) one sibling resided in a resource home for six or more months and established a relationship with the resource family;

(B) the siblings never resided in the same resource together or there is no established relationship between the siblings;

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- (C) placement of siblings together is contrary to the safety or well-being of any of the siblings; and
- (D) it is in the child's best interests to remain in the current placement.
- (5) In making a permanent placement, siblings are placed in the same permanent home. When the siblings are separated, they are allowed contact or visitation with other siblings, provided that each child's best interests are the standard for determining if the siblings are placed in the same foster placement or permanent placement, or allowed contact or visitation with other siblings.
- (h) **Sibling placement**Placement in nearest geographic proximity to parent or school. Per 10A O.S. § 1-7-107, when two or more siblings are removed and placed in foster care, every reasonable attempt is made to place the siblings together in the same temporary or permanent placement.
- (1) When siblings are separated, the siblings are allowed contact or visitation with each other when appropriate. Per 10A O.S. § 1-4-707, unless the child is placed with relatives or in accordance with federal and state ICWA, the child is placed, when possible, in the parent or legal guardian's county of residence to facilitate family reunification.
- (A) When an appropriate placement is not available in the parent or legal guardian's county of residence, the child is placed in an appropriate home in the nearest proximity to the parent or legal guardian's county of residence to facilitate family reunification. The child's placement is not intended to correspond in frequency to the parent or legal guardian's change of residence.
- (B) When determining if the child is to be moved, DHS considers the potential harmful effects of disrupting the child's placement and the reason the parent or legal guardian changed residences.
- (2) The best interests of each child determine whether joint placement, contact, or visitation is allowed. When an appropriate placement is not available in the parent or legal guardian's county of residence, the child is placed in an appropriate home in the nearest proximity to the child's school district to ensure his or her educational consistency.
- (3) Per 10A O.S. § 1-4-707, when the child is a part of a sibling group, it is presumed that placement of the entire sibling group in the same placement is in the best interests of the child and siblings unless the presumption is rebutted by a preponderance of evidence to the contrary.
- (i) **Indian Child Welfare Act and placement**Child's placement preference. The federal Indian Child Welfare Act, 25 United States Code § 1915, Oklahoma Indian Child Welfare Act, 10 O.S. § 40.6, and OAC 340:75-19-14 define placement preferences for Indian children. Per 10A O.S. § 1-7-110, when determining placement of a deprived child in foster care DHS is governed by the child's long-term best interests. The child may express a preference as to placement and the preference may be expressed by the child with or without the parents, foster parents, guardians, or any other parties present. DHS determines if the child's best interests are served by the child's preference, but is not bound by the child's preference and may consider other facts when determining placement.
- (j) **Religious consideration in placement decision**Former foster parent preferred placement. Consideration is given to the parent's wishes regarding religious preference in the selection of a placement provider for the child, per 10A O.S. § 1-4-705 and OAC 340:75-6-49. Per 10A O.S. § 1-9-119, the former foster parent has a right to be considered as a preferred placement option when the foster child who was formerly placed with the foster parent reenters foster care at the same level and type of care, when the placement is consistent with the best interests of the child and other children in the foster parent's home.
- (k) **Placement stability**Multiethnic Placement Act of 1994. DHS follows the provisions of the Multiethnic Placement Act of 1994 and the Interethnic Provisions of 1996, per OAC 340:75-1-9.
- (1) When reunification is feasible, the child's first out of home placement is the best available placement to provide permanency and placement stability for the child.
- (2) A request by a placement provider for immediate removal of the child is examined and assessed to determine if the situation can be resolved to prevent disruption of the child's placement.
- (l) **Placement provider's age**ICWA and placement. Per 10A O.S. § 1-4-705, when a prospective placement provider meets the minimum age required per OAC 340:75-7-12, DHS may not use the age of an otherwise eligible individual as a reason for denial of placement. DHS follows federal ICWA, Section 1915 of Title 25 of the United States Code, Oklahoma ICWA, 10 O.S. § 40.6, and OAC 340:75-19-14.
- (m) **Prescribed standards for placement provider**Religious consideration in placement decision. Each placement utilized by DHS is approved or licensed by specified procedures and meets prescribed standards. Consideration is given to the parent's wishes regarding religious preference in the selection of a placement provider for the child, per OAC 340:75-6-49.
- (1) The child in DHS custody is not placed in a home, temporarily or with a closely related person, prior to the person meeting provider standards per OAC 340:75.
- (2) Placement providers must:
- (A) provide safety for the child in DHS custody;
 - (B) have sufficient space in the home to allow the child privacy;
 - (C) support and participate in the child's permanency plan;
 - (D) adhere to DHS rules, such as not using physical discipline; and
 - (E) support the child's preferred religious and cultural choices.
- (n) **Determining the appropriate placement**Prescribed requirements for placement provider. Per 10A O.S. § 1-4-204, when determining the appropriate placement for the child, DHS considers, but does not limit consideration to the: Each placement utilized by DHS is approved or licensed by specified procedures and meets prescribed requirements.

- (1) ~~person's ability to provide safety for the child, including a willingness to cooperate with any restrictions placed on contact between the child and others and to prevent others from influencing the child in regard to allegations of the case; The child in DHS custody is not placed in a home prior to the person meeting provider standards per OAC 340:75-7.~~
- (2) ~~person's ability to support DHS efforts to implement the permanency plan for the child; Placement providers must:~~
- ~~(A) provide safety for the child in DHS custody;~~
 - ~~(B) have sufficient space in the home to allow the child privacy;~~
 - ~~(C) support and participate in the child's permanency plan;~~
 - ~~(D) adhere to DHS rules, such as not using physical discipline; and~~
 - ~~(E) support the child's preferred religious and cultural choices.~~
- (3) ~~person's ability to meet the child's physical, emotional, and educational needs, including the child's need to continue in the same school or educational placement;~~
- (4) ~~person who has the closest existing personal relationship with the child, when more than one person requests placement;~~
- (5) ~~person's ability to provide a placement for the child's sibling who is also in need of placement or continuation in out of home care;~~
- (6) ~~wishes of the parent, the relative, and the child when appropriate;~~
- (7) ~~person's ability to care for the child as long as necessary and to provide a permanent home when needed; and~~
- (8) ~~child's best interests.~~
- (o) **Child's placement preference**~~Certain criminal convictions prohibit placement approval.~~ Per 10A O.S. § 1-7-110, when determining placement of a deprived child in foster care, DHS is governed by the child's long term best interests. The child may express a preference as to placement and the preference may be expressed by the child with or without the parents, foster parents, guardians, or any other parties present. DHS determines whether the best interests of the child are served by the child's preference, but is not bound by the child's preference and may consider other facts in determining the placement.~~Per 10A O.S. § 1-4-705, DHS does not approve potential foster or adoptive parents for placement when the applicant, or any person residing in the potential applicant's home, has a criminal conviction for any of the felony offenses listed in paragraphs (1) through (5). The felony offenses are:~~
- ~~(1) physical assault, battery, or a drug-related offense within the five-year period preceding the application date;~~
 - ~~(2) child abuse or neglect;~~
 - ~~(3) domestic abuse;~~
 - ~~(4) a crime against a child including, but not limited to, child pornography; or~~
 - ~~(5) a crime involving violence including, but not limited to, rape, sexual assault, or homicide, but excluding those crimes specified in paragraph (1).~~
- (p) ~~Certain criminal convictions prohibit placement approval~~**Placement provider's age.** Per 10A O.S. § 1-4-705, DHS does not approve prospective foster or adoptive parents as Bridge resource parents when the applicant, or any person residing in the prospective applicant's home, has a criminal conviction for any of the felony offenses listed in paragraphs (1) through (5). The felony offenses are:~~a prospective placement provider meets the minimum age required per OAC 340:75-7-12, DHS may not use the age of an otherwise eligible individual as a reason for placement denial.~~
- ~~(1) physical assault, battery, or a drug related offense within the five year period preceding the application date;~~
 - ~~(2) child abuse or neglect;~~
 - ~~(3) domestic abuse;~~
 - ~~(4) a crime against a child, including, but not limited to, child pornography; or~~
 - ~~(5) a crime involving violence, including, but not limited to, rape, sexual assault, or homicide, but excluding those crimes specified in paragraph (A). Homicide includes manslaughter. A crime involving violence means an offense that:~~
 - ~~(A) has as an element, the use, attempted use, or threatened use of physical force against the person or property of another; or~~
 - ~~(B) by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.~~
- (q) ~~Former foster parent preferred placement~~**Placement providers as essential participants.** Per 10A O.S. § 1-9-119, the foster parent has a right to be considered as a preferred placement option when the foster child who was formerly placed with the foster parent reenters foster care at the same level and type of care, when the placement is consistent with the best interests of the child and other children in the foster parent's home.
- ~~(1) As placement providers, 10A O.S. § 1-9-119 and OAC 340:75-7-37 recognize foster parents and group home providers as essential participants in the decisions related to the growth, development, care, protection, and treatment of the child placed in the foster parent's home or in the group home with whom they have established a familial relationship.~~
 - ~~(2) Per 10A O.S. §§ 1-4-807 and 1-4-811, a placement provider has the right to be heard in a proceeding concerning the child, although the provider is not considered a party to the proceeding, unless allowed to intervene.~~
- (r) ~~Eligibility of foster parent to adopt the child~~**Foster parent rights.** Per 10A O.S. § 1-4-812, during any permanency hearing, when the court determines the child is to be placed for adoption and the child has resided with the foster parent for at least one year, the court considers the foster parent eligible to adopt and gives great weight to the foster parent in the adoption consideration unless there is an existing, loving, emotional bond with a relative of the child, by blood or marriage, who is willing, able, and eligible to adopt the child.~~A statement of foster parent's rights is given to every foster parent annually and found at 10A O.S. § 1-9-119.~~

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(s) ~~Foster parent as essential participant~~Group home rights. 10A O.S. § 1-9-119 and OAC 340:75-7-37 recognize foster parents as essential participants in the decisions related to the growth, development, care, protection, and treatment of the child placed in the foster parent's home with whom they have established a familial relationship. A statement of group home provider rights is attached to the group home contract.

(t) ~~Foster parent rights~~eligibility to adopt the child. A statement of foster parent's rights is found at 10A O.S. § 1-9-119 and annually, a copy is given to every foster parent. Per 10A O.S. § 1-4-812, during any permanency hearing when the court determines the child is to be placed for adoption, the court considers the foster parent eligible to adopt when the foster parent meets established eligibility requirements. When the child has resided with the foster parent for at least one year, the court gives great weight to the foster parent in the adoption consideration unless there is an existing, loving, emotional bond with a relative of the child, by blood or marriage, who is willing, able, and eligible to adopt the child.

340:75-6-85.3. Sibling placement [REVOKED]

(a) ~~When two or more children in foster care are siblings, every reasonable attempt is made to place siblings in the same home. In making a permanent placement, siblings are placed in the same permanent home, or if the siblings are separated, are allowed contact or visitation with other siblings, provided, the each child's best interests are the standard for determining whether siblings are placed in the same foster placement or permanent placement, or allowed contact or visitation with other siblings per Section 1-7-107 of Title 10A of the Oklahoma Statutes (10A O.S. § 1-7-107).~~

(b) ~~Per 10A O.S. § 1-7-106, a placement is made that meets the treatment needs of the child and supports the permanency plans for the child and family; however, when a child is determined to be an Indian child, as defined by the federal and state Indian Child Welfare Acts, the placement preferences specified by Section 1915 of Title 25 of the United State Code and Section 40.2 of Title 10 of the Oklahoma Statutes apply.~~

PART 13. INDEPENDENT LIVING SUCCESSFUL ADULTHOOD

340:75-6-110. Independent Living Oklahoma Successful Adulthood (OKSA) program

(a) ~~Eligibility for Independent Living (IL) OKSA program eligibility.~~ The Independent Living (IL) OKSA program serves youth:

- (1) ~~16 and~~ youth 14 through 17 years of age who are in an out-of-home placement; and in:
 - (A) Oklahoma Department of Human Services (DHS) legal custody; or
 - (B) the custody of a federally recognized Indian tribe;
- (2) young adults 18, 19, and 20 years of age, who:
 - (A) ~~who~~ were in an out-of-home placement while in DHS or tribal custody on his or her 18th birthday; or

(B) ~~who~~ entered a guardianship or adoption after ~~16~~14 years of age to achieve permanency and who have not yet reached his or her 21st birthday; and

(3) young adults 21 and 22 years of age who on his or her 21st birthday were participating in the Education and Training Voucher Program.

(b) ~~Legal authority for IL-OKSA services.~~ Laws that guide ~~IL-OKSA~~ services administered by DHS are described in (1) and (2) of this subsection.

(1) ~~Federal IL-successful adulthood law.~~ The Foster Care Independence Act of 1999 enacted as part of Public Law (P.L.) 106-169; and Section 475 of the Social Security Act as amended by P.L. 110-351, Fostering Connections to Success and Increasing Adoption Act of 2008; and by the Preventing Sex Trafficking and Strengthening Families Act, P.L. 113-183:

(A) supports states in the delivery of ~~IL-successful adulthood~~ services to eligible youth and provides them with services that focus on:

- (i) education;
- (ii) career planning;
- (iii) life skills; and
- (iv) aftercare services; and

(B) requires ~~IL-successful adulthood~~ services;

- (i) complement the youth's own efforts to achieve self-sufficiency; and
- (ii) that program participants recognize and accept personal responsibility for the transition from out-of-home care to adulthood.

(2) ~~State IL-successful adulthood law.~~ Section 1-9-107 of the Oklahoma Statutes (10A O.S. § 1-9-107) created the "~~Independent Living~~ Successful Adulthood Act," the purpose of which is to ensure eligible youth who, due to abuse or neglect, have been or are in the ~~DHS~~ foster care program of ~~DHS~~ or a federally-recognized Indian tribe with whom DHS has a contract or agreement, receive the protection and support necessary to allow youth to become self-reliant and productive citizens through the provision of requisite services that include, but are not limited to:

- (A) transitional planning;
- (B) housing;
- (C) medical coverage;
- (D) education; and
- (E) tuition waivers, when eligible, as set forth in ~~per~~ 70 O.S. § 3230.

(c) ~~IL-OKSA service provision.~~ ~~IL-OKSA~~ services for youth:

- (1) are initiated by the child welfare (CW) specialist according to the youth's age, as outlined in DHS Publication No. 94-08, Oklahoma ~~Independent Living~~ Successful Adulthood Program;
- (2) in DHS custody placed in other states, ~~is~~ are the responsibility of DHS; per Oklahoma Administrative Code (OAC) 340:75-1-86;
- (3) placed in Oklahoma through ~~the~~ Interstate Compact for the Placement of Children (ICPC) are approved by

~~OKSA~~ Program staff on a case-by-case basis, per OAC 340:75-1-86; and

(4) are initiated by the legal guardian or adoptive parent for youth who exited care after ~~16~~14 years of age to permanent guardianship ~~with kin~~ or adoption.

(d) **Requirements.** ~~Federal regulations, state statutes, and best practice require that eligible~~ Eligible youth are provided each of the items listed in (1) through ~~(4)~~(6) of this subsection.

(1) ~~Successful adulthood case assessment.~~ The ~~successful adulthood case~~ assessment is a comprehensive evaluation of the youth's readiness for ~~successful adulthood~~ and identification of the services and supports required for the youth to achieve a maximum level of self-sufficiency.

(2) ~~Successful adulthood plan.~~

(A) The permanency plan for the youth transitioning to a successful adulthood is developed in consultation with the youth and, at the option of the youth, with up to two members of the permanency planning team to be chosen by the youth, not including the foster parent and the youth's caseworker, subject to:

- (i) the youth's selection of one person that may be designated to be the advisor and youth's advocate, with respect to the application of the reasonable and prudent parent standard to the youth; and
- (ii) DHS rejecting a person selected by the youth to be a member of the permanency planning team at any time when DHS has good cause to believe the selected person would not act in the youth's best interests.

(B) The ~~successful adulthood~~ plan describes the services, supports, and activities the CW specialist, the permanency planning team, and youth identify as necessary for the youth to transition to ~~independence~~ successful adulthood, and includes the components required by federal and state statutes. The successful adulthood plan is continually reviewed and updated.

(C) During the 90-calendar day period immediately prior to a youth's 18th birthday, DHS and, as appropriate, the youth's representatives, provide the youth with assistance and support in developing an appropriate personalized transition plan based upon the youth's input, and as detailed as the youth elects that includes ~~including~~ specific options regarding:

- (A) ~~i~~ housing;
- (B) ~~ii~~ health insurance;
- (C) ~~iii~~ education;
- (D) ~~iv~~ local opportunities for mentors and continuing support services; and
- (E) ~~v~~ employment supports and services.

(3) **Notice of rights.**

(A) Per 10A O.S. § 1-9-107, each child in DHS foster care or a federally-recognized Indian tribe and in an out-of-home placement who reaches 14 years of age is given a notice of rights, Form 04IL011E, Rights of Foster Youth, describing the youth's right to:

- (i) education, health, visitation, and court participation;
- (ii) provision of documents specified in (4) of this subsection; and
- (iii) stay safe and avoid exploitation.

(B) The youth signs an acknowledgment stating the youth was provided a copy of Form 04IL011E and that the rights described were explained to the youth in an age-appropriate way.

(4) **Essential documents.** Per 10A O.S. § 1-9-107, a youth about to leave foster care at 18 years of age and in foster care for at least six months is given:

- (A) an official or certified copy of his or her United States birth certificate;
- (B) a Social Security card issued by the Social Security Administration;
- (C) his or her health insurance information;
- (D) a copy of his or her medical records; and
- (E) a state-issued driver license or identification card.

(35) **Judicial oversight.** A judicial determination is made:

(A) at each dispositional and review hearing involving a youth ~~16~~14 years of age or older whether the ~~OKSA~~ services needed to assist the youth in making the transition from out-of-home care to ~~independent living~~ successful adulthood are being provided, not provided, or are not appropriate;

(B) confirming that information was provided to the youth about the importance of designating another individual to make health care treatment decisions on the youth's behalf ~~if~~when the youth:

- (i) becomes unable to participate in his or her health care decisions; and
- (ii) does not have, or does not want a relative, who would otherwise be authorized under state or tribal law, to make health care decisions for the youth; and

(C) that the youth was provided with the option of executing a health care power of attorney, health care proxy, or other similar documents recognized under state or tribal law.

(46) ~~OKSA support services.~~ A variety of services, resources, and funds are provided to facilitate successful transition into adulthood. ~~Each service, resource, and fund category listed in (A) through (H) of this paragraph and each has distinct eligibility requirements.~~

(A) **Youth 14 through 15 years of age.**

(i) **Youth development funds.** OKSA youth development funds are obtained through community-contracted providers and are designed to support the youth's successful adulthood case plan in preparation for living independently.

(ii) **Incentive payments.** The OKSA incentive payment is a category of youth development funds that allows for monetary payments to youth for survey and application completions and for

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accomplishments prior to exiting DHS or tribal custody.

(iii) **Teen panels.** Teen panels provide an opportunity for DHS and tribal custody youth to educate staff, care providers, the community, and potential resource parents by presenting the youth's views and experiences in the CW system.

(B) Youth 16 years of age and older.

(A~~i~~) **Community contracted services.** Contracts support the ~~H-OKSA~~ program activities and serve youth who are ~~H-OKSA~~ eligible.

(B~~ii~~) **Youth development funds.** ~~H-OKSA~~ youth development funds are obtained through community contracted providers and are designed:

(i~~l~~) to support the youth's ~~H-successful~~ adulthood case plan in preparation for living independently; and

(ii~~l~~) for emergencies the youth encounters after leaving out-of-home care while learning to live independently.

(C~~iii~~) **Incentive payments.** The ~~H-OKSA~~ incentive payment is a category of youth development funds that allows for monetary payments to youth for survey and application completions and for accomplishments prior to exiting DHS or tribal custody.

(D~~iv~~) **Educational opportunities and scholarships.** Scholarships and ~~H-OKSA~~ services are available to assist the youth ~~with~~ completing ~~complete his or her~~ education and training.

(E~~v~~) **Youth and Adult Advisory Board.** The Youth and Adult Advisory Board includes current and former DHS and tribal custody youth, ~~and~~ ~~H-OKSA~~ Program staff, and adult advisors. The board provides the youth an opportunity to work together with other interested youth and adults to:

(i~~l~~) educate the community regarding issues related to youth in out-of-home placement;

(ii~~l~~) improve the CW system through problem solving;

(iii~~l~~) promote ~~independent living~~ successful adulthood through training; and

(iv~~l~~) bridge the gap between youth and adults.

(F~~vi~~) **Teen panels.** Teen panels provide an opportunity for DHS and tribal custody youth to educate staff, care providers, the community, and ~~prospective~~ potential resource parents by presenting the youth's ~~youth~~ views and experiences in the CW system.

(G~~vii~~) **Voluntary placement of youth after 18 years of age.** Custody youth may request placement in a DHS-paid placement and services from DHS on a voluntary basis, or in special circumstances, a short-term voluntary placement while 18, 19, or 20 years of age, when the youth:

(i~~l~~) reaches 18 years of age prior to completing his or her General Educational Development (GED) or high school education; ~~or~~

(ii~~l~~) did not obtain a GED or high school education and left an out-of-home placement after reaching 18 years of age; or

(iii~~l~~) has specified reasons approved by the district director for the county where the youth resides.

(H~~viii~~) **Credit reports for youth in out-of-home care.** Each youth beginning at ~~16~~ 14 years of age and continuing until the youth is discharged from out-of-home care receives:

(i~~l~~) an annual ~~copy of the youth's~~ consumer credit ~~reports~~ report;

(ii~~l~~) assistance interpreting the ~~reports~~ report; and

(iii~~l~~) assistance resolving any ~~inconsistencies~~ inaccuracies or evidence of identity theft in the ~~reports~~ report. The court with jurisdiction over the youth is notified of any inaccuracies, evidence of identity theft, or other fraudulent activity.

SUBCHAPTER 8. THERAPEUTIC FOSTER CARE AND DEVELOPMENTAL DISABILITIES SERVICES

PART 1. THERAPEUTIC FOSTER CARE

340:75-8-8. Therapeutic foster care contractor requirements

(a) Therapeutic foster care (TFC) contractors:

(1) engage in active recruitment of potential TFC parents who reflect the racial and ethnic diversity of children requiring placement, in compliance with the Multiethnic Placement Act of 1994 and the Interethnic Provisions of 1996, per Oklahoma Administrative Code (OAC) 340:75-7-10;

(2) engage in active recruitment of potential TFC parents who are receptive and capable of meeting the service needs of all Oklahoma Department of Human Services (DHS) custody children determined to be eligible for TFC placement;

(3) certify TFC homes according to rules established by Child Care Services (CCS), Child Welfare Services (CWS), OAC 340:75-7-10 through 340:75-7-19, Oklahoma Health Care Authority (OHCA), and the requirements outlined in the DHS placement agreement for residential behavioral management services (RBMS) in TFC Settings;

(4) ensure each TFC parent receives the appropriate pre-service training according to CCS ~~rules~~, and OHCA rules per OAC 317:30-5-740.1, ~~and~~ CWS resource family requirements ~~including~~ Bridge, and the requirements

outlined in RBMS in TFC sections, prior to the placement of a child in the home;

(5) ensure the TFC home meets all certification requirements prior to the placement of a child or youth in the home;

(6) evaluate the TFC parent's ability to provide TFC services and meet the needs of children receiving RMBS in a foster care setting per OAC 340:75-7-94;

(7) participate in regularly scheduled staffings on all child abuse and neglect referrals with CWS program staff. Each foster care resource file must contain a log of all investigations and screened out referrals for use as a continual assessment of safety and resource home developmental needs;

(8) ensure that no TFC home is used for new placements or respite care while under investigation for child abuse or neglect. New placements or respite care cannot resume without specific consent of TFC program staff;

(9) ensure each TFC parent meets the requirements for in-service training as defined in the DHS RBMS contract;

(10) ensure the TFC parent has training and support to apply reasonable and prudent parent standards per Section 1-1-105 of Title 10A of the Oklahoma Statutes. The reasonable and prudent parent standard is characterized by careful and sensible parental decisions that maintain the child's health, safety, and best interests while at the same time encouraging the child's emotional and developmental growth. This standard is used by the child's TFC parent when determining whether to allow a child to participate in extracurricular, enrichment, cultural, and social activities. The foster parent may request consultation with the CWS specialist, biological parent or guardian, TFC contractor staff, or other parties to the child's case to assist with decision-making and ensure the child has access to immediate therapeutic response and support when needed. Visitation with the child's family of origin or connections identified by DHS to have restricted contact with the child must be approved by the child CWS specialist;

~~(1011)~~ complete Form 04TF006E, Unsupervised Time Assessment, for all TFC children, regardless of age, anytime an assessment is made that the child has the ability to have time away from the TFC parent's ~~or parents'~~ direct supervision, ~~other than the child's participation in extracurricular educational activities for grades K through 12~~ for activities other than those included under reasonable and prudent parenting standards, such as the child spending time alone or attending a child care program while the TFC parent works. This assessment includes, but is not limited to, the utilization of child care and the TFC parent ~~or parents'~~ parent's availability to respond to behavioral needs and all problems when the child is not under ~~their~~ his or her direct supervision. The assessment is documented as part of the child's ongoing TFC treatment plan with a copy of the finalized plan provided to the TFC parent or parents;

~~(112)~~ request approval from CWS program staff for TFC prior to accessing child care for a child 5 years of age

or younger. DHS does not reimburse for child care for a child in TFC placement. The written request includes the:

(A) therapeutic justification in the child's treatment plan of daily child care outside of the child's TFC placement home;

(B) ability of child care staff or the child care provider to meet the child's emotional and behavioral needs and all problems;

(C) availability of the TFC parent and TFC contractor staff to respond to behavioral needs and all problems at the child care environment;

(D) verification of the child care center's licensing status, star ratings, and adult-to child ratio, per OAC 340:75-7-65(a)(3)(A);

(E) proposed weekly schedule for child care utilization;

(F) planned length of use of child care as a service component of the child's treatment plan; and

(G) copy of the child's Unsupervised Time Assessment;

~~(1213) do not accept applications from any foster parent certified by any other agency, including all licensed child placing agencies and DHS, without prior written approval of the current certifying TFC contractor and written approval of the CWS program supervisor for TFC~~ follow established protocol found in the RBMS, contract for TFC services, for managing the transfer of a currently certified foster home from another contracting agency;

~~(1314)~~ do not certify a DHS employee as a TFC parent without prior written approval from the CWS director or designee. The TFC contractor submits the written request to the CWS program supervisor for TFC. The review of the request is consistent with OAC 340:75-7-12;

~~(1415)~~ do not certify a TFC agency employee assigned to the TFC program as a TFC parent without prior written approval from the CWS TFC program supervisor ~~for TFC~~. The request includes a copy of TFC agency policy regarding certification of employees of the TFC agency; ~~and~~

~~(1516)~~ do not accept a foster parent application from a person licensed to provide child care services. Families are not approved as licensed family child care homes and TFC homes at their home or in any other location;

(17) establish a procedure to address and document a response to concerns in a TFC foster home that do not warrant a referral for an abuse or neglect assessment or investigation. Examples of these concerns include, but are not limited to, a TFC foster parent's judgment or supervision, disciplinary practices, non-compliance with policy or contract, unacceptable housing standards, inadequate clothing provisions for the child, or a lack of involvement in the child's education or independent living skills. DHS has the right to decline the use of the home when the TFC parent's documented efforts did not resolve the concerns;

(18) require all TFC parents to immediately report to the TFC contractor:

(A) charges or arrests of any foster parent or household member and any criminal investigation of a foster parent or household member; or

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(B) a proceeding for a protective order filed by or against any member of the household. The TFC contractor immediately reports these events to DHS TFC program staff and complies with directives given to ensure the safety of children in the home.

(b) TFC homes may be jointly approved per OAC 340:75-7-19.

340:75-8-9. Placement procedures in therapeutic foster care homes

(a) Therapeutic foster care (TFC) is the least restrictive, community-based residential care placement setting. Children in Oklahoma Department of Human Services (DHS) custody or tribal custody served in TFC placements are 3 through 17 years of age, ~~male or female~~, and determined by the Oklahoma Health Care Authority (OHCA) authorized reviewer to meet the medical necessity criteria for TFC services, per Oklahoma Administrative Code (OAC) 317:30-5-741.

(1) The child ~~has been~~was diagnosed with any Diagnostic and Statistical Manual of Mental Disorders (DSM) AXIS I primary diagnosis, with the exception of V codes and adjustment disorders, accompanied by a detailed description of the symptoms supporting the diagnosis.

(2) The child's conditions are directly attributed to a mental illness or serious emotional disturbance as the primary need for professional attention.

(3) It ~~has been~~was determined by the inpatient authorization reviewer that the child's current disabling symptoms cannot be or ~~have~~were not ~~been~~ managed in a less intensive treatment program.

(4) There is evidence that the child's presenting emotional or behavioral problems prohibit full integration in a family or home setting without the availability of 24-hour crisis response, behavior management, and intensive clinical interventions from professional staff.

(5) The child is medically stable and not actively suicidal or homicidal and not in need of substance use or abuse detoxification services.

(6) The parent or the legal guardian of the child in DHS custody or tribal custody is afforded the opportunity to actively participate in the child's treatment and planning.

(b) The Child Welfare Services (CWS) specialist and supervisor assess each child's treatment needs per OAC 340:75-6-40 and 340:75-6-85. The CWS specialist seeks TFC placement when the:

(1) child's treatment needs can no longer be met in the child's own home, relative home, or traditional foster family setting;

(2) child does not require a group home placement; and

(3) child does not meet the medical necessity criteria for psychiatric treatment.

(c) A child whose behavior requires 24-hour awake supervision or who poses a danger in a family setting is not appropriate for TFC placement.

(d) The TFC contractor receives referrals for the placement of children from the ~~regional resource (RRC)~~TFC placement coordinator, per OAC 340:75-8-12.

(e) The TFC contractor requests a TFC authorization extension 30-calendar days prior to the expiration of the authorized length of stay. When the OHCA authorized reviewer denies the extension of services, the TFC contractor provides written notification within one-business day of the denial to the CWS specialist, or to the Indian child welfare worker when the child is in tribal custody only, to initiate transition planning.

(f) TFC contractors document in writing, an assessment of the agency's ability to serve a child 5 years of age or younger prior to placement. The written documentation is maintained for on-site review during program audits and includes:

(1) the assessed diagnosis and proposed treatment plan for the child;

(2) the credentials, experience, and training of the TFC contractor's staff documenting the staff's ability to develop an age-appropriate treatment plan and deliver clinical services to children, 5 years of age or younger, with emotional ~~disturbances~~ or behavioral ~~disorders/problems~~; and

(3) a description of the proposed TFC parent's:

(A) age, availability, experience, and skills;

(B) family structure;

(C) ability to meet the child's needs of a child, including a child 5 years of age or younger; and

(D) parenting responsibilities to other children in the home, children in foster care or TFC placement, any adopted children, and any birth children.

(g) The TFC contractor does not place more than two children in a TFC home without prior written approval from ~~the CWS programs supervisor for TFC via the program staff~~on completed Form 04FT003E, Request for Third Placement. The TFC contractor submits the written request that includes:

(1) primary treatment needs for the proposed placement of a third child and any subsequent children in the TFC home;

(2) availability, placement history, skills, completed or planned corrective action, and additional contractor supports of the TFC parent identified for proposed placement of a third child;

(3) risk factors considered and compelling reasons for proposed placement of a third child;

(4) documentation of TFC contractor contact with CWS specialists or supervisors for each child in the home, involved professionals, and each TFC family member, regarding the impact of the proposed placement of a third child;

(5) documentation of TFC contractor's review of any separated siblings placed in the proposed third placement, Guidance on when siblings may be separated is located in OAC 340:75-6-85; and

(6) other information as requested by the CWS programs manager for TFC.

(h) A home serving three or more children without prior written approval is subject to denial of payment above the foster care maintenance rate. Email approval from TFC program staff is considered valid written approval. A child respite in the home beyond timeframes and processes for extensions is considered a placement in the home after 14-calendar days per OAC 340:75-8-11.

(hi) Title XIX payments for TFC services are not made for TFC parents who move out of Oklahoma.

(ij) A child/youth may remain in TFC placement on a voluntary basis after 18 years of age, per OAC 340:75-6-110.

(k) The TFC contractor establishes practice modalities to support the placement of all children in DHS custody and tribal custody meeting criteria for TFC level of care in a fully-certified TFC home. Each child in placement receives services based on his or her individualized service plan to meet mental and behavioral health needs. Services provided support the child to move to a less restrictive level of care as quickly as possible.

(l) Children in TFC are authorized for placement based on meeting specific criteria. The amount of reimbursement paid to the contractor and therapeutic parent are in accordance with Appendix C-20, Child Welfare Services (CWS) Rates Schedule.

(m) Children are supported with TFC services to make progressive step downs and maintain stability in placement to reach traditional foster care level or achieve permanency goals.

(n) When the TFC placement is not approved by OHCA because the placement need developed outside of OHCA business hours or the business day closed without a return call from OHCA, the contractor may assist with immediate placement of a child identified by DHS staff as in need of TFC level placement. These placements are documented and paid through the contractor's resource family partners contract for placement of traditional foster care placements or coordinated foster care contract. OHCA approval must be obtained the following business day after placement. The child is then admitted to TFC placement in the same home. When OHCA denies TFC approval, the contractor and CWS specialist immediately coordinate to ensure a new placement referral is initiated for placement in the appropriate level of care. The child may not remain in a TFC home more than three-business days when denied by OHCA for TFC placement.

340:75-8-11. Therapeutic foster care placement stability

(a) **Assessment of placement stability.** Therapeutic foster care (TFC) contractors and Child Welfare Services (CWS) specialists continually assess the stability of a child's placement. When indications of instability are identified, the TFC contractor and CWS specialist jointly evaluate the need for additional services and supports to maintain the current placement.

(b) **Supporting placement stability.** The TFC contractor and CWS specialist review the child's current treatment plan and determine the need for modifications including, but not limited to:

- (1) the need for further evaluation;
- (2) specialized treatment services;
- (3) increased communication between team members;
- (4) ~~wrap-around~~ wraparound services;
- (5) additional supports for the foster parents;
- (6) use of disruption prevention staffing; and
- (7) behavior redirection and crisis management services.

(c) **Foster parent supports for TFC.**

(1) **Travel reimbursement.** Oklahoma Administrative Code 340:75-7-65 provides for TFC parent reimbursement for a child's transportation that meets specific criteria.

(2) **Insurance for the foster home.** Liability insurance is provided for TFC families for damages caused by the child in Oklahoma Department of Human Services (DHS) custody according to the policy terms. Foster families have the right to receive a copy of the liability insurance policy per Section 1-9-119 of Title 10A of the Oklahoma Statutes. Foster parents are responsible for any deductibles.

(ed) **Placement disruption.** Disruption is an unplanned change in a child's placement and occurs when a child is removed from a ~~therapeutic foster~~ TFC home and will not return to the same foster home due to the home or contractor being unable or unwilling to continue to serve the child. Disruptions include all placement changes that are not related to a planned movement towards the child's identified permanency goal. Unless an emergency exists, the TFC:

- (1) ~~TFC~~ contractor will not move children in ~~therapeutic foster care~~ TFC placement without DHS approval; and
- (2) ~~TFC~~ parent provides a 30-calendar day notice to the TFC contractor when requesting a child's removal from the TFC home, unless the removal is required to protect the health or safety of the child or TFC family members.

(de) **Disruption staffing.** A disruption staffing ~~will occur~~ occurs for all unplanned placement changes. When possible, the staffing occurs prior to providing notice of discharge to support the foster parent and child, prevent disruption, or assist with transition. When prior planning is not possible, the staffing occurs within the 72-business hour notice of discharge period. The staffing occurs within 72-business hours following immediate discharge, such as into an inpatient setting. The staffing includes at least the TFC therapist, foster parent, and CWS specialist or supervisor. The child may participate, when able. The staffing may be conducted by conference call. The contractor's TFC program director reviews all disruptions and includes copies with the contractor's monthly report to the TFC programs supervisor.

(ef) **Respite care.** Respite care provides reprieve and support for the TFC parent, child, or both. Respite for children in ~~therapeutic foster~~ TFC is only provided in certified therapeutic foster homes. There are four classifications of respite care:

- (1) **Planned respite.** Reprieve for the TFC parent with whom a child is placed includes a defined timeframe, is not to exceed 14-calendar days, and specifies the date for the child to return.
- (2) **Unplanned respite.** Reprieve for the TFC parent with whom a child is placed due to a crisis or emergency circumstance includes a defined timeframe, is not to exceed three-business days. ~~If~~ When circumstances warrant an extension beyond three-business days of the respite stay, the TFC contractor submits a written request for the extension to the assigned TFC agency contract liaison ~~for their agency.~~ Any extension of unplanned respite ~~will~~ does not exceed a total of 14-calendar days.

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(3) **Transitional respite.** Reprieve for stabilization and assessment following a TFC home placement disruption, is not to exceed five-business days. This period allows the TFC contractor and CWS county of jurisdiction specialist time to develop an appropriate plan for the child's next placement. ~~If~~When circumstances warrant an extension beyond five-business days of the respite stay, the TFC contractor submits a written request for the extension to the assigned TFC agency contract liaison ~~for their agency~~. Any extension of transitional respite ~~will~~does not exceed a total of 14-calendar days.

(4) **Administrative Respite.** Care provided for children when safety or contract compliance is under review in the TFC home. These periods are identified by the TFC contractor or ~~DHSCWS~~. Circumstances ~~could~~ include, but are not limited to, abuse and/or neglect investigations, new criminal offenses by an adult household member, or contract violations that impact safety or may affect the requirements for continued certification.

(A) ~~DHSCWS~~ immediately notifies the TFC contractor when a need for administrative respite is identified and provides details of safety concerns.

(B) When concerns are identified by the TFC contractor, ~~DHSCWS~~ programs staff are notified within one-business day that a child ~~has been~~was moved to a respite setting for administrative respite and provided details of safety concerns.

(C) The TFC contractor and CWS programs staff agree to a specified time period for the respite care and establish a date to review the use of continued respite.

(~~fg~~) **Notification of respite placement.** The TFC contractor notifies, via Form 04FT004E, Notice of Child's Location, the CWS county of jurisdiction and county of placement specialists, regional resource coordinators involved in the placement, and the contract liaison of all placement changes, including all types of respite, for each child in TFC placement.

(~~gh~~) **TFC contractor.** The TFC contractor:

(1) ensures the respite TFC parent is informed of the child's current treatment issues, behavioral, medical, and physical needs, and any child-specific supervision or safety plans; and

(2) supervises the respite TFC parent in the implementation of the in-home treatment strategies identified in the TFC contractor's individualized treatment plan for the child.

[OAR Docket #17-494; filed 6-23-17]

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

[OAR Docket #17-495]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:

Subchapter 3. Administration
Part 1. General Administration
340:100-3-1 [AMENDED]
340:100-3-6 [REVOKED]
340:100-3-10 [REVOKED]
Part 3. Administration
340:100-3-27 [AMENDED]
340:100-3-38.1 through 340:100-3-38.5 [AMENDED]
340:100-3-38.10 [AMENDED]
340:100-3-38.12 through 340:100-3-38.13 [AMENDED]
Subchapter 5. Client Services
Part 3. Service Provisions
340:100-5-22.1 [AMENDED]
340:100-5-22.6 [AMENDED]
340:100-5-36 [NEW]
Subchapter 6. Group Home Regulations
Part 11. Program Standards
340:100-6-55 [AMENDED]
Part 19. Involuntary Transfer or Discharge of Service Recipient
340:100-6-85 [AMENDED]
Part 21. Resident Rights and Responsibilities
340:100-6-95 [AMENDED]
(Reference WF 17-03)

AUTHORITY:

Director of Human Services; Section 162 of Title 56 of the Oklahoma Statutes (56 O.S. § 162); 61 O.S. § 331; 10 O.S. § 1414; and Sections 441.301, 441.302, 441.715, 441.720, and 441.710 of Title 42 of the Code of Federal Regulations.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

January 6, 2017

COMMENT PERIOD:

February 1, 2017 through March 3, 2017

PUBLIC HEARING:

March 9, 2017

ADOPTION:

March 14, 2017

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

March 16, 2017

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 13, 2017

FINAL ADOPTION:

June 13, 2017

EFFECTIVE:

September 15, 2017

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The proposed revisions to Chapter 100 Subchapters 3, 5, and 6 amend and revoke rules to implement changes recommended during the annual Developmental Disabilities Services (DDS) rule review process. The proposed amendments: (1) update and clarify DDS rules per federal and state laws; (2) provide clear guidance to DDS partners and staff; and (3) position DDS to adhere to "best practice" standards.

CONTACT PERSON:

Dena Thayer, Programs Administrator, Office of Intergovernmental Relations and Policy, Department of Human Services, PO Box 25352, Oklahoma City, OK 73125, 405-521-4326.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2017:

SUBCHAPTER 3. ADMINISTRATION

PART 1. GENERAL ADMINISTRATION

340:100-3-1. Eligibility determination for Developmental Disabilities Services Division state-funded services

Developmental Disabilities Services Division (~~DDSD~~)(DDS) services ~~are state-funded through the state without federal subsidy and~~ are available to persons meeting eligibility requirements.

(1) To be eligible for state-funded ~~DDSD~~DDS services a person must:

- (A) present a psychological assessment with a diagnosis of ~~mental retardation (MR)~~intellectual disability (ID) that includes a full scale intelligence quotient (IQ) of 75 or less; or
- (B) be determined disabled, with a diagnosis of ~~MR~~ID, by the Social Security Administration;
- (C) be a resident of Oklahoma; and
- (D) have achieved an age defined within the provisions of each state-funded program per Oklahoma Administrative Code (OAC) 340:100.

(2) Persons approved for ~~DDSD~~DDS state-funded services prior to January 1, 1990, maintain their eligibility for services.

(3) Members of the Homeward Bound class, who are not eligible for services through Home and Community-Based Services (HCBS) Waivers because they do not meet the intermediate care facility for ~~persons with mental retardation (ICF/MR)~~individuals with intellectual disabilities (ICF/IID) level of care, receive state-funded services.

(4) Members of the Homeward Bound class who are not eligible for services through the HCBS Waiver because they do not meet financial eligibility requirements must resolve financial eligibility issues within a 90-calendar day period. Members may continue to receive services included in their plan of care with state funding for a maximum 90-calendar day period while resolving financial eligibility issues. If issues are not resolved, the member may receive state-funded services available to non-Medicaid eligible persons including group homes, assisted living services without supports, community integrated employment services, and sheltered workshop services. The member may also receive such other services as the member may choose to purchase. The member is not eligible for other Medicaid services until eligibility issues are resolved. Case management is provided.

(5) Per Section 1414 of Title 10 of the Oklahoma Statutes, the Oklahoma Department of Human Services Director may authorize delivery of services to persons whose capacities exceed criteria per ~~OAC 340:100-3-1~~ this Section.

(6) Eligibility for the Family Support Assistance Payment Program is in accordance with OAC 340:100-13-1.

340:100-3-6. Human Rights Committee [REVOKED]

(a) ~~Human Rights Committee (HRC)~~. Each service recipient participating in services or programs operated by or under contract with Developmental Disabilities Services Division (~~DDSD~~) is represented by a ~~HRC~~.

(b) ~~HRC role and function~~. The role and function of each HRC is to provide external monitoring and advocacy, separate and apart from the provision of services specifically addressing issues of protection of individual rights, program conditions, policy and procedure review, and resolution of complaints or concerns related to the protection of individual rights. Each ~~HRC~~:

(1) reviews at least annually, each protective intervention plan containing a restrictive or intrusive procedure per OAC 340:100-1-2 and advises each service recipient or if applicable, legal guardian of the perceived benefits and risks of proposed programs.

(A) The review includes an evaluation to determine whether proposed procedures conform to ~~DDSD~~ and provider agency policy.

(B) Service recipients or legal guardians retain the right to provide, refuse, or withdraw consent for proposed procedures regardless of HRC recommendations as long as this consent does not result in the implementation of a program that does not comply with ~~DDSD~~ policies;

(2) reviews and approves with the ~~DDSD~~ director of psychological and behavioral supports all research proposals involving service recipients, prior to the initiation of research per OAC 340:100-3-10;

(3) reviews complaints by service recipients or other persons on behalf of service recipients and makes recommendations regarding resolution;

(4) reviews allegations of abuse, neglect, or exploitation.

(A) The provider agency notifies the HRC when an allegation of abuse, neglect, or exploitation is made.

(B) The HRC confirms whether the agency acted appropriately in reporting the allegation, protecting the service recipient, and cooperating with investigating authorities.

(5) reviews all incident reports involving emergency use of restrictive or intrusive procedures;

(6) reviews and comments on provider agency policies and practices as they affect service recipients. HRC comments are provided to the governing body of the provider agency and others determined appropriate by the governing body; and

(7) participates at least quarterly, in activities designed to promote familiarity with service recipients, staff, and agency practices. These activities may include, but are not limited to:

(A) home visitation;

(B) attendance at agency functions; and

(C) social or recreational events.

(e) ~~Resource center HRC~~. Southern Oklahoma Resource Center (SORC), Northern Oklahoma Resource Center of Enid

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(NORCE), and Robert M. Greer Center (Greer) HRC composition and practices conform to Title XIX requirements, per Section 483.440 of Title 42 of the Code of Federal Regulations (CFR).

(d) **Provider agency HRC.**

(1) Each provider agency HRC must have at least four members:

(A) Members cannot be employed by an agency providing services to service recipients.

(B) At least one member is a service recipient or a family member of a service recipient.

(C) One member must be a professional with expertise in areas relating to HRC duties, such as:

(i) positive behavior supports and educational methodologies;

(ii) issues involving client rights; or

(iii) related medical or psychiatric issues.

(2) Service recipients served by multiple agencies funded by DDS or Oklahoma Health Care Authority (OHCA) are represented by the HRC of the agency providing residential supports.

(3) Each provider agency HRC develops by-laws that specify:

(A) persons represented by the HRC;

(B) time and location of routine meetings, held no less than quarterly;

(C) methods to ensure access by service recipients to HRC members for private communication;

(D) time frames for review of grievances, complaints, and protective intervention plans. Protective intervention plans are reviewed within 30 days of agency receipt;

(E) term of appointment for members; and

(F) routine rules of operation such as:

(i) selection of chairperson; and

(ii) recording and distribution of meeting minutes.

(e) **HRC meetings.**

(1) HRC rules for recording and distribution of meeting minutes include, but are not limited to:

(A) identification of any protective intervention plan containing rights restrictions or restrictive or intrusive procedures that were reviewed, specifying the nature of the restriction or restrictive or intrusive procedure in each case;

(B) recommendations if any, from the HRC for each protective intervention plan reviewed, including a copy of any checklist or review form used;

(C) names and titles of persons who attended;

(D) other key issues discussed; and

(E) notation, if a pattern of frequent use of restrictive or intrusive procedures or frequent injury is emerging from the HRC review of incident reports.

(2) Each HRC distributes copies of:

(A) the form used to review the protective intervention plan, along with any other information needed to clarify the HRC recommendation, to the service recipient's DDS case manager; and

(B) meeting minutes to each service recipient's case manager, when issues other than a protective intervention plan are reviewed with names deleted of persons who are not in that case manager's caseload

(f) **HRC training.** HRC members are trained, using curriculum consisting only of materials approved by the DDS director of psychological and behavioral supports and the DDS director of human resource development. The HRC may receive training from:

(1) a qualified DDS trainer;

(2) Statewide Behavior Review Committee (SBRC); or

(3) a fully trained HRC member approved by the DDS director of psychological and behavioral supports and DDS director of human resource development.

(g) **HRC advocacy.** The HRC may seek assistance when HRC advocacy recommendations are not carried out. When HRC:

(1) recommendations regarding a rights restriction are not implemented, HRC may request an administrative inquiry from DDS Quality Assurance (QA) Unit;

(2) recommendations regarding a protective intervention plan containing restrictive or intrusive procedures are not followed, HRC must refer the plan to SBRC; and

(3) is aware of the use of a restrictive or intrusive procedure not in accordance with OAC 340:100-5-57, HRC must request an administrative inquiry from DDS QA Unit.

340:100-3-10. Research initiatives [REVOKED]

DDS supports research initiatives that contribute to the advancement of knowledge about the causes of mental retardation, prevention and treatment strategies, and activities which promote accelerated realization of functional independence.

(1) Research proposals must include evidence of benefit to participants prior to authorization.

(2) All research activities will comply with the strictest standards of professional ethics and conduct.

(3) Research initiatives employing use of painful stimuli are prohibited.

(4) Research activities that may place a client's rights at risk are: initiated only with the informed consent of clients/guardians/advocates; and with the authorization of the respective Area Human Rights Committee(s) and Local Administrator(s).

(5) Research designs using control groups will ensure appropriate therapy or treatment for all individuals participating in the study.

(6) Clients/Guardians maintain the right to refuse or withdraw from participation in research activities.

(7) Clients/Guardians are informed of the intent, scope and, if desired, aggregate findings of formalized studies conducted to assess the impact of services delivered through provisions of the IHP. Formalized service studies required as a condition of service participation are subject to oversight by a committee including consumer representation.

(8) ~~Client privacy, confidentiality, and rights are insured in the design and conduct of any research initiative inclusive of formalized service studies.~~

PART 3. ADMINISTRATION

340:100-3-27. Quality assurance

(a) **Purpose.** ~~Developmental Disabilities Services Division (DDSD)(DDS)~~ quality assurance (QA) activities assess and encourage delivery of supports consistent with:

- (1) the preferences and needs of service recipients;
- (2) Oklahoma Department of Human Services ~~(OKDHS)(DHS)~~ rules;
- (3) applicable Oklahoma Health Care Authority (OHCA) rules;
- (4) ~~OKDHS~~DHS and OHCA contract requirements for Home and Community-Based Services (HCBS);
- (5) regulatory standards applicable to services;
- (6) federal and state laws.

(b) **Case manager monitoring.** ~~DDSD~~DDS case managers assess services rendered to each service recipient to ensure effectiveness of services in meeting the service recipient's needs. The case manager periodically observes service provision to assess implementation of the service recipient's Individual Plan (Plan). The requirements per ~~OAC 340:100-3-27~~this Section are minimum expectations for face-to-face visits with service recipients. ~~Additional Case management may require additional visits may be required at the discretion of case management,~~ to ensure the service recipient's health and welfare.

(1) The ~~DDSD~~DDS case manager conducts face-to-face visits to monitor the service recipient's health and welfare and service effectiveness of services in meeting ~~the service recipient's~~his or her needs.

(A) Face-to-face visits must include observation of, and talking with the service recipient regarding the service recipient's health and welfare and satisfaction with services.

(B) The case manager may:

- (i) observe service provision and related documentation in any location where services are provided; and
- (ii) talk with family members and providers regarding service provision of services and the service recipient's health and welfare.

(C) For service recipients receiving services through an In-Home Supports Waiver (IHSW):

- (i) a face-to-face visit must be completed at least semi-annually with one visit occurring ~~during the between~~ during January ~~through and~~ June ~~period~~ and one ~~during the between~~ during July ~~through and~~ December ~~period~~; and
- (ii) at least one of the two visits must occur at the site where the majority of services are provided.

(D) For service recipients receiving services through ~~the~~ a Community Waiver:

(i) a face-to-face visit must occur during each calendar month in the person's home of all persons receiving who receives residential services per OAC 340:100-5-22.1 or group home services per OAC 317:40-5-152. Case managers must certify home visits on Form 06MP070E, Access to Home Record and Verification of Monitoring Requirements, ~~located within the home record~~ per OAC 340:100-3-40;

(ii) a face-to-face visit must be completed at ~~least quarterly, per each~~ least quarterly, per each calendar year ~~quarters and quarter,~~ quarters coinciding with the quarters established per OAC 340:100-5-52 for a quarterly summary of progress reports, for service recipients who do not receive residential services or group home services, with at least two of these visits occurring at the site where the majority of services are provided; and

(iii) the case manager visits the employment or day services site at least semi-annually, with one visit occurring ~~during the between~~ during January ~~through and~~ June ~~period~~, and one ~~during the January through~~ during July ~~through and~~ December ~~period~~, when services are funded through the Community Waiver; unless the Personal Support Team (Team) requests ~~ana~~ a DDS area manager or designee approved exception ~~approved by the DDSD area manager or designee.~~

(E) For service recipients receiving services through the Homeward Bound Waiver:

(i) a face-to-face visit must occur in the home during each calendar month ~~in the home~~. Case managers must certify home visits on Form 06MP070E located within the home record per OAC 340:100-3-40; and

(ii) the case manager must visit the employment site at ~~least quarterly, per each~~ least quarterly, per each calendar year ~~quarters and quarter,~~ quarters coinciding with the quarters established per OAC 340:100-5-52 for quarterly summary of progress reports, unless the Team requests ~~ana~~ a DDS area manager or designee approved exception ~~approved by the DDSD area manager or designee.~~

(F) For members of the Homeward Bound class who reside in an intermediate care facility for ~~persons with mental retardation~~ individuals with intellectual disabilities (ICF/MR)(ICF/IID), the case manager visits monthly.

(2) ~~DDSD~~DDS case managers review and ensure Plan implementation ~~of the Plan.~~

(A) The case manager completes a ~~monthly~~ quarterly review for service recipients receiving services through the ~~Community Waiver or Homeward Bound Waiver~~ Home and Community Based Services (HCBS) Waivers, documenting the review in Client Contact Manager (CCM).

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- (B) ~~For service recipients receiving services through an IHSW, the case manager review occurs every six months and is documented in CCM.~~
- (3) When the ~~DDS~~ case manager believes the service recipient is at risk of harm, the case manager takes immediate steps to protect the service recipient and notifies the ~~(DDS)DDS~~ case management supervisor and ~~any~~ other appropriate authorities.
- (4) ~~If~~When the ~~DDS~~ case manager determines the service recipient's needs are not effectively addressed by a provider or contractual responsibilities or policies are not met by the provider, steps in (A) through (C) of this paragraph are followed.
- (A) The case manager consults with the relevant provider to secure a commitment for necessary service changes within an agreed ~~upon~~ time frame.
- (B) ~~If~~When necessary changes are not accomplished within the specified time frame, the case management supervisor intervenes to secure commitments from the provider ~~for necessary change~~.
- (C) ~~If~~When the service deficiency is not resolved as a result of the intervention of the case management supervisor, a referral for administrative inquiry is initiated per OAC 340:100-3-27.1.
- (5) If, during a contract survey, administrative inquiry, specialized foster care (SFC) monitoring, or area survey, QA staff discovers a situation that requires correction by ~~DDS~~ staff, a system administrative inquiry is initiated.
- (A) QA staff emails notification to ~~DDS~~ staff ~~responsible~~ to correct the situation, establishing a reasonable time frame for correction.
- (B) ~~If~~When the identified staff is unable to correct the situation within the established time frame, QA staff emails notification ~~of the situation~~ to the ~~DDS~~ staff supervisor, establishing a reasonable time frame for correction.
- (C) ~~If~~When the staff supervisor is unable to correct the situation within the established time frame, QA staff notifies his or her supervisor, who notifies the ~~DDS~~ area manager, establishing a reasonable time frame for correction.
- (D) ~~If~~When the area manager is unable to correct the situation within the established time frame, ~~QA supervisor~~he or she notifies the DDS State Office QA unit programs administrator, who resolves to resolve the situation with the community services unit ~~programs administrator~~deputy director.
- (c) **Specialized Foster Care Monitoring**~~SFC monitoring~~. QA staff ~~monitors~~monitors the ~~specialized foster care~~SFC program in each area for ~~compliance with DDS~~ and OHCA policy compliance. Monitoring is based on a proportionate, representative sample of individuals receiving ~~specialized foster care~~SFC supports identified for the fiscal year for each area. Monitoring includes a visit to the service recipient's SFC home.
- (d) **Consumer Service Evaluation**. At least annually, service recipients and families receiving supports are provided

the opportunity to complete ~~an~~ a service evaluation ~~of services~~ per ~~OKDHS~~DHS Publication No. 89-10, Consumer Service Evaluation.

- (1) Confidentiality is maintained unless the respondent authorizes ~~OKDHS~~DHS to reveal his or her name to those responsible for service delivery. ~~OKDHS~~DHS Publication No. 89-10 may be completed anonymously ~~if desired~~.
- (2) QA staff distributes ~~OKDHS~~DHS Publication No. 89-10 to service recipients or ~~their~~his or her legal guardians at least annually.
- (3) ~~Completed~~ ~~OKDHS~~DHS Publication No. 89-10, when completed is returned to the DDS State Office QA Unit programs administrator.
- (4) Results are forwarded to the respective ~~DDS~~ area office when authorized by the service recipient or legal guardian for resolution of concerns or staff recognition of staff as appropriate.
- (5) An analysis of responses is completed and distributed ~~for action~~ to ~~DDS~~ area offices, ~~DDS~~ State Office, or ~~OKDHS~~as ~~appropriate~~DHS for action. Data is available ~~to interested persons~~ upon request.
- (e) **OK- AIM Oklahoma - Advocates Involved in Monitoring (OK AIM)**. Service recipients and families receiving supports participate in formal assessments of contract providers ~~in order~~ to promote service enhancement, consistent with service recipient expectations of service recipients.
- (1) ~~Oklahoma~~ ~~Advocates Involved in Monitoring (OK AIM)~~OK AIM operates under the direction of the Oklahomans for Quality Services Committee (OQSC).
- (A) OQSC is composed of 15 persons who receive or have a family member receiving ~~DDS~~ services. All areas of Oklahoma are represented.
- (i) OQSC members may be nominated by the public at large, current OQSC members, or ~~DDS~~ representatives.
- (ii) Appointment of OQSC members occurs as a result of joint consensus by the OQSC chair and ~~DDS~~ director or designee following a determination of the nominee's:
- (I) commitment to promote the interests of persons with developmental disabilities; and
- (II) capacity to dedicate the ~~time~~ necessary time to fulfill his or her responsibilities.
- (iii) OQSC members have the authority to elect officers based ~~upon~~on a simple majority vote and establish by-laws governing the conduct of business.
- (B) OQSC:
- (i) develops and refines procedures and the survey instrument used, based upon feedback received from service recipients and their families, providers, and other key constituents;
- (ii) participates in the selection of agencies submitting proposals to conduct ~~OK- AIM~~OK AIM activities; and
- (iii) serves as a resource for education and coordination of agencies conducting ~~OK- AIM~~OK AIM monitoring activities.

(2) ~~DDSDDS~~ issues an invitation to bid (ITB) in accordance with state law and ~~OKDHS~~DHS rules, ~~soliciting and solicits~~ proposals from qualified organizations to participate in the ~~OK AIMOK AIM~~ initiative. Qualified organizations include agencies that:

- (A) are incorporated non-profit agencies dedicated to the representation of persons with developmental disabilities and their family members;
- (B) are not involved in service delivery funded through ~~DDSDDS~~ or HCBS Waivers; and
- (C) meet additional requirements set forth by federal and state laws as indicated in the ITB.

(3) OQSC is consulted regarding bids submitted in response to an ITB. Selection of a qualified organization to conduct ~~OK AIMOK AIM~~ monitoring and reporting activities occurs per state law and ~~OKDHS~~DHS rules.

(4) Agencies selected to conduct ~~OK AIMOK AIM~~ monitoring and reporting activities are responsible for:

- (A) soliciting, screening, and training volunteers to conduct ~~OK AIMOK AIM~~ site visits;
- (B) scheduling site visits with all service providers ~~of services~~ referenced in the ITB within counties for which the agency ~~has~~ assumed responsibility;
- (C) ensuring consistency of volunteer and staff activities with:
 - (i) OQSC-approved procedures and protocols ~~approved by OQSC; and~~
 - (ii) federal and state laws; and ~~OKDHS~~
 - (iii) DHS and OHCA rules;

(D) accurately recording ~~findings of OK AIMOK AIM~~ monitoring activities findings;

(E) ensuring provision of findings to provider agencies and ~~DDSDDS~~; and

(F) immediately notifying the ~~DDSDDS~~ area office of any issue identified during ~~OK AIMOK AIM~~ monitoring activities that presents risk to the service recipient's health ~~and/or~~ welfare.

(5) ~~DDSDDS~~ area managers identify ~~OKDHS~~DHS staff responsible for resolving concerns identified during ~~OK AIMOK AIM~~ monitoring activities and ~~notifying~~ notify the agencies responsible for ~~OK AIM~~ monitoring activities ~~of~~ how to contact ~~such~~ staff during ~~work~~business, evening, and weekend hours.

(6) OQSC with ~~the participation of DDSDDS~~ State Office, ~~DDSDDS~~ area offices, and agencies conducting ~~OK AIMOK AIM~~ activities participation, identifies conditions determined to present significant risks to service recipients.

(A) Conditions determined to present imminent riskrisks to service recipients are reported immediately to the:

- (i) statutory investigatory authority;
- (ii) ~~DDSDDS~~ area office; and
- (iii) provider agency chief executive officer (CEO) or designee.

(B) Issues determined to pose potential riskrisks to service recipients are reported to ~~DDSDDS~~ area office staff, who notify the provider agency CEO or designee, no later than at the conclusionclose of the first ~~working~~business-day following observation.

(C) ~~OK AIMOK AIM~~ monitors report any other significant issues to designated ~~DDSDDS~~ area office staff within time frames determined appropriate by ~~OK AIMOK AIM~~.

(7) ~~DDSDDS~~ staff immediately identifies ~~DDSDDS~~ area office staff to assume responsibility for verification and correction of problems posing imminent or potential riskrisks.

(A) Time frames for resolution of validated concerns are approved by the ~~DDSDDS~~ area manager based on the degree of risk involved.

(B) All identified concerns are resolved within 30-calendar days from initial notification to the ~~DDSDDS~~ area office, unless an extension is authorized by the area manager in circumstances that pose no jeopardy to any service recipient.

(C) Concerns presenting immediate and significant risk to service recipients are corrected immediately.

(8) Each ~~DDSDDS~~ area manager designates staff to:

- (A) track resolution of each identified concern; and
- (B) advise agencies conducting ~~OK AIMOK AIM~~ monitoring activities of the steps taken to resolve each concern.

(9) ~~OK AIMOK AIM~~ staff summarizes findings of each home visit conducted by volunteers, noting performance in the context of expectations established by OQSC, and published in the ~~OK AIMOK AIM~~ training manual.

(A) Recommendations for service enhancement are presented to the relevant ~~DDSDDS~~ area office for review within 30-calendar days of a home visit.

(B) ~~DDSDDS~~ area office staff shares this information with the provider and collaborates on recommendations as well as other alternatives ~~for achieving to~~ achieve targeted service enhancement. Plans developed as a result are shared with ~~OK AIMOK AIM~~ staff during the next meeting. Provider comments or action plans are maintained with the ~~OK AIMOK AIM~~ report in area office files.

(10) ~~OK AIM~~The OK AIM survey process is re-assessed at least annually by OQSC based uponon feedback solicited from service recipients, ~~DDSDDS~~ area office staff, providers, and other constituencies affected by or involved in the process.

(f) **Independent assessments.** An independent authority annually assesses service outcomes for a sample of service recipients receiving residential services funded or administered through ~~DDSDDS~~ or HCBS Waivers.

(1) Assessments employ standardized measures, facilitating individual as well as congregate data analysis over time.

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- (2) Assessment protocols provide for identification and resolution of circumstances posing immediate ~~risk~~risks to service recipients.
- (g) **Failure to cooperate.** Provider agencies failing to cooperate with provisions or providing false information in response to inquiries per ~~OAC 340:100-3-27~~this Section are subject to identified sanctions ~~identified~~, including contract termination.
- (h) **Findings of non-compliance.** Findings of significant non-compliance with human rights, laws, or rules are immediately reported to the ~~DDS~~DDS director and other relevant authorities for appropriate action, including disciplinary action of ~~OKDHS~~DHS employees or the imposition of sanctions, including suspension or contract termination with provider agencies per OAC 340:100-3-27.2.
- (i) **Retaliation.** Provider agencies and ~~OKDHS~~DHS employees are prohibited from any form of retaliation against any service recipient, employee, or agency for reporting or discussing possible performance deficiencies with any authorized ~~OKDHS~~DHS agent. Authorized agents are ~~OKDHS~~DHS staff whose responsibilities include administration, supervision, or oversight of ~~DDS~~DDS services, including all ~~DDS~~DDS and Office of Client Advocacy staff.
- (j) **QA functions.** Additional components of the ~~DDS~~DDS QA program are found in OAC 340:100-3-27.1 through OAC 340:100-3-27.5.

340:100-3-38.1. Training requirements for staff providing residential supports

- (a) **Applicability.** Oklahoma Administrative Code (OAC) 340:100-3-38.1 sets forth training requirements for staff, ~~or~~ volunteers, and direct supervisors providing either full-time or part-time direct supports for a service recipient receiving:
- (1) daily living supports (DLS), per OAC 317:40-5-150;
 - (2) Prader-Willi Syndrome services;
 - (3) agency companion services (ACS), per Part 1 of OAC 317:40-5; or
 - (4) group home services, per OAC 340:100-6.
- (b) **New employee training.** No later than ~~30-calendar~~ days following the ~~date of hire~~ date, staff providing direct supports or supervising ~~at any level~~ the delivery of direct supports ~~at any level~~ must complete the online or first available Developmental Disabilities Services ~~Division (DDSD) (DDS)~~-approved foundation training course and effective teaching course. The first available class is the first unfilled class held within 60 miles of the staff's work location following the staff's ~~date of hire~~ date.
- (c) **First aid and cardio-pulmonary resuscitation (CPR).** ~~All direct~~Direct support staff must be certified in an approved course of first aid and CPR before providing services alone or with other untrained staff.
- (1) First aid and CPR certification of each staff must occur within 90-calendar days following ~~employment~~the staff's hire date.
 - (2) The service recipient's Personal Support Team (Team) may determine, based on the service recipient's needs, that staff must receive first aid and CPR certification in less than 90-calendar days.

- (d) **Medication administration training.** Staff must be certified in an approved medication administration course, per OAC 340:100-3-38.10, before administering medication to a service recipient or assisting with a service recipient's medication support plan.
- (e) **Individual-specific in-service training.** Individual-specific in-service training is identified for direct support staff in the service recipient's Individual Plan (Plan).
- (1) Training requirements are based on the service recipient's identified needs through ~~team~~Team discussion and review of available assessment information.
 - (2) A service recipient's Team specifies required completion time frames for ~~completion~~ of individual-specific in-service training. ~~If~~When time frames are not identified in the Plan, required individual-specific in-service training must be completed before working with the service recipient.
 - (3) As the service recipient's needs require changes in supports or programs, the Team documents in the Plan, ~~or~~ in addenda to the Plan, any new or additional in-service training required, with completion time frames ~~for completion~~.
 - (4) Individual-specific training is provided by the person or persons designated by the Team and identified by nameposition in the Plan, ~~in accordance with policy~~per rule, statute, and professional practice regulations, ~~if~~when applicable.
 - (5) The responsible Team member verifies staff has knowledge and skills necessary to provide the identified services. Videos may be used when approved by the Team.
- (f) **Job-specific training.**
- (1) Staff must complete:
 - (A) within 90-calendar days after assignment date ~~of assignment~~:
 - (i) Health course; and
 - (ii) Ethical and Legal Issues course; and
 - (B) within six months after assignment date ~~of assignment~~:
 - (i) Communication course;
 - (ii) Skill Building course;
 - (iii) Connections course; and
 - (iv) Nuts and Bolts course.
 - (2) Staff who ~~work~~works in both residential and employment or other settings must meet the job-specific training requirements of both jobs. Transfers to avoid required training completion ~~of required training~~ are prohibited.
- (g) **Specialized training.** Additional specialized training may be required for direct support staff working with service recipients who have significant health, physical and behavior support issues.
- (1) Staff supporting a service recipient with a protective intervention ~~plan~~protocol (PIP) that includes non-restrictive intervention techniques must be trained on these techniques before use.

- (2) Completion of an approved behavior support course is required for staff supporting a service recipient with a ~~protective intervention plan~~ PIP that:
- (A) addresses challenging behavior that places the service recipient's physical safety, environment, relationships, or community participation at serious risk; and
 - (B) contains one or more of these procedures in ~~(i) through (iv)~~:
 - (i) ~~Physical~~ physical guidance to overcome resistance;
 - (ii) ~~Physical~~ physical guidance to move to safety; or
 - (iii) ~~Physical~~ hold to restrict movement.
 - ~~(iv) Intensified staffing to ensure safety.~~
- (3) Staff must complete the approved:
- (A) behavior support course before working alone or with other untrained staff, but no later than 60-~~calendar~~ days after starting work with the service recipient; and
 - (B) physical management course before using any technique of physical management identified in a ~~protective intervention plan~~ the PIP.
 - (i) All staff ~~to be trained~~ must complete foundation training with the approved effective teaching course and behavior support course.
 - (ii) Staff working with the service recipient implements the positive components of the ~~protective intervention plan~~ PIP, as well as non-intrusive procedures to assist the service recipient during a crisis.
 - (iii) The ~~protective intervention plan~~ PIP must be reviewed by the provider agency Human Rights Committee and approved by the Statewide Human Rights and Behavior Review Committee.
 - (iv) Only staff and staff supervisors providing support to the service recipient are trained on the use of a physical management procedure.
 - (v) Staff formally trained to use physical management procedures ~~does~~ not use those techniques with other service recipients, except in emergencies per OAC 340:100-5-57.
 - (vi) Training curricula regarding behavior support are approved by the ~~DDSD director of DDS~~ human resource development and ~~DDSD director of psychological and behavioral supports~~ director.
- (4) Training regarding physical management procedures must be obtained from trainers approved by the ~~director of DDS~~ human resource development director.
- (5) Staff must complete annual retraining on physical management or physical restraint procedures in the approved ~~protective intervention plan~~ PIP.
- (h) **Ongoing training.** All ~~direct~~ Direct support staff employed by provider agencies ~~complete~~ completes eight hours of approved annual training.
- (1) Annual training may come from:
 - (A) required re-certification classes in first aid, CPR, ~~and~~ or medication administration training;
 - (B) courses per OAC 340:100-3-38(b)(1);
 - (C) courses, conferences, or workshops approved by the ~~DDSD director of DDS~~ human resource development director;
 - (D) individual-specific training; or
 - (E) agency-specific in-services.
 - (2) Any ~~direct~~ Direct support staff who supervises other staff must take 12 hours of supervisory training annually that may be included in the hours required per OAC 340:100-3-38.4 ~~this Section~~.
 - (3) Direct support staff may challenge or test out of required annual recertification when an approved option is available. Training completion hours ~~will be~~ granted equal to the number of hours for the standard recertification class.
 - (i) **Exceptions.** Exceptions to training requirements per OAC 340:100-3-38.4 ~~this Section~~ may be made by the ~~DDSD~~ DDS director or designee.
- 340:100-3-38.2. Training requirements for staff providing employment services**
- (a) **Applicability.** Oklahoma Administrative Code (OAC) 340:100-3-38.2 sets forth training requirements for provider agency staff, ~~or~~ volunteers, and direct supervisors providing either full-time or part-time direct supports for a service recipient receiving:
 - (1) center-based services;
 - (2) community-based services;
 - (3) sheltered workshop services;
 - (4) job coaching services, excluding services per OAC 317:40-7-8; or
 - (5) other supported employment services.
 - (b) **New employee training.** No later than 30-~~calendar~~ days following the ~~hire date of hire~~, staff providing direct supports or supervising at ~~any level~~ the delivery of direct supports at ~~any level~~ must complete the online or first available Developmental Disabilities Services Division (~~DDSD~~)(~~DDS~~)-approved foundation training course and effective teaching course. The first available class is the first unfilled class held within 60 miles of the staff's work location following the staff's ~~date of hire~~ date.
 - (c) **First aid and cardio-pulmonary resuscitation (CPR).** All ~~direct~~ Direct support staff must be certified in an approved course of first aid and CPR before providing services alone or with other untrained staff.
 - (1) First aid and CPR certification of each staff must occur within 90-~~calendar~~ days following ~~employment~~ the staff's hire date.
 - (2) The service recipient's Personal Support Team (Team) may determine, based on the service recipient's needs, ~~that~~ staff must receive first aid and CPR certification in less than 90-~~calendar~~ days.
 - (d) **Medication administration training.** Staff must be certified in an approved medication administration course, per OAC 340:100-3-38.10, before administering medication to a service recipient or assisting with a service recipient's medication support plan.

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(e) **Individual-specific in-service training.** Individual-specific in-service training is identified for direct support staff in the service recipient's Individual Plan (Plan).

(1) Training requirements are based on the service recipient's identified needs through team discussion and review of available assessment information.

(2) The service recipient's Team specifies required completion time frames for ~~completion~~ of individual-specific in-service training. ~~If~~ When time frames are not identified in the Plan, required individual-specific in-service training must be completed before working with the service recipient.

(3) As the service recipient's needs require changes in supports or programs, the Team documents in the Plan, or in addenda to the Plan, any new or additional in-service training required, with completion time frames for ~~completion~~.

(4) Individual-specific training is provided by the person or persons designated by the Team and identified by name position in the Plan, ~~in accordance with policy per rule~~, statute, and professional practice regulations, ~~if~~ when applicable.

(5) The responsible Team member verifies staff has knowledge and skills necessary to provide the identified services. Videos may be used when approved by the Team.

(f) **Job-specific training.**

(1) Staff must complete:

(A) general employment training within 90-calendar days after assignment date of ~~assignment~~; and

(B) employment specialist training within six months after assignment date of ~~assignment~~ as job coach or other position providing supported employment service.

(2) Staff who ~~work~~ works in both residential and employment or other settings must meet the job-specific training requirements of both jobs. Transfers to avoid ~~completion~~ of required training completion are prohibited.

(g) **Specialized training.** Additional specialized training may be required for direct support staff working with service recipients who have significant health, and physical, or behavior support issues ~~or behavior support issues~~.

(1) Staff supporting a service recipient with a protective intervention plan protocol (PIP) that includes non-restrictive intervention techniques must be trained on these techniques before use.

(2) Completion of an approved behavior support course is required for ~~direct support~~ staff supporting a service recipient with a ~~protective intervention plan~~ PIP that:

(A) addresses challenging behavior that places the service recipient's physical safety, environment, relationships, or community participation at serious risk; and

(B) contains one or more of these procedures ~~in (i) through (iv)~~:

(i) ~~Physical~~ physical guidance to overcome resistance; ~~;~~

(ii) ~~Physical~~ physical guidance to move to safety; ~~;~~ or

(iii) ~~Physical~~ physical hold to restrict movement.

~~(iv) Intensified staffing to ensure safety.~~

(3) The approved behavior support course is identified in the Plan and must be completed before working alone or with other untrained staff, but no later than 60-calendar days after starting work with the service recipient.

(4) Staff must complete the approved physical management course before using any technique of physical management identified in a ~~protective intervention plan~~ PIP.

(A) All staff ~~to be trained~~ must complete foundation training with the approved effective teaching course and behavior support course.

(B) Staff working with the service recipient implements the positive components of the ~~plan~~ PIP and non-intrusive procedures to assist the service recipient during a crisis.

(C) The ~~protective intervention plan~~ PIP must be reviewed by the ~~provider agency Human Rights Committee~~ and approved by the Statewide Human Rights and Behavior Review Committee.

(D) Training in physical management procedures occurs only within the requirements of ~~OAC 340:100-3-38.2(e)~~ this subsection.

(E) Only staff and staff supervisors who provide support to the service recipient are trained on the use of a physical management procedure.

(F) Staff formally trained to use physical management procedures, ~~do~~ does not use those techniques with other service recipients, except in emergencies per OAC 340:100-5-57.

(G) Training curricula regarding behavior support are approved by the ~~DDSD director of DDS~~ human resource development and ~~DDSD director of psychological and behavioral supports~~ director.

(5) Training regarding physical management procedures must be obtained from trainers approved by the ~~director of DDS~~ human resource development director.

(6) Staff must complete an annual retraining on the physical management or physical restraint procedures in the approved ~~protective intervention plan~~ PIP.

(h) **Ongoing training.** ~~All direct~~ Direct support staff employed by provider agencies ~~complete~~ completes 12 hours of approved annual training.

(1) Annual training may come from:

(A) required re-certification classes in first aid, CPR, and medication administration training;

(B) courses per OAC 340:100-3-38(b)(1);

(C) courses, conferences, or workshops approved by the ~~DDSD director of DDS~~ human resource development director;

(D) individual-specific training; or

(E) agency-specific in-services.

(2) ~~Any direct~~ Direct support staff who supervises other staff must take 12 hours of supervisory training annually that may be included in the hours required per OAC 340:100-3-38.2 ~~this Section~~.

(3) Direct support staff may challenge or test out of required annual recertification when an approved option is available. Training completion hours ~~will be~~ granted equal to the number of hours for the standard recertification class.

(i) **Exceptions.** Exceptions to training requirements per OAC 340:100-3-38.2 ~~this Section~~ may be made by the ~~DDS~~ DDS director or designee.

340:100-3-38.3. Training requirements for staff providing supports in family's or service recipient's home through Community Waiver or Homeward Bound Waiver, other than residential supports

(a) **Applicability.** Oklahoma Administrative Code (OAC) 340:100-3-38.3 sets forth training requirements for provider agency staff, ~~or~~ volunteers, and direct supervisors providing direct supports funded through the Community Waiver or Homeward Bound Waiver in the family's or service recipient's home. Staff providing:

- (1) services through an In-Home Supports Waiver must complete training per OAC 340:100-3-38.5; and
- (2) residential supports per OAC 340:100-5-22.1 must complete training per OAC 340:100-3-38.1.

(b) **New employee training.** No later than 30-~~calendar~~ days following the ~~date of hire~~ date, staff providing direct supports or supervising ~~at any level~~ the delivery of direct supports ~~at any level~~ must complete the online or first available Developmental Disabilities Services Division (~~DDS~~) (~~DDS~~)-approved foundation training course and effective teaching course. The first available class is the first unfilled class held within 60 miles of the staff's work location following the staff's ~~date of hire~~ date.

(c) **First aid and cardio-pulmonary resuscitation (CPR).** ~~All direct~~ Direct support staff must be certified in an approved course of first aid and CPR before providing services alone or with other untrained staff.

- (1) First aid and CPR certification of each staff must occur within 90-~~calendar~~ days following ~~employment~~ the staff's hire date.
- (2) The service recipient's Personal Support Team (Team) may determine, based on the needs of the service recipient, that staff must receive first aid and CPR certification in less than 90-~~calendar~~ days.

(d) **Medication administration training.** Staff must be certified in an approved medication administration course; per OAC 340:100-3-38.10, before administering medication to a service recipient or assisting with a service recipient's medication support plan.

(e) **Individual-specific in-service training.** Individual-specific in-service training is identified for direct support staff in the service recipient's Individual Plan (Plan).

- (1) Training requirements are based on the service recipient's identified needs through team discussion and review of available assessment information.

(2) The service recipient's Team specifies required completion time frames for ~~completion of~~ individual-specific in-service training. ~~If~~ When time frames are not identified in the Plan, required individual-specific in-service training must be completed before working with the service recipient.

(3) As the service recipient's needs require changes in supports or programs, the Team documents in the Plan, or in addenda to the Plan, any new or additional in-service training required, with completion time frames ~~for completion~~.

(4) Individual-specific training is provided by the person or persons designated by the Team and identified by name position in the Plan, ~~in accordance with policy~~ per rule, statute, and professional practice regulations, ~~if~~ when applicable.

(5) The responsible Team member verifies staff has knowledge and skills necessary to provide the identified services. Videos may be used when approved by the Team.

(f) **Job-specific training.** Staff must complete:

- (1) within 90-~~calendar~~ days after ~~date of~~ assignment date, Health course; and
- (2) within six months after ~~date of~~ assignment date:
 - (A) Skill Building course; and
 - (B) Communication course.

(g) **Specialized training.** Additional specialized training may be required for direct support staff working with service recipients who have significant health, physical, or behavior support issues.

(1) Staff supporting a service recipient with a protective intervention ~~plan~~ protocol (PIP) that includes non-restrictive intervention techniques must be trained on these techniques before use.

(2) Completion of an approved behavior support course is required for staff supporting a service recipient with a protective intervention plan PIP that:

- (A) addresses challenging behavior that places the service recipient's physical safety, environment, relationships, or community participation at serious risk; and
- (B) contains one or more of these procedures ~~in (i) through (iv)~~:
 - (i) ~~Physical~~ physical guidance to overcome resistance;
 - (ii) ~~Physical~~ physical guidance to move to safety; ~~or~~
 - (iii) ~~Physical~~ physical hold to restrict movement.
 - (iv) ~~Intensified staffing to ensure safety.~~

(3) The approved behavior support course must be completed before working alone or with other untrained staff, but no later than 60-~~calendar~~ days after starting work with the service recipient.

(4) Staff must complete the approved physical management course before using any technique of physical management identified in a protective intervention plan PIP.

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- (A) All staff must complete foundation training with the approved effective teaching course and behavior support course.
- (B) Staff working with the service recipient implements the positive components of the ~~plan~~PIP, as well as non-intrusive procedures to assist the service recipient during a crisis.
- (C) The ~~protective intervention plan~~PIP must be reviewed by the ~~provider agency Human Rights Committee~~ and approved by the Statewide Human Rights and Behavior Review Committee.
- (D) Training in physical management procedures occurs only within the requirements per ~~OAC 340:100-3-38.3~~(e) this subsection.
- (E) Only staff and staff supervisors who provide support to the service recipient are trained on use of a physical management procedure.
- (F) Staff formally trained to use physical management procedures ~~does~~ not use those techniques with other service recipients, except in emergencies per OAC 340:100-5-57.
- (G) Training curricula regarding behavior support are approved by the ~~DDSD director of DDS~~ human resource development and ~~DDSD director of psychological and behavioral supports~~ director.
- (5) Training regarding physical management procedures must be obtained from trainers approved by the ~~director of DDS~~ human resource development director.
- (6) Staff must complete an annual retraining on the physical management or physical restraint procedures in the approved ~~protective intervention plan~~PIP.
- (h) **Ongoing training.** ~~All direct~~Direct support staff employed by provider agencies ~~complete~~completes eight hours of approved annual training.
- (1) Annual training may come from:
- (A) required re-certification classes in first aid, CPR, and medication administration training;
- (B) courses per OAC 340:100-3-38(b)(1);
- (C) courses, conferences, or workshops approved by the ~~DDSD director of DDS~~ human resource development director;
- (D) individual-specific training; or
- (E) agency-specific in-services.
- (2) ~~Any direct~~Direct support staff who supervises other staff must take 12 hours of supervisory training annually that may be included in the hours required per ~~OAC 340:100-3-38.2~~this Section.
- (3) Direct support staff may challenge or test out of required annual ~~recertifications~~re-certification when an approved option is available. Training completion hours are granted equal to the number of hours for the standard recertification class.
- (i) **Exceptions.** Exceptions to training requirements per ~~OAC 340:100-3-38.2~~this Section may be made by the ~~DDSD~~ DDS director or designee.

340:100-3-38.4. Training requirements for persons providing specialized foster care

- (a) **Applicability.** Oklahoma Administrative Code (OAC) 340:100-3-38.4 sets forth training requirements for persons providing specialized foster care (SFC).
- (b) **Initial training.** Prior to the contractual agreement with the Oklahoma Health Care Authority (OHCA), SFC providers must complete the:
- (1) online or first available Developmental Disabilities Services ~~Division (DDSD)~~(DDS) approved foundation training course and effective teaching course. The first available class is the first unfilled class held within 60 miles of the SFC provider's work location; and
- (2) SFC orientation training as approved by the ~~DDSD~~DDS director of human resource development.
- (c) **First aid and cardio-pulmonary resuscitation (CPR).** Prior to the contractual agreement with OHCA, SFC providers must be certified in an approved course of first aid and CPR.
- (d) **Medication administration training.** Prior to the contractual agreement with OHCA, SFC providers must be certified in an approved medication administration course; per OAC 340:100-3-38.10.
- (e) **Individual-specific in-service training.** Individual-specific in-service training is identified for direct support staff in the service recipient's Individual Plan (Plan).
- (1) Training requirements are based on the service recipient's identified needs through team discussion and review of available assessment information.
- (2) A service recipient's Team specifies required completion time frames ~~for completion~~ of individual-specific in-service training. ~~If~~When time frames are not identified in the Plan, required individual-specific in-service training must be completed before working with the service recipient.
- (3) As the service recipient's needs require changes in supports or programs, the Team documents in the Plan, or in addenda to the Plan, any new or additional in-service training required, with completion time frames ~~for completion~~.
- (4) Individual-specific training is provided by the person or persons designated by the Team and identified by nameposition in the Plan, in accordance with policyrule, statute, and professional practice regulations, ~~if~~when applicable.
- (5) The responsible Team member verifies staff has knowledge and skills necessary to provide the identified services. Videos may be used when approved by the Team.
- (f) **Job-specific training.** SFC providers working in both residential and employment or other settings must meet the job-specific training requirements of both jobs. The SFC provider must complete:
- (1) within 90-calendar days after receipt of the approved OHCA contractual agreement:
- (A) Health course;
- (B) Ethical and Legal Issues course; and
- (2) within six months after receipt of the approved OHCA contractual agreement:

- (A) Communication course;
- (B) Skill Building course;
- (C) Connections course; and
- (D) Nuts and Bolts course.

(g) **Specialized training.** Additional specialized training courses may be required for SFC providers working with service recipients who have significant health, physical, or behavior support issues.

(1) Staff supporting a service recipient with a protective intervention ~~plan~~protocol (PIP) that includes non-restrictive intervention techniques must be trained on these techniques before use.

(2) Completion of an approved behavior support course is required for SFC providers supporting a service recipient with a protective intervention ~~plan~~PIP that:

- (A) addresses challenging behavior that places the service recipient's physical safety, environment, relationships, or community participation at serious risk; and
- (B) contains one or more of these procedures in (i) through (iv):
 - (i) ~~Physical~~physical guidance to overcome resistance;
 - (ii) ~~Physical~~physical guidance to move to safety; or
 - (iii) ~~Physical~~physical hold to restrict movement.
 - (iv) ~~Intensified staffing to ensure safety.~~

(3) The SFC provider must complete the approved:

- (A) behavior support course before working alone or with other untrained staff, but no later than 60-calendar days after starting work with the service recipient; and
- (B) physical management course before using any technique of physical management identified in a ~~protective intervention plan~~PIP.
 - (i) The SFC provider implements the positive components of the ~~plan~~Plan, as well as non-intrusive procedures to assist the person during a crisis.
 - (ii) The ~~protective intervention plan~~PIP must be reviewed by a ~~Human Rights Committee~~ and approved by the Statewide Human Rights and Behavior Review Committee.
 - (iii) Training in physical management procedures occurs only within the requirements of ~~OAC 340:100-3-38.4(e)~~this subsection.
 - (iv) Only SFC providers who provide support to the service recipient are trained on use of a physical management procedure.
 - (v) The SFC provider formally trained to use physical management procedures does not use those techniques with other service recipients, except in emergencies per OAC 340:100-5-57.
 - (vi) Training curricula regarding behavior support are approved by the ~~DDSD director of DDS~~ human resource development and ~~DDSD director of psychological and behavioral supports~~ director.

(4) Training regarding physical management procedures must be obtained from trainers approved by the ~~director of DDS~~ human resource development director.

(5) The SFC provider must complete an annual retraining on the physical management or physical restraint procedures in the approved ~~protective intervention plan~~PIP.

(h) **Ongoing training.** All SFC providers complete 12 hours of approved annual training.

(1) Annual training may come from:

- (A) required re-certification classes in first aid, CPR, and medication administration training;
- (B) courses per OAC 340:100-3-38(b)(1);
- (C) courses, conferences, or workshops approved by the ~~DDSD director of DDS~~ human resource development director;
- (D) individual-specific training; or
- (E) Oklahoma Department of Human Services in-services.

(2) Direct support staff may challenge or test out of required annual recertification when an approved option is available. Training completion hours ~~will be~~ granted equal to the number of hours for the standard recertification class.

(i) **Exceptions.** Exceptions to training requirements per ~~OAC 340:100-3-38.4~~this Section may be made by the ~~DDSD~~ DDS director or designee.

340:100-3-38.5. Training requirements for staff providing supports in family's or service recipient's home through an In-Home Supports Waiver

(a) **Applicability.** Oklahoma Administrative Code (OAC) 340:100-3-38.5 sets forth training requirements for staff providing direct supports funded through an In-Home Supports Waiver (IHSW) in the family's or service recipient's home. Staff providing employment supports must complete training per OAC 340:100-3-38.2.

(b) **New employee training.** No later than 30-calendar days following the ~~date of hire~~ date, staff providing direct supports or supervising at any level the delivery of direct supports must complete the online or first available Developmental Disabilities Services ~~Division (DDSD)~~(DDS)-approved foundation training course and effective teaching course. The supervisory staff training requirement does not apply to the service recipient or representative who is self-directing services per OAC ~~317:40-5-114~~317:40-9-1. The person directing services per OAC ~~317:40-5-114~~317:40-9-1 must complete the approved self-directed services training course. The first available class is the first unfilled class held within 60 miles of staff's work location following staff's ~~date of hire~~ date.

(c) **First aid and cardio-pulmonary resuscitation (CPR).** ~~All direct~~Direct support staff must be certified in an approved course of first aid and CPR before providing services alone or with other untrained staff.

(1) First aid and CPR certification of staff must occur within 90-calendar days following ~~employment~~ the staff's hire date.

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- (2) The service recipient's Personal Support Team (Team) may determine, based on the service recipient's needs, ~~if that~~ staff must receive first aid and CPR certification in less than 90-calendar days.
- (d) **Medication administration training.** Staff must be certified in an approved medication administration course, per OAC 340:100-3-38.10, before administering medication to a service recipient or assisting with a service recipient's medication support plan.
- (e) **Individual-specific in-service training.** Individual-specific in-service training is identified for direct support staff in the service recipient's Individual Plan (Plan).
- (1) Training requirements are based on the service recipient's identified needs through team discussion and review of available assessment information.
- (2) The service recipient's Team specifies required completion time frames for ~~completion~~ of individual-specific in-service training. ~~If~~When time frames are not identified in the Plan, required individual-specific in-service training must be completed before working with the service recipient.
- (3) As the service recipient's needs require changes in supports or programs, the Team documents in the Plan, or in addenda to the Plan, any new or additional in-service training required, with completion time frames for ~~completion~~.
- (4) The Team identifies the person responsible for providing individual-specific training and verifies staff has knowledge and skills necessary to provide the identified services. Videos may be used when approved by the Team.
- (f) **Job-specific training.** Staff must complete:
- (1) within 90-calendar days after ~~date of~~ assignment date, Health course; and
- (2) within six months after ~~date of~~ assignment date:
- (A) Communication course; and
- (B) Skill Building course.
- (g) **Specialized training.** Additional specialized training courses may be required for direct support staff working with service recipients who have significant health, physical or behavior support issues.
- (1) Staff supporting a service recipient with a protective intervention ~~plan~~protocol (PIP) that includes non-restrictive intervention techniques must be trained on these techniques before use.
- (2) Completion of an approved behavior support course is required for staff supporting a service recipient with a ~~protective intervention plan~~PIP that:
- (A) addresses challenging behavior that places the service recipient's physical safety, environment, relationships, or community participation at serious risk; and
- (B) contains one or more of these procedures:
- (i) physical guidance to overcome resistance;
- (ii) physical guidance to move to safety; or
- (iii) physical hold to restrict movement; ~~or~~
- (iv) ~~intensified staffing to ensure safety.~~
- (3) The approved behavior support course must be completed before working alone or with other untrained staff, but no later than 60-calendar days after starting work with the service recipient.
- (4) Staff must complete the approved physical management course before using any technique of physical management identified in a ~~protective intervention plan~~PIP.
- (A) All staff must complete foundation training with the approved effective teaching course and behavior support course.
- (B) Staff working with the service recipient implements the positive components of the ~~plan~~Plan, as well as non-intrusive procedures to assist the service recipient during a crisis.
- (C) The ~~protective intervention plan~~PIP must be reviewed by the ~~provider agency, Human Rights Committee,~~ and approved by the Statewide Human Rights and Behavior Review Committee.
- (D) Training in physical management procedures occurs only within the requirements per OAC 340:100-3-38.5~~(e)~~this subsection.
- (E) Only staff and staff supervisors ~~who provide~~providing support to the service recipient are trained on use of a physical management procedure.
- (F) Staff formally trained to use physical management procedures ~~do~~does not use those techniques with other service recipients, except in emergencies per OAC 340:100-5-57.
- (G) Training curricula regarding behavior support are approved by the ~~DDSD director of DDS human resource development director and DDSD director of psychological and behavioral supports director.~~
- (5) Training regarding physical management procedures must be obtained from trainers approved by the ~~director of DDS human resource development director.~~
- (6) Staff must complete annual retraining on the physical management or physical restraint procedures in the approved ~~protective intervention plan~~PIP.
- (h) **Ongoing training.** ~~All direct~~Direct support staff employed by ~~contract~~approved provider agencies that provide services funded through an IHSW complete 12 hours of annual training.
- (1) Annual training may come from:
- (A) required re-certification classes in first aid, CPR, and medication administration training;
- (B) courses per OAC 340:100-3-38(b)(1);
- (C) courses, conferences, or workshops approved by the ~~DDSD director of DDS human resource development director;~~
- (D) individual-specific training; or
- (E) agency-specific in-services.
- (2) Direct support staff may challenge or test out of required annual recertification when an approved option is available. Training completion hours ~~will be~~are granted equal to the number of hours for the standard recertification class.
- (i) **Certification of competency.** ~~If~~When the service recipient, if applicable, legal guardian, or parent(s) of a minor

service recipient determines the person chosen to provide services ~~has~~ demonstrated competency in providing care to the service recipient, the service recipient, legal guardian, or parent(s) may exempt the person from training requirements, per ~~OAC 340:100-3-38.5~~ this Section, by signing Form 06IS037E, In-Home Supports Waiver - Certificate of Competency.

(1) The exemption from training is intended to allow ~~services to be provided by~~ a friend, neighbor, family member, or other person who has been trained and deemed competent by the service recipient, or if applicable, legal guardian or parent(s) of a minor service recipient to provide services.

(A) No person may coerce or in any way influence a service recipient, legal guardian, or family member to sign Form 06IS037E.

(B) Violation of this prohibition may result in sanctions per OAC 340:100-3-27.

(2) ~~If~~ When a service recipient, if applicable, legal guardian, or parent(s) of a minor service recipient chooses to exempt staff from training, neither the Oklahoma Department of Human Services (~~OKDHS~~) (DHS) nor the employing contract agency is liable in the event of harm, attributable to lack of training, to the service recipient while in the care of contract agency staff.

(3) ~~If~~ When an adult service recipient without a legal guardian chooses to exempt staff from training, training requirements are not waived without written concurrence, on Form 06IS038E, In-Home Supports Waiver - Family Member's Statement, from a parent(s) or family member closest to the service recipient.

(4) The provider agency employing the staff may require training not included in the exemption.

(5) All staff, regardless of signed Form 06IS037E, must successfully complete:

(A) certification in first aid and CPR before working alone or with untrained staff, but no later than 90-calendar days after starting work with the service recipient;

(B) an approved medication administration course per OAC 340:100-3-38.10; and

(C) individual-specific in-service training per ~~OAC 340:100-3-38.5~~ (e) of this Section.

(6) Form 06IS037E:

(A) is valid for no longer than one year from the signature date; and

(B) may be withdrawn at any time by the service recipient, if applicable, legal guardian, or parent(s) of a minor service recipient by writing to the ~~DDSD~~ DDS case manager and provider agency.

(7) ~~OKDHS~~ DHS may withdraw the exemption from training at any time.

(j) **Exceptions.** Exceptions to training requirements per ~~OAC 340:100-3-38.5~~ this Section may be made by the ~~DDSD~~ DDS director or designee.

340:100-3-38.10. Medication administration training

(a) **General requirements.** Staff must be certified in a medication administration-training course approved by the

Developmental Disabilities Services ~~Division (DDSD)~~ (DDS) human resource development director before administering medication(s) to a person receiving services or assisting with a person's medication support plan.

(1) The ~~DDSD~~ DDS human resource development director may approve medication administration certification from another state when supplied with a copy of an acceptable course curriculum.

(2) A licensed nurse who maintains a current, unrestricted license is exempt from the training requirements of this paragraph.

(A) Licensed practical nurses (LPNs) and registered nurses (RNs) may administer medications in accordance with ~~their~~ training.

(B) The employer must maintain a copy of the nurse's license in the nurse's personnel file or make the license available for review.

(3) Certification or re-certification to administer medications is valid for ~~one year~~ two-calendar years from the date of issuance, as long as the person administered medications as a paid, certified staff within the two-calendar year period.

(A) ~~If~~ When a person allows his or her medication administration certification to expire, he or she cannot administer medication(s) or assist with a medication support plan. ~~If~~ When the person's certification ~~has been~~ was expired for less than 60-calendar days, the person's certification is renewed by taking the one-day update training.

(B) ~~If~~ When the person's medication administration certification ~~has been~~ was expired for 60-calendar days or more, the person does not administer medication(s) or assist with a medication support plan and must complete an approved initial medication administration class.

(4) All provider agencies must:

(A) establish written ~~policies~~ rules that ~~assure~~ ensure compliance with ~~the rules in~~ this Section and with applicable federal and state laws;

(B) provide documentation that staff ~~have been~~ were given an in-service training in agency-specific practices, including, but not limited to, medication storage requirements, documentation forms, and procedures for a medication event, per Oklahoma Administrative Code (OAC) 340:100-3-34; and

(C) maintain a copy of each employee's current certification in his or her personnel file.

(b) **Medication administration training provided by provider agencies.** ~~DDSD~~ DDS provider agencies may conduct medication administration training under the conditions listed in this subsection.

(1) Any provider agency ~~wishing~~ planning to conduct medication administration training or re-certification classes must submit the prospective trainer's credentials to the ~~DDSD~~ DDS human resource development director for approval. The provider agency is responsible for ensuring ~~that~~ the instructor adheres to the rules in this Section.

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- (A) The prospective instructor must be an RN or LPN working under the supervision of an RN.
- (i) The nurse's license must be current and active through the Oklahoma State Board of Nursing.
- (ii) Any exception to the requirement that the instructor be an RN or LPN must be approved in writing by the ~~DDSD~~ human resource development director ~~and the DDSD director of nursing.~~
- (B) Potential instructors with other types of medical experience or licensure may seek approval to teach medication administration training classes by submitting credentials to the ~~DDSD~~ human resource development director.
- (C) Each instructor must request and receive approval every two years to teach medication administration training.
- (2) The ~~DDSD program manager for health and professional services and~~ ~~DDSD~~ human resource development director must approve or deny the agency's request in writing. A letter designating approval of an instructor to conduct medication administration training must be maintained in the instructor's personnel file at the agency.
- (3) Approved instructors only use ~~only~~ course materials approved by the ~~DDSD~~ human resource development director.
- (4) Each participant in an initial medication training course receives an approved training manual.
- (5) Each agency approved to provide medication administration training must implement an internal monitoring system, ~~subject to DDSD-DDS random review,~~ to review and document the consistency of the training and use of the approved curriculum that is subject to DDS random review.
- (6) All medication administration training must be conducted according to the specific requirements of the course, the rules in this Section, and ~~DDSD~~ training rules per OAC 340:100-3-38.
- (7) Instructors provide ~~Certificate Number C-0226, Certificate of Medication Administration Training, signed verification of completion for each participant~~ based on the competency criteria provided in this paragraph.
- (A) Each person must satisfactorily complete the course with a minimum passing score of 85 percent for each test or subtest. ~~If~~ When a person does not achieve a score of at least 85 percent after taking the exam two times, he or she must repeat the class.
- (B) The instructor is responsible for administering a written test to each participant and directly observing test completion.
- (8) The agency providing the training maintains documentation of completed medication administration training. Documentation must include the:
- (A) name of the agency providing the training;
- (B) name(s) of the instructor(s);
- (C) name of the training, include whether it is an initial medication administration training or update training;

- (D) training date(s);
- (E) participant names;
- (F) agency name employing each participant; and
- (G) each participant's pass or fail status.
- (9) The ~~DDSD~~ human resource development director may revoke an instructor's approval to provide medication training for violating rules in this Section.

340:100-3-38.12. Training requirements for direct support staff providing respite, homemaker, or homemaker respite services

- (a) **Applicability.** Oklahoma Administrative Code (OAC) 340:100-3-38.12 sets forth training requirements for ~~direct support staff, or provider agency~~ volunteers, and direct supervisors providing only respite, homemaker, or homemaker respite services through the Community Waiver, an In-Home Supports Waiver (IHSW), or Homeward Bound Waiver in the family's or service recipient's home or in any community setting as specified per the service recipient's Individual Plan (Plan).
- (1) ~~If~~ When Form 06IS037E, In-Home Supports Waiver - Certificate of Competency, is in place for IHSW participants per OAC 340:100-3-38.5, staff does not have to meet ~~the~~ this Section's requirements of ~~OAC 340:100-3-38.12.~~
- (2) Direct support staff providing services beyond respite, homemaker, or homemaker respite services completes training appropriate to staff jobs per OAC 340:100-3-38.
- (b) **New employee training.** No later than 30-calendar days following the ~~date of hire date,~~ staff providing direct supports or supervising ~~at any level~~ the delivery of direct supports at any level must complete the online or first available Developmental Disabilities Services ~~Division (DDSD)~~ (DDS)-approved foundation training course and effective teaching course. The first available class is the first unfilled class held within 60 miles of the staff's work location following the staff's ~~date of hire date.~~
- (c) **First aid and cardio-pulmonary resuscitation (CPR).** ~~All direct~~ Direct support staff must be currently certified in an approved course of first aid and CPR before providing services alone or with other untrained staff.
- (1) First aid and CPR certification of each staff must occur within 90-calendar days following ~~employment the~~ staff's hire date.
- (2) The service recipient's Personal Support Team (Team) may determine, based on the service recipient's needs, that staff must receive first aid and CPR certification in less than 90-calendar days.
- (d) **Medication administration training.** Staff must be certified in an approved medication administration course, per OAC 340:100-3-38.10, before administering medication to a service recipient or assisting with a service recipient's medication support plan.
- (e) **Individual-specific in-service training.** Individual-specific in-service training is identified for direct support staff in the service recipient's Individual Plan (Plan).
- (1) Training requirements are based on the service recipient's identified needs through team discussion and review of available assessment information.

(2) A service recipient's Team specifies required time frames for ~~completion~~ of individual-specific in-service training completion. ~~If~~When time frames are not identified in the Plan, required individual-specific in-service training must be completed before working with the service recipient.

(3) As the service recipient's needs require changes in supports or programs, the Team documents in the Plan, or in addenda to the Plan, any new or additional in-service training required, with completion time frames ~~for completion~~.

(4) Individual-specific training is provided by the person or persons designated by the Team and identified by name/position in the Plan, ~~in accordance with policy~~per rules, statute, and professional practice regulations, ~~if~~when applicable.

(5) The responsible Team member verifies staff has knowledge and skills necessary to provide the identified services. Videos may be used when approved by the Team.

(f) **Ongoing training.** ~~All direct~~Direct support staff employed by provider agencies ~~complete~~completes eight hours of approved annual training.

- (1) Annual training may come from:
 - (A) required re-certification classes in first aid, CPR, and medication administration training;
 - (B) courses per OAC 340:100-3-38(b)(1);
 - (C) courses, conferences, or workshops approved by the ~~DDSD~~director of DDS human resource development director;
 - (D) individual-specific training; or
 - (E) agency-specific in-services.

(2) Direct support staff may challenge or test out of required annual recertification when an approved option is available. Training completion hours are granted equal to the number of hours for the standard recertification class.

(g) **Exceptions.** Exceptions to training requirements per OAC ~~340:100-3-38.12~~this Section may be made by the ~~DDSD~~DDS director or designee.

340:100-3-38.13. Training requirements for staff providing supports in alternative group homes

(a) **Applicability.** Oklahoma Administrative Code (OAC) 340:100-3-38.13 sets forth training requirements for staff, ~~or~~ volunteers, and direct supervisors providing direct supports for a service recipient in an alternative group home per OAC 340:100-5-22.6.

(b) **New employee training.** No later than 30-calendar days following the hire date ~~of hire~~, staff providing direct supports or supervising ~~at any level~~ the delivery of direct supports at any level must complete the online or first available Developmental Disabilities Services ~~Division (DDSD)~~DDS-approved foundation training course and effective teaching course. The first available class is the first unfilled class held within 60 miles of the staff's work location following the staff's date of hire ~~date~~.

(c) **First aid and cardio-pulmonary resuscitation (CPR).** ~~All direct~~Direct support staff must be certified in an approved

course of first aid and CPR before providing services alone or with other untrained staff.

(1) First aid and CPR certification of each staff must occur within 90-calendar days following employment ~~the~~the staff's hire date.

(2) The service recipient's Personal Support Team (Team) may determine, based on the service recipient's needs, that staff must receive first aid and CPR certification in less than 90-calendar days.

(d) **Medication administration training.** Staff must be certified in an approved medication administration course, per OAC 340:100-3-38.10, before administering medication to a service recipient or assisting with a service recipient's medication support plan.

(e) **Individual-specific in-service training.** Individual-specific in-service training is identified for direct support staff in the service recipient's Individual Plan (Plan).

(1) Training requirements are based on the service recipient's identified needs through ~~team~~Team discussion and review of available assessment information.

(2) A service recipient's Team specifies required completion time frames for ~~completion~~ of individual-specific in-service training. ~~If~~When time frames are not identified in the Plan, required individual-specific in-service training must be completed before working with the service recipient.

(3) As the service recipient's needs require changes in supports or programs, the Team documents in the Plan, or in addenda to the Plan, any new or additional in-service training required, with completion time frames ~~for completion~~.

(4) Individual-specific training is provided by the person or persons designated by the Team and identified by name/position in the Plan ~~in accordance with policy~~per rule, statute, and professional practice regulations, ~~if~~when applicable.

(5) The responsible Team member verifies staff has knowledge and skills necessary to provide the identified services. Videos may be used when approved by the Team.

(f) **Job-specific training.**

(1) Staff must complete:

- (A) within 90-calendar days after assignment ~~date~~date of assignment:

- (i) Health course; and
- (ii) Ethical and Legal Issues course; and

(B) within six months after date of assignment:

- (i) Communication course; and
- (ii) Skill Building course.

(2) Staff ~~working~~who work in both residential and employment or other settings must meet job-specific training requirements of both jobs. Transfers to avoid ~~completion~~ of required training completion are prohibited.

(g) **Specialized training.** Additional specialized training is required for each direct services~~support~~ staff working with service recipients in ~~the~~an alternative group home.

(1) Staff supporting a service recipient with a protective intervention ~~plan~~protocol (PIP) that includes

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non-restrictive intervention techniques must be trained on these techniques before use.

(2) Completion of an approved behavior support course is required for staff supporting a service recipient with a ~~protective intervention plan~~ PIP that:

(A) addresses challenging behavior that places the service recipient's physical safety, environment, relationships, or community participation at serious risk; and

(B) contains one or more of these procedures in (i) through (iv):

(i) ~~Physical~~ physical guidance to overcome resistance;

(ii) ~~Physical~~ physical guidance to move to safety; or

(iii) ~~Physical~~ physical hold to restrict movement.

~~(iv) Intensified staffing to ensure safety.~~

(3) Staff must complete the approved:

(A) behavior support course before working alone or with other untrained staff, but no later than 60-calendar days after starting work with the service recipient; and

(B) physical management course before using any technique of physical management ~~contained in~~ identified in a protective intervention plan the PIP.

(i) Staff working with the service recipient implements the positive components of the plan Plan, as well as non-intrusive procedures to assist the service recipient during a crisis prior to using physical management techniques.

(ii) Only staff and staff supervisors providing support to the service recipient are trained on the use of a physical management procedure.

(iii) Training curricula regarding behavior support are approved by the ~~DDSD director of~~ DDS human resource development ~~and DDSD director of~~ psychological and behavioral supports director.

(4) Training regarding physical management procedures must be obtained from ~~DDSD~~ DDS trainers approved by the ~~director of~~ DDS human resource development director.

(5) Staff must complete:

(A) an annual retraining on the physical management or physical restraint procedures in the approved protective intervention plan; and

(B) the ~~DDSD~~ DDS approved orientation specific to community protection issues within 60-calendar days of starting work with the service recipient.

(h) **Ongoing training.** ~~All direct~~ Direct support staff employed by provider agencies complete 12 hours of approved annual training.

(1) Annual training may come from:

(A) required re-certification classes in first aid, CPR, and medication administration training;

(B) courses per OAC 340:100-3-38(b)(1);

(C) courses, conferences, or workshops approved by the ~~DDSD director of~~ DDS human resource development director;

(D) individual-specific training; or

(E) agency-specific in-services.

(2) ~~Any direct~~ Direct support staff supervising other staff must take 12 hours of supervisory training annually that may be included in the hours required per ~~OAC 340:100-3-38.13~~ this Section.

(3) Direct support staff may challenge or test out of required annual recertification when an approved option is available. Training completion hours are granted equal to the number of hours for the standard recertification class.

(i) **Exceptions.** Exceptions to training requirements per ~~OAC 340:100-3-38.13~~ this Section may be made by the ~~DDSD~~ DDS director or designee.

SUBCHAPTER 5. CLIENT SERVICES

PART 3. SERVICE PROVISIONS

340:100-5-22.1. Community residential supports

(a) **Applicability.** Community residential supports are funded through contracts with the Oklahoma Department of Human Services (~~OKDHS~~) DHS, Oklahoma Health Care Authority (OHCA), or both, and must meet standards per ~~OAC 340:100-5-22.1~~ this Section.

(1) A service recipient is considered receiving community residential supports when the service recipient receives:

(A) daily living supports (DLS), per Oklahoma Administrative Code (OAC) 317:40-5-150;

(B) Prader-Willi Syndrome services;

(C) agency companion services (ACS), per Part 1 of OAC 317:40-5; or

(D) specialized foster care (SFC), per Part 5 of OAC 317:40-5.

(2) ~~OAC 340:100-5-22.1~~ This Section does not apply to:

(A) group home services, per OAC 340:100-6; or

(B) services provided to service recipients who receive assisted living services, per OAC 340:100-5-22.2.

(b) **General information.**

(1) Services for children are provided in family settings unless approved by the Developmental Disabilities Services ~~Division (DDSD)~~ DDS Community Services Unit programs administrator or designee.

(2) In addition to OAC 340:100-5-50 through 340:100-5-58, the ~~DDSD~~ DDS case manager ensures each Personal Support Team (Team) assesses and addresses the service recipient's needs regarding:

(A) safety in the home, including:

(i) storage of toxic chemicals, cleaning supplies, and combustibles; and

- (ii) use of a tempering valve or other anti-scald device or lowered, hot water tank temperature to control water temperature;
 - (B) financial issues in addition to OAC 340:100-3-4, including:
 - (i) a household budget that provides adequate resources for housing, food, clothing, furnishings, personal supplies, and recreational opportunities; and
 - (ii) assistance needed by the service recipient in money management;
 - (C) selection, adaptation, and maintenance of a home;
 - (D) community inclusion and access to work, recreation, and therapies;
 - (E) transportation; and
 - (F) water safety.
- (3) Each service recipient is responsible for his or her room and board expenses, including recreational activities, clothing, furnishings, food, and other expenses for services or supports not funded through ~~OKDHS~~ DHS, except as:
- (A) provided to members of the Homeward Bound class; or
 - (B) approved in emergency circumstances per OAC 340:100-3-33 or 340:100-5-3.
- (c) **Homes.** Community residential supports are provided in the service recipient's home. The provider agency ensures:
- (1) the home and yard are clean, well-maintained, safe, ~~free from hazards~~ hazard free, and adapted to the service recipient's needs;
 - (2) the home has:
 - (A) utility service and adequate heating, cooling, and plumbing;
 - (B) safety items in operating condition located in strategic locations in the home, such as a:
 - (i) flashlight;
 - (ii) smoke detector;
 - (iii) carbon monoxide detector;
 - (iv) first aid kit;
 - (v) fire extinguisher; and
 - (vi) a tempering valve or other anti-scald device, when determined by the Team necessary to ensure the service recipient's safety;
 - (C) phone service ~~that~~ is available and accessible to the service recipient. Emergency numbers are available at each phone, including:
 - (i) ~~DDS~~ the DDS toll-free number;
 - (ii) the fire, police, ambulance, hospital, and poison control, ~~if~~ when not in a 911 area;
 - (iii) a physician name and number; and
 - (iv) a nursing agency number, ~~if~~ when applicable;
 - (D) at least two means of exit;
 - (E) a bedroom of at least 80 square feet for each service recipient living in the home. ~~if~~ When a service recipient shares a bedroom with another individual, the bedroom must have 120 square feet or more;
 - (F) adequate enclosed storage space available for personal items;
 - (G) laundry equipment, ~~if~~ when in the home, located in a safe, well ventilated, and clean area, with dryers vented to the outside;
 - (H) an address ~~that is~~ clearly visible from the street;
 - (I) a bathroom that:
 - (i) includes a:
 - (I) flush toilet;
 - (II) fixed basin; and
 - (III) shower or bath tub that meets the service recipient's needs;
 - (ii) is in proper working order;
 - (iii) provides privacy;
 - (iv) is adapted ~~if~~ when needed; and
 - (v) provides hot and cold running water; and
 - (J) a kitchen and equipment to store, prepare, and serve food in a sanitary manner;
 - (3) dangerous or deadly weapons are not permitted in the home, except as provided in OAC 317:40-5-40. Provider agency staff is prohibited from assisting any service recipient to obtain or possess dangerous or deadly weapons. Dangerous or deadly weapons include, but are not limited to:
 - (A) guns, BB guns, air rifles, or other firearms;
 - (B) crossbows;
 - (C) paint guns;
 - (D) arrows;
 - (E) explosives;
 - (F) stun guns; and
 - (G) knives, except cooking and eating utensils; and
 - (4) illegal substances are not permitted in the home.
- (d) **Pre-service requirements.** The ~~DDS~~ DDS case manager and service recipient, or, ~~if~~ when applicable, legal guardian, complete and approve steps ~~in~~ (1) through (3) when community residential supports are initiated, when the service recipient changes provider agencies, and before the service recipient moves to a new home. The documentation of such is maintained in the home record and the case manager record.
- (1) Prior to service delivery, the provider completes an emergency housing back-up plan for review and approval by the service recipient's Team per OAC 340:100-5-52.
 - (A) The back-up plan contains the:
 - (i) service recipient's name;
 - (ii) description of the living arrangement;
 - (iii) name and phone number for back-up staff;
 - (iv) back-up housing location;
 - (v) written agreement by the:
 - (I) service recipient or legal guardian;
 - (II) direct provider of service, ~~if~~ when an ACS or SFC provider;
 - (III) agency program coordination staff (PCS), as applicable;
 - (IV) provider agency administrative representative, as applicable; and
 - (V) ~~DDS~~ DDS case manager;
 - (vi) dates for provider review of back-up plan, required quarterly and as changes occur; and

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- (vii) review date by ~~DDSD~~the DDS case manager.
 - (B) When the location for the back-up plan is a hotel or motel, the provider agency is responsible for including a plan to pay the cost without additional reimbursement from ~~OKDHS~~DHS.
 - (C) ~~OKDHS~~DHS must complete a home profile on a private home prior to the Team's identification of the home in the back-up plan or use of the home to provide back-up services to the service recipient. A home profile is not required ~~if~~when the service recipient stays in the private home of a relative, per ~~OAC 340:100-5-22.1(f)(4)(A) of this Section.~~
 - (D) The ACS or SFC provider is responsible for re-establishing a residence ~~if~~when his or her home becomes uninhabitable.
- (2) The provider agency cooperates with the service recipient and Team to establish and maintain a household budget based on the service recipient's earned and un-earned income.
- (A) Expenses associated with supporting the household are maintained in an auditable fashion sufficient to track the use of money collected from the service recipient by the contract provider.
 - (B) Upon request, the contract provider furnishes to the service recipient, service recipient's family, and legal guardian:
 - (i) a record of all funds collected from the service recipient;
 - (ii) documentation of how the money was used; and
 - (iii) the amount of remaining money held by the provider.
 - (C) Upon termination of residential supports from the contract provider, unused funds are returned to the service recipient within ~~ten~~10-calendar days of service termination date.
- (3) Form 06CB034E, Residential Pre-Service Checklist, is completed; and ~~all requirements of OAC 340:100-5-22.1~~this Section's requirements are satisfied.
- (e) **Service requirements.**
- (1) Unless the service recipient demonstrates the ability under varying conditions to independently and appropriately respond to emergency situations, the provider agency assists in conducting fire drills at least quarterly and weather emergency drills ~~two times annually~~twice a year. The dates, times, and outcomes of the drills are available in the home for review.
 - (2) The provider:
 - (A) ensures all ~~requested~~ financial information necessary for maintaining the service recipient's financial eligibility is provided to ~~OKDHS~~DHS in a timely manner;
 - (B) when serving as payee, ensures the service recipient maintains financial eligibility for benefits and services by notifying appropriate authorities of a change in the service recipient's income;
- (C) when a change of payee is necessary, cooperates to ensure the change is made in a timely manner;
 - (D) establishes a written financial agreement with the service recipient or legal guardian that defines financial responsibilities of ~~the provider's and service recipient's financial responsibilities of the agency and service recipient.~~ The financial agreement:
 - (i) accurately reflects the ongoing financial arrangement between the provider and service recipient;
 - (ii) clearly defines who purchases personal items;
 - (iii) is renewed annually and when changes occur; and
 - (iv) is available to the service recipient, legal guardian, Office of Client Advocacy (~~OCA~~)-advocate, and ~~DDSD~~DDS case manager;
 - (E) as a member of the service recipient's Team, assists in determining safeguards necessary to protect the service recipient's assets;
 - (F) allows service recipients to select stores for the purchase of food, clothing, and personal items;
 - (G) implements the service recipient's Individual Plan (Plan);
 - (H) provides necessary assistance, including staff support for each service recipient's active participation in community life;
 - (I) assists the service recipient in maintaining an adequate supply of seasonal clothing that fits appropriately, personal grooming materials, and linens. All items are maintained in good condition;
 - (J) promotes the service recipient's health and welfare, including providing meals that meet the service recipient's nutritional needs;
 - (K) promotes visitation and contact with each service recipient's natural family, legal guardian, and friends, according to the service recipient's desires;
 - (L) promotes friendships with neighbors, co-workers, and peers, according to the service recipient's desires;
 - (M) when the service recipient, legal guardian, or provider ~~wishes~~wants to discontinue services, cooperates in securing alternative services and continues to serve the service recipient until the Team confirms all essential services are in place;
 - (N) while providing services, ensures staff is engaged at all times in purposeful activity that directly or indirectly benefits the service recipient;
 - (O) ensures the service recipient attends scheduled medical and therapy appointments.
 - (i) Transportation to the appointment is provided.
 - (ii) Adequate records, needed materials, and equipment accompany the service recipient to the appointment.
 - (iii) ~~If~~When the service recipient requires support in describing illness, issues, or concerns to the

- ~~practitioner~~ health care provider, knowledgeable staff accompanies the service recipient;
- (P) ensures the service recipient's prescriptions are filled and administered as prescribed, per OAC 340:100-5-32;
- (Q) ensures the Plan in a positive manner addresses ~~in a positive manner any~~ issues related to maintaining the home per ~~OAC 340:100-5-22-1(c) of this Section~~;
- (R) ensures the service recipient has transportation to programs and services.
- (i) Transportation is provided to and from:
 - (I) medical or therapy appointments;
 - (II) personal shopping;
 - (III) leisure or recreational activities;
 - (IV) vocational or employment activities;
 - (V) religious or cultural activities;
 - (VI) Team meetings;
 - (VII) appointments necessary to secure or maintain needed services; and
 - (VIII) voting.
 - (ii) All vehicles used to transport the service recipient meet local and state ~~requirements~~ for licensing, inspection, insurance, and capacity requirements.
 - (iii) A vehicle used to transport a service recipient with physical disabilities is adapted to meet the service recipient's needs.
 - (iv) Drivers of vehicles have valid and appropriate driver licenses.
- (S) ensures ~~that~~ the hot water temperature for the home is set to no more than 120 degrees Fahrenheit. The provider tests the hot water temperature of the home at least annually, after any servicing of the home's water system, and any time the water temperature is believed to have increased above 120 degrees Fahrenheit. The provider ~~will maintain~~ maintains test documentation of ~~tests performed~~, and ~~this~~ the documentation ~~will~~ at minimum include ~~includes~~ the ~~test date of the test and the temperature of the home's hot water temperature~~. The documentation is maintained in the home and available for inspection. The provisions within this paragraph will henceforth be known as the Julie Teenor Anti-Scald Protocol; and
- (T) ensures reasonable precautions are employed for safety with hot food, cooking oils, and other hot liquids.
- (f) **Provider agency policies, practices, and procedures.** The provider agency develops and maintains written policies and procedures that are consistent with ~~OKDHS~~ DHS rules and govern all aspects of service provision.
- (1) Provider agency policies are made available to each service recipient, the service recipient's parent(s), legal guardian, or advocate, provider agency staff, and ~~OKDHS~~ DHS.
 - (2) Provider agency policies and procedures include, but are not limited to:
 - (A) service recipient rights protection;
 - (B) services provided;
 - (C) admission and discharge criteria;
 - (D) grievance procedures;
 - (E) prevention and reporting of abuse, neglect, and/or exploitation;
 - (F) confidentiality;
 - (G) emergency management;
 - (H) fees paid by service recipient;
 - (I) health and safety precautions; and
 - (J) safeguarding service recipient funds.
- (3) The provider agency designates one person who, in the absence of the agency administrator, is responsible for the administration of the agency and is empowered to act on behalf of the provider agency.
- (4) The provider agency is responsible for recruitment, screening, training, and supervision of staff or volunteers providing direct services, ensuring direct support staff:
 - (A) is not supervised by a relative or person living in the staff's home. A relative includes wife, husband, children, parents, stepparents, parents-in-law, grandchildren, grandparents, brothers, sisters, stepchildren, brothers-in-law, sisters-in-law, sons-in-law, daughters-in-law, aunts, uncles, nieces, nephews, first cousins or any such person with whom the employee shares a foster relationship;
 - (B) who provides back-up services is available and has received training per OAC 340:100-3-38;
 - (C) is at least 18 years of age;
 - (D) is present in sufficient numbers to ensure the service recipient's health, and welfare, as authorized by the service recipient's Plan of Care;
 - (E) is physically able and mentally alert to carry out the job duties of ~~the job~~;
 - (F) implements and follows the service recipient's Plan;
 - (G) does not take the service recipient to visit staff's home unless the Team has provided prior written approval; and
 - (H) must meet requirements of OAC 317:40-5-40 when overnight visits are going to occur.
- (5) The provider agency ensures the Program Coordinator Staff (PCS) supervises, guides, and oversees all aspects of programming associated with receipt of community residential supports.
- (A) The PCS must:
 - (i) get to know the service recipient and his or her needs;
 - (ii) make announced and unannounced visits to the service recipient's home. The PCS makes a minimum of three face-to-face visits per month, to monitor the service recipient's needs of ~~the service recipient~~ and for staff supervision of ~~staff~~. Agency administration staff ~~who meet the requirements of meeting~~ (f)(5)(A)(xii) requirements of this Section, may complete these visits in addition to program coordination staff. At least two of the three visits must be unannounced. Of the unannounced visits:

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- (I) at least one visit each month must occur on Saturday or Sunday; or
 - (II) between 8:00 p.m. and 7:00 a.m. on a weekday;
 - (iii) Monthly visits may be reduced to one unannounced face-to-face visit to the service recipient's home when the home:
 - (I) has fully trained staff;
 - (II) has had no turn-over for the past year;
 - (III) does not require restrictive or intrusive procedures; and
 - (IV) has had no medication errors during the previous calendar year.
 - (iv) provide support and assistance to any service recipient who is experiencing an emotional, behavioral, or medical crisis;
 - (v) be accessible to direct service staff 24 hours per day and available to respond, in person ~~if~~when necessary, to an emergency;
 - (vi) supervise direct contact staff to promote achievement of outcomes in the Plan;
 - (vii) ensure staffing levels meet the requirements of the service recipient's Plan, with staff trained in accordance with per OAC 340:100-3-38;
 - (viii) ensure records are maintained according to ~~DDSDDS~~ community records per OAC 340:100-3-40;
 - (ix) ensure basic household requirements are always in place, including:
 - (I) utilities and phone service;
 - (II) furniture;
 - (III) food supplies that meet the service recipient's nutritional needs;
 - (IV) linens;
 - (V) personal items;
 - (VI) adaptive equipment; and
 - (VII) prescription medications;
 - (x) assist the ~~DDSDDS~~ case manager as requested to prepare for and implement the Plan and its revisions per OAC 340:100-5-50 through 340:100-5-58;
 - (xi) ensure applicable ~~OKDHS~~DHS and OHCA rules are followed;
 - (xii) complete necessary training per OAC 340:100-3-38; and
 - (xiii) have a minimum of four years of any combination of college level education or full-time equivalent experience in serving persons with disabilities, or full-time equivalent experience in a supervisory position, unless this requirement is waived in writing by the ~~DDSDDS~~ director or designee.
- (B) Provider agencies ensure that residential PCS caseloads do not exceed ~~20—27~~ with the following calculations:
- (i) calculate one for persons receiving community residential supports and group home services; and
 - (ii) calculate one for every ~~three~~five persons receiving In-home Supports Waiver services, assisted living services, or any other non-residential service on the PCS caseload.
- (C) Provider agencies providing community residential supports for less than one calendar year ensure the caseload of each PCS numbers no more than 15 service recipients when the PCS serves service recipients receiving community residential supports.
- (D) The ~~DDSDDS~~ director may grant a written exception to the PCS ratios per ~~OAC 340:100-5-22.1~~this Section upon written request and adequate justification from the provider.
- (E) Provider agencies who fail to meet program coordination requirements per ~~OAC 340:100-5-22.1~~(f) this subsection may be required to provide a reduced PCS ratio in accordance with sanctions per OAC 340:100-3-27.
- (6) Staff, who assist a service recipient with bathing or showering, must ensure the water temperature is safe and comfortable for the service recipient. The requirements of this paragraph are enforced even when an anti-scald device is used. ~~The staff~~Staff:
- (A) tests the water temperature by touch or with a thermometer designed to test hot liquids, before the service recipient enters the water. The water must be determined safe and comfortable for the service recipient, not merely comfortable for the staff;
 - (B) is trained by his or her employer in the unique needs of each service recipient including tolerance to water temperature and bathing or showering needs; and
 - (C) does not leave a service recipient who is unable to attend to safety considerations alone in the bath or shower.

340:100-5-22.6. Alternative group homes

(a) **Legal basis.** Authority to operate alternative group homes is based on the Group Homes for Persons with Developmental or Physical Disabilities Act per Section 1430.1 through 1430.41 of Title 10 of the Oklahoma Statutes. Administrative and program requirements for alternative group homes are described in Oklahoma Administrative Code (OAC) 317:40-5-152, and ~~OAC 340:100-5-22.6~~this Section, and OAC 340:100-6.

(b) **General information.** Alternative group homes:

- (1) serve up to four service recipients who ~~have~~ have:
 - (A) have serious behavioral or emotional challenges or community protection issues in addition to ~~mental retardation~~intellectual disabilities and require continuous supervision and assistance to remain in the community; or
 - (B) ~~been~~were charged with a felony, determined by the district court as incompetent to stand trial due to intellectual disability formerly known as mental retardation and dangerous, and placed by the district court in the custody of the public guardian; and

(2) provide ~~more restrictive measures than other community residential settings to ensure the safety of the service recipient and others~~ for the development of skills to assist service recipients to lead healthy, independent, and productive lives to the fullest extent possible.

(c) **Provider approval criteria.** In addition to ~~requirements of~~ requirements of OAC 340:100-6-12 requirements, prospective providers of alternative group home services must demonstrate a history of effective services and supports to persons with serious behavioral or emotional challenges or community protection issues. Provider approval requires review of historical information, ~~if/when~~ available, from Developmental Disabilities Services Division ~~(DDSD)(DDS)~~ Quality Assurance Unit and area office. The location of the alternative group home must be approved in writing by the ~~DDSD~~ DDS director or designee prior to the implementation of services. Each prospective provider submits written documentation of:

- (1) a history of services to persons who present serious behavioral or emotional challenges or community protection issues, including:
 - (A) past experience;
 - (B) number of persons served;
 - (C) provider's perspective on the greatest challenges in serving persons eligible for alternative group home services; and
 - (D) provider's philosophy for service provision;
- (2) financial viability through fiscal information when requested, including the anticipated budget related to the rate for alternative group home services;
- (3) service provision plans, including:
 - (A) anticipated number of homes;
 - (B) location;
 - (C) floor plans;
 - (D) gender to be served;
 - (E) population to be served; and
 - (F) availability of psychological, psychiatric, and vocational services in the proposed location;
- (4) plans for staffing and program coordination; and
- (5) staff qualifications, including any additional training to be provided.

(d) **Eligibility to receive services.** To be eligible for services in an alternative group home, the person must:

- (1) be in ~~public guardian~~ the custody of the public guardian per Section 1175.6b or 1175.6b.A of Title 22 of the Oklahoma Statutes (22 O.S. § 1175.6b or 1175.6c); or
- (2) meet the criteria for an intermediate care facility for the mentally retarded (ICF/MR) individuals with intellectual disabilities (ICF/IID) level of care; and
 - (A) require 24-hour, on-site, awake staff supervision to ensure safety; and
 - (B) be found by the ~~DDSD Community Services programs administrator~~ DDS director or designee to have serious behavioral or emotional challenges or community protection issues, such as:
 - (i) evidence of commitment of a sexually violent offense, sexually predatory act, or crime of sexual violence including, but not limited to:
 - (I) rape;

(II) lewd or indecent acts or proposals made to a child, per ~~Section 1123 of Title 21 of the Oklahoma Statutes~~ (21 O.S. § 1123); or
 (III) forcible sodomy, per ~~Section 888 of Title 21 of the Oklahoma Statutes~~ (21 O.S. § 888);

- (ii) history of stalking or opportunistic behavior that demonstrates a likelihood to commit a sexually violent or predatory act;
- (iii) documented pattern of acts of violence toward others;
- (iv) experience ongoing, highly disruptive behavioral episodes that:
 - (I) are dangerous per ~~Section 1175.1 of Title 22 of the Oklahoma Statutes~~ (22 O.S. § 1175.1); and
 - (II) require close supervision and frequent intervention by staff;
- (v) evidence of commitment of one or more violent offenses, such as:
 - (I) murder or manslaughter;
 - (II) attempted murder;
 - (III) arson;
 - (IV) assault;
 - (V) kidnapping; or
 - (VI) use of a weapon to commit a crime; or
- (vi) severe ongoing self-injurious behavior.

(e) **Services provided.** Services provided are designed to assist service recipients in acquiring, retaining, and improving self-help, socialization, and adaptive skills necessary to reside successfully in a home and community-based setting.

- (1) Services include supports to meet each service recipient's needs including, but not limited to:
 - (A) residential habilitation, such as assistance with the acquisition, retention, or improvement of skills related to activities of daily living, such as:
 - (i) personal grooming and cleanliness;
 - (ii) bed-making and household chores;
 - (iii) eating and food preparation; and
 - (iv) social and adaptive skills necessary to enable the service recipient to reside in a shared home;
 - (B) program supervision and oversight including 24-hour availability of response staff to meet schedules or unpredictable needs in a way that promotes maximum dignity and independence, while providing for supervision and safety. In addition to requirements in OAC 340:100-6-55, program coordination staff (PCS) must:
 - (i) serve no more than ~~42~~ 18 service recipients;
 - (ii) ensure staffing levels meet ~~the requirements of OAC 340:100-5-22.6(e)(1)(H) of this subsection requirements~~; and
 - (iii) ensure records are maintained per OAC 340:100-3-40;
 - (C) implementation of community protection precautions and individual program plans per ~~OAC 340:100-5-22.6(f) of this Section~~;

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- (D) recreational and leisure activities, including individual and group activities;
- (E) assistance in money management;
- (F) health care services provided per OAC 340:100-5-26 and OAC 340:100-5-26.3;
- (G) medication administration per OAC 340:100-5-32; and
- (H) management of staffing levels that provides supervision to ensure the safety of the service recipient, community, staff, ~~and~~ other service recipients, and implementation of each service recipient's Individual Plan (Plan).
- (i) An average of 14 hours of staffing per service recipient must be provided per billable day prior to filing a claim for habilitation training staff authorized per OAC 317:40-5-152.
- (I) At least two awake-staff must be on duty during daytime and evening hours when service recipients are in the home.
- (II) This requirement may be reduced to one awake-staff, when there are only one or two service recipients in the home.
- (ii) Sufficient daytime staffing must be provided to:
- (I) ensure adequate supervision in the home and community; and
- (II) implement the Plan, except during the time the service recipient is in an authorized employment, vocational, or day services program that ~~provide~~provides the needed supervision, security, and support identified in the Plan. ~~All staff are~~ Staff is trained per OAC 340:100-3-38.
- (iii) At least one awake-staff must be on duty during hours when service recipients are asleep.
- (I) The agency must have a provision to immediately provide additional staff in the home should the need arise.
- (II) Staff on duty must be physically able and mentally alert to carry out the duties of the job.
- (iv) The provider must:
- (I) have staff available to provide necessary support and supervision when the service recipient needs to return from employment or other day services;
- (II) provide activity options and supervision during all times when the service recipient is not participating in authorized employment activities; and
- (III) ensure effective transition and coordination of supervision between alternative group home and employment programs or other authorized absences from the alternative group home program.
- (2) In addition to the services in ~~OAC 340:100-5-22-6(e)~~ (1) of this subsection, services for wards of the public guardian are designed to ensure the service recipient is not dangerous to self or others.
- (f) **Alternative group home program requirements.** In addition to compliance with applicable Oklahoma Department of Human Services (~~OKDHS~~)(DHS) and Oklahoma Health Care Authority (OHCA) rules, the provider ensures:
- (1) staff implements security precautions protecting the service recipient, neighbors, children, vulnerable adults ~~who are vulnerable~~, animals, and others;
- (2) staff implements outcomes and action steps detailed in the Plan to assist service recipients to function safely in the community and avoid criminal activity;
- (3) collaboration and coordination occur with ~~DDSD~~DDS staff, employment providers, therapists, and other entities and persons, such as law enforcement, corrections officers, schools, employers, mental health workers, and, when appropriate, the public guardian;
- (4) written agency policies comply with ~~OKDHS~~DHS and OHCA rules;
- (5) effective security and supervision of service recipients in the residence and community are provided;
- (6) contingency plans are developed and implemented for:
- (A) emergency relocation of a service recipient who ~~has~~ created a danger or who is in danger;
- (B) emergency staffing in the event changes are required to protect staff or others;
- (C) general emergencies requiring evacuation of the entire home, such as fire or weather emergencies, per OAC 340:100-6-45; and
- (D) elopement;
- (7) legal and court requirements are followed, including adherence to Oklahoma laws governing registered sexual offenders;
- (8) the health care coordinator (HCC) or other knowledgeable staff accompanies the service recipient to each medical or psychiatric appointment, taking current data summaries that indicate the rate of occurrence of medication-responsive symptoms or behaviors over the last one to three months. For visits to the physician prescribing psychotropic medication, the ~~summary covers symptoms or behaviors listed on Form 06HM067E, Semi-annual Psychotropic Medication Review~~HCC presents Form 06HM073E, Referral Form for Psychiatric Treatment or Examination, per OAC 340:100-5-26;
- (9) specific offense patterns are considered and addressed when determining appropriate program locations; and
- (10) ~~cabinets are locked if they contain any knives or other sharp objects that may be used as weapons or any items specifically identified by the Team as dangerous;~~any modifications to the Plan including restrictive or intrusive procedures is supported by a specific, assessed need, and justified in the person-centered plan per OAC 317:40-1-3(b). When the Team determines restrictive or intrusive procedures are essential for safety, the Team must develop a protective intervention protocol per OAC 340:100-5-57.

- (11) ~~staff provides arm's length supervision to each service recipient when outside the home unless another supervision pattern is specifically described in the Plan approved by designated DDS State Office staff;~~
 - (12) ~~door and window alarms are used;~~
 - (13) ~~the yard is fenced with a locked gate, unless the requirement for a locked gate is waived in writing by the DDS director or designee; and~~
 - (14) ~~other necessary restrictive procedures as detailed in the Plan are implemented, that may include:~~
 - (A) ~~restricted views from or into windows, doors, and other openings;~~
 - (B) ~~restricted access to certain areas;~~
 - (C) ~~for wards of the public guardian, restrictions deemed necessary to maintain the safety of the service recipient and public; and~~
 - (D) ~~room and personal searches.~~
- (g) **Weapons.** Dangerous or deadly weapons are not permitted in the alternative group home or on the premises. Providers are prohibited from assisting any service recipient to obtain or possess dangerous or deadly weapons including, but not limited to:
- (1) guns, BB guns, air rifles, or other firearms;
 - (2) crossbows;
 - (3) paint guns;
 - (4) arrows;
 - (5) explosives;
 - (6) stun guns; and
 - (7) knives, except cooking and eating utensils.
- (h) **Substances and items prohibited in alternative group homes are:**
- (1) illegal substances; and
 - (2) alcohol; and
 - (3) ~~cell phones, except for staff who have written authorization from the program coordinator.~~
- (i) **SoonerCare eligibility.** The service recipient and guardian, with necessary support from the provider, establish and maintain SoonerCare eligibility, if when possible.
- (j) **Natural supports.** Persons who agree to provide natural supports to a service recipient living in an alternative group home must:
- (1) work with the Team to develop a schedule, support strategies, and agreement for support. Each Plan contains a description of any natural support ~~to be~~ provided that ensures the safety and welfare of the service recipient and community. No arrangement ~~can be~~ made for natural supports that violate existing court orders, security arrangements, or the Plan;
 - (2) keep commitments made, regarding supports; and
 - (3) document or report to the program coordinator or ~~DDS~~ DDS case manager regarding supports provided.
- (k) **Refusal to participate.** if when a service recipient or guardian refuses to participate in service delivery as described in the Plan:
- (1) the provider:
 - (A) continues to implement the Plan as written; and
 - (B) immediately notifies the ~~DDS~~ DDS case manager of the need for a Team meeting;
 - (2) the ~~DDS~~ DDS case manager takes immediate action to convene the Team to address the situation; and
 - (3) steps in OAC 340:100-3-11 are followed.
- (l) **Record keeping.** In addition to requirements of OAC 340:100-3-40, records of service recipients must include documentation of:
- (1) ~~documentation of the registration of the service recipient~~ recipient's registration with appropriate law enforcement authorities, if when required, and documentation of subsequent registration notification to ~~DDS~~ DDS of registration;
 - (2) ~~documentation of all agreements or plans with other agencies or persons who support the service recipient, including the guardian and family members, that specifies requirements for supervision of the service recipient~~ recipient's supervision requirements when staff is not present; and
 - (3) ~~documentation of any refusal by the service recipient to follow conditions of the Plan, Protective Intervention Plan~~ protective intervention protocols, or treatment recommendations of treatment professionals; and
 - (4) ~~Form 06CB055E, Monthly Summary of Restrictive/Intrusive Procedure Usage, per OAC 340:100-5-57.1.~~
- (m) **Training.** Staff or volunteers, and their supervisors providing direct supports for service recipients in an alternative group home are required to complete ~~the~~ necessary training requirements per OAC 340:100-3-38.13.
- (n) **Transportation.** Providers of alternative group home services must ensure transportation is:
- (1) available as needed for medical emergencies, appointments, day programs, and community activities per OAC 317:40-5-103; and
 - (2) supervised per ~~OAC 340:100-5-22.6~~ this Section in accordance with each service recipient's needs.
- (o) **Transition.** Teams plan for ~~transition of a~~ service recipient's transition to appropriate services when it is determined the alternative group home program is no longer necessary.
- (1) Within three months of the service recipient's admission to an alternative group home, the Team develops reasonable criteria for the service recipient's ~~move~~ transition to a less restrictive environment that are:
 - (A) included in a written plan submitted to designated ~~DDS~~ DDS State Office staff; and
 - (B) reviewed at least annually by the Team.
 - (2) All transitions from alternative group homes must be approved by designated ~~DDS~~ DDS State Office staff. DDS State Office Residential Unit staff may adjust the transition date if when necessary.
- (p) **~~DDS~~ DDS-initiated transition.** ~~DDS Community Services programs administrator~~ The DDS director or designee may initiate the transition process for a person receiving alternative group home services who can be effectively served in another residential environment.
- 340:100-5-36. Community maintenance services**
- (a) **Supplemental property replacement.** When funding is available, a maximum of \$300 per service recipient per fiscal

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year is reimbursed for replacement of unusable, necessary furniture or appliances. Necessary furniture and appliances include refrigerators, stoves, washers, dryers, dining tables and chairs, sofas, love seats, chairs and recliners, beds, dressers, or chests of drawers. The Oklahoma Department of Human Services (DHS) provides a payment to the contracted residential provider agency to establish and maintain community households per Section 331 of Title 61 of the Oklahoma Statutes (61 O.S. § 331). To be eligible the service recipient must receive community residential supports services per Oklahoma Administrative Code 340:100-5-22.1.

(1) The provider agency submits a written property replacement request to the case manager that includes:

(A) the furniture or appliance to be purchased;

(B) the reason the item is necessary;

(C) the age of the furniture or appliance to be replaced; and

(D) verification that other resources are not available to purchase the item.

(2) The case manager reviews the written request, submits it to the area manager or designee within five-business days of receipt from the provider agency, and includes a statement of the need for the furniture or appliance.

(3) The area manager or designee reviews the written request and when the request meets the criteria in this Section, submits it to the DDS director or designee within five-business days of receipt from the case manager.

(4) The DDS director or designee reviews and responds to the request within five-business days of receipt from the area manager or designee after considering if:

(A) funding is available;

(B) the request includes the required information;

(C) the case manager assessment indicates need;

(D) the household unnecessarily disposed of usable items that may have otherwise met the need for which the payment is requested;

(E) other resources are available to provide the necessary item; and

(F) items less than five years old can feasibly be repaired.

(5) No reimbursement for replacement of worn out furniture may occur during the first year of service.

(b) **Goods and services.** When funding is available, DHS provides a payment to the contracted residential provider agency to purchase necessary goods and services to establish and maintain community households per 61 O.S. § 331. Goods and services are incidental, non-routine goods and services that promote the service recipients' health, safety, self-care, and daily living skills needed to reside successfully in the community, and do not duplicate other services authorized in the member's plan of care.

SUBCHAPTER 6. GROUP HOME REGULATIONS

PART 11. PROGRAM STANDARDS

340:100-6-55. Staffing requirements

Group homes must employ sufficient staff who are appropriately qualified and trained to provide the essential services of the home.

(1) **Sufficient staff.** The provider agency designates one person who, in the absence of the agency administrator, is responsible for the administration of the agency and is empowered to act on behalf of the provider agency.

(A) There must be at least one designated person in charge of the home and its operation available for each home when service recipients are present. Staff support and supervision must be provided as needed for each service recipient in the home. Staff must be physically able and mentally alert to carry out the duties of the job.

(B) In addition to direct support staff, each service recipient in a group home must have a staff person who serves as program coordinator. In addition to duties required by Oklahoma Administrative Code (OAC) 340:100-5-52, program coordination staff must:

(i) get to know the service recipient and the service recipient's needs;

(ii) make announced and unannounced visits to the group home that include a minimum of three monitoring visits per month, to monitor the service recipient's needs of the service recipients and the staff's need for supervision of staff. The visits ~~should~~ occur at times when it would reasonably be anticipated that the majority of the residents are home. Agency administration staff meeting the requirements of this Section may complete these visits in addition to program coordination staff. At least two of the visits must be unannounced, unless the:

(I) home has fully trained staff;

(II) home ~~has had~~ no turn-over for the past year;

(III) ~~the~~ service recipients do not require restrictive or intrusive procedures; and

(IV) there ~~have been were~~ no medication errors for the previous year, in which case the unannounced visits may be reduced to one per month. Of the unannounced visits, at least one visit must occur each month on Saturday or Sunday or between 8:00 p.m. and 7:00 a.m. on a weekday;

(iii) provide support and assistance to any service recipient who is experiencing an emotional, behavioral, or medical crisis;

(iv) be accessible to direct support staff 24 hours per day and available to respond, in person when necessary, to an emergency;

(v) supervise direct support staff to promote achievement of outcomes in the service recipient's Individual Plan (Plan);

- (vi) ensure staffing levels meet the requirements of the service recipient's Plan, with staff trained per OAC 340:100-3-38;
- (vii) ensure each service recipient's needs are always met, including, but not limited to:
 - (I) utilities and phone service;
 - (II) furniture;
 - (III) food supplies that meet the service recipient's nutritional needs;
 - (IV) linens;
 - (V) personal items;
 - (VI) adaptive equipment; and
 - (VII) prescription medications;
- (viii) assist the Developmental Disabilities Services (DDS) case manager as requested to prepare for and implement the service recipient's Plan and its revisions per OAC 340:100-5-50 through 340:100-5-58;
- (ix) ensure Oklahoma Department of Human Services and Oklahoma Health Care Authority rules are followed; and
- (x) complete necessary training per OAC 340:100-3-38.

~~(C) All group home providers must have a signed, written agreement with a registered nurse to:~~

- ~~(i) act as a consultant;~~
- ~~(ii) review medication issues and administration quarterly, or more often when required; and~~
- ~~(iii) provide technical assistance upon request. Documentation of the use of the nurse consultant must be maintained by the group home provider.~~

~~(D) Service recipients do not supervise other service recipients.~~

(2) Staff qualifications.

- (A) The group home has an administrator and program coordinator who must:
- (i) be at least 21 years of age; and
 - (ii) have a minimum of four years of any combination of college level course work or full-time equivalent experience in serving persons with disabilities or full-time equivalent experience in a supervisory position, unless this requirement is waived in writing by the DDS director or designee. Both roles may be filled by the same person.

(B) All other staff must be at least 18 years of age.

(C) The provider agency is responsible for recruitment, screening, training, and supervision of staff or volunteers providing direct services, ensuring direct support staff is not supervised by a relative or person living in the staff's home. A relative includes a wife, husband, child, parent, stepparent, parent-in-law, grandchild, grandparent, brother, sister, stepchild, brother-in-law, sister-in-law, son-in-law, daughter-in-law, aunt, uncle, niece, nephew, first cousin, or any such person with whom the employee shares a foster relationship.

(D) The provider agency must comply with OAC 340:100-3-39 regarding pre-employment screening for community services workers.

(3) **Staff training.** To ensure all providers achieve and maintain a level of competency necessary to meet the needs of each service recipient in the group home, provider agency staff must complete training per OAC 340:100-3-38.

PART 19. INVOLUNTARY TRANSFER OR DISCHARGE OF SERVICE RECIPIENT

340:100-6-85. Transfer or discharge

(a) A group home provider must not involuntarily transfer or discharge a service recipient residing in a group home except for:

- (1) medical reasons;
- (2) the service recipient's safety or the safety of other residents;
- (3) violations of the agreement between the service recipient and group home provider; or
- (4) nonpayment for the service recipient's stay unless limited by the federal Social Security Act.

(b) Involuntary transfer or discharge of a service recipient for violations of the agreement must be subject to:

- (1) review of the agreement and notification to the service recipient of specific violations;
- (2) discharge only after all appropriate attempts are made to resolve any violations. Attempts must be documented in the service recipient's record; and
- ~~(3) review of all proposed discharges by the group home Human Rights Committee prior to discharge to determine compliance with due process requirements.~~

(c) When a service recipient changes provider agencies, only the out-going provider agency claims for services provided on the day the service recipient moves.

PART 21. RESIDENT RIGHTS AND RESPONSIBILITIES

340:100-6-95. Resident rights and responsibilities

(a) Each resident is responsible for making a room and board payment to the group home provider in accordance with the financial agreement.

(b) Unless otherwise indicated in the resident's Individual Plan, each resident is responsible for participation in meaningful activities, including employment, vocational training, or adult day services that occur outside the group home for a minimum of five hours per weekday.

~~(c) Each resident is represented by a Human Rights Committee per OAC 340:100-3-6.~~

~~(d) A statement of rights and responsibilities, developed by each group home, including, but not limited to, each resident's right to:~~

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- (1) civil and religious liberties, including the right to independent personal decisions and knowledge of available choices; that must not be infringed. The provider must encourage and assist in the exercise of these rights;
- (2) private communications and consultations with the resident's physician or attorney or any other person of the resident's choice; including sending and promptly receiving unopened personal mail;
- (3) without fear of reprisal, present grievances, and join with other residents or persons within or outside of the group home to work for improvements in resident care;
- (4) manage his or her financial affairs, unless the resident delegates the responsibility in writing, to the provider. The resident must have at least a quarterly accounting of any personal financial transactions undertaken on the resident's behalf by the group home provider during any period of time the resident delegates such responsibilities to the provider;
- (5) receive adequate and appropriate medical care consistent with established and recognized medical practice standards within the community. Each resident:
 - (A) must be fully informed by the attending physician of his or her medical condition and proposed treatment in terms and language the resident can understand; and
 - (B) has the right to refuse medication and treatment after being fully informed of, and understanding the consequences of such actions;
- (6) respect and privacy in the resident's medical care program;
 - (A) Discussion, consultation, examination, and treatment must remain confidential and be conducted discreetly.
 - (B) Personal and medical records must be confidential;
- (7) retain and use personal clothing and possessions, unless prohibited by law, and security in the storage and use of such clothing and possessions;
- (8) be treated courteously and respectfully;
- (9) be free from mental and physical abuse, and free from physical and chemical restraints, except for those physical and chemical restraints authorized in writing by a physician health care professional, per Oklahoma Department of Human Services (OKDHS) rules, for a specified period of time;
- (10) receive a statement of the group home provider guidelines and an explanation of the resident's responsibility to comply with all reasonable group home regulations of the group home and to respect the other resident's personal rights and private property of the other residents;
- (11) receive a statement, if when adjudicated incapacitated, stating the rights and responsibilities provided in OAC 340:100-6-95 per this Section must be exercised by a court-appointed guardian;
- (12) privacy for conjugal visits. A resident may share a room with a spouse, if when the spouse resides in the same group home;
- (13) all rights specified in OAC 340:100-3-1.2; and

- (14) not perform services for a group home provider, except for normal, shared household tasks.
- (e) Upon admission of a resident and at least annually thereafter, or upon request, each resident and resident's advocate or legal guardian must be provided a copy of:
 - (1) the resident's rights; and
 - (2) procedures for grievances and appeal, per OAC 340:2-3-54.
- (f) The rights enumerated in OAC 340:100-6-95 this Section may be limited for residents of an alternative group home.

[OAR Docket #17-495; filed 6-23-17]

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

[OAR Docket #17-496]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 11. State Long-Term Care Ombudsman Program
Part 37. Statewide Long-Term Care Ombudsman Program
340:105-11-231 through 340:105-11-233 [AMENDED]
340:105-11-233.1 [NEW]
340:105-11-234 [AMENDED]
340:105-11-234.1 through 340:105-11-234.2 [NEW]
340:105-11-235 [AMENDED]
340:105-11-235.1 [NEW]
340:105-11-236 through 340:105-11-237 [AMENDED]
340:105-11-237.1 through 340:105-11-237.2 [NEW]
340:105-11-238 through 340:105-11-240 [AMENDED]
340:105-11-242 through 340:105-11-243 [AMENDED]
340:105-11-243.1 [NEW]
340:105-11-245 [AMENDED]
340:105-11-248 [AMENDED]
340:105-11-251 through 340:105-11-252 [AMENDED]
340:105-11-254 [REVOKED]
340:105-11-255 [AMENDED]

(Reference WF 17-01)

AUTHORITY:

Director of Human Services, Section 162 of Title 56 of the Oklahoma Statutes (56 O.S. § 162); Section 1681b of Title 15 of the United States Code (15 U.S.C. § 1681b); 18 U.S.C. § 228; 28 U.S.C. § 1738B; 31 U.S.C. § 3716; 42 U.S.C., Chapter 7, Subchapter IV, Part D; 50A U.S.C. §§ 501 through 596; Sections 285.1 and 285.3 of Title 31 of the Code of Federal Regulations (31 C.F.R. §§ 285.1 and 285.3); 45 C.F.R., Subtitle B, Chapter III; 3A O.S. § 724.1; 10 O.S. § 83; 10A O.S. §§ 1-4-702, 7700-307, 7700-308, and 7700-312; 12 O.S. §§ 719 through 726, 842, 1171.2, and 2005; 21 O.S. §§ 566, 566.1, 567, and 852; 24 O.S. §§ 112 through 123; 36 O.S. §§ 6058A and 6059A; 43 O.S. §§ 112, 112A, 112.1A, 118 through 118I, 118.2, 119, 120, 135, 137, 139, 139.1, 140, 413, 601-100 through 601-901; 47 O.S. §§ 1-153, 6-201, 6-201.1, 6-211, and 6-212; 56 O.S. §§ 183, 230.50, and 231 through 240.23; Title 58; Title 62; 63 O.S. §§ 1-311 and 1-311.3; 68 O.S. §§ 205.2 and 205.3; 70 O.S. § 11-103; Internal Revenue Service Publication 1075; Executive Order 13019; and Section 6305 of the Internal Revenue Code of 1954.

Chapter 75 Subchapter 8: 10A O.S. §§ 1-1-105, 1-2-101, 1-6-102, 1-7-105, and 1-9-119; and HB 1078 and SB 763.

Chapter 75 Subchapter 11: 10A O.S. §§ 1-2-101, 1-3-102, 1-6-107, 1-7-103, 1-7-105, and 1-9-110; 70 O.S. § 1-113; and HBs 1078 and 1273.

Chapter 75 Subchapter 13: 10A O.S. § 1-4-203.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

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Approved by Governor's declaration on June 13, 2017

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June 13, 2017

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September 15, 2017

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The proposed amendments to Chapter 105 Subchapter 11 amend the rules to: (1) achieve substantial compliance with 42 Code of Federal Regulations Part §1324.1 through §1324.2; and (2) make non-substantive housekeeping changes to improve the rule clarity.

CONTACT PERSON:

Dena Thayer, Programs Administrator, Legal Services - Policy, Oklahoma Department of Human Services, PO Box 25352, Oklahoma City, Oklahoma 73125, 405-521-4326.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2017:

SUBCHAPTER 11. STATE LONG-TERM CARE OMBUDSMAN PROGRAM

PART 37. STATEWIDE LONG-TERM CARE OMBUDSMAN PROGRAM

340:105-11-231. Definitions

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

"Assistant Secretary" means the Assistant Secretary for Aging; the administrative head of the Administration on Aging of the United States Department of Health and Human Services.

"Business day" means a consecutive eight-hour period of time when the Office of the State Long-Term Care Ombudsman (Office) is open for business.

"Certification" means the official designation of a volunteer representative of the Office of the State Long-Term Care Ombudsman.

"Confidential information" means all information which that relates to specific individuals who live in long-term care facilities, complainants, and other informants including, but not limited to, names, other identifying information, and all problem and complaint documentation.

"Deputy state long-term care ombudsman" or "deputy ombudsman" an individual employed by the Office to assist

with management and operations and supervised by the State Long-Term Care Ombudsman (Ombudsman).

"Designated entity" means an agency, not-for profit business, or organization that the Ombudsman has designated in writing to host Office representatives.

"Designation" means the appointment of an agency, an individual, or both, as the official Office representative of the Office of the State Long-Term Care Ombudsman (Office), according to the policies of the Office.

"Immediate family" means a member of the household or a relative with whom there is a close personal or significant financial relationship.

"Leave of absence" means an ombudsman volunteer's excused absence from official duties of an ombudsman volunteer, not to exceed three months.

"Long-term care facility" means any nursing facility, specialized facility, residential care home, or assisted living center as defined by Oklahoma State Statute in this definition per Sections 1-820, 1-890.2, and 1-1902 of Title 63 of the Oklahoma Statutes (O.S. 63 §§ 1-820, 1-890.2, and 1-1902).

(A) **"Nursing facility"** means a home, an establishment, or an institution a distinct part thereof which is primarily engaged in providing:

- (i) skilled nursing care and related services for residents who require medical or nursing care;
- (ii) rehabilitation services for the rehabilitation of injured, disabled, or sick persons; or
- (iii) on a regular basis, health-related care and services to individuals who because of their mental or physical condition conditions require care and services beyond the level of care provided by a residential care home which can be made available to them only through a nursing facility per 63 O.S. § 1-1902(9). [63 O.S. § 1-1902(9)]

(B) **"Residential care home"** means any establishment or institution other than an adult companion home, a group home, hotel, motel, fraternity or sorority house, or college or university dormitory which that offers, provides, or supports residential accommodations, food service, and supportive assistance to any of its residents; or houses any resident requiring supportive assistance who are is not related to the owner or administrator of the home by blood or marriage. The residents shall resident must be ambulatory and essentially capable of participating in their his or her own activities of daily living, shall and not routinely require requiring nursing services per 63 O.S. § 1-820.12. [63 O.S. § 1-820.12]

(C) **"Specialized facility"** means any home, establishment, or institution which that offers or provides inpatient long-term care services on a 24-hour basis to a limited category of persons requiring such services; including, but not limited to, a facility providing health or habilitation services for persons who have mental retardation are living with intellectual or developmental disabilities per 63 O.S. § 1-1902(11). [63 O.S. § 1-1902(11)]

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(D) **"Assisted living center"** means any home or establishment offering, coordinating, or providing services to two or more persons who:

- (i) are domiciled therein;
- (ii) are unrelated to the operator;
- (iii) by choice or ~~because of~~ functional impairments, need assistance with personal care or nursing supervision;
- (iv) may need intermittent or unscheduled nursing care;
- (v) may need medication assistance; and/or
- (vi) may need assistance with transfer, ambulation, or both per 63 O.S. § 1-890.2. ~~63 O.S. § 1-890.1.1]~~

"Long-term care ombudsman" means a person who receives and resolves complaints made by or on behalf of ~~elder~~ residents of long-term care facilities; and ~~who has been~~ trained and designated as an official representative ~~of~~ by the Office of the State Long-Term Care Ombudsman.

"Office of the State Long-Term Care Ombudsman (Office)" referred to hereinafter as the "Office" means the office created within the Oklahoma Department of Human Services (DHS) which carries out the Long-Term Care Ombudsman Program per the Older Americans Act (OAA) of 1965, as Amended, and per federal regulations under the auspices and general direction of the state long-term care ombudsman; ~~carries out the Long-Term Care Ombudsman Program in accordance with the Older Americans Act (OAA) of 1965, as amended, and in accordance with federal regulations.~~

"Planning and Service Area (PSA)" means a geographic area specified by ~~the State Agency under~~ DHS per Section 305(a)(1)(E) of the Older Americans Act (OAA) of 1965, as Amended for purposes of planning for and serving the needs of individuals ~~aged 60 years of age and above.~~

"Representative" means ~~the state long-term care ombudsman and any state, area, or local long-term care ombudsman designated by the state long-term care ombudsman, whether paid or unpaid~~ the employee or volunteer designated by the Ombudsman to fulfill duties per Oklahoma Administrative Code (OAC) 340:105-11-234, whether personnel supervision is provided by the Ombudsman or designees or by an agency hosting a local ombudsman entity designated by the Ombudsman per OAC 340:105-11-234.

"Resident representative" means:

(A) an individual chosen by the resident to act on his or her behalf in order to support the resident in decision-making; accessing the resident's:

- (i) medical, social, or other personal information;
- (ii) managing financial matters; or
- (iii) receiving notifications;

(B) a person authorized by state or federal law including, but not limited to, agents under power of attorney, representative payees, and other fiduciaries to act on the resident's behalf in order to support him or her in:

- (i) decision-making;

(ii) accessing the resident's medical, social, or other personal information; and/or

(iii) managing financial matters; or receiving notifications;

(C) a legal representative as used in Section 712 of the OAA; or

(D) the resident's court-appointed guardian or conservator. This definition is not intended to expand the authority of any resident representative beyond that specifically authorized by the resident, state or federal law, or a court of competent jurisdiction.

"State long-term care ombudsman" or "Ombudsman" means the individual ~~employed by the Department of Human Services to be the chief administrative officer of the Office of the State Long-Term Care Ombudsman~~ who heads the Office and is personally responsible or responsible through Office representatives to fulfill the functions, responsibilities, and duties per OAC 340:105-11-232 and 340:105-11-233.

"State Long-Term Care Ombudsman Program" or "Program" means the program carried out and consisting of the Ombudsman, Office, and Office representatives.

"Willful interference" means actions or inactions taken by an individual in an attempt to intentionally prevent, interfere with, or attempt to impede the Ombudsman or Office representative from performing any program functions or responsibilities per O.S. 63 § 1-2215 or duties per OAC 340:105-11.

340:105-11-232. Duties and Oklahoma Department of Human Services (DHS) Office of the State Long-Term Care Ombudsman responsibilities of the State Agency

(a) ~~The State Agency~~ DHS Office of the State Long-Term Care Ombudsman (Office) establishes and operates a statewide Long-Term Care Ombudsman Program consistent with ~~the requirements of the Older Americans Act and the Oklahoma Long-Term Care Ombudsman Act requirements. The State Agency, through~~ DHS provides monitoring including, but not limited to, fiscal monitoring where the Office and/or local ombudsman entity is organizationally located within, under contract, or by other arrangement. DHS monitors and ensures the State Long-Term Care Ombudsman (Ombudsman) is the head of a unified statewide State Long-Term Care Ombudsman Program (Program). With DHS assistance, the Office of the State Long-Term Care Ombudsman (Office):

(1) identifies, investigates, and resolves complaints made by, or on behalf of, residents of long-term care facilities that relate to action, inaction, or decisions of providers, or representatives of providers of long-term care services provider representatives, public agencies, or health and social services agencies that may adversely affect the health, safety, welfare, or residents' rights of the residents, including the welfare and rights of residents with respect to the appointment and activities of guardians and representative payees;

(2) informs residents about obtaining services provided by the Program;

(3) ensures residents have regular and timely access to the services provided through the Program;

(4) ensures residents and complainants receive timely responses from Office representatives on information and complaint requests;

(5) represents residents' interests before governmental agencies;

(6) ensures individual residents have access to and can pursue, as the Ombudsman determines necessary and consistent with resident interests, administrative, legal, and other remedies to protect the resident's health, safety, and welfare;

(7) provides administrative and technical assistance to Office representatives and agencies hosting local ombudsman entities;

(8) analyzes, comments on, and monitors the development and implementation of federal, state, and local laws, regulations, and other governmental policies and actions that pertain to the health, safety, welfare, and resident's rights with respect to long-term care facilities and services in the state, and recommends any changes in such laws, regulations, and policies deemed by the Office to be appropriate; The Office:

(A) recommends changes in such laws, regulations, policies, and actions as appropriate;

(B) facilitates public comment on the laws, regulations, policies, and actions; and

(C) provides leadership to statewide systems advocacy efforts on behalf of long-term care facility residents including coordination of systems advocacy efforts carried out by Office representatives;

(9) provides information to public and private agencies, legislators, the media, and others, as deemed necessary by the Office, regarding the problems and concerns of individuals residing in long-term care facilities including recommendations related to such problems and concerns, of older individuals residing in long-term care facilities. Such determinations and positions are those of the Office and do not necessarily represent DHS determinations or positions;

(10) when carrying out systems advocacy efforts on behalf of long-term care facility residents and pursuant to the receipt of grant funds under the Older Americans Act, the provision of information, recommendations of changes in law to legislators, and recommendations of changes in regulations and policies to government agencies by the Ombudsman or Office representatives does not constitute lobbying activities per Part 93 of Title 45 of the Code of Federal Regulations;

(11) coordinates with and promotes the development of citizen organizations consistent with the residents' interests;

(12) promotes and provides technical support for the development of ongoing support requested by residents and family councils to protect the residents' well-being and rights;

(13) provides training for staff and volunteers and promotes the development of citizen organizations to participate in the Ombudsman Program;

(14) carries out other activities consistent with the requirements of this Part which the Assistant Secretary for Aging determines appropriate;

(15) establishes procedures for appropriate access by the ombudsman Ombudsman and designated representatives to long-term care facilities, appropriate private access to residents, and appropriate access to residents' personal and medical records;

(16) establishes procedures to protect the confidentiality of records and ensures that the identity of any complainant or resident or complainant is not disclosed without consent of such complainant or resident the resident's or complainant's consent, or upon court order;

(17) establishes a statewide uniform reporting system to collect and analyze information on complaints and conditions in long-term care facilities; for the purpose of identifying and resolving significant problems. The state long-term care ombudsman Ombudsman must submit this information to the state agency of the state responsible for licensing or certifying long-term care facilities in the state and to the Assistant Secretary for Aging in the manner prescribed by the Assistant Secretary;

(18) prepares independently develops and provides final approval of an annual report containing describing the activities carried out by the Office in the year for which the report is prepared. The annual report:

(A) contains data and findings regarding the types of problems experienced and complaints made by or on behalf of individuals residing in long-term care facilities; and;

(B) provides policy, regulatory, and legislative recommendations to solve such problems, resolve such and complaints, and to improve the quality of care and life in long-term care facilities;

(C) includes analysis of the Program's success and success in providing services to residents of long-term care facilities;

(D) describes barriers that prevent optimal Program operation;

(E) is available to the public and is submitted to:

(i) the Assistant Secretary for Aging;

(ii) the state chief executive officer;

(iii) the state legislature;

(iv) the state agency responsible for licensing or certifying long-term care facilities; and

(v) other appropriate governmental entities;

(19) ensures that no officer, employee, or other designated representative of the Office is subject to a conflict of interest; and

(20) plans and operates the Ombudsman Program, considering the stakeholders' views of Area Agencies on Aging, older individuals and provider agencies.

(b) The State Agency DHS ensures that:

(1) the Office is a distinct entity, separately identifiable, and located within or connected to DHS;

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(2) the Ombudsman serves on a full-time basis. Oklahoma Administrative Code 340:105-11 constitutes the entirety of the ombudsman's work that provides Office leadership and management, functions, responsibilities, and duties;

(3) the Office and its representatives are not required or requested to be responsible for leading, managing, or performing the work of non-ombudsman services or programs except on a time-limited, intermittent basis;

(4) no individual individuals involved in the designation of the long term care ombudsman Ombudsman, whether by appointment or otherwise, or the designation of the head of any subdivision of the Office is/are not subject to a conflict/conflicts of interest;

(25) mechanisms are in place to identify and remedy any conflicts, such as conflicts of interest or other similar conflicts;

(36) adequate legal counsel, free from conflict of interest is available to the Office for advice and consultation, and that legal representation is provided to any representative of the Office representatives against whom suit or other legal action is brought in connection with the performance of such representative's official duties; and

(47) the Office has the ability to pursue administrative, legal, and other appropriate remedies on behalf of residents of long-term care facilities/facility residents;:

(8) the Ombudsman meets minimum qualifications that include, but are not limited to, demonstrated expertise in:

(A) long-term services and supports or other direct services for older persons or individuals with disabilities;

(B) consumer-oriented public policy advocacy;

(C) leadership and program management skills;
and

(D) negotiation and problem resolution skills;

(9) the Ombudsman has authority to recommend policies and procedures. DHS policies and practices do not prohibit the Ombudsman from performing functions and responsibilities per federal law and rules;

(10) entities hosting a local ombudsman must not have personnel policies or practices that prohibit Office representatives from performing Program duties or from adhering to federal or state laws and rules;

(11) the Ombudsman monitors the performance of local entities designated to carry out Program duties;

(12) processes are in place by which the agencies hosting local ombudsman entities coordinate with the Ombudsman in the employment or appointment of Office representatives;

(13) standards are in place to prioritize abuse, neglect, exploitation, and time-sensitive complaints and consider the severity of the risk to the resident, the imminence of the threat of harm to the resident, and the opportunity for mitigating harm to the resident through Program services; and

(14) procedures are in place clarifying appropriate fiscal responsibilities of the local ombudsman entity including,

but not limited to, clarifications regarding access to programmatic fiscal information by appropriate Office representatives.

340:105-11-233. Policies and procedures specific to the Office of the State Long-Term Care Ombudsman policies and procedures

~~In accordance with~~Per the Older Americans Act of 1965, as Amended, the Office of the State Long-Term Care Ombudsman (Office) is established within the ~~State Agency~~Oklahoma Department of Human Services (DHS) to carry out a statewide Long-Term Care Ombudsman Program ~~that is~~(Program) under the ~~DHS~~ direct supervision and administration of ~~the State Agency~~.

(1) ~~The Office staff consists of the state long term care ombudsman~~ State Long-Term Care Ombudsman (Ombudsman) and ~~adequate~~ program and support staff.

(2) Specific staffing requirements for each area ~~Long-Term Care Ombudsman Program~~ are set in accordance with ~~normal State Agency~~DHS administrative and funding procedures.

(3) The area entity designated to provide ombudsman services must provide an adequate allocation of funds to operate the local program. Costs incurred include, but are not limited to:

(A) reimbursement of ombudsman supervisors' and ombudsman volunteers'travel costs ~~of the ombudsman supervisor and ombudsman volunteers,~~ including travel to and from ~~their~~ assigned facilities and required meetings;

(B) identification badges; and

(C) ~~other~~ incidental costs related to trainings and meetings, including awards and certificates.

(4) ~~The designated~~Designated area ombudsman staff representatives are ~~housed within the Area Agency on Aging, whenever possible~~organizationally-located within public or non-profit private entities.

(5) Selection of area ombudsman staff representatives is made by the director of the designated area ombudsman entity, with input and recommendations from state Ombudsman staff during the interview process, and subject to ~~State Agency Ombudsman~~ approval.

(A) For the purpose of review of qualifications, criminal background checks, and conflict of interest issues, the Office ~~shall have~~has access to applications, resumes, and other personnel information related to applicants ~~for~~ and incumbents in area ombudsman staff positions.

(B) State ~~ombudsman~~Ombudsman staff ~~are~~is involved at ~~their~~the Ombudsman's discretion in applicant interviews of applicants for area ombudsman staff positions as members of an interviewing team. Upon conclusion of the interview process, there is opportunity for discussion and recommendations.

(C) Merit hiring standards are adhered to throughout the hiring process, ~~pursuant to~~per Part 900 of Title 5 of the United States Code and ~~other valid procedures agreed to by the interview team.~~

(D) Employment of area ombudsman staff is probationary pending the ~~person's individual's~~ satisfactory training completion of training prescribed by the state long term care ombudsman and designation as described in this Part.

(6) The Ombudsman investigates allegations of misconduct by Office representatives in the performance of Program duties and, as applicable, coordinates investigations with DHS, the agency hosting the local ombudsman entity, and/or the local ombudsman entity.

(7) The Ombudsman determines the use of the fiscal resources appropriated or otherwise available to operate the Office. The Ombudsman approves the allocations of federal and state funds provided to such entities, subject to applicable federal and state laws and policies. The Ombudsman determines Program budgets and expenditures and those local ombudsman entities are compliant with laws, policies, and procedures governing the Program.

340:105-11-233.1. Grievance process

The Office of the State Long-Term Care Ombudsman (Office) per Part 1327.11 of Title 42 of the Code of Federal Regulations establishes a grievance process for the receipt and review of grievances regarding the determinations or actions of the State Long-Term Care Ombudsman (Ombudsman) and Office representatives.

(1) Long-term care residents or legal representatives of residents who lack capacity to provide informed consent may ask the Ombudsman to review and reconsider complaint findings of designated representatives by submitting a request in writing or verbally to the Ombudsman or deputy ombudsman within 30-calendar days of the completion of an investigation. The Ombudsman or deputy ombudsman:

(A) completes a record review within 30-calendar days of the formal request;

(B) determines if the representative followed complaint processes per Oklahoma Administrative Code (OAC) 340:105-11-237 and 340:105-11-237.1;

(C) places notation in the case record of his or her findings, initiates any needed action for resolution, and completes any warranted changes to the case documentation; and

(D) provides a copy of the findings to the resident or the resident's legal representative.

(2) When any grievance is related to the refusal or withdraw of designation by the ombudsman entity or staff representative, the resident or the resident's legal representative has a right to request a hearing within 10-calendar days of the written notice per OAC 340:105-11-234(e).

340:105-11-234. Designation of area programs and area representatives including staff and volunteers

(a) The Office of the State Long-Term Care Ombudsman (Office) officially designates agencies serving as area or local subdivisions of the Office through an annual designation

process, ~~in accordance with State Agency per Oklahoma Department of Human Services (DHS) administrative funding procedures.~~

(1) ~~Staff~~ Area program staff and volunteer representatives of ~~the Office~~ are officially designated in writing by the ~~state long term care ombudsman~~ State Long-Term Care Ombudsman (Ombudsman).

(2) Designation as ~~an Office~~ representative of ~~the Office~~:

(A) ~~for an area staff person~~ is based on ~~the person meeting~~ criteria necessary to ~~satisfactory performance in the position for~~ satisfactory performance including, but not limited to, ~~the person~~:

(i) ~~is being~~ free from any conflict of interest as defined by this ~~policy rule~~ and in compliance with federal and state ~~statutes~~ statutes; and does not stand to gain financially through an action or potential action brought on behalf of ~~the residents the ombudsman he or she serves;~~

(ii) ~~meets~~ meeting minimum Office job qualifications and screening standards ~~set by the Office;~~ and

(iii) ~~satisfactorily completes~~ completing training prescribed by the ~~state long term care ombudsman~~ Ombudsman; and

(B) ~~for as~~ an ombudsman volunteer is accomplished through a ~~certification designation~~ process, and is based on the ~~person individual~~ meeting criteria necessary to satisfactory performance in the position, including, but not limited to, the person:

(i) ~~is being~~ free from any conflict of interest as required by statute and defined by this Part and ~~he or she~~ does not stand to gain financially through an action or potential action brought on behalf of residents the ombudsman serves;

(ii) meets screening criteria set in this Part;

(iii) satisfactorily completes training prescribed by the ~~state long term care ombudsman~~ Ombudsman; and

(iv) completes and signs:

(I) Form 02OM003E, Ombudsman Volunteer Application, agreeing to accept supervision and follow the Program rules and guidelines of the program; and

(II) ~~04AD003E, Request for the Registry and criminal history record check~~ consent and release form for the Oklahoma National Fingerprint Background Check Program, authorizing the Office to conduct a eriminal national fingerprint background check and registry checks.

(b) The ~~state long term care ombudsman~~ Ombudsman has the authority to refuse to designate:

(1) a ~~person an individual~~, staff or volunteer, as ~~an Office~~ representative of ~~the Office~~ for any reasonable cause related to ~~satisfactory~~ unsatisfactory performance in the position, including, but not limited to:

(A) an unresolved or unresolvable conflict of interest;

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- (B) failure to satisfactorily complete training; and
- (C) failure to meet screening standards for volunteers and staff, including ~~criminal~~ national fingerprint background and registry check; or minimum job qualifications for ~~area staff representatives~~; and
- (2) an ~~agency entity~~ as a subdivision of the Office for any reasonable cause that prevents satisfactory operation of the State Long-Term Care Ombudsman Program (Program); including, but not limited to:
 - (A) an unresolved or unresolvable conflict of interest;
 - (B) failure to provide adequate assurances that ~~program~~ Program guidelines can be met; and
 - (C) failure to provide assurances that the ~~program~~ Program can be adequately funded.
- (c) The ~~state long term care ombudsman~~ Ombudsman has the authority to withdraw designation as:
 - (1) a subdivision of the Office from an ~~agency~~ designated entity when there is:
 - (A) an unresolved or unresolvable conflict of interest;
 - (B) a breach of the confidentiality requirement caused by the action of any staff ~~person~~ of the ~~agency~~ designated entity as a local subdivision of the Office; or of that ~~agency's~~ designated entity's sponsoring agency;
 - (C) failure to adhere to ~~the Office~~ the Office policies of the ~~Office, federal~~ Federal Administration on Aging regulations, ~~federal~~ or state or ~~federal~~ law; or
 - (D) any other unreasonable or prejudicial conduct substantially affecting the ~~State Long Term Care Ombudsman~~ Program; and
 - (2) an ~~Office~~ representative of the ~~Office~~ from a staff person or volunteer when there is:
 - (A) an unresolved or unresolvable conflict of interest;
 - (B) breach of the confidentiality requirement;
 - (C) failure to adhere to ~~the Office~~ the Office policies of the ~~Office~~ or ~~federal~~ or state or ~~federal~~ law;
 - (D) failure to accept program supervision from the Office; or
 - (E) conviction of a crime listed in Section 1-1950.1 of Title 63 of the Oklahoma Statutes or listing on the Mary Rippy Violent Offender Registry when the prospective representative is determined to be ineligible by the Oklahoma State Department of Health National Fingerprint Background Check Program.
- (d) The ~~state long term care ombudsman~~ Ombudsman may also withdraw ~~certification~~ designation of an ombudsman volunteer when ~~the ombudsman~~ he or she:
 - (1) fails to file monthly reports with the ombudsman supervisor for three consecutive months, unless on an approved leave of absence;
 - (2) fails to attend three consecutive monthly meetings, unless on an approved leave of absence;
 - (3) fails to initiate resident visitation of ~~residents~~ in assigned facility within two months after ~~certification~~ designation;
 - (4) misuses the "ombudsman volunteer" title or badge; or
 - (5) without specific authorization by the Ombudsman, represents himself or herself, either verbally or by wearing a badge, as an ombudsman for a facility for which the volunteer is not ~~certified, without specific authorization by state ombudsman staff designated.~~
- (e) An agency that is refused designation or from which designation is withdrawn as an ~~Area Long Term Care Ombudsman Program designated entity~~ or a ~~person~~ individual refused designation or from whom designation is withdrawn as an area ombudsman staff representative may appeal the decision.
 - (1) Designation is not withdrawn until reasonable notice and opportunity for a hearing is provided.
 - (2) Notification of the right to appeal and the appeal procedures are included in the letter notifying the agency or staff person of a decision to refuse or withdraw designation.
 - (3) A request for hearing must be submitted within 10-calendar days of the receipt of the letter of notification of the decision to refuse or withdraw designation.
 - (4) Hearings are conducted by the DHS Appeals Unit of the Oklahoma Department of Human Services.
 - (5) The Ombudsman has authority to suspend a designated ombudsman entity or staff representative from engaging in any and all Program duties pending the conclusion of a hearing.
 - (6) In a case where findings of the hearing officer are contrary to federal law or rules, as determined by the Ombudsman, the Ombudsman retains the authority to refuse or withdraw designation regardless of the findings of the hearing officer.

340:105-11-234.1. Responsibilities of agencies hosting local ombudsman representatives

(a) The designated entity in which a local Office of the State Long-Term Care Ombudsman (Office) Program (Program) is organizationally-located is responsible for the personnel management, but not programmatic oversight of Office representatives including employees and volunteer representatives.

(b) The designated entity in which a local program is organizationally located does not have personnel policies or practices that prohibit Office representatives from performing the duties or from adhering to the access, confidentiality, and disclosure requirements of federal and state laws and regulations.

(1) Host agencies may not have policies, procedures, or practices including personnel management practices that the State Long-Term Care Ombudsman (Ombudsman) determines conflictive with the laws or policies governing the Program.

(2) Any policy, procedure, or practice the Ombudsman determines to be in violation of federal or state laws and regulations is sufficient grounds for the refusal, suspension, or removal of the designation of local ombudsman entity by the Ombudsman.

(3) Nothing in this provision prohibits the host agency from requiring that Office representatives adhere to the

personnel policies and procedures of the agency that are otherwise lawful.

340:105-11-234.2. Duties of representatives of the Office of the State Long-Term Care Ombudsman (Office)

The State Long-Term Care Ombudsman (Ombudsman) may designate an entity as a local ombudsman entity and may designate an employee or volunteer of the local ombudsman entity as an Office representative. Office representatives may also be designated employees or volunteers within the Office. An individual designated as an Office representative per Oklahoma Department of Human Services (DHS) and Office policies and procedures:

- (1) identifies, investigates, and resolves complaints made by or on behalf of residents that relate to action, inaction, or decisions that may adversely affect the health, safety, welfare, or rights of the residents;
- (2) provides assistance to protect the health, safety, welfare, and rights of residents;
- (3) ensures residents in the local ombudsman entity service area have regular and timely access to the services provided through the State Long-Term Care Ombudsman Program and that residents and complainants receive timely responses to requests for information and complaints;
- (4) represents the interests of residents before government agencies and ensures individual residents have access to and pursue, as the representative determines necessary and consistent with resident interest, administrative, legal, and other remedies to protect the health, safety, welfare, and rights of the residents;
- (5) reviews, and when necessary, comments on any existing and proposed laws, regulations, and other government policies and actions pertaining to residents' rights and well-being;
- (6) facilitates public comment on the laws, regulations, policies, and actions;
- (7) promotes and provides technical support for development and ongoing support when requested by resident and family councils; and
- (8) carries out other activities the Ombudsman determines to be appropriate.

340:105-11-235. Conflict of interest

(a) An officer, employee, volunteer, or other representative of the Office of the State Long-Term Care Ombudsman (Office) may not be subject to a conflict of interest that has the potential to impair ~~the ability of said person to carry out~~ his or her official duties in an impartial manner and may not stand to gain financially through an action or potential action brought on behalf of persons the ~~ombudsman~~ State Long-Term Care Ombudsman Program (Program) serves.

(b) A conflict of interest exists when any organizational or supervisory relationship, policy, ~~or~~ action, or individual ~~ombudsman~~ ombudsman's personal relationship, immediate familial relationship, or action conflicts with or impairs ~~the~~

~~ability of an ombudsman to carry out~~ his or her responsibilities to investigate, resolve, or refer complaints or otherwise advocate for long-term care facility residents.

(c) No persons involved in the designation of the ~~state long-term care ombudsman~~ State Long-Term Care Ombudsman (Ombudsman), ~~whether~~ by appointment or otherwise, or the designation of the head of any ~~subdivision of the Office~~ designated entity may be subject to a conflict of interest.

(d) Freedom from conflict of interest is established through interview of prospective ~~state long-term care ombudsman~~ Ombudsman staff and volunteers; and through a signed statement in a form prescribed by the Office and other appropriate means.

(e) Persons listed in this paragraph must complete and sign Form 02OM001E, Conflict of Interest Statement and Ethical Guidelines, annually; and when there is any change of facility or area assignment by:

- (1) prospective and current ~~ombudsman~~ Office staff;
- (2) prospective and current ombudsman volunteers; and
- (3) any other person involved in the direct operation of the ~~State Long-Term Care Ombudsman~~ Program.

(f) Agencies must annually review Form 02OM002E, Freedom from Conflict of Interest Assurances, which must be signed annually by:

- (1) directors of ~~agencies~~ designated entities; or those seeking designation; as a ~~local ombudsman entity~~ entity; and
- (2) directors of sponsoring agencies.

340:105-11-235.1. Organizational conflict of interest

(a) The Oklahoma Department of Human Services (DHS) and the Office of the State Long-Term Care Ombudsman (Office) State Long-Term Care Ombudsman (Ombudsman) consider the organizational conflicts that may impact the effectiveness and credibility of the work of the Office. Organizational conflicts of interest include, but are not limited to, placement of the Office or requiring that an Ombudsman or Office representative perform conflicting activities in an organization that:

- (1) is responsible for licensing, surveying, or certifying long-term care facilities;
- (2) is an association or an affiliate of such an association, of long-term care facilities or of any other residential facilities for older individuals or individuals with disabilities;
- (3) has ownership or investment interest, represented by equity, debt, or other financial relationship in, or receives grants or donations from, a long-term care facility;
- (4) has governing board members with any ownership, investment, or employment interest in long-term care facilities;
- (5) provides long-term care to residents of long-term care facilities including the provision of personnel for long-term care facilities or the operation of programs that control access to or services for long-term care facilities;
- (6) provides long-term care coordination or case management for residents of long-term care facilities;

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- (7) sets reimbursement rates for long-term care facilities;
 - (8) provides adult protective services;
 - (9) is responsible for eligibility determinations for residents of long-term care facilities regarding Medicaid or other public benefits;
 - (10) conducts preadmission screening for long-term care facility placements;
 - (11) makes admission or discharge decisions for individuals to or from long-term care facilities; or
 - (12) provides guardianship, conservatorship, or other fiduciary or surrogate decision-making services for residents of long-term care facilities.
- (b) Removing or remedying organizational conflicts. DHS and the Ombudsman identify and take steps to remove or remedy conflicts of interest between the Office and DHS or another entity carrying out the Ombudsman Program (Program).
- (1) The Ombudsman identifies organizational conflicts of interest in the Program and describes steps taken to remove or remedy conflicts within the annual report submitted to the Assistant Secretary for Aging through the National Ombudsman Reporting System.
 - (2) When the Office is located within or otherwise organizationally-connected to DHS, DHS:
 - (A) takes reasonable steps to avoid internal conflicts of interest;
 - (B) reviews and identify internal conflicts;
 - (C) takes steps to remove or remedy conflicts;
 - (D) ensures that no individual, or member of the immediate family of an individual, involved in the designating, appointing, otherwise selecting or terminating the Ombudsman is subject to a conflict of interest; and
 - (E) ensures the Ombudsman disclosed such conflicts and described steps taken to remove or remedy conflicts within the annual report submitted to the Assistant Secretary for Aging through the National Ombudsman Reporting System.
 - (3) When DHS is unable to adequately remove or remedy a conflict, the Program is carried out by contract or other arrangement with a public agency or nonprofit private organization, per Section 712(4)(a) of the Older Americans Act, as Amended.
 - (4) DHS may not enter into a contract or other arrangement to carry out the Program or operate the Office when the other entity:
 - (A) is responsible for licensing, surveying, or certifying long-term care facilities;
 - (B) is an association or an affiliate of such an association of long-term care facilities, or of any other residential facilities for older individuals or individuals with disabilities; or
 - (C) has any ownership, operational, or investment interest, represented by equity, debt, or other financial relationship in a long-term care facility.

340:105-11-236. Remedies in conflict~~Conflict of interest situations~~**remedies**

- (a) **Volunteers.** ~~When~~ When a conflict of interest is identified before ~~certification~~ designation, the volunteer is not certified in any facility in which the conflict of interest could be expected to affect performance. ~~When~~ When a conflict of interest or potential conflict of interest involving a certified volunteer is identified, the ombudsman supervisor promptly notifies the Office of the State Long-Term Care Ombudsman (Office) to recommend ~~decertification or withdrawal of designation~~, reassignment of the volunteer, or other appropriate action.
- (b) ~~Ombudsman staff~~ **Paid ombudsman representatives.** No applicant for a ~~long-term care~~ paid ombudsman staff position, at any level of the program, is selected to fill that position ~~if~~ when a conflict of interest is identified during any stage of the application or hiring process. ~~When~~ When a conflict of interest or potential conflict of interest is identified involving a ~~staff~~ designated representative of ~~the Office~~, action must be taken to remedy the conflict within 30-calendar days. Remedies may range from elimination of the conflict to withdrawal of ~~the individual's designation of the individual as a representative of the Office.~~
- (c) **Directors of sponsoring agencies and agencies designated as ombudsman entity entities.** ~~When~~ When a conflict of interest or potential conflict of interest is identified ~~involving the director of a sponsoring agency or the director of an agency designated as a subdivision of the Office~~, action must be taken to remedy the conflict of interest within 30-calendar days. Remedies may include:
 - (1) removal or resolution of the conflict of interest;
 - (2) withdrawal of the agency's designation as an area ombudsman entity;
 - (3) withdrawal of designation of the agency as an Area Agency on Aging; or
 - (4) other reasonable action.

340:105-11-237. Complaint investigation

The State Long-Term Care Ombudsman Program (Program) complaint mechanism functions at all levels with procedures for receipt, investigation, and resolution of problems and complaints.

- (1) The Office of the State Long-Term Care Ombudsman (Office) staff:
 - (A) receive complaints from all sources, including referrals from enforcement agencies and complaints from area ombudsman programs;
 - (B) refer complaints to area ombudsman supervisors when appropriate;
 - (C) investigate complaints directly or with ombudsman supervisors;
 - (D) refer unresolved formal complaints to a regulatory or law enforcement agency, when appropriate;
 - (E) assist other agencies in complaint resolution of complaints; and
 - (F) follow-up on complaint resolution and closure; and
 - (G) may decline to investigate any complaint when:

- (i) the complaint is frivolous or not made in good faith;
 - (ii) the complaint was made so long after the incident that it is no longer reasonable to conduct an investigation;
 - (iii) an adequate investigation cannot be conducted because of insufficient funds, insufficient staff, lack of staff expertise, or any other reasonable factor that would result in an inadequate investigation despite a good faith effort; or
 - (iv) an investigation by the Office would create a real or apparent conflict of interest.
- (2) Area ombudsman supervisors:
- (A) receive complaints from all sources;
 - (B) investigate complaints through on-site, unannounced visits to the facility or refer the complaints to ombudsman volunteers ~~to resolve~~;
 - (C) resolve complaints or refer the complaint in writing to ~~state long-term care ombudsman~~ State Long-Term Care Ombudsman (Ombudsman) staff when correction cannot be achieved at the area level, or when a regulatory or law enforcement agency's assistance is needed; and
 - (D) follow-up on conditions identified through the complaint process.
- (3) Ombudsman volunteers:
- (A) receive complaints and learn of problems from all sources;
 - (B) investigate complaints through ~~unannounced~~ on-site, unannounced, routine weekly visitation to the assigned facility or refer complaints to an ombudsman supervisor ~~to investigate~~ for investigation;
 - (C) resolve problems or complaints within the facility or refer to an ombudsman supervisor ~~to resolve~~ for resolution; and
 - (D) follow-up on conditions through routine, weekly visitation with residents in the assigned facility.

340:105-11-237.1.Complaint processing

- (a) Regardless of the source of the complaint the Office of the State Long-Term Care Ombudsman (Office), State Long-Term Care Ombudsman (Ombudsman), and Office representatives serve long-term care facility residents to identify, investigate, and resolve complaints. The Ombudsman or Office representative investigates complaints including, but not limited to, abuse, neglect, or exploitation for the purposes of resolving the complaint to the resident's satisfaction and to protect the resident's health, safety, welfare, and rights. The Ombudsman or Office representative may identify, investigate, and resolve a complaint impacting multiple or all facility residents.
- (b) Regardless of the source of the complaint, including when the source is the Ombudsman or Office representative, the Ombudsman or Office representative must support and maximize resident participation in the complaint resolution process.
- (1) The Ombudsman or Office representative must offer the resident privacy for confidentially purposes, when

- providing information and hearing, investigating, and resolving complaints.
- (2) The Ombudsman or Office representative must discuss the complaint with the resident and resident representative when the resident is unable to communicate informed consent, to:
- (A) determine his or her perspective;
 - (B) request informed consent to investigate the complaint;
 - (C) determine the resident's or his or her representative's perspective on complaint resolution including if the allegations are reported and, when so, if the Ombudsman or Office representative releases resident identifying information or other relevant information to the facility and/or appropriate agencies. Such report and disclosure is consistent with (b)(3) of this Section;
 - (D) advise the resident and resident representative of the resident's rights, when applicable;
 - (E) work with the resident or resident representative to develop a plan of action to resolve the complaint, when applicable;
 - (F) investigate the complaint to determine if the complaint can be verified; and
 - (G) determine if the complaint is resolved to the resident's or resident representative's satisfaction.
- (3) When the resident is unable to communicate and does not have a representative to provide informed consent the Ombudsman or Office representative:
- (A) takes appropriate steps to investigate and works to resolve the complaint in order to protect the resident's health, safety, welfare, and rights; and
 - (B) determines if the complaint was resolved to the complainant's satisfaction.
- (4) To determine whether to rely on a resident representative to communicate or make determinations on the resident's behalf for complaint processing, the Ombudsman or Office representative ascertains the extent of the authority granted to the resident's representative under court order, by power of attorney, or other document the resident used to grant authority to the representative.
- (c) The Ombudsman or Office representative may provide information regarding the complaint to another agency in order to substantiate the facts for regulatory, protective services, law enforcement, or other purposes so long as the Ombudsman or Office representative adheres to the disclosure requirements per Oklahoma Administrative Code 340:105-11-243. When the resident or resident representative:
- (1) seeks regulatory, protective services, or law enforcement action and the Ombudsman or Office representative determines the resident or resident representative communicated informed consent to the Office, the Office assists the resident or resident's representative contact the appropriate agency and/or discloses the resident or resident's representative consent for such purposes; and
 - (2) is served by disclosing information to a facility representative and/or referrals to an entity other than those referenced in (c)(1) of this Section and the Ombudsman

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or Office representative determines the resident or resident representative communicated informed consent to the State Long-Term Care Ombudsman Program (Program), the Ombudsman or Office representative may:

- (A) assist the resident or resident representative contact the appropriate facility representative or the entity;
- (B) provide information on how a resident or representative may obtain a facility or entity contact information; and/or
- (C) disclose the information the resident or resident's representative provided consent for to an appropriate facility representative or entity, consistent with Ombudsman Program procedures.

340:105-11-237.2. Complaint investigation timeframes

(a) All complaints investigated by a designated ombudsman require a face-to-face visit with the resident the complaint involves. The time frames for the initial attempt at a face-to-face visit must occur within five business days of the receipt of the complaint unless:

- (1) the complaint includes an allegation of abuse, neglect, or exploitation; then the time frame for initial face-to-face contact with resident occurs within three business days; or
- (2) the complaint involves an actual or threatened discharge from a facility, the time frame for initial face-to-face contact with resident is no later than the last day the resident has a right to appeal the discharge or within five business days, whichever comes first.

(b) There is no time frame for the determination of the final disposition of a complaint but it is determined when the ombudsman has enough evidence to complete the investigation. In the event the final disposition of a complaint exceeds 90 days, the Ombudsman representative assigned to investigate the complaint submits the case to the Ombudsman or Deputy Ombudsman for review and the reason the case will remain open is documented in the case record.

(c) In rare instances weather, illness, or other unforeseen, serious circumstances may delay on-site investigation. When a delay occurs, the ombudsman representative consults with and seeks consent from the State Long-Term Care Ombudsman or deputy ombudsman to:

- (1) initiate a phone response.
 - (A) Contact with the resident and/or the complainant is attempted.
 - (B) Resolution of the complaint may be sought, in accordance with the resident's wishes, through phone calls to persons that may be able to resolve or mitigate the situation, such as the facility administrator, facility staff, or another agency;
- (2) complete comprehensive documentation regarding the cause(s) for delay and the response to the complaint in:
 - (A) hard copy case notes, when used;
 - (B) electronic documentation, such as a journal entry titled, "Delayed Response" documenting the:

- (i) follow-up date;
 - (ii) delaying factor(s); and
 - (iii) steps taken to resolve the complaint;
- (3) an on-site visit follow-up with the resident is required even when the complaint was resolved by phone. The follow-up visit occurs immediately following the unforeseen circumstance; and
- (4) complete the follow-up visit with comprehensive documentation in:
 - (A) hard copy case notes, when used; or
 - (B) electronic documentation, such as a journal entry titled, "Delayed Response" documenting the:
 - (i) follow-up date;
 - (ii) any remaining issues or additional complaints to be resolved; and
 - (iii) resident's satisfaction with the resolution.

340:105-11-238. Monitoring Systems Advocacy, monitoring laws, regulations, and policies

(a) The Office of the State Long-Term Care Ombudsman (Office) is required and authorized to:

- (1) analyze, comment on, and monitor the development and implementation of federal, state, and local laws, regulations, and other government policies and actions that pertain to long-term care facilities and services;
 - (2) monitor the health, safety, welfare, and rights of residents; and
 - (3) recommend changes in such laws, regulations, and policies as the Office determines appropriate.
- (~~ab~~) Office of the State Long-Term Care Ombudsman staff:
- (1) acquire and share with area programs, citizen organizations, and individuals copies of proposed and enacted laws, regulations, and policies ~~which that~~ may affect ~~older~~ long-term care facility residents;
 - (2) give testimony and written comments as appropriate and assist others to learn of comment opportunities to ~~comment~~;
 - (3) attend or conduct public hearings;
 - (4) request comments from area ombudsman staff; and
 - (5) investigate complaints and take ~~other~~ action as necessary to monitor the development and implementation of laws, rules, and policies.
- (~~bc~~) Area ombudsman staff:
- (1) review proposed and enacted laws, regulations, and policies ~~which that~~ may affect ~~older~~ long-term care facility residents in the planning and service area (PSA), as provided by ~~state long-term care ombudsman~~ Office staff;
 - (2) give testimony and written comments, and attend or conduct public hearings, as appropriate;
 - (3) investigate complaints; and
 - (4) communicate concerns identified through the above activities to ~~state long-term care ombudsman~~ Office staff.
- (d) The Office makes determinations and establishes positions of the Office independently. Those determinations or positions may or may not represent the determinations or positions of the Oklahoma Department of Human Services (DHS) and are not subject to approval by DHS.

340:105-11-239. Provision of information

The Office of the State Long-Term Care Ombudsman (Office), State Long-Term Care Ombudsman (Ombudsman), and designated staff provide information to public and private agencies, legislators, the media, and other persons regarding the problems and concerns of residents and recommendations related to the problems and concerns. The provision of information includes, but is not limited to:

~~(a1)~~ Office of the State Long-Term Care Ombudsman staff:

- ~~(1A)~~ developdeveloping administrative and legislative proposals as needed, relating to significant problems of residents in long-term care facilities, based on complaint investigation data and other sources;
- ~~(2B)~~ developdeveloping working relationships with state legislators and policy makers in order to inject concerns of long-term care facility residents directly into the policy making process;
- ~~(3C)~~ provideproviding information on conditions affecting and the needs of long-term care facility residents, upon request, to individuals, agencies, organizations, and others; and
- ~~(4D)~~ meetmeeting at least quarterly with the State Council on Aging's Advisory Committee for the State Long-Term Care Ombudsman Program (Program) to discuss programProgram operation, issues affecting the population served by the programProgram, and strategies to address identified concerns.

~~(b2)~~ Area ombudsman staff provide:

- ~~(1A)~~ information to individuals, agencies, committees, and organizations concerning the general problems and issues affecting residents in long-term care facilities; and
- ~~(2B)~~ community education on needs and issues affecting long-term care facility residents through publicity including monthly press releases, public speaking, and other means.

340:105-11-240. Training

The Office of the State Long-Term Care Ombudsman (Office) prohibits investigation of any complaint by ~~an ombudsman~~Office staff ~~person~~ or ~~an~~ ombudsman volunteer, unless the person ~~has~~ satisfactorily completed training required by the Office, and ~~has been~~is approved by the State Long-Term Care Ombudsman (Ombudsman) as qualified to investigate ~~such~~ complaints.

(1) Office staff:

- (A) orients and trains ombudsman staff representatives and determines satisfactory completion of prescribed training;
- (B) develops and periodically updates training core curriculum ~~for use in training ombudsman staff and volunteers;~~
- (C) assists area ombudsman staff ~~in the training of~~train ombudsman volunteers, ~~upon request;~~

- (D) provides, on a quarterly basis, a minimum of 40 hours of continuing education and training to ombudsman supervisors per year;
- (E) provides community education ~~in coordination~~ with area staff;
- (F) officially certifies newly-trained, ombudsman volunteers who ~~meet~~ screening criteria; and
- (G) assists in the development of citizen organizations to participate in the State Long-Term Care Ombudsman Program.

(2) Area ombudsman staff ~~representatives:~~

- (A) holds public workshops for community education and volunteer recruitment;
- (B) trains ombudsman volunteer applicants using the Office-prescribed core training format ~~developed by the Office staff;~~
- (C) submits ~~to Office staff~~ the name, ~~and~~ facility assignment, and the original signed Form 02OM003E, Ombudsman Volunteer Application, of each ~~trained~~ volunteer recommended for certification designation;
- (D) accompanies each newly-certified ombudsman volunteer on at least one introductory visit to the assigned facility to reinforce training and ensure the ombudsman volunteer's understanding of the ombudsman role; and
- (E) holds monthly meetings for continued training and supervision of ~~certified~~-designated ombudsman volunteers to annually achieve a minimum of 18 hours per volunteer of continuing education relevant to the care of older persons and persons with disabilities.

340:105-11-242. Access

(a) **Access to facilities and residents.** The Office of the State Long-Term Care Ombudsman (Office) procedures for access to long-term care facilities and facility residents are set in Sections 1-829-F, 1-1902, 1-1919, and 1-2213-D, of Title 63 of the Oklahoma State Statutes. A stateAn Office or local ombudsman, as that term is defined by Oklahoma Department of Human Services Aging Services ~~Division of the Department of Human Services~~, is authorized to enter any ~~home~~facility licensed ~~pursuant to~~per the Oklahoma Nursing Home Care Act, the Oklahoma Residential Care Act, and the Continuum of Care and Assisted Living Act to communicate privately and without unreasonable restriction with any resident who consents to the communication, to seek consent to communicate, and to observe all areas of the facility that directly pertain to the care of the resident, without infringing upon the privacy of other residents without their consent.

- (1) Area ombudsman staff and trained, ~~certified~~designated ombudsman volunteers have the same right of access to licensed long-term care facilities and residents as ~~state ombudsman~~Office staff.
- (2) Any ombudsman staff or volunteer asked to leave the premises of any licensed facility for any reason does so, and immediately reports the incident to the ~~State Ombudsman~~ Office.

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(b) Access to resident's records. The ~~state long-term care ombudsman~~ State Long-Term Care Ombudsman (Ombudsman) and ~~staff representatives of the Office staff~~ have access to:

(1) review the resident's medical and social records ~~of a resident if when the:~~

(A) ~~the Office representative of the Office~~ has the resident's or the resident's legal representative's permission ~~of the resident, or the legal representative of the resident;~~ or

(B) ~~the~~ resident is unable to consent to the review, ~~and~~ has no legal representative, and the Office representative of the Office obtains the Ombudsman approval of the state long-term care ombudsman;

(2) the records as ~~is~~ necessary to investigate a complaint ~~if when:~~

(A) a resident's legal guardian ~~of the resident~~ refuses to give ~~the~~ permission;

(B) ~~an~~ Office representative of the Office has reasonable cause to believe ~~that~~ the guardian is not acting in the resident's best interests ~~of the resident;~~ and

(C) the representative obtains the Ombudsman approval ~~of the state long-term care ombudsman;~~

(3) the administrative records, policies, and documents; of long-term care facilities, to which the residents or the general public have access; and

(4) copies of all licensing and certification records maintained by the Oklahoma State Department of Health or any ~~other state~~ agency of ~~Oklahoma~~ with respect to long-term care facilities. ~~Ombudsman volunteers do not have access to the medical record or social record of a resident. The volunteer ombudsman must refer problems requiring review of records to the ombudsman supervisor must obtain a resident's legal representative's, ombudsman supervisor's, Ombudsman's, or deputy ombudsman's consent before accessing medical or social records of a resident who does not have the capacity to grant informed consent.~~

(5) The Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule, Part 160 of Title 45 of the Code of Federal Regulations (C.F.R.) and 45 C.F.R. Part 164 Subparts A and E does not preclude release by covered entities of resident private health information or other resident identifying information to the State Long-Term Care Ombudsman Program including, but not limited to, residents' medical, social, or other records, a list of resident names and room numbers, or information collected in the course of a federal or state survey or inspection process.

340:105-11-243. Confidentiality Records, confidentiality, and disclosure

The Office of the Long-Term Care Ombudsman (Office) manages the Office State Long-Term Care Ombudsman Program (Program) files, records, and information, in physical, electronic, or other formats including information maintained by Office representatives and local ombudsman entities pertaining to Program cases and activities. Such files, records,

and information are the property of the Office. State Office and area ombudsman staff, and ombudsman volunteers, and designated agencies uphold policies listed in this subsection Section.

(1) No complaint, ~~or~~ other confidential information, or records maintained by the ~~Ombudsman~~ Program may be disclosed unless the ~~state ombudsman~~ State Long-Term Care Ombudsman (Ombudsman) authorizes the disclosure.

(2) The ~~ombudsman~~ Ombudsman or ombudsman representative ~~shall~~ does not disclose the identity of any complainant or resident unless the complainant or resident, or his or her legal representative consents:

(A) ~~the complainant or resident, or legal representative of either, consents~~ in writing to the disclosure and specifies to whom the identity may be disclosed;

(B) ~~the complainant or resident, or legal representative consents orally verbally~~ and the ~~ombudsman~~ Ombudsman documents the consent at the time ~~the consent is given; or through the use of auxiliary aids and services communication of informed consent may be made:~~

(i) in writing; or

(ii) verbally or visually; and

(iii) such consent must be documented contemporaneously by the Ombudsman or Office representative; or

(C) a court orders the disclosure.

(3) In accordance with federal law and regulation, the Ombudsman and Office representatives do not report suspected abuse, neglect, or exploitation of a resident when a resident has not communicated informed consent to such report. Except the Ombudsman or Office representative may refer confidential information and disclose resident-identifying information to the appropriate agency or agencies for regulatory oversight; protective services; access to administrative, legal, or other remedies; and/or law enforcement action when the circumstances in (4) of this Section are met.

(4) When a resident is unable to communicate his or her informed consent to the Ombudsman or Office representative, the Office may rely on the resident's designated representative's consent, so long as the Ombudsman or Office representative does not have reasonable cause to believe the resident representative is not acting in the resident's best interests or is the alleged perpetrator of the abuse, neglect, or exploitation.

(35) Inspection dates provided to the Ombudsman Program at any level, including Health Department Oklahoma State Department of Health inspections, are confidential under federal and state statute per Section 1395i-3(g)(5)(B) of Title 42 of the United States Code (U.S.C.).

(A) Inspection dates and dates of other unannounced visits to facilities, including visits for the purpose of complaint investigation, ~~shall~~ are not be posted or otherwise revealed.

(B) Federal law provides for a \$2,000 penalty for release of inspection dates. ~~State law also provides~~

~~for fine, imprisonment, or both per 42 U. S. C. § 1395i-3(g)(2) (A) (1) and Section 488.307 of Title 42 of the Code of Federal Regulations.~~

~~(46) Privacy shall be provided for receipt of complaints/complaint receipts by mail, telephone, or personal interview, in order to maintain confidentiality.~~

~~(57) All mail addressed to an ombudsman by name or title shall be delivered unopened to the ombudsman unopened.~~

~~(68) Locked files shall be used to maintain confidential records. Access to such files is limited to designated area ombudsman representatives and Office staff of the Office of the State Long Term Care Ombudsman.~~

340:105-11-243.1. Procedures related to the disclosure of witnessed abuse, neglect, or exploitation

(a) When the Office of the State Long-Term Care Ombudsman (Office) State Long-Term Care Ombudsman (Ombudsman) or Office representative (representative) personally witnesses suspected abuse, gross neglect, or exploitation of a resident, the Ombudsman or representative seeks communication of informed consent from such resident to disclose resident-identifying information to appropriate agencies.

(1) When the resident is able to communicate informed consent or has a resident representative available to provide informed consent, the Ombudsman or representative follows the resident's or resident representative's direction.

(2) When the resident is unable to communicate informed consent and has no resident representative available to provide informed consent, the Ombudsman or representative opens a case with the Ombudsman or representative as the complainant, follows the Office's program complaint resolution procedures, refers the matter, and discloses the resident's identifying information to facility management where the resident resides and/or to the appropriate agency or agencies for substantiation of abuse, gross neglect, or exploitation in the following circumstances the:

(A) Ombudsman or representative has no evidence indicating the resident would not want a referral to be made;

(B) Ombudsman or representative has reasonable cause to believe disclosure is in the resident's best interest; and

(C) representative obtains Ombudsman or deputy ombudsman approval.

(3) In addition, the Ombudsman or representative, following Office policies and procedures per Oklahoma Administrative Code 340:105-11-243 (3) (i) - (vi) may report suspected abuse, gross neglect, or exploitation to other appropriate agencies for regulatory oversight; protective services; access to administrative, legal, or other remedies; and/or law enforcement action.

(4) The decision to grant or deny Ombudsman or deputy ombudsman approval for confidential information disclosure related to abuse, neglect, or exploitation is made and conveyed to the requesting ombudsman in one business day.

340:105-11-245. Facility visitation

~~(a) The Designated area entity ombudsman staff makes periodic visits to all long-term care facilities in the area covered by the designated area ombudsman entity to ensure State Long-Term Care Ombudsman Program (Program) services are made available to the residents.~~

~~(1) Residents of each facility are visited a minimum of four times each fiscal year.~~

~~(A) Visits made by appointment, including in-service training for facility staff, are not counted toward the ombudsman staff's four visits per year.~~

~~(B) When the ombudsman visits residents as a citizen observer in inspections by the during Oklahoma State Department of Health (OSDH) inspections, the visit may be counted.~~

~~(C) Visits made to resolve complaints are counted if when multiple residents are visited as a part of this function.~~

~~(2) Visits are documented on forms approved by the Office of the State Long-Term Care Ombudsman (Office) approved forms and are protected according to the program's Program confidentiality requirements. Visits are:~~

~~(A) unannounced and the dates are kept confidential; and~~

~~(B) not posted or revealed to any person other than the director of the Area Agency on Aging director, designated as the area ombudsman entity who must likewise safeguard/safeguards them.~~

~~(3) The area ombudsman State Long-Term Care Ombudsman (Ombudsman) staff:~~

~~(A) accompanies each newly-certified designated ombudsman volunteer to the volunteer's assigned facility, by appointment, for an introductory visit to:~~

~~(Ai) introduce the volunteer to the facility administrator, residents, and facility; and~~

~~(Bii) explain or clarify the role of the ombudsman volunteer role; and~~

~~(4) The area ombudsman staff~~

~~(B) conducts at least one supervisory visit with each certified designated ombudsman volunteer to at his or her assigned facility each year/annually to:~~

~~(Ai) assess skills, relationships, and understanding of appropriate role; and/or~~

~~(Bii) assist the volunteer with a complaint or other problem; or and~~

~~(C) do both (A) and (B).~~

~~(5) The area ombudsman staff~~

~~(C) offers and conducts in-service training for staff of long-term care facilities on residents' rights, elder abuse prevention, and other topics of importance to residents.~~

~~(b) The certified designated ombudsman volunteer visits residents in his or her assigned facility, at least two hours per week, for the purpose of assisting the to assist residents to resolve or prevent problems or complaints. Each visit is documented.~~

~~(1) No volunteer/Volunteers may not officially begin his or her visitation and other duties in a facility as a certified designated ombudsman volunteer until he or she:~~

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- (A) receives written notice of ~~certification~~designation from the Office; and
- (B) is accompanied by ~~ombudsman~~Office staff on an introductory visit to the assigned facility.
- (2) A volunteer who is temporarily unable to fulfill visitation or other program responsibilities, may request or be placed on leave of absence. As defined in this Part, leave of absence may be granted due to:
- (A) ~~ill health of volunteer~~illness or ~~volunteer's family illness~~illness;
- (B) vacation or extended travel; or
- (C) ~~other~~a reason approved by the ombudsman supervisor.
- (3) Leave of absence must not exceed three months duration. ~~If~~When the volunteer is unable to resume official duties by the end of the three-month period, the area supervisor notifies the Office and the volunteer's ~~certification~~designation is withdrawn.
- (4) The volunteer may request voluntary ~~decertification~~designation withdrawal from the ~~State Long-Term Care Ombudsman~~ Program at any time and be ~~re-certified~~re-certified at a later date if ~~all other~~redesignated again when requirements are met.
- (5) A volunteer that returns to service within one year of withdrawal of designation is not required to complete the initial two-day volunteer training but must be screened for potential conflicts of interests and complete the OSDH National Fingerprint Background Check.
- (c) Ombudsman participation as a citizen observer in unannounced inspections by ~~the Oklahoma State Department of Health~~OSDH is allowed by the Oklahoma Nursing Home Care Act, the Oklahoma Residential Care Act, and the Federal Nursing Home Reform Act.
- (1) ~~Ombudsman~~Office staff and ~~certified~~designated ombudsman volunteers may participate.
- (2) Inspection schedule information is kept in a locked file and access is restricted to ~~ombudsman~~Office staff.
- (3) The location of the inspection is shared by ~~state ombudsman~~Office staff only with the area ombudsman supervisor.
- (4) The ombudsman facility volunteer ~~for that facility~~ may be notified, but notification is made no earlier than the inspection date ~~of the inspection~~.
- (5) Early notification to a facility is strictly prohibited. Penalties are set in ~~state and~~ federal statutes for ~~violations that result in early notification to a facility~~ notifications per Section 1395i-3(g)(2)(A)(1) of the United States Code and Section 488.307 of Title 42 of the Code of Federal Regulations.
- (d) ~~Upon~~When entering a facility for a visit, ~~ombudsman~~Office staff and volunteers notify the administrator or other charge person of their presence. If ~~no~~a charge person is not located, any staff person may be notified. This requirement is not intended to delay an ombudsman from proceeding promptly with a complaint investigation or resident visitation.

340:105-11-248. Ombudsman volunteer rules and guidelines

The ~~certified~~designated ombudsman volunteer observes the requirements of the State Long-Term Care Ombudsman (~~Ombudsman~~) State Long-Term Care Ombudsman Program (Program). The ombudsman volunteer:

- (1) completes and signs ~~Form~~Forms:
 - (A) 02OM003E, Ombudsman Volunteer Application;
 - (B) 02OM001E, Conflict of Interest Statement and Ethical Guidelines; and
 - (C) 04AD003E, Request for Background Check;
- (2) completes the two-day ombudsman volunteer training program to be ~~certified~~designated by ~~the State Long-Term Care Ombudsman~~ Program staff;
- (3) accepts supervision by the ombudsman supervisor;
- (4) respects privacy and confidentiality.
 - (A) The volunteer does not disclose information regarding any complainants or participant's name, condition, or situation, except to the ombudsman supervisor or ~~the state ombudsman~~State Long-Term Care Ombudsman (Office) staff, without the written permission of the complainant, participant, or legal representative.
 - (B) Supervisory approval is secured before any information is released;
- (5) visits weekly with residents in the assigned facility;
- (6) attends monthly ombudsman volunteer meetings for continuing education, program updates, and group supervision;
- (7) submits monthly reports to the ombudsman supervisor;
- (8) wears the badge issued by the ~~Area Agency on Aging~~ designated entity ombudsman supervisor when visiting the facility or attending functions as an ombudsman volunteer;
- (9) is available to the facility residents ~~of the facility in which volunteering, to hear~~ hear their concerns, and ~~to assist~~assists them with, and ~~follow through~~follows-up on problem-solving;
- (10) meets with the facility administrator to establish and maintain a cooperative working relationship;
- (11) is familiar with ~~the facility~~ policies and procedures ~~the facility~~ established for its operation;
- (12) is ~~certified~~designated as an ombudsman volunteer, limited to the facility named in the ~~certification~~designation letter, unless authorized in advance by the ~~Office of the State Long-Term Care Ombudsman~~;
- (13) is clear in understanding the ombudsman volunteer role ~~of advocate~~ on behalf of the residents; and
- (14) does not perform direct care services, such as lifting, feeding, or transporting residents.

340:105-11-251. Screening criteria for ombudsman

- (a) Criteria for subjective screening of potential ombudsman staff and volunteers, ~~are~~is reviewed in addition to standard education and work experience questions.

(b) Persons who are not eligible for ombudsman volunteer certification ~~include any person~~ designate include any person ~~individual~~ individual who:

- (1) was ~~terminated~~ terminated from employment in a facility where he or she ~~wishes~~ wants to volunteer ~~and any relative of a fired employee;~~
- (2) is a relative of ~~an~~ a ~~current~~ current employee of the facility where he or she ~~wishes~~ wants to volunteer;
- (3) lacks the ability to be objective or hold confidences;
- (4) is a current employee or has any financial interest in a facility ~~in which~~ where he or she ~~wishes~~ wants to volunteer. The person may volunteer in another facility ~~with the stipulation that, if the chosen facility is a competitive facility, acceptance must be made by the administrator of the facility the volunteer chooses~~ located in a separate planning and services area;
- (5) is a paid sitter, private duty nurse, or ~~private duty~~ private duty aide in the facility where the person ~~wishes~~ wants to volunteer. If a competitive facility is chosen, the placement is accepted by the chosen facility;
- (6) is involved in a pending law suit against a facility, until the legal process is completed and acceptance of the person as a volunteer is made by the selected facility administrator ~~of the selected facility;~~
- (7) stands to gain financially through an action or potential action brought on behalf of persons the ~~ombudsman~~ State Long-Term Care Ombudsman Program serves; ~~and~~ or
- (8) ~~was convicted of a crime listed in Section 1-1950.1 of Title 63 of the Oklahoma Statutes or whose name appears on the Sex Offender Registry or the Mary Rippy Violent Offender Registry~~ was determined to be ineligible by the Oklahoma State Department of Health National Fingerprint Background Check Program.

340:105-11-252. Conflict of interest statement and ethical guidelines

(a) The Older Americans Act of 1965, as ~~amended~~ Amended, requires assurances that there are no conflicts of interest within the State Long-Term Care Ombudsman Program. Mechanisms to identify and remedy any conflicts are mandated. ~~Ombudsman~~ State Long-Term Care (Office) staff and volunteers study the rules in this Section and sign Form 02OM001E, Conflict of Interest Statement and Ethical Guidelines, ~~if~~ when able to provide ~~the~~ the assurances and meet ~~the~~ the ethical guidelines. The designated ombudsman:

- (1) and any member of the ombudsman's immediate family may not own, operate, control, or have interest, voting rights, or outstanding indebtedness to or be employed by any company or facility or person investigated by the ombudsman;
- (2) may not solicit or accept from any person or organization, directly or indirectly, money or anything of value if it could reasonably be expected to influence the ombudsman's official actions or judgment or could reasonably be considered a reward for any official action or omission on the part of the ombudsman;
- (3) who is assigned or acts as an official representative of ~~his or her agency~~ a designated entity in the presentation

of papers, talks, demonstrations, or making appearances does not solicit or accept fees, honoraria, or reimbursement of expenses for personal gain. Any fees or honoraria offered in connection with these activities are paid to the agency designated entity;

- (4) is alert to anything that impairs ability to objectively investigate complaints. The ombudsman avoids conflict of interest in the establishment of personal relationships that affect impartiality on the job;
- (5) may be involved in serving as an officer or board member of a social, fraternal, or religious organization for which the ombudsman receives no compensation or anything of value, provided the organization is not affected by exercise of the ombudsman's discretion;
- (6) may not use or disclose information gained in the course of, or by reason of, the ombudsman's official position or activities in any way without the express consent of the resident or complainant;
- (7) discloses all past and current appointments, involvement, membership, or interest that affect or could reasonably be expected to affect the ombudsman's ability to investigate and resolve complaints in an objective and independent manner;
- (8) may not effectively recommend or decide to hire or promote another person who is a member of the ombudsman's immediate family;
- (9) may not give preferential or favorable treatment in provision of service to a resident who is a member of the ombudsman's family; ~~and~~
- (10) may not serve as guardian, conservator, or in another fiduciary or surrogate decision-making capacity for a resident of a long-term care facility where he or she is assigned or investigates complaints;
- (11) may not be assigned, investigate complaints, or serve residents of a facility in where his or her immediate family member resides; and
- (12) may not conduct business in restaurants or other public places where a public observer might reasonably conclude that confidences could be breached due to lack of privacy.

(b) In no circumstance will the Oklahoma Department of Human Services or a local ombudsman entity appoint or employ an individual, nor will the State Long-Term Care Ombudsman designate an individual as an Office representative who:

- (1) has direct involvement in the licensing or certification of a long-term care facility;
- (2) has an ownership or investment interest represented by equity, debt, or other financial relationship in a long-term care facility. Divestment within a reasonable period may be considered an adequate remedy to this conflict;
- (3) receives, directly or indirectly, remuneration in cash or in kind under a compensation arrangement with an owner or operator of a long-term care facility; or
- (4) is employed by or participating in the management of a long-term care facility.

(c) Any entity that appoints or employs Office representatives make efforts to avoid appointing or employing an individual as an Office representative who was employed by or

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participating in the management of a long-term care facility within the previous 12 months. Where such an individual is appointed or employed, steps are taken to remedy the conflict.

340:105-11-254. Ombudsman complaint handling guidelines [REVOKED]

Upon receipt of a complaint, the ombudsman proceeds as described in this subsection:

- (1) ~~If the complainant has not done so, encourage the complainant to discuss the matter with the appropriate person(s) within the facility or agency. Complainants are encouraged to act for themselves when possible.~~
- (2) ~~If the complainant has utilized the facility process to no avail, or does not perceive the facility staff to be responsive, or is fearful of taking direct action, the ombudsman proceeds with investigation by:~~
 - (A) ~~reviewing the complaint with the complainant and identifying and prioritizing issues;~~
 - (B) ~~evaluating the complaint for urgency;~~
 - (C) ~~acquiring written consent for release of information, if appropriate;~~
 - (D) ~~keeping a narrative log of interviews, meetings, contacts, and requests for information;~~
 - (E) ~~contacting parties involved to get all the facts. Identity of complainant or resident is not revealed without consent;~~
 - (F) ~~identifying and reviewing all state and federal regulations pertinent to the complaint;~~
 - (G) ~~developing a strategy for resolution with the complainant or resident. If referral is necessary, the ombudsman contacts his or her supervisor;~~
 - (H) ~~anticipating barriers, involving appropriate personnel, and seeking technical assistance from the State Ombudsman Office as needed;~~
 - (I) ~~implementing strategy for resolution; and~~
 - (J) ~~following up to verify that resolution, or corrections, or both, have occurred and that there is no retaliation against the complainant or resident.~~
- (3) ~~Activities undertaken in resolution of complaints may include:~~
 - (A) ~~negotiating with a facility to change a particular long-term care facility behavior, pattern, or practice affecting a resident;~~
 - (B) ~~educating a resident, relative, or long-term care facility staff to resolve a problem;~~
 - (C) ~~affecting appropriate enforcement action by a regulatory agency;~~
 - (D) ~~proposing and advocating regulatory or statutory changes or additions; and~~
 - (E) ~~advising the complainant or resident about the right to pursue legal action.~~

340:105-11-255. Office of the State Long-Term Care (Office) ombudsman staff and volunteer training

(a) ~~Ombudsman~~**Paid ombudsman staff training curriculum.** ~~New ombudsman staff training includes 90 hours of introductory education in:~~

- (1) ~~an introduction to the Long-Term Care Ombudsman Program (Program);~~
- (2) ~~ombudsman~~**Program** policies and procedures;
- (3) ~~the~~ **complaint investigation and** response system;
- (4) ~~the~~ **long-term care regulatory system;**
- (5) residents' rights;
- (6) characteristics of long-term care facilities and residents;
- (7) ~~aging processes of aging;~~
- (8) communication skills;
- (9) legal and ethical issues;
- (10) ~~a~~ **visitation practicum;**
- (11) mediation or negotiation skills;
- (12) community resources or services;
- (13) volunteer management; ~~and~~
- (14) reporting and record keeping-;
- (15) ~~adult abuse, neglect, and exploitation investigations; and~~
- (16) ~~testing to determine an understanding of the curriculum.~~

(b) ~~Ombudsman volunteer~~**Volunteer ombudsman training curriculum.** ~~Ombudsman volunteer training includes 12 hours of introductory education in:~~

- (1) ~~introduction to the Long-Term Care Ombudsman Program;~~
- (2) ~~the~~ **ombudsman volunteer role, including activities and responsibilities;**
- (3) ~~problem-solving and complaint investigation;~~
- (4) ~~aging processes of aging;~~
- (5) ~~characteristics of the institutionalized older person~~**long-term care facilities and residents;**
- (6) communication and interviewing skills;
- (7) Oklahoma's Nursing Home Care Act, Residential Care Act, or Assisted Living Act, as appropriate;
- (8) residents' rights in long-term care facilities;
- (9) ~~the regulation of long-term care~~ **regulation;**
- (10) confidentiality; ~~and~~
- (11) reporting and record keeping-; ~~and~~
- (12) ~~a visitation practicum.~~

[OAR Docket #17-496; filed 6-23-17]

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

[OAR Docket #17-497]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions

Part 1. Licensing Services - Child Care

340:110-1-6 [AMENDED]
340:110-1-9 [AMENDED]
340:110-1-9.3 [AMENDED]
340:110-1-15 [AMENDED]
Part 3. Licensing Services - Residential Care and Agencies
340:110-1-45 [AMENDED]
340:110-1-47.2 [AMENDED]
340:110-1-54 [AMENDED]
Subchapter 3. Licensing Standards for Child Care Facilities
Part 15. Requirements for Child Care Centers, Day Camps, Drop-In Programs, Out-of-School Time Programs, Part-Day Programs and Programs for Sick Children
340:110-3-309 [AMENDED]
(Reference WF 17-04)

AUTHORITY:

Director of Human Services; Section 162 of Title 56 of the Oklahoma Statutes (56 O.S. § 162).

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n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The proposed revisions to Chapter 110, Subchapter 1, Parts 1 and 3 amend Child Care Services (CCS) policy and licensing procedures. Amendments reflect clarifying CCS practice and licensing procedures regarding the application process, monitoring of licensed programs and agencies, non-compliance with licensing requirements, and grievances. Licensed child care programs and agencies impacted by the proposed amendments include: (1) family child care homes; (2) child care centers; (3) day-camps; (4) drop-in programs; (5) out-of-school time programs; (6) part-day programs; (7) programs for sick children; (8) residential programs; and (9) child-placing agencies.

The proposed revisions to Chapter 110, Subchapter 3, Part 15 amend licensing requirements for out-of-school time programs.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2017:

SUBCHAPTER 1. GENERAL PROVISIONS

PART 1. LICENSING SERVICES - CHILD CARE

340:110-1-6. Application Request for license process

(a) Application Request for license. The licensing staff provides Form 07LC004E, Request for License - Child Care Facility Program, to persons/individuals interested in licensure.

(1) If requested, a family child care home application is filed and when requested a license may be issued to a primary caregiver and spouse. References are obtained for both persons/individuals, and both must demonstrate compliance with requirements. A primary caregiver must be identified and meet all primary caregiver requirements.

(2) Proof of ownership must be provided according to Oklahoma Department of Human Services (OKDHS) (DHS) Appendix L-7, Ownership Proof Chart, for a:

- (A) child care center; or
(B) family child care home.

(3) Care may be provided in a location other than the primary caregiver's primary residence.

(4) Contact When permission to operate has not been granted, contact is made by phone every two months and documented on Form 07LC080E, Licensing Services Supplemental Information, when no permission to operate has been granted.

(b) Permission to Operate/operate. The facility program may be granted permission to operate on application status if when the licensing staff determines that an applicant is temporarily unable to comply with all licensing requirements, but the services are needed and the non-compliance does not place children at risk of imminent harm. These situations are staffed with the regional programs manager for permission to operate. Permission to operate cannot exceed 30-calendar days.

(c) Child care provider contract. The licensing staff advises the child care facility program of the opportunity to contract with OKDHS/DHS for the care of children whose families receive subsidized child care benefits, per OAC-Oklahoma Administrative Code (OAC) 340:40-13-5. The licensing staff documents that a child care contract promotional flyer is provided to the facility with contact information for the county child care liaison program.

(d) Reopening a family child care home ease. If When a family child care home has been closed for less than one year 12 months and had a record of compliance prior to closure, the licensing staff obtains a new application Form 07LC004E and may recommend license issuance after one compliant monitoring visit, utilizing previous Previous references may be utilized. Prior to issuance of the license, background investigations must be conducted per OAC 340:110-1-8.1.

(e) Reopening a child care center, day camp, drop-in, out-of-school time, part-day children's program, or school-age program for sick children. If When a child care center program has been closed and the same owner wishes requests to reopen, a new application must be Form 07LC004E is completed.

(1) Fire and health inspections completed within the last 12 months may be used, unless concerns exist.

(2) If When the facility program has been closed less than one year 12 months:

- (A) previously obtained director references may be used;

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- (B) background investigations must be conducted per OAC 340:110-1-8.1; and
- (C) with a record of compliance prior to closure, the licensing staff may recommend license issuance after one compliant monitoring visit.
- (f) **Computer checks on license applicants.** Computer checks to identify prior involvement with ~~OKDHS~~DHS are completed on required ~~persons~~individuals per OAC 340:110-1-8.1(g).
- (g) **Family child care homes approved to provide foster care.** A primary caregiver approved to provide kinship foster care may be licensed as a family child care home. ~~No other foster care placement will be approved.~~ The primary caregiver cannot be licensed ~~if~~when approved for therapeutic foster care per OAC 340:75-7-19. The approval for dual service is made by the licensing supervisor ~~in writing~~ prior to each child placement, based upon the recommendation of the licensing staff and DHS foster care staff of ~~the child placing agency.~~ Licensing staff complete Form 07LC099E, Dual Approval Request for Foster Care Placement. When a joint consensus is not achieved, either division may request a review by the dual approval committee for a final decision. The decision for approval is:
- (1) based upon the number, ages, and specific needs of children potentially eligible for child care and foster care and receipt of a written agreement from the primary caregiver stating the individual(s) from whom the child was removed will not be present during the hours of child care;
 - (2) documented in the case record; and
 - (3) reviewed with the ~~provider~~primary caregiver and foster care worker at least once ~~per year~~every 12 months or ~~more often if~~when concerns exist.
- (h) **Withdrawal of application request for license.** ~~If a child care facility~~When an applicant:
- (1) ~~wishes~~requests to withdraw the ~~application request for license~~ prior to issuance of an initial permit the licensing staff:
 - (~~1A~~) documents this request on Form 07LC080E, Licensing Services Supplemental Information;
 - (~~2B~~) confirms ~~that~~ no children are in care; and
 - (~~3C~~) may close the case, unless negative action is warranted.
 - (2) has not had children in care for more than 12 months, the applicant is requested to withdraw the request for license. When the applicant:
 - (A) agrees to withdraw the request, licensing staff:
 - (i) documents this discussion on Form 07LC080E;
 - (ii) provides a letter notifying the applicant of withdrawal of request for license; and
 - (iii) proceeds with case closure; or
 - (B) does not agree to withdraw the request, licensing staff; or
 - (i) documents this discussion on Form 07LC080E;

- (ii) provides a letter notifying the applicant of case closure within 10-calendar days of receipt of letter; and
- (iii) proceeds with case closure.

340:110-1-9. Case management

- (a) **Periodic monitoring visits.** Child Care Services (CCS) licensing staff makes a minimum of three unannounced monitoring visits to programs operating a full-year program and two unannounced monitoring visits annually to programs operating less than a full year. Licensing staff varies the time of monitoring visits to include lunch observation and an evening visit to child care centers with extended hours.
- (b) **Ongoing monitoring.** During monitoring visits, licensing staff observes the entire facility, including the outdoor play space and vehicles used for transportation, when available. At, or subsequent to each visit, licensing staff checks:
- (1) compliance with licensing requirements;
 - (2) compliance with stars criteria per Oklahoma Administrative Code (OAC) 340:110-1-8.3;
 - (~~3~~) records for new personnel including personnel sheets and compliance with background investigations per ~~Oklahoma Administrative Code (OAC)~~OAC 340:110-1-8.1;
 - (~~4~~) personnel professional development records;
 - (~~5~~) the Oklahoma Department of Human Services (DHS) ~~data based~~database on applicable individuals per OAC 340:110-1-8.1(g);
 - (~~6~~) fire and health inspections within the last 24 months, when applicable;
 - (~~7~~) Form 07LC092E, Insurance Verification, within the last 12 months, or posting of Form 07LC093E, Insurance Exception Notification; and
 - (~~8~~) other documentation requiring renewal.
- (c) **Technical assistance and consultation.** Licensing staff provides:
- (1) technical assistance to licensees to assist them in meeting minimum requirements; and
 - (2) consultation on various aspects of quality child care.
- (d) **Agreements with tribal licensing programs and other monitoring agencies.** DHS may enter into a cooperative licensing agreement with a tribal licensing program or other monitoring agency.
- (e) **Equipment inventory.** Licensing staff completes Form 07LC006E, Equipment Inventory for Child Care Programs, prior to a license being issued. Licensing staff or the program may complete the appropriate equipment inventory prior to a change in class and prior to an increase in licensed capacity in a child care center, day camp, drop-in, out-of-school time, part-day program, and program for sick children. The purpose of the inventory is to document the equipment available and items needed to comply with the equipment requirements. Licensing staff may conduct a complete inventory any time concern exists about the availability of required equipment.
- (f) **Change of address.** Specific procedures are followed when a program moves to a new address.

- (1) When a program moves to a new address, licensing staff:
- (A) obtains an updated Form 07LC004E, Request for License Child Care Program;
 - (B) conducts a monitoring visit to verify the new location meets licensing requirements;
 - (C) obtains new fire and health inspections, when applicable, for a child care center, day camp, drop-in, out-of-school time, part-day program, and program for sick children;
 - (D) obtains Oklahoma Department of Environmental Quality approval, when applicable;
 - (E) completes Form 07LC057E, Physical Plant, with required calculations; and
 - (F) requests a permit or license be issued reflecting the new address.
- (2) When a change of address involves care provided in a location other than the primary caregiver's primary residence, refer to OAC 340:110-1-6(a)(3).
- (g) **Change in program name.** When there is a change in program name, licensing staff verifies there is no change in ownership, and documents the name change in the case record and database. A new Form 07LC004E reflecting the program name change is completed. Licensing staff requests a permit or license be issued reflecting the new program name.
- (h) **Change in director.** When there is a change in director, licensing staff:
- (1) verifies the new director meets qualifications;
 - (2) obtains the applicable page of Form 07LC004E, completed by the new director;
 - (3) obtains references;
 - (4) obtains an appropriate, complete Form 07LC117E, Compliance Review for Child Care Programs, from the director, when the director has no previous director experience;
 - (5) notifies the new director of current personnel ~~who were~~ granted a waiver; and
 - (6) documents the information on Form 07LC080E, Licensing Services Supplemental Information.
- (i) **Change in primary caregiver.** When there is a change in primary caregiver, licensing staff:
- (1) verifies the primary caregiver meets qualifications;
 - (2) obtains the applicable page of Form 07LC004E completed by the new primary caregiver;
 - (3) obtains references;
 - (4) notifies the new primary caregiver of current personnel ~~who were~~ granted a waiver; and
 - (5) documents the information on Form 07LC080E.
- (j) **Change in household.** All changes in household members living in a facility are documented on the monitoring summary. Form 07LC096E, Criminal History Review Request for Programs, must be submitted prior to a new adult residing in the facility. When there is a new adult residing in a facility, the required documentation includes:
- (1) the applicable page of Form 07LC004E completed by the new adult;
 - (2) background investigations per OAC 340:110-1-8.1; and
 - (3) a DHS database search.
- (k) **Change in ownership.** When there is a change in ownership or change in form of business organization of a ~~family child care home, child care center, day camp, drop-in, out-of-school time, part-day program, or program for sick children~~ child care program, the case is closed and a new Form 07LC004E is obtained. Prior to the issuance of a permit or license, the program must be in compliance with background investigations per OAC 340:110-1-8.1. A permit may be issued when a monitoring visit without numerous, repeated, or serious non-compliances was conducted at the program within the past 60-calendar days. A full monitoring visit is conducted within 14-calendar days of change of ownership to verify the new owner is able to meet minimum licensing requirements.
- (l) **Change in class.** When a program requests a change in class, the procedures contained in this subsection are followed.
- (1) The case is closed and a new Form 07LC004E is required when a:
 - (A) family child care home converts to a child care center, day camp, drop-in, out-of-school time, part-day program, or program for sick children; or
 - (B) child care center, day camp, drop-in, out-of-school time, part-day program, or program for sick children converts to a family child care home.
 - (2) ~~Any other~~ Other request for change in class does not require case closure and documentation includes:
 - (A) a request in writing from the provider;
 - (B) a new Form 07LC004E, with updated information;
 - (C) documentation the program meets the requirements for the requested class type;
 - (D) the appropriate equipment inventory, when applicable;
 - (E) a current approved fire inspection, when applicable;
 - (F) a current approved health inspection, when applicable; and
 - (G) database updates to the appropriate class and monitoring frequency plan.
- (m) **Procedure for increasing or decreasing capacity.** When a program requests an increase or decrease in licensed capacity, it is documented on Form 07LC080E, Licensing Services Supplemental Information, and must be approved by the licensing supervisor. The program must not have a history of numerous, repeated, or serious non-compliance, and must provide:
- (1) the reason for the increase;
 - (2) an updated floor plan on Form 07LC057E reflecting adequate indoor and outdoor space, toilets, and sinks for the increase and ~~any other~~ changes;
 - (3) fire department approval of ~~any~~ space not previously inspected;
 - (4) health approval of ~~any~~ additional food preparation space not previously inspected;
 - (5) an updated equipment inventory reflecting adequate equipment for the increase; and
 - (6) verification of the number of required master teachers.

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(n) **Inactive cases.** A program is determined to be in inactive status when care has not been provided for more than 90-calendar days.

(1) A program wanting to remain open after 90-calendar days submits a request in writing including a statement the owner will notify licensing ~~when prior to resuming care is resumed~~. Licensing staff verify compliance with requirements prior to resuming care.

(2) The program is contacted by licensing staff, a minimum of every four months by phone, letter, or email to update program status including new household members, or other program changes, per (j) of this Section.

(3) When the program is a child care center, day camp, drop-in, out-of-school time, part-day program, or program for sick children voluntary closure is discussed with the owner and an agreement to close is reached ~~if~~ when possible.

(4) When care has not been provided for 12-consecutive months or more, licensing staff ~~sends~~ provides a letter to notify the owner of case closure within 10-calendar days of receipt of letter, unless CCS is notified care has resumed.

(5) Licensing staff visits the inactive program, at least once ~~a year~~ during the 12 month timeframe to verify compliance with licensing requirements until closure is final.

(6) When a change of address occurs during the time a program is in inactive status, a monitoring visit is required and change of address is followed per (f) of this Section.

(o) **Closure of an inactive program.** Procedures (1) - (4) of this subsection are followed when closing an inactive program.

(1) Licensing staff contacts the owner of a family child care home and large child care home during the 12th month of inactive status to verify case status.

(2) Licensing documents the case status on Form 07LC080E, Licensing Services Supplemental Information, and notifies the owner the case will be closed should care not resume, prior to the end of the 12th month.

(3) When care has not been provided for 12-consecutive months or more, licensing staff ~~sends~~ provides a letter to notify the owner of case closure within 10-calendar days of receipt of letter, unless CCS is notified care has resumed.

(4) The case is closed and the owner must reapply and be approved for a license prior to resuming care, per OAC 340:110-1-6.

(p) **Response to a child death.** When notified of death of a child while in child care, licensing staff completes Form 07LC079E, Child Death Report, and forwards it to the statewide licensing coordinator or designee. When notified of a death, licensing staff visits the program as soon as possible, unless advised otherwise by law enforcement.

(q) **Serious incident reports.** The licensing supervisor submits reports of serious incidents to the licensing regional programs manager, county director, and statewide licensing coordinator ~~a report of any serious incident~~.

(r) **Self-reported incidents.** When a provider self-reports a non-compliance incident, Form 07LC080E is completed and

the licensing database is updated. ~~A letter to include a copy of Form 07LC080E is provided to the program.~~

340:110-1-9.3. Non-compliance with requirements

(a) **Documentation of non-compliance.** Licensing staff documents clearly and concisely areas of non-compliance and the discussion with the operator on the monitoring ~~report~~ checklist and summary.

(1) A plan of correction, including a specific agreed-upon time period for correction of ~~the each~~ non-compliance; is documented ~~for each non-compliance~~ on the monitoring ~~report~~ checklist. ~~If~~ When a previous non-compliance was not corrected by the agreed-upon time period, the non-compliance is documented again with a shorter plan of correction date.

(2) Immediate correction is required when the non-compliance has a direct impact on the health, safety, or well-being of one or more children in care.

(3) Licensing staff requests the operator sign the monitoring ~~report~~ summary and explains the operator's signature indicates acknowledgment of information recorded.

(4) ~~If~~ When the ~~person~~ operator or individual in charge refuses to sign, the refusal is documented on the report.

(5) The operator is given a copy of the completed monitoring ~~report~~ summary.

(b) **Referrals to fire and health officials.** ~~If~~ When non-compliance regarding fire or health requirements places children at risk or remains uncorrected, licensing staff requests an inspection by a fire, health, or Oklahoma Department of Environmental Quality official. ~~If~~ When there is non-compliance regarding smoke detectors, the child care provider is given a copy of the Smoke Detector Law, Section 324.11A of Title 74 of the Oklahoma Statutes. ~~If~~ When the non-compliance is not corrected by the third monitoring visit or is frequently repeated, copies of the monitoring ~~reports~~ summaries are ~~sent~~ provided with a cover letter to the appropriate fire official for enforcement of the law.

(c) **Numerous, repeated, and serious non-compliance.**

(1) Numerous non-compliance is ~~any~~ monitoring ~~visit~~ visits with:

(A) five or more items documented as non-compliant on the monitoring ~~report~~ checklist for a family child care home or large child care home;

(B) six or more items documented as non-compliant on the monitoring ~~report~~ checklist for a child care center, day camp, drop-in, out-of-school time, part-day children's program, or school-age program for sick children with a licensed capacity of less than 60; or

(C) seven or more items for a child care center, day camp, drop-in, out-of-school time, part-day children's program, or school-age program for sick children with a licensed capacity of 60 or more.

(2) Repeated non-compliance is three or more documented incidents of non-compliance with the same requirement within the last 12 months. For missing immunizations to be considered a repeat non-compliance, they must be regarding the same child.

(3) Serious non-compliance is a non-compliance with licensing requirements ~~that exposes~~exposing children to conditions ~~that present~~presenting an imminent risk of harm. Imminent risk of harm must be assessed based on the child's age of ~~the child~~, the amount of time the caregiver was out of compliance, and the caregiver's efforts to mitigate the risk. Serious non-compliances are identified through licensing observations, confirmed complaint investigations, and/or self-reported incidences. Some examples of non-compliance that may be considered as serious are:

- (A) staff-child ratio;
- (B) supervision of children;
- (C) infant sleep environments;
- (D) prohibited disciplinary actions;
- (E) licensed capacity;
- (F) use of passenger restraints;
- (G) water activities;
- (H) pools and other water hazards;
- (I) multiple hazards;
- (J) weapons;
- (K) reporting child abuse;
- (L) knowingly permitting access to children by ~~persons~~individuals identified as restricted or Child Care Restricted Registry registrants;
- (M) failure to obtain background investigations or Child Care Restricted Registry searches;
- (N) administering medication to children;
- (O) room temperatures;
- (P) heat sources and loss of any utility service;
- (Q) compliance file and or posting;
- (R) cardio-pulmonary resuscitation and first aid training;
- (S) liability insurance; and
- (T) vehicle liability insurance.

(d) **Case management responses to non-compliant facilities.** When there is numerous, repeated, or serious non-compliance, one or more of the actions in (1) through (12) is taken.

- (1) **Technical assistance.** Technical assistance is offered along with referrals to consultants or training resources, ~~if~~when necessary, to assist the operator in meeting and maintaining licensing requirements.
- (2) **Follow-up phone call.** Follow-up phone calls ~~to the program~~ are ~~made~~, and documented on Form 07LC080E, Licensing Services Supplemental Information. A copy ~~of the documentation~~ is ~~mailed~~provided to the ~~facility~~program.
- (3) **Non-compliance letters.** A non-compliance letter may be written to the operator. A copy ~~of the non-compliance letter~~ is sent to the owner or registered agent, ~~if~~when applicable, with a copy of the monitoring ~~report~~summary.
- (4) **Return monitoring visit.** A return monitoring visit may be made ~~if~~when there is numerous, repeated, or serious non-compliance with licensing requirements or when non-compliance places children at imminent risk of harm. ~~If~~When the non-compliance is associated with a specific time of day, such as understaffing after school or a

lack of early morning supervision, the return visit is made at that approximate time.

(5) **Use of witnesses.** Licensing staff may be accompanied by a witness during monitoring visits ~~if~~when the ~~facility has~~program had numerous, repeated, or serious non-compliances or ~~if~~ denial of request for license or revocation of the license is under consideration. The witness may be an Oklahoma Department of Human Services (~~OKDHS~~)(DHS) employee or a representative from the health or fire department, or law enforcement. The witness signs the monitoring ~~report in the space provided~~summary.

(6) **Increased monitoring visits.** Licensing staff may increase the frequency of monitoring when there has been numerous, repeated, or serious non-compliance or when the need for additional technical assistance is indicated.

(7) **Notice to comply.** Licensing staff provides the ~~facility~~program with Form 07LC037E, Notice to Comply, ~~on which the facility and the program~~ documents the plan of correction. Immediate correction may be required ~~if~~when the non-compliance places the health, safety, or well-being of one or more children in care at risk.

(A) ~~If~~When the plan submitted by the operator is unacceptable to licensing staff, licensing staff negotiates and documents a revised plan.

(B) ~~If~~When Form 07LC037E is not submitted within the specified time period, licensing staff contacts the operator and documents the conversation.

(C) When non-compliances continue to place children at risk, licensing staff ~~sends~~provides a letter stating the non-compliances and/or continued failure to correct non-compliances may result in revocation of license, denial of the ~~application~~request for license, filing of an injunction, or Emergency Order.

(8) **Office conference.** Licensing staff may schedule an office conference with the owner and/or operator of the facility. The licensing supervisor is present at the office conference. The licensing regional programs manager (RPM) is informed of the office conference and may be present, ~~if~~when necessary.

(A) ~~Areas~~Program status, areas of non-compliance and progress toward meeting the plan(s) of correction are reviewed and technical assistance is offered.

(B) The conference is documented on Form 07LC080E, ~~which and~~ is signed by licensing staff, the operator, and ~~any~~ witnesses ~~present~~. This documentation includes a list of every ~~person who is~~ individual present, the purpose of the conference, and verification of correct documentation regarding ownership.

(C) Form 07LC037E is completed ~~if~~when one addressing these issues has not been completed ~~recently~~.

(9) **Consent agreement.** ~~OKDHS~~Child Care Services (CCS) and the facility owner may enter into a consent agreement whereby the ~~facility~~program owner agrees to specific conditions in lieu of license denial of request for license or license revocation, per ~~OAC~~Oklahoma Administrative Code (OAC) 340:110-1-9.5.

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- (10) **Revocation or denial.** Licensing staff may recommend the ~~application to become licensed~~request for license be denied or the license be revoked when numerous, repeated, or serious non-compliance with requirements has been observed and documented or the ~~facility~~program failed to adequately protect children, per OAC 340:110-1-10.
- (11) **Voluntary cease care.** With CCS State Office approval, the owner is asked to voluntarily cease caring for children. The RPM is notified of every situation involving a request for voluntary cease care.
- (12) **Voluntary closure.** With CCS State Office approval, the owner is asked to voluntarily close the facility, per OAC 340:110-1-11.
- (e) **Case management responses when children are at risk.** When licensing staff documents non-compliance with requirements or is investigating a complaint that may place the health, safety, or well-being of children at imminent risk of harm, options to consider during consultation with the operator and licensing supervisor are outlined in this subsection.
- (1) The operator is asked to immediately correct the non-compliance, for example, ~~the staff person~~program personnel will not ~~work~~be present or work alone with children at the facility pending the outcome of an investigation.
- (2) ~~The~~With CCS State Office approval, the owner is asked to ~~discontinue~~voluntarily cease child care until the non-compliance is corrected or the investigation is complete.
- (3) ~~The~~With CCS State Office approval, the owner is asked to voluntarily close the facility.
- (4) Licensing staff requests an Emergency Order, per OAC 340:110-1-9.4, when immediate action is needed to protect children in a child care facility.
- (5) The owner ~~and CCS~~ agrees to enter into a consent agreement whereby the ~~facility~~program owner agrees to specific conditions in lieu of ~~license~~denial of request for license or ~~license~~revocation, per OAC 340:110-1-9.5.
- (6) Licensing staff may recommend the ~~application~~request for license be denied or license be revoked when numerous, repeated, or serious non-compliance with requirements was observed and documented or the ~~facility~~program failed to adequately protect children, per OAC 340:110-1-10.
- (7) An injunction may be requested when a child care facility is:
- (A) unlicensed;
 - (B) on application status;
 - (C) licensed;
 - (D) violating an Emergency Order;
 - (E) operating during an appeal following denial of request for license or ~~denial~~ and children are at risk; or
 - (F) violating the notice to cease ~~and desist~~ care following denial of request for license or ~~revocation or denial~~ of license.
- (f) **Notification to supervisor when children are at risk.** ~~If~~When during a monitoring visit licensing staff is concerned

the health, safety, or well-being of children is at imminent risk, the licensing supervisor or ~~OCCS~~CCS State Office staff is contacted immediately for an appropriate response.

(g) **Alternative method of compliance.** ~~OCCS~~CCS may approve an alternative method of compliance to a minimum licensing requirement. An alternative method of compliance may be authorized ~~if~~when licensing determines the alternative method of compliance offers equal protection of health, safety, and well-being to children, meets the basic intent of the requirements for ~~which~~ the alternative compliance ~~was~~being requested, and does not violate statutory requirements.

(1) An applicant or licensee may submit a written request with ~~any~~ supporting documentation on Form 07LC061E, Alternative Compliance Request, to the licensing ~~specialist~~staff. A separate alternative method of compliance request is submitted for each requirement ~~for which~~that an alternative method of compliance is requested.

(2) Licensing ~~specialist~~staff completes Form 07LC105E, Alternative Compliance Referral, and submits all documentation to the statewide licensing coordinator or designee for authorization.

(3) Approval of an alternative method of compliance does not set a precedent, and is independently evaluated on the merits of each request.

(4) The ~~facility's~~program's record of compliance is taken into consideration in determining whether to approve the request.

(5) An alternative method of compliance is not authorized for critical items affecting the health and safety of a child, such as exceeding licensed capacity or staff-child ratios, fire safety violations, or behavior and guidance violations.

(6) ~~Written notice from OCCS~~, Form 07LC075E, Notice of Alternative Compliance, stating the nature of the exception, is posted with the license.

340:110-1-15. **Grievance ~~and~~ complaint policy and procedure**

(a) **Grievance ~~and~~ complaint policy.** The owner or director of a licensed program may file a grievance ~~or~~complaint regarding the application of any written or unwritten policy, rule, or regulation of ~~the Oklahoma Department of Human Services (DHS)~~Child Care Services (CCS) or ~~any~~ decision by a ~~DHS~~CCS employee affecting the program. Grievances must be requested within 30-calendar days of the documented non-compliance, violation of star criteria, or substantiated complaint allegation. A grievance ~~or~~complaint is not accepted concerning an Emergency Order, denial of request for license or ~~revocation~~ of a child care facility license. The procedure for appealing this action is provided in Section 407 of Title 10 of the Oklahoma Statutes, the Oklahoma Child Care Facilities Licensing Act.

(b) **Grievance ~~or~~ complaint procedure.** Individuals wanting to file a grievance ~~or~~complaint are encouraged to seek informal resolution of his or her concerns by contacting the appropriate licensing supervisor, who attempts to resolve the matter.

(1) When a resolution cannot be reached at the local level or through verbal conversation with CCS State Office staff, the grievant ~~or complainant~~ is requested to file a written request with the licensing supervisor within 15-calendar days of this communication.

(2) The licensing supervisor notifies the licensing regional programs manager (RPM) and statewide licensing coordinator ~~that a formal grievance or complaint~~ was filed and efforts were made to resolve the issue. The licensing supervisor responds to written grievances ~~or complaints~~ within 10-Oklahoma Department of Human Services (DHS) DHS business days of receipt. The grievant is informed the request for additional reviews must be submitted within 15-calendar days of the correspondence date.

(3) When the grievant ~~or complainant~~ is not satisfied with the proposed resolution, he or she may ~~appeal to request review by~~ the RPM. The RPM responds to written grievances ~~or complaints~~ within 10-DHS business days of receipt. The grievant is informed the request for additional reviews must be submitted within 15-calendar days of the correspondence date.

(4) When the grievant ~~or complainant~~ is not satisfied with the proposed resolution, he or she may ~~appeal to request review by~~ the Child Care Advisory Committee (CCAC) statewide licensing coordinator. The grievant is informed he or she may request review by the Peer Review Board of the Child Care Advisory Committee (CCAC), prior to review by the statewide licensing coordinator. The statewide licensing coordinator forwards information to the Peer Review Board, when applicable or proceeds with the review. The CCAC responds within 10 DHS business days of receipt to the statewide licensing coordinator with advisement for resolution.

(5) When applicable, the Peer Review Board responds to the statewide licensing coordinator with advisement for resolution within 10-DHS business days of receipt.

(6) The statewide licensing coordinator notifies the grievant ~~or complainant~~ of the ~~Child Care Service (CCS)~~ CCS decision within 10-DHS business days or when applicable 10-DHS business days of receipt of the CCAC Peer Review Board advisement. The grievant is informed the request for additional reviews must be submitted within 15-calendar days of the correspondence date.

(7) When the grievant ~~or complainant~~ is not satisfied with the proposed resolution, he or she may ~~appeal to request review by~~ the CCS director, Adult and Family Service (AFS) director, and Director of Human Services (Director), respectively. The CCS director, AFS director, and Director each respond within 10-DHS business days of receipt and the Director's decision is final. The grievant is informed the request for additional reviews must be submitted within 15-calendar days of the correspondence date. The Director's decision is final.

(8) The grievant ~~or complainant~~ is requested to file only one written ~~complaint/grievance~~. Referrals for resolution are made by the DHS staff involved in the response.

PART 3. LICENSING SERVICES - RESIDENTIAL CARE AND AGENCIES

340:110-1-45. ~~Application process~~ Request for license process

(a) ~~Application Request for license packets. Application Request for license packets, which include~~ including the appropriate licensing requirements and application request for license forms, are provided to potential licensees upon request. This ~~The~~ packet includes:

(1) Form ~~07C040E~~ 07LC040E, Request for License — Child Placing Agency, Residential Child Care, and Children's Shelter Request for License Child-Placing Agency and Residential Child Care;

(2) Form 07LC041E, ~~Staff Information — Child Care Facility~~ Personnel Information; and

(3) Form ~~07LC043~~ 07LC043E, Child Placing Agency Compliance Review, or Form 07LC056E, Residential Child Care Facility Compliance Review-Residential Child Care Facility, as applicable; and

(4) Appendix L-7, Ownership Proof Chart.

(b) Receipt of application request for license. Upon receipt of the ~~application request for license packet to~~ Oklahoma Child Care Services (CCS), the case is assigned a license number and a file is created. Contact ~~When permission to operate has not been granted, contact is made by phone every two months and documented on Form 07LC080E, Licensing Services Supplemental Information, when children have not been accepted into care.~~

(c) Permission to operate. The ~~facility~~ program may be granted permission to operate on application status. ~~If~~ When the licensing staff determines ~~that~~ an applicant is temporarily unable to comply with all licensing requirements, but the services are needed and the non-compliance does not place children at risk of imminent harm, these situations are staffed with programs manager for permission to operate. Permission to operate ~~can not~~ cannot exceed 30-calendar days.

(d) Reopening a residential child care facility program or child-placing agency. A new ~~application request for license~~ application request for license must be completed when a residential ~~facility program~~ facility program or child-placing agency that has been closed is reopened. Prior to the issuance of the license, background investigations must be conducted per ~~OAC 340:110-1-5~~ Oklahoma Administrative Code (OAC) 340:110-1-8.1.

(e) Computer checks. Computer checks to identify prior involvement with the Oklahoma Department of Human Services are completed on required ~~persons~~ individuals per ~~OAC 340:110-1-5~~ 340:110-1-8.1.

(f) Withdrawal of application request for license. ~~If~~ When a residential ~~child care facility program~~ facility program or child-placing agency applicant;

(1) ~~wishes~~ requests to withdraw the ~~application request for license~~ application request for license prior to issuance of an initial permit, the licensing staff:

(A) documents this request on Form 07LC080E;

(B) confirms ~~that~~ no children are in care, or no child-placing activity is being conducted; and

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(3C) may close the case unless negative action is warranted; and

(2) has not had children in care or conducted child-placing activity for more than 12 months, the program or agency is requested to withdraw the request for license. When the program or agency:

(A) agrees to withdraw the request, licensing staff:

(i) documents this discussion on Form 07LC080E;

(ii) provides a letter notifying the applicant of withdrawal of request for license; and

(iii) proceeds with case closure; or

(B) does not agree to withdraw the request, licensing staff:

(i) documents this discussion on Form 07LC080E;

(ii) provides a letter notifying the applicant of case closure within 10-calendar days of receipt of letter; and

(iii) proceeds with case closure.

340:110-1-47.2. Non-compliance with requirements

(a) **Documentation of non-compliance.** Licensing staff documents clearly and concisely areas of non-compliance and the discussion with the operator on the monitoring ~~re-~~port checklist and summary.

(1) A plan of correction, including an agreed-upon time period for correction of the non-compliance, is documented on the monitoring ~~report for each~~ checklist. Each non-compliance or documentation indicates a plan of correction will be submitted by the executive or program director. When a previous non-compliance was not corrected by the agreed-upon time period, the non-compliance is documented again with a shorter plan of correction date.

(2) Immediate correction is required when the non-compliance has a direct impact on the health, safety, or well-being of a child(ren) in care.

(3) Licensing staff requests the operator sign the monitoring ~~report~~summary, explaining the operator's signature indicates acknowledgment of the recorded information.

(4) When the operator or individual in charge refuses to sign, the refusal is documented on the ~~report~~summary.

(5) The operator is given a copy of the completed monitoring ~~report~~summary.

(b) **Referrals to fire and health officials.** When non-compliance regarding fire or health requirements places children at risk of harm or remains uncorrected, licensing staff requests an inspection by a fire, health, or Oklahoma Department of Environmental Quality (ODEQ) official.

(c) **Case management responses to non-compliant facilities.** The responses in this subsection may be used when there is repeated, numerous, or serious non-compliance.

(1) **Technical assistance.** Technical assistance is offered along with referrals to consultants or professional development resources, when necessary, assisting the operator in meeting and maintaining licensing requirements.

(2) **Follow-up phone call to the program.** Phone calls are documented on Form 07LC080E, Licensing Services Supplemental Information, and a copy is mailed to the program.

(3) **Non-compliance letter.** A non-compliance letter may be written to the operator. Licensing staff ~~sends~~ provides a copy of the monitoring ~~report~~checklist and non-compliance letter to the governing board or owner, when applicable.

(4) **Return monitoring visit.** A return monitoring visit may be made when there is ~~repeated,~~ numerous, repeated, or serious non-compliance with licensing requirements or when non-compliance places children at imminent risk of harm. When the non-compliance is associated with a specific time of day, such as understaffing after school or a lack of early morning supervision, the return visit is made at ~~that~~the approximate time.

(5) **Use of witnesses.** Licensing staff may be accompanied by a witness during monitoring visits when the program has had numerous, repeated, or serious non-compliances or when ~~license~~ denial of request for license or revocation of a license is being considered. The witness may be an Oklahoma Department of Human Services (DHS) employee, ~~or~~ a representative from the fire or health department, or law enforcement. The witness signs the monitoring ~~report~~summary in the space provided.

(6) **Increased monitoring visits.** Licensing staff may increase the frequency of monitoring when there has been numerous, repeated, or serious non-compliance or when the need for additional technical assistance is indicated.

(7) **Notice to comply.** Licensing staff provides the program with Form 07LC037E, Notice to Comply, ~~on~~ which ~~and~~ the program documents the plan of correction. Immediate correction may be required when the non-compliance places the health, safety, or well-being of ~~a child(ren)~~ one or more children in care at risk.

(A) When the plan submitted by the operator is unacceptable to licensing staff, licensing staff negotiates and documents a revised plan.

(B) When the operator does not submit Form 07LC037E within the specified time period, licensing staff contacts the operator and documents the conversation.

(C) When non-compliances continue to place children at risk, licensing staff ~~sends~~ provides a letter stating non-compliances and/or continued failure to correct non-compliances may result in revocation of license, denial of ~~the~~ request for license, filing of an injunction, or issuance of an Emergency Order.

(8) **Office conference.** Licensing staff may schedule an office conference with the ~~owner of the program~~ owner or operator. The programs manager is present at the office conference. ~~Areas~~Program status, ~~areas~~ of non-compliance and progress toward meeting the plan(s) of correction are reviewed and technical assistance is offered. The office conference is documented on Form 07LC080E and signed by licensing staff, the operator, and witnesses

present. This documentation includes a list of the individuals present, purpose of the conference, and verification of correct documentation regarding ownership. Form 07LC037E is completed when one addressing these issues has not been completed recently.

(9) **Consent agreement.** ~~DHS~~Child Care Services (CCS) and the program owner may enter into a consent agreement whereby the program owner agrees to specific conditions in lieu of ~~license~~ denial of request for license or revocation of a license.

(10) **Revocation or denial.** Licensing staff may recommend the request for license be denied or the license revoked when numerous, repeated, or serious non-compliance with requirements has been observed and documented or the program failed to adequately protect children.

(11) **Voluntary cease care.** With CCS State Office approval, the owner is asked to voluntarily cease caring for children or child-placing activity. The programs manager is notified of every situation involving a request for voluntary cease care or child-placing activity.

(12) **Voluntary closure.** With ~~Child Care Services (CCS) state office~~CCS State Office approval, the owner is asked to voluntarily close the program.

(d) **Case management responses when children are at risk.** When licensing staff documents non-compliance with requirements or is investigating a complaint that children may be at imminent risk of harm, options to consider during consultation with the operator and the programs manager are outlined in this subsection.

(1) The operator is asked to immediately correct the non-compliance; for example, the personnel will not ~~work~~ be present or work alone with children at the program or be present at the facility pending the outcome of an investigation.

(2) The operator is asked to voluntarily cease care until the non-compliance is corrected or the investigation is complete.

(3) ~~The~~With CCS State Office approval, the owner is asked to voluntarily close the program.

(4) Licensing staff requests an issuance of an Emergency Order when immediate action is needed to protect children in a child care program on permit, licensed, on notice of revocation or denial, or operating during an appeal following revocation or denial.

(5) ~~The~~CCS and the owner agrees to may enter into a consent agreement whereby the program owner agrees to specific conditions in lieu of ~~license~~ denial of request for license or revocation of a license.

(6) Licensing staff may recommend the request for license be denied or license be revoked when numerous, repeated, or serious non-compliance with requirements was observed and documented or the program failed to adequately protect children.

(7) An injunction may be requested when the residential program or child-placing agency is:

- (A) unlicensed;
- (B) on application status;

- (C) licensed;
- (D) violating an Emergency Order;
- (E) operating during an appeal following ~~revocation or denial of request for license~~ or revocation of a license and children are at risk of harm; or
- (F) violating the notice to cease and desist care following denial of request for license or revocation of license.

(e) **Notification to supervisor when children are at risk.** When licensing staff, during a monitoring visit is concerned the health, safety, or well-being of children is at imminent risk, the licensing supervisor or CCS State Office staff is contacted immediately for an appropriate response.

(f) **Alternative method of compliance.** CCS may approve an alternative method of compliance to a minimum licensing requirement. An alternative method of compliance may be authorized when licensing determines the alternative method of compliance offers equal protection of health, safety, or well-being to children, meets the basic intent of the requirements for the alternative compliance being requested, and does not violate statutory requirements.

(1) An applicant or licensee may submit a written request with supporting documentation on Form 07LC061E, Alternative Compliance Request, to licensing staff. A separate alternative method of compliance request is submitted for each requirement that an alternative method of compliance is requested.

(2) Licensing staff completes Form 07LC105E, Alternative Compliance Referral, and submits all documentation to the statewide licensing coordinator or designee for authorization.

(3) Approval of an alternative method of compliance does not set a precedent, and is independently evaluated on the merits of each request.

(4) The program's record of compliance is taken into consideration in determining whether to approve the request.

(5) An alternative method of compliance is not authorized for critical items affecting the health and safety of a child, such as exceeding licensed capacity of a residential program, staff-child ratios, fire safety violations, or behavior and guidance violations.

(6) Form 07LC075E, Notice of Alternative Compliance, stating the nature of the exception, is posted with the license.

340:110-1-54. Grievance and complaint policy and procedure

(a) **Grievance and complaint policy.** The owner, director, or administrator of a licensed child care program or agency may file a grievance or complaint regarding the enforcement of any written or unwritten policy, rule, or regulation of the ~~Oklahoma Department of Human Services (DHS)~~Child Care Services (CCS) or any decision by a ~~DHS~~CCS employee affecting the program. Grievances must be requested within 30-calendar days of the documented non-compliance or substantiated complaint allegation. A grievance or complaint is not accepted concerning an Emergency Order, denial of

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request for license or revocation of a child care facility program license. The procedure for appealing requesting a review of this action is provided for in the Oklahoma Child Care Facilities Licensing Act, 10 O.S. § 407.

(b) **Grievance or complaint procedure.** Individuals wanting to file a grievance or complaint are encouraged to seek informal resolution of his or her concerns by contacting the programs manager, who attempts to resolve the matter.

(1) When a resolution cannot be reached at the local level or through verbal conversation with CCS State Office staff, the grievant or complainant is requested to file a written request with the programs manager within 15-calendar days of this communication.

(2) The programs manager notifies the statewide licensing coordinator a formal grievance or complaint was filed and efforts were made to resolve the issue. The programs manager responds to written grievances or complaints within 10-Department of Human Services (DHS) business days of receipt. The grievant is informed the request for additional reviews must be submitted within 15-calendar days of the correspondence date.

(3) ~~When the grievant or complainant is not satisfied with the proposed resolution, he or she may appeal to the statewide licensing coordinator. The statewide licensing coordinator responds to written grievances or complaints within 10 DHS business days of receipt.~~

(4) When the grievant or complainant is not satisfied with the proposed resolution, he or she may ~~appeal to request review to the Child Care Advisory Committee (CCAC) statewide licensing coordinator. The grievant is informed he or she may request review by the Peer Review Board of the Child Care Advisory Committee (CCAC), prior to review by the statewide licensing coordinator. The statewide licensing coordinator forwards information to the Peer Review Board, when applicable or proceeds with the review. The CCAC responds within 10 DHS business days of receipt to the Child Care Services (CCS) director with advisement for resolution.~~

(4) When applicable, the Peer Review Board responds to the statewide licensing coordinator with advisement for resolution within 10-DHS business days of receipt.

(5) ~~The CCS director statewide licensing coordinator notifies the grievant or complainant of the CCS decision within 10-DHS business days or when applicable 10-DHS business days of receipt of the CCAC Peer Review Board advisement. The grievant is informed the request for additional reviews must be submitted within 15-calendar days of the correspondence date.~~

(6) When the grievant or complainant is not satisfied with the proposed resolution, he or she may ~~appeal request review to the CCS director, Adult and Family Service (AFS) director and DHS Director of Human Services (Director), respectively. The CCS director, AFS director and Director each respond within 10-DHS business days of receipt and the Director's decision is final. The grievant is informed the request for additional reviews must be submitted within 15-calendar days of the correspondence date. The Director's decision is final.~~

(7) The grievant or complainant is requested to file only one written ~~complaint grievance~~. Referrals for resolution are made by the DHS staff involved in the response.

SUBCHAPTER 3. LICENSING STANDARDS FOR CHILD CARE FACILITIES

PART 15. REQUIREMENTS FOR CHILD CARE CENTERS, DAY CAMPS, DROP-IN PROGRAMS, OUT-OF-SCHOOL TIME PROGRAMS, PART-DAY PROGRAMS AND PROGRAMS FOR SICK CHILDREN

340:110-3-309. Addendum requirements for out-of-school time programs

(a) **Out-of-school time programs.** Out-of-school time programs operate when school is not in session, such as before-and after-school and school breaks and serve 3-year-olds and older who are attending or have completed pre-kindergarten or above.

(b) **Common requirements.** Programs are required to meet the common requirements in Oklahoma Administrative Code (OAC) 340:110-3-275 through 340:110-3-305, unless the addendum requirements in this Section state otherwise.

(c) **Posted records and documentation.** Programs are exempt from or may vary posted requirements according to requirements listed in (1) and (2) of this subsection. Posted:

(1) hand washing procedures per OAC 340:110-3-281.1(g) are not required when the program is in a school and different hand washing procedures are posted by the school; and

(2) ratios and group sizes, daily classroom schedule, and weekly lesson plans, per OAC 340:110-3-281.1(i)(4) through (6) may be maintained in a portable method with the teaching personnel. The remainder of the posted in classroom items in (i) may be posted in a prominent location when a large area, such as a gymnasium or cafeteria, is used as classrooms.

(d) **Immunization records.** Programs operated by a school may use the school's immunization records to meet the requirement per OAC 340:110-3-281.4(b).

(e) **General professional development.** Personnel are exempt from the Entry Level Child Care Training (ELCCT) or equivalent requirement per OAC 340:110-3-284(d).

(f) **Director qualifications.** Directors are exempt from:
(1) the Oklahoma Director's Credential requirement per OAC 340:110-3-284.1(b). However, directors obtain at least an Oklahoma Professional Development Ladder (OPDL) certificate per OAC 340:110-3-284(b) and have:

(1A) a high school diploma, General Educational Development (GED), or Licensing approved equivalent and two years of full-time experience in an out-of-school time, educational, or child care setting;

(2B) a high school diploma, GED, or Licensing approved equivalent and 12 college credit hours in child development, elementary or secondary education, or

a closely related subject and one year of satisfactory experience in an out-of-school time, educational, or child care setting;

(3C) an associate or bachelor's degree with at least 12 college credit hours in child development, elementary or secondary education, or a closely related subject; and

(2) licensed capacity requirements when counting as master teachers per OAC 340:110-3-284.2(b). Directors meeting master teacher qualifications may count as master teachers regardless of licensed capacity.

(g) **Director responsibilities.** Directors are free from direct care responsibilities one hour per day rather than three hours per day per OAC 340:110-3-284.1(b).

(h) **Director professional development.** Directors meet the continuing professional development requirements per OAC 340:110-3-284(d) to maintain at least 20 clock-hours every 12 months. The clock-hours meet the criteria identified in the footnotes per OAC 340 Appendix FF - Oklahoma Professional Development Ladder.

(i) **Master teacher qualifications.** Master teachers are exempt from position specific educational and OPDL requirements per OAC 340:110-3-284.2(b). However, master teachers have at least:

- (1) a high school diploma, GED, or Licensing approved equivalent and one year of satisfactory full-time experience in an out-of-school time, educational, or child care setting;
- (2) a high school diploma, GED, or Licensing approved equivalent and 12 college credit hours in child development, elementary or secondary education or a closely related subject; or
- (3) an associate degree with at least six college credit hours in child development, early childhood, elementary or secondary education or a closely related subject.

(j) **Teacher qualifications.** Teachers hired on or before September 1, 1997, are exempt from the position specific educational requirements per OAC 340:110-3-284.2(c).

(k) **Groups and classrooms.** Programs are exempt for kindergarten and older children from the:

- (1) one group per classroom requirement per OAC 340:110-3-286(b); and
- (2) classroom requirements per OAC 340:110-3-286(b) provided the area is divided into interest areas, including portable means such as tables and area rugs.

(l) **Weekly lesson plans.** Programs are exempt from the lesson plan for each classroom requirement per OAC 340:110-3-289(d) for children who are attending or have completed kindergarten or above. However, the lesson plans for these children are at least by the activity type, such as art and science.

(m) **Play equipment accessibility.** Play equipment may be stored on open storage or in cabinets, closets, or similar storage, provided children may easily access the equipment when desired.

(n) **Rest time.** Programs are exempt from the scheduled rest time requirement per OAC 340:110-3-296(c) for 4-year-olds

and younger who had an afternoon rest time in a pre-kindergarten program.

(o) **Required meals and snacks.** In addition to the required meals and snacks requirement per OAC 340:110-3-298(a) programs that provide care:

- (1) before 7:00 a.m. serve a morning meal or snack; and
- (2) in the afternoon serve an afternoon snack.

(p) **Electrical outlets.** Programs are exempt from the unused electrical outlet requirement per OAC 340:110-3-300(f) for 5-year-olds.

(q) **Toileting and hand washing facilities.** Programs are exempt from the one toilet and sink quantity requirement per OAC 340:110-3-300(m) and (n) for children who are attending or have completed kindergarten provided one of these options is met:

- (1) one toilet and sink for every 25 children; or
- (2) one toilet and sink for every 50 children, with a minimum of two toilets and sinks and at least one restroom for males and one for females.

(r) **Food service area hand washing sink.** Programs licensed before September 1, 1997, in a facility originally designed as a family residence may meet the separate hand washing sink requirement for the food service area per OAC 340:110-3-300(n) with a sink in a restroom on the same floor as the food service area, unless the program changes locations.

(s) **Indoor square footage.** Programs are exempt from having to divide large areas into classrooms in order to count them toward the licensed capacity per OAC 340:110-3-301(b).

(t) **Fencing.** When the program is in a school, Licensing may grant an exception to the enclosed outdoor play area requirement per OAC 340:110-3-301(c) for 4-year-olds when the safety of children is ensured. The fencing exception per OAC 340:110-3-301(c) applies at all times, rather than only during a scheduled occasional supervised activity.

(u) **Equipment.** Programs are required to meet the indoor basic and play equipment type and quantity requirements per OAC 340 Appendix MM - Equipment, according to these requirements.

- (1) For 3-year-olds, the 3-year-old equipment chart is used.
- (2) For 4-year-olds, the 4- and 5-year-old equipment chart is used.
- (3) For 5-year-olds and older, the 6-year-old and older equipment chart is used.
- (4) Book quantity requirements do not apply provided programs at least have:
 - (A) five books for one to 10 children;
 - (B) 10 books for 11 to 20 children;
 - (C) 15 books for 21 to 30 children; and
 - (D) 20 books for 31 to 40 children.
- (5) The program may require parents provide, for their children, rest equipment and bedding that meets the requirements.

[OAR Docket #17-497; filed 6-23-17]

Permanent Final Adoptions

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

[OAR Docket #17-498]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions

Part 1. Licensing Services - Child Care

340:110-1-17 [AMENDED]

Subchapter 3. Licensing Standards for Child Care Facilities

Part 5. Requirements for Family Child Care Homes and Large Family Child Care Homes

340:110-3-85 through 340:110-3-86 [AMENDED]

340:110-3-86.1 [NEW]

340:110-3-88 [AMENDED]

340:110-3-89.1 [AMENDED]

340:110-3-91.1 [AMENDED]

340:110-3-93 [AMENDED]

340:110-3-97.1 [AMENDED]

Part 15. Requirements for Child Care Centers, Day Camps, Drop-In Programs, Out-of-School Time Programs, Part-Day Programs and Programs for Sick Children

340:110-3-278 through 340:110-3-280 [AMENDED]

340:110-3-281.1 through 340:110-3-281.2 [AMENDED]

340:110-3-284 [AMENDED]

340:110-3-284.1 [AMENDED]

340:110-3-284.2 [AMENDED]

340:110-3-289 [AMENDED]

340:110-3-296 [AMENDED]

340:110-3-301 [AMENDED]

340:110 Appendix EE. Oklahoma Director's Credential [REVOKED]

340:110 Appendix EE. Oklahoma Director's Credential [NEW]

(Reference WFs 16-02, 16-06, and 16-07)

AUTHORITY:

Director of Human Services; O.S. 56 § 162; Child Care Development Block Grant (CCDBG) Act of 2014 (Public Law No. 113-186); 10 O.S. § 404; 10 O.S. § 404.3; and 21 O.S. § 870.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

January 6, 2017

COMMENT PERIOD:

February 1, 2017 through March 3, 2017

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ADOPTION:

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SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

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APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 13, 2017

FINAL ADOPTION:

June 13, 2017

EFFECTIVE:

September 15, 2017

SUPERSEDED EMERGENCY ACTIONS:

Superseded rules:

Subchapter 3. Licensing Standards for Child Care Facilities

Part 5. Requirements for Family Child Care Homes and Large Family Child Care Homes

340:110-3-85 through 340:110-3-86 [AMENDED]

340:110-3-86.1 [NEW]

340:110-3-88 [AMENDED]

340:110-3-89.1 [AMENDED]

340:110-3-91.1 [AMENDED]

340:110-3-93 [AMENDED]

340:110-3-97.1 [AMENDED]

Part 15. Requirements for Child Care Centers, Day Camps, Drop-In Programs, Out-of-School Time Programs, Part-Day Programs and Programs for Sick Children

340:110-3-278 through 340:110-3-280 [AMENDED]

340:110-3-281.1 through 340:110-3-281.2 [AMENDED]

340:110-3-284 [AMENDED]

340:110-3-284.1 [AMENDED]

340:110-3-284.2 [AMENDED]

340:110-3-289 [AMENDED]

340:110-3-296 [AMENDED]

340:110-3-301 [AMENDED]

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340:110 Appendix EE. Oklahoma Director's Credential [REVOKED]

340:110 Appendix EE. Oklahoma Director's Credential [NEW]

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34 OK Reg 226

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Subchapter 1. General Provisions

Part 1. Licensing Services - Child Care

340:110-1-17 [AMENDED]

(Reference WF 16-07)

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16-882

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The proposed revisions to Chapter 110, Subchapter 1, Part 1, amend Child Care Advisory (CCAC) by-laws. The passage of Senate Bill (SB) 1211 during the 2016 legislative session amended Section 404 of Title 10 of the Oklahoma Statutes (10 O.S. § 404), Oklahoma Child Care Facilities Licensing Act. Statutory amendments include: (1) revising the responsibilities of CCAC members; (2) revising the process of the development of minimum licensing requirements; (3) identifying agencies that Oklahoma Department of Human Services (DHS) consults with prior to promulgating child care licensing rules; (3) expanding the role of the Oklahoma Commission on Children and Youth (OCCY) representative; (4) expanding membership of the standing subcommittees; and (5) clarifying Peer Review Board representation.

The proposed revisions to Chapter 110 Subchapter 3 Part 5 and 15 amend minimum licensing requirements affecting family child care homes, child care centers, day-camps, drop-in, out-of-school time programs, part-day, and programs for sick children to comply with federal and state statutory changes.

On November 19, 2014, President Barack Obama signed the Child Care Development Block Grant (CCDBG) Act of 2014 (Public Law No. 113-186) into law following its passage in the 113th Congress. The CCDBG Act authorizes the Child Care and Development Fund (CCDF) that is the primary federal funding source devoted to providing low-income families who are working or participating in education or training activities with help paying for child care and improving the quality of child care for all children. CCDBG criteria was revised to provide further protection to the health and safety of children in child care and enhances the overall quality of child care and the early childhood workforce. Revisions to CCDBG criteria required Child Care Services to revise child care licensing requirements to meet the new criteria. Revisions include health and safety orientation topics for child care programs in areas of: (1) immunizations; (2) physical premise safety; (3) handling and storage of hazardous materials and disposal of bio-contaminants; (4) emergency preparedness; (5) administration of medication; and (6) prevention of and responses to food and allergic reactions. Revisions to minimum licensing requirements included: (1) expulsion program policies; (2) emergency preparedness and emergency drills; (3) cardio-pulmonary resuscitation (CPR) and first aid certification for all caregivers; and (4)

requirements addressing any orientation topic not currently addressed by requirement language.

An interim study was conducted on infant safe sleep environments in licensed family child care homes and child care center based programs. This study resulted in Senate Bill (SB) 1273 during the 2016 legislative session amending Section 404 of Title 10 of the Oklahoma Statutes (10 O.S. § 404), Oklahoma Child Care Facilities Licensing Act to improve infant sleep environments. Amendments included restricting items and bedding within rest equipment and requiring infants to sleep in approved rest equipment. An agreement between legislators leading the interim study and DHS also resulted in request for requirement revisions in lieu of statutory revisions. These requirement revisions included: (1) restrictions of infant swaddling; (2) restriction of infants in car seats; (3) observation of infants; and (4) required safe sleep training.

SB 1274 approved during the 2016 legislative session amends 10 O.S. § 404.3 of the Oklahoma Child Care Facilities Licensing Act to require parental notification of the program's compliance file and liability insurance. An agreement between authors of SB 1274 and DHS also resulted in request for requirement revisions in lieu of statutory revisions. These requirement revisions impacted further rule language development regarding parental notifications.

SB 1554 approved during the 2016 legislative session amends previous requirement language for child care center based programs regarding infant room square footage.

Amendments also reflect compliance with 21 O.S. § 870 requiring reporting of human trafficking. The proposed revisions to Chapter 110, Appendix EE Oklahoma Director's Credential (Appendix EE) amend minimum educational licensing requirements for child care directors. Child care programs impacted include child care centers, drop-in programs, and programs for sick children.

Senate Bill (SB) 1554 approved during the 2016 Legislative Session, amends minimum educational licensing requirements for child care directors effective November 1, 2016. Appendix EE amendments provide an additional education option for child care program directors to include having obtained a bachelor's degree or post graduate degree in any field of study.

CONTACT PERSON:

Dena Thayer, Programs Administrator, Office of Intergovernmental Relations and Policy, Department of Human Services, PO Box 25352, Oklahoma City, OK 73125, 405-521-4326.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2017:

SUBCHAPTER 1. GENERAL PROVISIONS

PART 1. LICENSING SERVICES - CHILD CARE

340:110-1-17. Child Care Advisory Committee bylaws

(a) **Purpose.** The purpose of the Child Care Advisory Committee (CCAC) is to:

(1) carry out the provisions of the Oklahoma Child Care Facilities Licensing Act (Licensing Act), Section 404 of Title 10 of the Oklahoma Statutes to:

(A) ensure maintenance of minimum standards for the care and protection of children away from their homes, including:

- (i) constructive programs and services to meet the needs of each child and family;
- (ii) personnel of good moral character and ability to care for children;
- (iii) adequate and safe housing, sanitation, and equipment;

- (iv) good health care;
 - (v) full educational and religious opportunities;
 - (vi) good community relationships;
 - (vii) essential records and administrative methods; and
 - (viii) sufficient funds for sound operation;
 - (B) encourage and assist child care facilities toward maximum standards; and
 - (C) work for the development of sufficient and adequate services for child care through joint work with public and private agencies;
- (2) ~~prepare and~~ recommend minimum requirements and standards for child care programs for promulgation by the Oklahoma Department of Human Services (DHS); ~~Rules are promulgated after consultation with:~~

- (A) the Oklahoma State Department of Health (OSDH);
- (B) the Oklahoma State Department of Education (OSDE);
- (C) the Oklahoma State Bureau of Investigation (OSBI);
- (D) the Office of the Oklahoma State Fire Marshal (OSFM);
- (E) the Oklahoma Commission on Children and Youth (OCCY);
- (F) the Oklahoma Department of Mental Health and Substance Abuse Services (ODMHSAS); and
- (G) other agencies deemed necessary by DHS;

- (3) serve in an advisory capacity to DHS for developing quality child care programs and services; and
 - (4) educate the public and consumers regarding quality child care.
- (b) **Function.** The CCAC function is to:
- (1) become informed on DHS programs and policies regarding children;
 - (2) express the needs and concerns of the community and the State of Oklahoma as they relate to the care and treatment of children; and
 - (3) express recommendations for change, including ~~the approval of revisions to~~ minimum requirements and encouraging maximum standards for child care.
- (c) **Membership.**
- (1) **Representation.** CCAC provides names for consideration of new appointments and reappointments of members to the Child Care Services (CCS) director. The CCS director in consultation with the OCCY representative makes recommendations for membership to the DHS Director. Members are appointed to serve at the pleasure of the DHS Director, based on expertise, experience, and leadership in the field of child care.
 - (A) CCAC, at a minimum, consists of 18 members.
 - (B) The majority are representatives of programs licensed by DHS to care for children.
 - (C) Other members include at least one representative from ~~the Oklahoma State Department of Health (OSDH); the Oklahoma State Department of Education (OSDE); the Office of the State Fire Marshal~~

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OSFM; tribal agencies; and CCS. These representatives are exempt from term limits.

(D) Other members include associations and agencies as recommended to the DHS Director, such as the Oklahoma Child Care Association, Oklahoma Children's Agencies and Residential Enterprises Incorporated (OK-CARE), ~~Oklahoma Department of Mental Health and Substance Abuse Services~~ ODMHSAS, OSBI, Oklahoma Association of Youth Services, Office of Juvenile Affairs, Early Childhood Association of Oklahoma, and Head Start.

(E) A representative from the ~~Oklahoma Commission on Children and Youth~~ OCCY serves as an ex-officio member.

(2) Terms of office.

(A) The terms of CCAC members are for three years with a two-consecutive-term limit.

(B) Members may be recommended for reappointment after completing the first term of office.

(3) Officers. The officers of CCAC are chairperson, vice-chairperson, and secretary.

(A) **Chairperson.** The chairperson is responsible for:

- (i) presiding over all meetings;
- (ii) planning the meeting agenda, at least 14-calendar days in advance, in coordination with CCS;
- (iii) appointing members of subcommittees, in consultation with the CCS director and OCCY representative; and
- (iv) ~~moderating public hearings; and~~
- (v) ~~serving as CCAC spokesperson.~~

(B) **Vice-Chairperson.** The vice-chairperson works closely with the chairperson, assumes the responsibilities of the chairperson in his or her absence, and attends public hearings.

(C) **Secretary.** The position of secretary is held by the CCS representative. The secretary is responsible for accurately recording the minutes of each meeting and making them available to the members prior to the next meeting. A permanent copy of the minutes is maintained by CCS.

(4) Election of officers and terms of office.

(A) Upon vacancy of office, the chairperson and vice-chairperson are elected by a majority vote of members present during the next quarterly meeting following the office vacancy. Officers assume duties during the meeting in which the election is held.

(B) Terms of office are for one year. Officers may be elected to serve in one office for a maximum of three terms.

(5) Standing Subcommittees.

(A) ~~Subcommittees are appointed by the chairperson with consultation from CCS and are designated to:~~

- (i) ~~draft licensing requirements for child care programs and services;~~
- (ii) ~~study CCAC concerns; and~~

(iii) ~~address special issues of CCAC.~~

(B) ~~The chairperson of the subcommittee is a CCAC member.~~

(C) ~~Subcommittee members include representatives of child care programs and services with experience and expertise in the field of child care and children's services.~~

(D) ~~Subcommittees appointed to draft licensing requirements for child care programs:~~

- (i) ~~present recommendations to CCAC for approval prior to being approved by the DHS Director and the Governor;~~
- (ii) ~~have a majority of members who represent private child care programs affected by the requirements; and~~
- (iii) ~~include representatives from licensing, including supervisory and field staff.~~

(E) Standing subcommittees expand the opportunity for child care program operators to identify quality improvement resources, express concerns facing the industry, and recommend issues for CCAC consideration by CCAC.

(i) The chairpersons of four standing subcommittees are CCAC members and appointed by CCAC chairperson. Standing subcommittees represent:

- (I) family child care homes;
- (II) child care centers, day camp, drop-in, out-of-school time, and part-day programs, and programs ~~earing~~ for sick children;
- (III) residential and child-placing agencies; and
- (IV) the quality rating and improvement system (QRIS) program.

(ii) Standing subcommittee members are identified and recruited by the standing subcommittee chairpersons with CCS and OCCY consultation. Membership meets representation per 10 O.S. § 404.

(iii) Standing subcommittees meet a minimum of twice a year.

(iv) The standing subcommittee chairperson provides a written report to CCAC, at least twice a year.

(v) CCS state office staff attends standing subcommittee meetings and serves as a resource.

(F) A standing membership subcommittee helps to insure a broad representation of licensed programs are included within CCAC. The OCCY representative serves on the standing membership subcommittee and consults with the CCS director to identify appropriate CCAC members.

(i) The ~~chair~~ chairperson of the standing membership subcommittee works closely with other CCAC officers and provides oversight to the standing membership subcommittee.

(ii) The membership subcommittee meetings are held at least quarterly, prior to CCAC meetings.

(iii) The membership subcommittee chairperson provides a written quarterly report to CCAC.

(iv) The membership subcommittee recommends to CCAC:

- (I) the names of individuals for new appointments;
- (II) the re-appointment of existing members based upon attendance and participation on CCAC subcommittees; and
- (III) a slate of officers.

(6) Peer Review Board. CCAC identifies members to serve on the Peer Review Board and participate in the DHS grievance process per Oklahoma Administrative Code (OAC) 340:110-1-15 and 340:110-1-54. A majority of the Peer Review Board are representatives of licensed child care facilities.

(d) Meetings.

(1) **Frequency.** CCAC meets quarterly. Additional meetings may be called or regular meetings cancelled at the discretion of the chairperson and CCS representative.

(2) **Quorum.** A minimum of one third plus one member or designee must be present for a quorum.

(3) **Voting.** All members or designees must receive orientation on the goals and practices of CCAC prior to voting.

(4) **Attendance.** Committee members or designees must attend at least two CCAC meetings a year or may be removed from the committee at the discretion of the CCAC or DHS Director.

(5) **Active participation.** CCAC members or designees are required to serve on subcommittees annually.

(6) **Guidelines.** The practices of the CCAC are compatible with the Licensing Act.

(7) **Rules of order.** *Robert's Rules of Order*, as amended, are used to govern the meetings.

(e) Change of bylaws. Bylaws may be altered, amended, or repealed only by a majority vote of the CCAC, provided written notice of the proposed action is given in the call to the meeting and a quorum is present. CCS prepares bylaw revisions based on CCS and CCAC input and recommendations. Proposed rulemaking is presented to CCAC for comment and submitted for approval through the Administrative Procedures Act rulemaking process.

SUBCHAPTER 3. LICENSING STANDARDS FOR CHILD CARE FACILITIES

PART 5. REQUIREMENTS FOR FAMILY CHILD CARE HOMES AND LARGE FAMILY CHILD CARE HOMES

340:110-3-85. Requirements for caregivers

(a) **Responsibilities of caregivers.** Responsibilities of caregivers are specified in this subsection.

(1) **Primary caregiver.** The primary caregiver is present in the home at least 80 percent of weekly operating

hours and is responsible for the day-to-day operation of the program. The sole proprietor must be the primary caregiver.

(2) **Care and supervision.** The caregiver provides care and supervision of children at all times, both indoors and outdoors.

(A) Caregivers prevent and respond to allergies and life-threatening conditions by:

(i) being aware of children's known food and life-threatening allergies;

(ii) knowing the location of any life-threatening condition medications; and

(iii) ensuring life-threatening condition medications, such as epinephrine pens and rescue inhalers are in close proximity to the child for immediate administration when needed, including outdoors when the child is outside, during transportation, or on field trips. However, medications are inaccessible to children.

(B) Supervision of children means observing, overseeing, and guiding a child or group of children including:

(Ai) awareness of and responsibility for the ongoing activity of each child and being near enough to intervene when needed; and

(ii) observation of infants at least every 15 minutes while awake or sleeping; and

(Biii) frequent observation of children 1-year-olds and older at least every 15 minutes while in cribs and playpens.

(3) **Supervision of outdoor play.** In addition to the requirements in (2) of this subsection, the caregiver remains outdoors with children at all times to ensure safety when:

(A) there is a potentially hazardous situation, such as a pool on the premises or a trampoline in the outdoor play area;

(B) there is access to a dog(s) outdoors;

(C) there are children 3 years of age or younger present; or

(D) the outdoor area is not completely fenced.

(4) **Supervision of overnight care.** When children are in care overnight and more than one caregiver is required due to the ages and number of children present, at least one caregiver must be awake at all times.

(5) **Assistant and substitute caregivers.** When the primary caregiver employs a ~~person~~ individual to assist with the care of children or to provide care and supervision in the primary caregiver's absence, the primary caregiver ensures ~~that~~ the assistant or substitute caregiver is qualified, ~~and~~ understands and complies with requirements, ~~and~~ has documentation of current cardio-pulmonary resuscitation (CPR) and first aid certification per Oklahoma Administrative Code (OAC) 340:110-3-85(h).

(A) **Required records.** Prior to employment, a staff information form provided by Oklahoma Department of Human Services (DHS) is completed and three references are verified. References from

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relatives are not accepted. Personnel records on all assistant and substitute caregivers are maintained at the home and made available to ~~licensing staff~~ Licensing upon request.

(B) **Assistant caregiver.** When an assistant caregiver is employed to meet the required staff to child ratio, the assistant caregiver must be a responsible, mature, and healthy ~~person~~ individual at least 16 years of age. The caregiver is prohibited from leaving children alone in the care of any ~~person—individual~~ younger than 18 years of age.

(C) **Substitute caregiver.** A substitute caregiver, at least 18 years of age, is available to provide care for short periods of time in the absence of the caregiver.

(i) The substitute caregiver may be used in emergency situations and occasionally in non-emergency situations. In non-emergency situations, the caregiver must notify parents in advance that the substitute will be caring for the child at these times.

(ii) The name, address, and telephone number of the substitute is provided to ~~DHS~~ Licensing and is posted with the other required emergency numbers in the family child care home.

(6) **Verification of criminal history investigations.**

The family child care owner or primary caregiver is responsible for submitting to the Licensing Records Office (LRO), criminal history investigations and obtaining dispositions on any charges shown on the report ~~that lack~~ lacking dispositions.

(7) **Realistic expectations.** The caregiver demonstrates a capacity for setting realistic expectations for behavior and performance based on the age, abilities, and special needs of the children.

(8) **Constructive influence.** The caregiver's family members and others living in the home accept the children in care and provide constructive influence. There must be indication of a stable and harmonious home life.

(9) **Hazards.** The caregiver recognizes and acts to correct hazards to children's safety, both indoors and outdoors.

(10) **Child abuse and human trafficking reporting.**

~~The primary caregiver, assistant caregiver, and substitute caregiver immediately report any suspicion of child abuse or neglect to the Statewide Child Abuse and Neglect Hotline, 1-800-522-3511. Failure to report is a misdemeanor offense and upon conviction is punishable by law. Reporting requirements listed in (A) and (B) of this paragraph are met.~~

(A) Any person who has reason to believe a child has been abused or neglected per 10 O.S. § 1-1-105 is required to report the matter promptly to the DHS Child Abuse and Neglect Hotline at 1-800-522-3511 per Section 1-2-101 of Title 10A of the Oklahoma Statutes (10A O.S. § 1-2-101). Failure to report is a

misdemeanor offense and upon conviction is punishable by law. Failure to report with prolonged knowledge, six months or more, of ongoing abuse or neglect is a felony offense.

(B) Per 21 O.S. § 870, every person having reason to believe that a person or child-placing agency is engaging in the crime of human trafficking in children, as described in 21 O.S. § 866 of the Oklahoma Statutes, reports the matter promptly to the Oklahoma Bureau of Narcotics and Dangerous Drugs Control.

(11) **Notification of Licensing.** The primary caregiver notifies Licensing:

(A) within 24-hours of the death of a child in care;

(B) within 24-hours of any accident involving transportation unless there were no injuries and only minor damage to the vehicles;

(C) within 24-hours of any changes in liability insurance coverage;

(D) within 24-hours of any injury to a child requiring emergency medical attention;

(E) within 24-hours of any remodeling, changes, or damage to the physical facility ~~that affect~~ affecting compliance with any requirement;

(F) within 24-hours of any known arrests, criminal investigations, criminal charges, or child abuse investigations involving persons who live in the home, provide care, or assist with the care of children;

(G) within 24-hours of any legal action against a caregiver ~~that involves~~ involving or ~~affects~~ affecting a child in care or the operation of the family child care home;

(H) within 24-hours when an animal bites a child and the skin is broken;

(I) within five calendar days when ~~a person~~ an individual moves into the home; and

(J) at least 30 calendar days in advance of a move from one residence to another unless an emergency exists. The new home must comply with minimum licensing requirements.

(12) **Posting of license.** The permit or license is displayed in the home.

(13) **Other employment.** The caregiver is prohibited from conducting business in the home during the hours children are in care. The primary caregiver is not employed outside the home during the hours of child care.

(14) **Foster care.** The caregiver may not provide therapeutic foster care. The caregiver may provide foster care only with prior written approval from ~~DHS~~ Licensing for each child placement.

(A) The written approval includes the number and ages of foster children.

(B) Foster children 12 years of age and younger are counted in the capacity of the family child care home.

(15) **Inactive care.** A primary caregiver is determined to be in inactive status when care has not been provided for more than 90 consecutive calendar days.

- (A) Prior to resuming care, the caregiver must notify Licensing to verify compliance with family child care home requirements.
- (B) When care has not been provided for more than 12 consecutive months, the family child care home is closed and must reapply and be approved for a license prior to resuming care.
- (b) **Qualifications of caregivers.** Qualifications of caregivers are described in this subsection.
 - (1) **General.** The caregiver is a responsible, mature, healthy adult who is capable of understanding and complying with minimum licensing requirements and meeting the needs of the children in care. The caregiver demonstrates good judgment, as evidenced by prudent and responsible behavior that reasonably ensures the health, safety, and well-being of children in care.
 - (A) Primary caregivers applying for a license after October 1, 2007, are at least 21 years of age.
 - (B) Primary caregivers applying for a license after October 1, 2007, have obtained a high school diploma or General Educational Development credential (GED).
 - (C) All caregivers left alone with children have the ability to read and write for keeping required records, reading the licensing requirements, and administering medication.
 - (D) All caregivers cooperate with licensing staff during monitoring visits and DHS investigations.
 - (2) **Health.** The requirements relating to the health of the caregiver, assistant caregiver, and members of the household are specified in (A) - (C) of this paragraph.
 - (A) **General health.** All caregivers and all members of the household where licensed care is provided must be in good physical, mental, and emotional health. When it is reported or observed that a caregiver or household member has a physical, mental, or emotional condition that could negatively impact the care of children, a physician's statement is requested.
 - (B) **Tuberculosis testing.** The need for employee tuberculin skin testing is based upon a local identified tuberculosis exposure, the degree of risk of transmission of latent tuberculosis infection, the impact to public health and safety, and Oklahoma State Department of Health specific recommendations.
 - (C) **Immunizations.** There is documentation verifying all children living in the home have or are in the process of obtaining the required immunizations at the medically appropriate time. The schedule for required immunizations is found in Supplement IX of ~~OKDHS~~DHS Publication No. 86-104, Licensing Requirements for Family Child Care Homes and Large Child Care Homes.
 - (3) **References.** The primary caregiver submits to Licensing the names of three references other than relatives that may include a personal or family physician.
- (c) **Background investigations - general.**
 - (1) **Required individuals.** Background investigations are required per ~~Section 401 et seq. of Title 10 of the Oklahoma Statutes (10 O.S. § 401 et seq.)~~, Oklahoma Child Care Facilities Licensing Act (Licensing Act), unless an exception per (2) or (3) of this subsection applies for:
 - (A) owners, prior to authorization to operate;
 - (B) responsible entities, prior to authorization to operate and when there is a change in a responsible entity;
 - (C) personnel applicants, prior to hire. However:
 - (i) the program may hire individuals who are only awaiting the national criminal history records search, based upon the submission of fingerprints, provided the:
 - (I) preliminary criminal history review results from LRO are received by the program. However, until complete results are received, the individual does not have unsupervised access to children; and
 - (II) completed criminal history review results from LRO are received by the program within 30 calendar days from submission of the fingerprints for employment to continue; and
 - (ii) personnel who come from another licensed program owned by the same business entity are not required to repeat the background investigation process, with the exception of criminal history restriction waivers, provided there is no break in employment from the business entity;
 - (D) individuals with unsupervised access to children, prior to having access to children, unless an exception per (3) of this subsection applies;
 - (E) adults living in the facility, prior to authorization to operate or moving into the facility of an existing program. This includes children who turn 18 years of age while living in the facility; and
 - (F) individuals who have access to or review of the fingerprint results, prior to access to or review of the results.
 - (2) **Existing required individuals as of November 1, 2013.** On or before November 1, 2016, the fingerprinting and criminal history review process of this Section is completed for existing required individuals, with the exception of individuals who have access to or review of the fingerprint results. These individuals complete the process prior to having access to or review of the results.
 - (3) **Non-required individuals.** Background investigations are not required for:
 - (A) specialized service professionals who are not program personnel, provided parent releases are obtained per OAC 340:110-3-88(c);
 - (B) volunteer drivers who transport children on an irregular basis and do not fill another position, provided parent releases are obtained per OAC 340:110-3-88(c);
 - (C) contracted drivers who do not fill another position or have unsupervised access to children; and

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- (D) contracted non-personnel who do not have unsupervised access to children, such as when the program contracts for special activities or facility repair.
- (d) **Background investigations - Restricted Registry.** The program conducts a search of the online Child Care Restricted Registry or Restricted Registry, also named Joshua's List, when required per (c) of this Section.
- (1) **Non-registrants.** Non-registrants are individuals who are not recorded on the Restricted Registry.
- (2) **Registrants.** Registrants are individuals who are recorded on the Restricted Registry, prohibited from licensure, ownership, employment, unsupervised access to children, or residence in the facility and are prohibited individuals per (e) of this Section.
- (e) **Background investigations - criminal history.** The program and required individuals complete the criminal history review process. The program receives the completed criminal history review results from LRO when required per (c) of this Section.
- (1) **Criminal history prohibitions.** Individuals with criminal history prohibitions are prohibited per (f) of this Section. Criminal history prohibitions include required registration under the:
- (A) Sex Offenders Registration Act; or
- (B) Mary Rippey Violent Crime Offenders Registration Act.
- (2) **Criminal history restrictions.** Individuals with criminal history restrictions are prohibited per (f) of this Section, unless a criminal history restriction waiver is granted. Criminal history restrictions include pending charges, pleas of guilty or nolo contendere (no contest), or convictions of any criminal activity involving:
- (A) gross irresponsibility or disregard for the safety of others;
- (B) violence against an individual;
- (C) sexual misconduct;
- (D) child abuse or neglect;
- (E) animal cruelty;
- (F) possession, sale, or distribution of illegal drugs; or
- (G) a pattern of criminal activity.
- (3) **Criminal history restriction waivers.** Restriction waivers are specified in this subsection.
- (A) Restriction waivers may be requested for individuals who have criminal history restrictions. The owner, responsible entity, or primary caregiver completes requests on a DHS form.
- (B) Restriction waivers are not requested or granted for:
- (i) Restricted Registry registrants;
- (ii) individuals with criminal history prohibitions; or
- (iii) individuals whose sentence has not expired for any of the criminal history restrictions per (2) of this subsection.
- (C) Individuals identified in pending or denied restriction waiver requests are prohibited per (f) of this Section.
- (f) **Prohibited individuals.**
- (1) **Background investigation of required individuals.** The program does not allow a required individual to be the owner or responsible entity, to be employed, to live in the facility, or have:
- (A) access to children, such as being present at the facility during the hours of operation or present with the children in care while off-site, when the individual has criminal history:
- (i) prohibitions; or
- (ii) restrictions, unless a criminal history restriction waiver is granted. Individuals identified in a pending or denied restriction waiver request are prohibited; or
- (B) unsupervised access to children, when the individual is a Restricted Registry registrant.
- (2) **Endangerment of children.** ~~A person~~An individual whose health or behavior would endanger the health, safety, or well-being of children is not permitted to live in the home or be on the premises when children are in care.
- (3) **Alcohol, drugs, medication.** When children are in care, no caregiver is under the influence of:
- (A) alcohol or illegal drugs; or
- (B) medication ~~that impairs~~impairing functioning.
- (g) **Child Abuse Registry check.** A Child Abuse Registry check is conducted on all persons who sign the license application. A confirmed or substantiated allegation of child abuse or neglect is considered when evaluating the qualifications of the applicant and the safety and well-being of the children in care.
- (h) **TrainingProfessional development requirements.** ~~TrainingProfessional development requirements for caregivers are specified in (1) - (3)(4) of this subsection. The training specified in paragraphs (2) through (3) of this subsection is required prior to issuance of the initial permit.~~
- (1) **General.** The primary caregiver is required to complete ~~12 clock hours~~12 clock-hours of ~~trainingprofessional development~~ annually through workshops, formal training, videos, or individual position-related readings. Annually, no more than six ~~hours~~clock-hours of videos or individual position-related readings is counted toward the required ~~12 hours~~clock-hours.
- (2) **CPR and first aid certification.** ~~Prior to permission to operate or issuance of the initial permit, the primary caregiver and any person who cares for children alone, on or off the premises, including during transportation, must have documentation that is maintained by the caregiver at the facility, of current completed certification in age appropriate first aid and cardio pulmonary resuscitation (CPR), as approved by CCS licensing. CPR and first aid certification must be kept current with documentation maintained by the program. CPR and first aid requirements listed in (A) through (B) of this subsection are met.~~
- (A) Current CPR and first aid certification is required for:

- (i) the primary caregiver, prior to permission to operate or issuance of the initial permit;
- (ii) any person who cares for children alone, on or off the premises, including during transportation; and
- (iii) other caregivers, included in the caregiver to child ratio. Caregivers employed:
 - (I) prior to November 1, 2016, obtain CPR and first aid certification by November 1, 2017; or
 - (II) on or after November 1, 2016, obtain CPR and first aid certification within three months of caring for children.
- (B) CPR and first aid certification is kept current, approved by Licensing, and maintained at the facility.
- (3) **Health and safety training.** ~~Prior to issuance of the initial permit the primary caregiver obtains~~ Prior to caring for children, all caregivers obtain training in:
 - (A) prevention and control of infectious disease and injury prevention measures;
 - (B) use of a fire extinguisher; and
 - (C) ~~health and safety issues, including:~~
 - (i) prevention of shaken baby syndrome and abusive head trauma;
 - (ii) prevention of sudden infant death syndrome (SIDS);
 - (iii) infant safe sleep practices;
 - (iv) car seat and transportation safety;
 - (v) ~~safeguarding the home~~ physical premise safety including identification of and protection from hazards that can cause bodily injury such as, electrical hazards, bodies of water, or vehicular traffic;
 - (vi) handling and storage of hazardous materials and appropriate disposal of bio-contaminants;
 - (vii) emergency preparedness and response planning for emergencies resulting from a natural disaster or human-caused event;
 - (viii) immunizations;
 - (ix) administration of medication;
 - (x) prevention of and response to emergencies due to food and allergic reactions;
 - (xi) the definition, identification, and mandatory reporting of child abuse and neglect; and
 - (xii) behavior and guidance methods.
- (4) **Safe sleep training.** Prior to caring for infants, the primary caregiver and any individual caring for infants alone, obtains two or more clock-hours of training in safe sleep practices from an Oklahoma Professional Development Registry (OPDR) approved training organization.

340:110-3-86. Home environment

- (a) **Physical conditions.**
 - (1) **Accessibility to licensing staff.** All areas of the home are accessible to licensing staff.
 - (2) **Indoor space.** There is minimum indoor space available for routine use by children in child care of not less than 35 square feet per child exclusive of hallways, bathrooms, kitchen, and space not intended for children's

- use. Rooms used exclusively for napping are not counted toward the capacity.
- (3) **Maintenance.** The home is in a good state of repair and maintained in a clean and sanitary condition, with operable utilities.
- (4) **Toilet facilities.** The home has:
 - (A) a sink with comfortably warm or tempered running water with the temperature not to exceed 120 degrees Fahrenheit;
 - (B) an operable toilet available for children's use;
 - (C) soap for hand-washing and individual use towels; and
 - (D) toilet paper within easy reach of children.
- (5) **Hazards.** The premises are free of hazards, indoor and out.
 - (A) All medicines, cleaning products, hazardous items, and smoking materials are inaccessible to children.
 - (B) The premises are free of illegal drugs and paraphernalia.
 - (C) Clear glass doors are plainly marked at the child's eye level to avoid accidental impact.
 - (D) All stairways with four or more steps have a railing. Indoor stairways are made inaccessible when infants and toddlers are in care.
- (6) **Weapons.** All weapons are stored unloaded in a locked container, cabinet, or closet. Ammunition is stored in a locked area separate from weapons.
- (7) **Trampolines.** The use of trampolines by children in care is prohibited.
- (8) **Lighting and ventilation.** Rooms used by children are lighted enough to accommodate activities with comfort and allow the caregiver to see children's facial features at all times. Rooms used by children are ventilated.
- (9) **Tobacco products.** When children are in care, smoking is prohibited inside the home and in the presence of children. Other tobacco products are not used in the presence of children or in areas designated for children's use. Parents are informed upon enrollment of the presence of smokers in the home.
- (10) **Indoor temperature.** The indoor temperature is maintained between 65 and 80 degrees Fahrenheit.
- (11) **Screens.** When windows or doors are kept open, screens are maintained to minimize the entry of insects.
- (12) **Outdoor play safety.** There is an outdoor play area on the premises of not less than 75 square feet per child.
 - (A) This area must be hazard free, away from traffic, water, and other dangers.
 - (B) A fence beginning at ground level ~~that~~ and is in good repair is required. ~~OKDHS~~ Licensing may grant an exception when the safety of children can be ensured.
- (13) **Outdoor play.** Children play outdoors daily when weather conditions do not pose a significant health risk.
- (14) **Fire safety.** The home complies with all fire safety requirements, per ~~OAC~~ Oklahoma Administrative Code (OAC) 340:110-3-97.

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- (15) **Water supply and waste disposal.** Water supply, sewage disposal, and solid waste disposal meet local city ordinances and Oklahoma Department of Environmental Quality regulations.
- (16) **Water testing.** When not on a public water supply, water is tested initially and annually for lead, bacteria, and nitrates.
- (17) **Questionable conditions.** If the fire, safety, or health conditions are questionable, the appropriate state or local agency is requested to inspect the home.
- (b) **Water safety.**
- (1) **Supervision.** Any play activity ~~that~~ involves involving water is supervised constantly.
- (2) **Accessibility of ponds, pools, and hot tubs.** No ponds, pools, or hot tubs are left accessible to children.
- (3) **Fencing.** Pools are fenced to prevent unsupervised access. All doors and gates leading to the pool are locked. There is:
- (A) a sturdy fence at least four feet high ~~that~~ and cannot be easily climbed; or
- (B) a fence ~~that connects~~ connecting to the top of an above-ground pool and ~~extends~~ extending two feet above the pool.
- (4) **Wading pools.** The use of portable wading pools is prohibited.
- (5) **Swimming.** In accordance with Oklahoma law, swimming pools used by the child care home are considered public bathing places and must be in compliance with the water quality, occupancy, and fencing standards in Design Standards and Operational Criteria for Public Bathing Places, Oklahoma State Department of Health Engineering Bulletin. This includes wading pools, water parks, in-ground pools, and above-ground pools. When children swim in a pool:
- (A) the caregiver is at or in the water and is appropriately dressed to enter the water at any time;
- (B) ~~a person~~ an individual with a Community Water Safety Certificate or a comparable certificate as approved by ~~OKDHS~~ Licensing is in attendance at all times; and
- (C) the adult to child ratio for:
- (i) infants and toddlers is one adult to one child. This adult is not counted in any other adult-child ratios. The adults remain in direct physical contact with infants at all times during swimming or wading; and
- (ii) children two years and older is in accordance with OAC 340:110-3-84(a) through (d) for family child care homes and OAC 340:110-3-97.1(e) for large family child care homes. When four or more children are two years of age through three years of age, one additional adult is required.
- (6) **Restrictions.**
- (A) The use of hot tubs by children in care is prohibited. The hot tub must be equipped with a hard cover.
- (B) Swimming and wading is not permitted at a lake, pond, or other body of water.
- (c) **Animals and household pets.**
- (1) Patrons are advised of the presence of animals.
- (2) Animals are in good health, do not show evidence of carrying disease, are friendly, and do not present a threat to the health, safety, and well-being of children.
- (3) All contact between animals and children is supervised by a caregiver who is close enough to remove the child immediately if the animal shows signs of distress or the child shows signs of treating the animal inappropriately.
- (4) Documentation of current rabies vaccinations administered by a licensed veterinarian for dogs and cats is filed on the premises.
- (5) Ferrets, turtles, and any wild or dangerous animals are kept in an area ~~that is~~ inaccessible to children.
- (6) Reptiles, such as crocodiles, alligators, poisonous snakes and lizards, pythons, and boa constrictors, are not kept on the premises.
- (7) Animals are restricted from areas where food is prepared or served and from children's sleeping surfaces.
- (8) Animal litter boxes are not located in food preparation areas and are not easily accessible to children in other areas of the home.
- (9) Outdoor play areas are cleaned of animal waste before children play outside.
- (10) If an animal bites a child and the skin is broken, the child's parent is contacted immediately. The licensing staff and the county or state department of health are notified within 24 hours.
- (d) **Emergency procedures.** ~~The caregiver is familiar with emergency procedures.~~ Emergency procedures are required per OAC 340:110-3-86.1.
- (1) ~~There is a planned source of medical care, such as a hospital emergency room, clinic, or other medical facility or physician acceptable to parents.~~
- (2) ~~The caregiver has emergency transportation available.~~
- (3) ~~The home has an operable telephone. Emergency information posted next to the telephone includes:~~
- (A) ~~address of the home;~~
- (B) ~~physician or clinic;~~
- (C) ~~fire department;~~
- (D) ~~police department;~~
- (E) ~~poison control, 1 800 222 1222; and~~
- (F) ~~substitute caregiver.~~
- (4) ~~First aid supplies are available in the home but made inaccessible to children. Supplies include:~~
- (A) ~~thermometer;~~
- (B) ~~disposable nonporous gloves;~~
- (C) ~~blunt tipped scissors;~~
- (D) ~~tweezers;~~
- (E) ~~bandage tape;~~
- (F) ~~sterile gauze;~~
- (G) ~~non-medicated adhesive strips; and~~
- (H) ~~current standard first aid text or equivalent first aid guide.~~

- (5) ~~Fire and tornado drills are conducted monthly. A record of the drills is maintained at the home.~~
- (6) ~~The primary caregiver has a written plan for reporting and protecting from outside threats, and evacuating in case of fire, flood, tornado, blizzard, power failure, or other natural or man-made disaster that could create structural damage to the facility or pose health hazards.~~
- (7) ~~Caregiver contacts poison control with any suspected child poisonings.~~
- (e) **Overnight care.** Overnight care can only be provided by a caregiver who is licensed at his or her primary residence.

340:110-3-86.1. Emergency preparedness

(a) **General.** All caregivers are familiar with emergency plans and procedures. Written plans and procedures are:

- (1) developed by the primary caregiver;
- (2) maintained on site;
- (3) individualized to the program and hours of operation; and
- (4) followed, unless children's safety is at risk or emergency personnel provide alternative instructions during an emergency.

(b) **Emergency medical care plans.** Emergency medical care plans include:

- (1) a planned source of medical care, such as a hospital emergency room, clinic, or other medical facility or physician acceptable to parents; and
- (2) available emergency transportation.

(c) **Situations.** Emergency plans and procedures are maintained in a readily available and portable manner and include procedures for:

- (1) weather conditions, such as, but not limited to tornadoes, floods, blizzards, or ice storms;
- (2) fires, including wildfires;
- (3) man-made disasters, including chemical and industrial accidents;
- (4) human threats, including individuals with threatening behaviors, bomb threats, or terrorist attacks;
- (5) other natural or man-made disasters that could create structural damage to the facility or pose health hazards; and
- (6) utility disruption.

(d) **Child location and needs.** Emergency plans include procedures to:

- (1) account for each child's location during an emergency; and
- (2) address each child's needs, with additional considerations for:
 - (A) 2-year-olds and younger; and
 - (B) children with disabilities or chronic medical conditions.

(e) **Shelter-in-place.** Emergency plans include procedures for short and extended stay situations requiring children to stay inside the home, such as tornadoes or other weather emergencies.

(f) **Lock-down.** Emergency plans and procedures for situations threatening the safety of children and adults include:

- (1) notifying adults present in the home;

- (2) keeping children in designated safe locations inside the home;
- (3) encouraging children to remain calm and quiet;
- (4) securing entrances to the home;
- (5) preventing unauthorized individuals from entering the home; and
- (6) responding when outdoors and on field trips.

(g) **Evacuation.** Emergency plans include procedures for situations, such as a fire, requiring that children leave the home and meet at pre-determined locations.

(h) **Relocation.** Emergency plans include procedures for situations requiring children to move to an alternate location, such as bomb threats and wildfires, include:

- (1) pre-determined primary and secondary alternate locations, with prior approval from the contact individual at alternate locations;
- (2) relocating children, including a pre-determined transportation plan; and
- (3) reuniting parents and children.

(i) **Reporting.** Emergency plans include procedures for notifying:

- (1) emergency authorities;
- (2) parents, including a method and backup method for how and when parents are notified; and
- (3) Licensing.

(j) **Phones.** The home has an operable phone. Emergency information posted next to the phone includes:

- (1) the home's address;
- (2) a physician or clinic;
- (3) the fire department;
- (4) the police department;
- (5) poison control, 1-800-222-1222; and
- (6) a substitute caregiver.

(k) **First aid supplies.** First aid supplies are available in the home but made inaccessible to children. Supplies are stored together in a portable container and include:

- (1) thermometer;
- (2) disposable non-porous, latex-free gloves;
- (3) blunt-tipped scissors;
- (4) tweezers;
- (5) bandage tape;
- (6) sterile gauze;
- (7) non-medicated adhesive strips; and
- (8) current standard first aid text or equivalent first aid guide.

(l) **Poisoning.** The caregiver immediately contacts poison control, 1-800-222-1222, with any suspected child poisonings.

(m) **Emergency supply kit.** Records and supplies available during an emergency include:

- (1) **Emergency records.** Records at minimum, include, the:
 - (A) emergency plans and procedures, alternate location addresses, phone numbers, and contacts;
 - (B) emergency contacts for all caregivers and enrolled children; and
 - (C) full names of children and caregivers currently in attendance; and

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- (2) **Emergency supplies.** Supplies gathered at the time of an emergency or maintained in a portable container at all times include, at least:
- (A) first aid supplies; and
 - (B) children's prescribed medications, including life-threatening condition medications.
- (n) **Drills.** Drills are conducted and follow the pre-determined emergency plans and procedures. A record of drills is maintained at the home.
- (1) **Monthly.** Monthly drills include:
 - (A) fire drills conducted by evacuating and meeting at pre-determined locations; and
 - (B) tornado drills conducted by sheltering in pre-determined on-site locations.
 - (2) **Annual.** Annual drills conducted include:
 - (A) locking-down by sheltering in pre-determined on-site locations;
 - (B) relocating according to procedures of preparation to relocate but do not require physical relocation;
 - (C) sheltering-in-place, requiring children stay inside the home, such as tornados and other weather emergencies; and
 - (D) evacuating and meeting at pre-determined locations.
- (o) **Emergency plans and procedures reviews.** The primary caregiver updates, as necessary, and reviews emergency plans and procedures:
- (1) at least once every 12 months;
 - (2) when children with disabilities or chronic medical conditions enroll;
 - (3) after a drill when procedural issues are identified; and
 - (4) after an emergency as identified in this Section.

340:110-3-88. Records

- (a) **General requirements.** Children's records are kept on Oklahoma Department of Human Services (DHS) provided forms or on forms containing the same information. Records are kept current and easily accessible. DHS staff are allowed access to all records.
- (b) **Caregiver records.** Records on all caregivers, including the primary caregiver, assistant caregivers, and substitute caregivers, are completed and maintained in the home. Records include:
- (1) staff information forms provided by DHS;
 - (2) criminal history investigations with records maintained in a confidential manner;
 - (3) training documentation;
 - (4) attendance records for each caregiver that reflect days and hours worked and are maintained on file for 120 calendar days; and
 - (5) documentation of requests and/or results of criminal history reviews.
- (c) **Children's records.**
- (1) Identification and health records include:
 - (A) the child's name, birth date, parents' names, home addresses, places of employment, and telephone numbers;

- (B) the names and telephone numbers of responsible persons to contact in an emergency when a parent cannot be located promptly;
 - (C) permission of a parent authorizing the caregiver to transport the child to emergency medical care;
 - (D) names and relationships of persons authorized to pick up the child;
 - (E) health information, including immunization records;
 - (F) name, address, and telephone number of the child's physician;
 - (G) when applicable, medication and transportation permission; and
 - (H) the date child began care.
- (2) When a volunteer driver or specialized service professional does not have a criminal history review per OAC 340:110-3-85(c), parent releases indicating this understanding are signed and dated prior to unsupervised access to children for each volunteer driver or professional.
- (3) Daily attendance records, including arrival and departure times for each child, are maintained and on file a minimum of 120 calendar days.
- (d) **Public access to records - Compliance Posting.**
- (1) ~~Items posted within clear view of the main entrance are:~~
 - (A) ~~DHS provided, "Notice to Parents"; and~~
 - (B) ~~child welfare investigative summary with confirmed or substantiated findings for 120 calendar days from the completion of the investigation. DHS provided, "Notice to Parents"; is posted in a conspicuous location within clear view at the main entrance of the facility.~~
 - (2) Child welfare investigative summary with confirmed or substantiated findings for 120-calendar days from the completion of the investigation is posted within clear view of the main entrance of the facility.
 - (23) The granted criminal history restriction waiver notification for individuals who have criminal histories as defined in OAC 340:110-3-85 are posted in a prominent place for as long as they are employed by the program or living in the facility.
- (e) **Compliance file.** A compliance file accessible to staff, parents, and others contains:
- (1) the most recent child care licensing monitoring report provided by the licensing specialist;
 - (2) the following documents issued by Licensing within the last 120 calendar days:
 - (A) child care licensing monitoring reports and licensing correspondence;
 - (B) notice to comply;
 - (C) licensing complaints; and
 - (D) child welfare investigative summary with findings of unconfirmed or unsubstantiated to include findings of services not needed, ruled out, or services recommended; and

- (3) child welfare investigative summary with findings of confirmed or substantiated, for one year from the completion of the investigation.

340:110-3-89.1. Parent communication

- (a) **Policy.** A written statement of the caregiver's business policy is provided to parents, including:
 - (1) the location and accessibility of the licensing compliance file;
 - (2) days and hours of operation, including holidays the program is closed;
 - (3) procedure for:
 - (A) receiving and releasing a child from care, including a method of verifying the identity of a caller or ~~person~~ individual who picks up a child;
 - (B) notifying parents if a concern exists when a child does not arrive as scheduled;
 - (C) handling illness and injuries;
 - (D) storing and administering children's medication;
 - (E) notifying parents of field trips; and
 - (F) transporting children;
 - (4) care of ill children;
 - (5) mandatory reporting of child abuse or neglect; ~~and~~
 - (6) behavior and guidance policy; ~~and~~
 - (7) expulsion policy.
- (b) **Well-being of the child.** The caregiver informs parents of the child's physical and emotional well-being.
- (c) ~~OKDHS~~ **DHS child care information.** Oklahoma Department of Human Services (~~OKDHS~~(DHS) Publication No. 87-91, The Parents' Guide to Selecting Quality Child Care, is made available to parents upon their child's enrollment.
- (d) **Access to the home.** Parents are provided access to all areas of the home used for child care during the hours ~~that~~ children are in care.
- (e) **Insurance.** A child care facility shall maintain liability insurance in accordance with Section 404.3 of Title 10 of the Oklahoma Statutes.
 - (1) When liability insurance is maintained, Form 07LC092E, Insurance Verification, ~~that includes~~ including a certificate of insurance obtained from the insurance agent is completed annually, maintained at the facility, and made available to ~~licensing~~ Licensing.
 - (2) When liability insurance is not maintained or the ~~facility program~~ reports they are self-insured, Form 07LC093E, Insurance Exception Notification, is posted in a conspicuous location within clear view of the main entrance to the facility.
- (f) **Parent notifications.** Parents are provided information regarding liability insurance and the compliance file.
 - (1) Parents complete DHS Forms 07LC045E, Insurance Notification, and 07LC046E, Compliance File Notification, every 12 months. Forms are maintained at the facility.
 - (2) When the child is enrolled, parents are provided copies of DHS Forms 07LC093E, Insurance Exception Notification, and 07LC084E Notice to Parents.

340:110-3-91.1. Rest time

- (a) **Place to rest.**
 - (1) Each child has an appropriately sized, individual place to rest, such as a crib, playpen, bed, cot, or mat, with clean, individual bedding. The place to rest is maintained in a clean and sanitary condition and in good repair.
 - (2) Waterbeds, sofas, soft mattresses, bassinets, stacked cribs, pillows, beanbag chairs, and other soft surfaces are prohibited as infant sleeping surfaces.
- (b) **Mats.** Mats are not used for overnight care. When used for napping, each mat is:
 - (1) at least two inches thick and covered with a fitted, durable, washable, waterproof material; and
 - (2) only used on clean carpeted surfaces.
- (c) **Cribs and playpens.** A crib, port-a-crib, or playpen with a firm waterproof mattress or pad and a tight-fitting sheet is used for each child younger than one year of age.
- (d) **Crib, port-a-crib, and playpen safety features.** Infants sleep in appropriate rest equipment and environments listed in (1) through (6) of this subsection.
 - (1) Cribs, including portable cribs that can be folded or collapsed without being disassembled, meet the current Consumer Product Safety Commission (CPSC) full-size and non-full size crib standards per Sections 1219 and 1220 of Title 16 of the Code of Federal Regulations.
 - (2) Verification of compliance with CPSC standards is maintained for duration of crib use.
 - (3) Mattresses are tightfitting with no more than one inch between the mattress and crib.
 - (4) Pillows, ~~covers, blankets,~~ quilts, comforters, sheepskins, ~~stuffed toys,~~ bumper pads, and other soft products or bedding, are not permitted in infant cribs, playpens, or port-a-cribs.
 - (5) Play equipment, and other items, except for pacifiers, are not placed inside, above, or attached to the sides of the infant rest equipment, unless there is a medical reason documented by a licensed physician for a monitor or other device. Documentation is maintained at the facility. Mobiles may be securely attached or hung above the crib provided no part of the mobile is within reach of the child.
 - (6) When an infant arrives asleep or falls asleep in inappropriate rest equipment, the infant is immediately moved to appropriate rest equipment.
- (e) **Sleep positioning.**
 - (1) To reduce the risk of Sudden Infant Death Syndrome (SIDS), infants younger than 12 months of age are placed on their back for sleeping unless a medical reason is documented by a ~~doctor~~ licensed physician that the infant should not sleep in this position. Documentation is maintained at the facility.
 - (2) Infants who are able to turn themselves over are placed initially on their back for sleeping but allowed to sleep in a position they prefer.
 - (3) Children's heads and faces are not covered.
- (f) **Swaddling.** Infants, birth through three months of age may be swaddled with an infant-sized, thin fabric, such as a receiving blanket, only when:

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- (1) the infant is not mobile enough to move the fabric over his or her face; and
- (2) requested in writing by the parents. Requests are maintained by the caregiver.

340:110-3-93. Infants, toddlers, and two-year-olds

- (a) **Responding to needs.** The caregiver holds, cuddles, talks to, and sings to infants and toddlers and understands and responds to their particular needs.
- (b) **Daily routine.** The daily routine is adapted to the individual needs of each infant and toddler and fits as much as possible into the schedule set up by the parent.
 - (1) The daily schedule is accessible and followed with reasonable regularity.
 - (2) Children are not left for more than 30 minutes while awake in playpens, swings, high chairs, or stationary activity centers.
- (c) **Bottle-feeding.** Bottles are not propped by any means at any time.
 - (1) Infants up to the age of six months are held while bottle-fed.
 - (2) Infants of more than six months are held while bottle-fed until they are able to hold their own bottle securely.
 - (3) Children are not given bottles in cribs or moving swings due to increased risk of choking, ear infections, and tooth decay.
 - (4) Breast milk is refrigerated or frozen until immediately before feeding.
 - (5) Bottles of premixed formula are refrigerated until immediately before feeding.
 - (6) Unused breast milk or formula left in the bottle is disposed of after feeding.
 - (7) Bottles of formula or breast milk are not warmed in a microwave oven.
- (d) **Diaper-changing.** Diapers are changed promptly when wet or soiled.
 - (1) A clean nonporous surface or pad is used for diaper changes and sanitized after each use. Care is taken to prevent spread of germs.
 - (2) Caregivers wash their hands thoroughly with soap and warm running water after each diaper change.
- (e) **Availability and disposal of diapers.**
 - (1) Sufficient quantities of clean diapers are available.
 - (2) A closed container for soiled diapers is provided and used.
- (f) **Toilet learning.** Toilet learning is a relaxed, pleasant activity.
 - (1) The caregiver shares the child's toilet learning progress with the parent.
 - (2) Training pants or underwear are changed promptly when wet or soiled.
 - (3) Fecal content may be disposed of in a toilet, but soiled diapers or training pants are not rinsed in the toilet.
- (g) **Potty chairs.** Potty chairs are emptied and sanitized after each use.
- (h) **Infant car seats.** Infants are not permitted in infant car seats except during emergency drills, transportation, and arrival and departure with parents.

340:110-3-97.1. Requirements for large family child care homes

- (a) **Large family child care home.** A large family child care home is a residential family home that provides care and supervision for eight to 12 children for part of the 24 hour day.
- (b) **Requirements.** Large family child care homes are required to meet the rules ~~specified in per~~ Oklahoma Administrative Code (OAC) 340:110-3-81 through 340:110-3-97, except as otherwise provided in this Section.
- (c) **Mobile homes.** Large family child care homes operated in a mobile home are required to obtain an approved fire inspection by the state or local fire official prior to caring for children.
- (d) **Capacity.** Large family child care homes are required to meet the rules found in OAC 340:110-3-84(a), except the total number of children in care in a large family child care home is limited to 12.
- (e) **Supervision of outdoor play.** Large family child care homes are required to meet the rules specified in OAC 340:110-3-85(a)(3) pertaining to supervision of outdoor play, except when two or more staff are needed to meet the required child to staff ratio, at least one staff is present with children outdoors at all times.
- (f) **Required number of caregivers.** Large family child care homes are exempt from the requirements regarding the number of caregivers per OAC 340:110-3-84(b) and (c). The number of caregivers required in a large family child care home is described in this subsection.
 - (1) **One caregiver.** One caregiver may care for:
 - (A) up to five children of any age;
 - (B) up to six children, with no more than three children younger than 2 years of age;
 - (C) up to seven children, with no more than two children younger than 2 years of age;
 - (D) up to seven children, when the children are 2 years of age and older;
 - (E) up to eight children, when the children are 3 years of age and older;
 - (F) up to 10 children, when the children are 4 years of age and older; or
 - (G) up to 12 children, when the children are 5 years of age and older.
 - (2) **Two caregivers.** Two caregivers may care for up to:
 - (A) eight children younger than 2 years of age; or
 - (B) 12 children, with no more than six children younger than 2 years of age.
 - (3) **Three caregivers.** Three caregivers may care for up to 12 children, with no more than eight children younger than 2 years of age.
- (g) **Qualifications of caregivers.** Primary, assistant, and substitute caregivers at large family child care homes are required to meet qualifications per OAC 340:110-3-85(a) and (b), except as otherwise described in this subsection.
 - (1) **Primary caregiver.** The primary caregiver or any person substituting for the primary caregiver must be at least 21 years of age. For any person applying after October 1, 2007, the primary caregiver must:

(A) have six months of satisfactory experience as the primary caregiver in a licensed family child care home in Oklahoma; and

(B) meet one of the requirements specified in (i) through (iv):

(i) a high school diploma or General Educational Development (GED) credential and 12 college credit hours in child development or early childhood education;

(ii) a vo-tech occupational child care program diploma;

(iii) a Child Development Associate (CDA) credential; or

(iv) an associate or bachelor's degree in child development or early childhood education.

(2) **Assistant caregiver.** The assistant caregiver or any person substituting for the assistant caregiver must be at least 16 years of age and have current documentation of cardio-pulmonary resuscitation (CPR) and first aid certification per OAC 340:110-3-85(h). Children are not left alone in the care of any person younger than 21 years of age.

(3) **Substitute caregiver.** Any person substituting for the primary caregiver is required to be at least 21 years of age and have current documentation of cardiopulmonary resuscitation (CPR) and first aid training certification per OAC 340:110-3-85(h).

(h) **TrainingProfessional development requirements.** The primary caregiver and assistant caregiver at large family child care homes are required to meet the trainingprofessional development requirements specified in OAC 340:110-3-85(h), except as otherwise described in this subsection.

(1) The primary caregiver is required to complete 15 clock hours of trainingprofessional development annually.

(2) The assistant caregiver is required to complete 12 clock hours of trainingprofessional development annually.

(3) No more than six hours of videos or individual position-related readings is counted toward the annual required trainingprofessional development hours for the primary caregiver or assistant caregiver.

(4) Within two years prior to license application, the primary caregiver must have completed and documented all health and safety training specified in OAC 340:110-3-85(h)(3)(A)–(C).

~~(5) The primary caregiver must have documentation of current completed training in CPR and first aid prior to initial permit issuance.~~

~~(6) The assistant caregiver completes and documents all health and safety training specified in OAC 340:110-3-85(h)(3)(A)–(C) within six months of employment. CPR and first aid training are completed before the assistant caregiver is left alone with children.~~

(i) **Outdoor play space.** The requirements regarding outdoor play space per OAC 340:110-3-86(a)(12) must be met. The outdoor play space must be enclosed by a building or a fence that is in good repair, begins at ground level, and is at least four feet high. The Oklahoma Department of Human Services does not grant exceptions.

PART 15. REQUIREMENTS FOR CHILD CARE CENTERS, DAY CAMPS, DROP-IN PROGRAMS, OUT-OF-SCHOOL TIME PROGRAMS, PART-DAY PROGRAMS AND PROGRAMS FOR SICK CHILDREN

340:110-3-278. Policy

(a) **General.** Policies are individualized to the program, followed, and maintained per Oklahoma Administration Code (OAC) 340:110-3-281.2(c).

(b) **Program liability insurance policy.** Program liability insurance is maintained, unless an exception, per Section 404.3 of Title 10 of the Oklahoma Statutes, Oklahoma Child Care Facilities Licensing Act, is posted per OAC 340:110-3-281.1.

(c) **Vehicle insurance policy.** Vehicle insurance is maintained per OAC 340:110-3-281.2(c) and (d).

(d) **Program policy.** Program policies:

(1) are provided to:

(A) parents upon enrollment and when revisions are made; and

(B) personnel upon employment and when revisions are made; and

(2) include at least items (A) through ~~(K)~~(L), unless a statement is included addressing non-applicable items:

(A) a brief program description;

(B) the ages of children accepted;

(C) the days and hours of operation including days closed, such as holidays;

(D) the location of the compliance file;

(E) relevant emergency plans and procedures information for parents;

(F) the health inclusion, separation, and exclusion criteria, including head lice and other infestations;

(G) whether the program administers medication and under what conditions;

(H) the behavior management and discipline methods;

(I) expulsion policy;

~~(J)~~ the mandatory reporting requirement of suspected child abuse and neglect;

~~(K)~~ an infant safe sleep environment description; and

~~(L)~~ procedures for:

(i) gaining access to the building when the entrance is secured;

(ii) receiving and releasing children from the program, including the methods for verifying the identity of a caller to authorize the pick-up of a child and of an individual who picks up a child. Verbal authorizations to pick-up a child, not previously indicated in the child's records, are documented per OAC 340:110-3-281.4;

(iii) notifying parents when a child does not arrive as required per OAC 340:110-3-280(d);

(iv) monitoring children's health as required per OAC 340:110-3-294(c);

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- (v) notifying parents of communicable disease exposure, while maintaining confidentiality of the ill child or personnel;
- (vi) notifying of infestation exposure, while maintaining confidentiality of the infected child or personnel;
- (vii) handling illnesses, injuries, and poison exposures, including when children are off-site;
- (viii) storing, administering, returning, and disposing of medications;
- (ix) storing, using, returning, and disposing of medical waste, such as syringes, needles, and lancets;
- (x) using sun safety methods, such as sun-screen;
- (xi) using insect repellent;
- (xii) managing children's personal belongings;
- (xiii) transporting children;
- (xiv) notifying parents of field trips;
- (xv) receiving children who arrive late for field trips when their group has left the facility; and
- (xvi) providing meals and snacks, including those for field trips.

(e) **Personnel policy.** When the program has two or more personnel, personnel policies:

- (1) are provided to personnel upon employment and when revisions are made; and
- (2) include, at least the:
 - (A) qualifications, responsibilities, and professional development requirements for each position, including initial and continuing professional development. Position descriptions may meet this requirement;
 - (B) chain of command;
 - (C) health and injury exclusion criteria, including head lice and other infestations; and
 - (D) procedures for the:
 - (i) close supervision of new personnel for at least 30-calendar days;
 - (ii) performance evaluations; and
 - (iii) discipline and termination of personnel.

(f) **Volunteer policy.** When the program uses volunteers, who are not filling another position per OAC 340:110-3-284.1 through 340:110-3-284.4, volunteer policies:

- (1) are provided to the volunteers upon starting service and when revisions are made; and
- (2) include, at least:
 - (A) screening and selection criteria; ~~and~~
 - (B) procedures for ensuring volunteers are familiar with emergency preparedness plans and procedures per OAC 340:110-3-279; and
 - ~~(B)~~ (C) procedures for ensuring the volunteers obtain training and comply with requirements.

340:110-3-279. Emergency preparedness

(a) **Emergency plans and procedures.**

- (1) **General.** The program is required to have emergency plans that are:

- (A) individualized to the program and hours of operation;
- (B) followed, unless children's safety is at risk or emergency personnel provide alternative instructions during an emergency; and
- (C) maintained per Oklahoma Administrative Code (OAC) 340:110-3-281.2(c).

(2) **Situations.** Emergency plans include procedures for:

- (A) serious injuries;
- (B) serious illnesses;
- (C) poison exposure;
- (D) outbreaks of communicable diseases, including pandemic influenza;
- (E) weather conditions, including tornados, floods, blizzards, and ice storms;
- (F) fires, including wildfires;
- (G) man-made disasters, including chemical and industrial accidents;
- (H) human threats, including individuals with threatening behaviors, bomb threats, and terrorist attacks;
- (I) lost or abducted children;
- (J) utility disruption; and
- (K) other natural or man-made disasters that could create structural damage to the facility or pose health hazards.

(3) **Child needs.** Emergency plans include procedures for addressing each child's needs, with additional considerations for:

- (A) 2-year-olds and younger; and
- (B) children with disabilities or chronic medical conditions.

(4) **Account for children.** The emergency plans include procedures to account for each child's location during an emergency.

(5) **Shelter-in-place.** Emergency plans include shelter-in-place procedures for short and extended stay situations that require children to stay in the building, such as tornados and other weather emergencies.

(6) **Lock-down.** Emergency plans include lock-down procedures for situations threatening the safety of children and personnel. Lock-down procedures include:

- (A) notifying personnel;
- (B) keeping children in designated safe locations in the building;
- (C) encouraging children to remain calm and quiet;
- (D) securing building entrances;
- (E) preventing unauthorized individuals from entering the building. When the program is in a shared facility, the program entrances are secured; and
- (F) responding when outdoors and on field trips.

(7) **Evacuation.** Emergency plans include evacuation procedures for situations that require children leave the building, such as building fires. Evacuation procedures include:

- (A) evacuation routes posted per OAC 340:110-3-281.1(c) and (i); and

- (B) pre-determined meeting locations.
- (8) **Relocation.** Emergency plans include relocation procedures for situations that require children move to an alternate location, such as bomb threats and wildfires. Relocation procedures include:
 - (A) pre-determined primary and secondary alternate locations, with prior approval from the contact individual at alternate locations;
 - (B) relocating children, including a pre-determined transportation plan; and
 - (C) reuniting parents and children.
- (9) **Reporting.** Emergency plans include procedures for notifying:
 - (A) emergency authorities, including the poison control center, when necessary;
 - (B) parents, including a method and backup method for how and when parents are notified; and
 - (C) Licensing per OAC 340:110-3-280(a).
- (10) **Personnel.** Emergency plans include procedures for ensuring personnel are familiar with the:
 - (A) current emergency plans and procedures, including roles and responsibilities in an emergency;
 - (B) location of the emergency plans and procedures;
 - (C) location of the posted emergency information;
 - (D) location of the first aid and emergency supply kits; and
 - (E) location and use of the fire extinguishers.
- (b) **Phones.**
 - (1) **On-site.** The program provides an operable phone in each building and on each floor.
 - (2) **Off-site.** An operable phone is available at off-site activities.
 - (3) **Vehicles.** An operable phone is in each vehicle when children are transported.
- (c) **Posted emergency information.**
 - (1) **Program information and emergency numbers.** Items are posted per OAC 340:110-3-281.1(d) and (i).
 - (2) **First aid kit, emergency supply kit, and fire extinguisher locations.** Locations are posted per OAC 340:110-3-281.1(i).
 - (3) **Evacuation routes.** Routes are posted per OAC 340:110-3-281.1(c) and (i).
- (d) **First aid kits.**
 - (1) **Location.** First aid kits are located in each building and in vehicles when transporting children.
 - (2) **Accessibility.** First aid kits are accessible to personnel at all times and inaccessible to children.
 - (3) **Replace.** First aid kit supplies are replaced as needed, including expired items.
 - (4) **Sanitary.** First aid kit supplies are maintained in a clean and sanitary manner, including sanitizing re-usable supplies.
 - (5) **Supplies.** First aid kit supplies are stored together in a portable container.
 - (A) Supplies include, at least:
 - (i) non-medicated adhesive strips;
 - (ii) sterile gauze pads;
 - (iii) rolled flexible or stretch gauze;
 - (iv) bandage tape;
 - (v) disposable non-porous, latex-free gloves;
 - (vi) blunt-tipped scissors;
 - (vii) tweezers;
 - (viii) a non-glass and non-mercury thermometer. The appropriate thermometer and method are used per OAC 340:110-3-294(d);
 - (ix) a current first aid guide; and
 - (x) a copy of the posted program information and emergency numbers per (c) of this Section.
- (B) In addition, the first aid kits in vehicles include, at least:
 - (i) a cold pack;
 - (ii) liquid soap and water or individually packaged moist, disposable towelettes, for cleaning wounds;
 - (iii) hand sanitizer and moist, disposable towelettes, for hand hygiene;
 - (iv) plastic bags for disposal of items contaminated with blood or other body fluids; and
 - (v) a pen or pencil and note pad.
- (e) **Emergency supply kit.**
 - (1) **Records.** Records available during an emergency include, at least the:
 - (A) emergency plans and procedures per OAC 340:110-3-281.2(c) and alternate location addresses, phone numbers, and contacts;
 - (B) emergency contacts per OAC 340:110-3-281.2(c); and
 - (C) full names of children and personnel currently in attendance.
 - (2) **Supplies.** Emergency supplies gathered at the time of an emergency or maintained in a portable container at all times include, at least:
 - (A) a first aid kit; and
 - (B) children's prescribed medications, including life-threatening condition medications.
- (f) **Testing and maintaining emergency equipment.**
 - (1) **Individual smoke and carbon monoxide alarms.** When the facility is equipped per OAC 340:110-3-300(t) or (u), individual alarms are:
 - (A) operable; and
 - (B) tested at least monthly. Documentation is maintained per OAC 340:110-3-281.2(c).
 - (2) **Central detection and alarm system for smoke and carbon monoxide.** When the facility is equipped per OAC 340:110-3-300(v), the system is:
 - (A) fully functional;
 - (B) checked at least monthly by viewing the control panel and documented per OAC 340:110-3-281.2(c). However, this is not required when a company continuously monitors the system for full-function as documented per OAC 340:110-3-281.2(c); and
 - (C) inspected and tagged at least every 12 months by a state licensed authority.

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- (3) **Fire extinguishers and automatic sprinkler systems.** Fire extinguishers and automatic sprinkler systems are:
- (A) fully functional; and
 - (B) inspected and tagged at least every 12 months by a state licensed authority.
- (g) **Drills and reviews.**
- (1) **General.** Drills and reviews are documented per OAC 340:110-3-281.2(c) and drills are conducted:
- (A) at various times throughout the hours of operation, such as morning, mid-day, afternoon, and evening, so children and personnel in attendance at various times are involved in each type of drill at least one time every three months; ~~and~~
 - (B) by following the pre-determined emergency plans and procedures; ~~and~~
 - (C) per required scheduling.
 - (i) **Monthly.** Monthly drills include:
 - (I) fire drills conducted by evacuating and meeting at pre-determined locations; and
 - (II) tornado drills conducted by sheltering in pre-determined on-site locations.
 - (ii) **Annual.** Annual drills include:
 - (I) locking-down by sheltering in pre-determined on-site locations;
 - (II) relocating according to procedures of preparation to relocate but do not require physical relocation;
 - (III) sheltering-in-place, requiring children stay inside the facility, such as tornados and other weather emergencies; and
 - (IV) evacuating and meeting at pre-determined locations.
- (2) ~~**Fire drills.** Fire drills are conducted at least monthly by evacuating and meeting at pre-determined locations.~~
- (3) ~~**Tornado drills.** Tornado drills are conducted at least monthly by sheltering in pre-determined on-site locations.~~
- (4) **Lock-down and relocation procedures reviews.** Personnel review the procedures at least once every 12 months.
- (5) **Emergency plans and procedures reviews.** The director updates, as necessary, and reviews emergency plans and procedures:
- (A) at least once every 12 months;
 - (B) upon enrollment of children with disabilities or chronic medical conditions;
 - (C) after a drill when procedure issues are identified; and
 - (D) after an emergency, as identified in this Section.
- (A) a change of responsible entity;
 - (B) a change of director;
 - (C) a change in mailing address, when different from the physical address;
 - (D) a change in phone number;
 - (E) a change in program liability insurance coverage;
 - (F) an individual moving into the facility;
 - (G) a known legal action, such as a Victim Protection Order, arrest, or criminal investigation or charge, involving the program, owner, responsible entity, personnel, or an individual living in the facility;
 - (H) a known child abuse or neglect investigation involving the owner, responsible entity, personnel, or an individual living in the facility that is pending or has a disposition;
 - (I) an unscheduled temporary or permanent program closure or relocation;
 - (J) facility damage affecting the amount of usable square footage or compliance with requirements;
 - (K) an incident that exposes children to an imminent risk of harm, such as a child leaving the facility without program knowledge or being left alone on- or off-site or in a vehicle;
 - (L) an animal bite to an individual that occurs on-site at any time or off-site when participating in program activities;
 - (M) an accident involving transportation, unless there were no injuries and only minor damage to the vehicles;
 - (N) a child injury requiring emergency medical attention; and
 - (O) a child death occurring while in care.
- (2) **Thirty calendar days prior.** The owner, responsible entity, or director notifies Licensing at least 30 calendar days prior to:
- (A) an anticipated temporary or permanent program closing, other than a scheduled closing identified in program policy, such as a holiday;
 - (B) an anticipated temporary or permanent change in location;
 - (C) an anticipated facility change or alteration effecting the amount of usable square footage or compliance with the requirements;
 - (D) a change of business entity;
 - (E) a change in program name; and
 - (F) a proposed licensed capacity change.
- (b) **Child abuse and neglect ~~hotline~~ and human trafficking.**
- (1) **Immediately Abuse and neglect.** ~~Individuals who have a suspicion or reason to believe a child was abused or neglected or is in danger of being abused, immediately make a report to the statewide Child Abuse and Neglect Hotline 1-800-522-3511 per Section 1-2-101 of Title 10A of the Oklahoma Statutes. Any person who has reason to believe a child has been abused or neglected per 10 O.S. § 1-1-105 is required to report the matter promptly to the DHS Child Abuse and Neglect Hotline at 1-800-522-3511~~

340:110-3-280. Reporting

(a) Licensing.

- (1) **Next business day.** The owner, responsible entity, or director notifies Licensing by the next Oklahoma Department of Human Services (DHS) business day of:

per Section 1-2-101 of Title 10A of the Oklahoma Statutes (10A O.S. § 1-2-101). Failure to report is a misdemeanor offense and upon conviction is punishable by law. Failure to report with prolonged knowledge, six months or more, of ongoing abuse or neglect is a felony offense.

(2) ~~Failure to report Human trafficking. It is a misdemeanor for any individual who fails to report suspected child abuse or neglect. Per 21 O.S. § 870, every person having reason to believe that a person or child-placing agency is engaging in the crime of trafficking in children, as described in 21 O.S. § 866 of the Oklahoma Statutes, reports the matter promptly to the Oklahoma Bureau of Narcotics and Dangerous Drugs Control.~~

(c) **Health department.**

(1) **Promptly.** The program promptly notifies the local or Oklahoma State Department of Health (OSDH) of a known case, in individuals associated with the program, of:

- (A) Haemophilus influenza invasive diseases;
- (B) hepatitis A;
- (C) measles; and
- (D) meningococcal invasive disease.

(2) **Next business day.** By the next health department business day, the program notifies the local or OSDH of a known case, in individuals associated with the program, of:

- (A) E. coli O157:H7 or shigatoxin-producing E. coli (STEC);
- (B) rubella;
- (C) salmonellosis;
- (D) shigellosis;
- (E) tuberculosis; and
- (F) whooping cough (pertussis).

(d) **Parents.**

(1) **Immediately.** The program notifies parents immediately of:

- (A) a child who does not arrive on his or her own at the facility as scheduled, such as when walking to the facility;
- (B) a child not present at the pick-up location as scheduled;
- (C) a child or individual at the pick-up location who believes the child is to be transported by the program, when the program is not providing this transportation;
- (D) administration of a life-threatening condition medication that is only administered as needed;
- (E) an injury that may need evaluation by a physician;
- (F) poison exposure; and
- (G) an animal bite to a child, when the skin is broken or when an evaluation by a physician may be needed.

(2) **Promptly.** The program notifies parents promptly of a child who is separated from the group due to an illness or infestation or when exclusion is required per Oklahoma Administrative Code (OAC) 340 Appendix JJ - Exclusion Criteria for Children Who Are Ill.

(3) **Upon child pick up.** The program notifies parents upon child pick up of:

- (A) daily happenings, including the infant and 1-year-old daily records as maintained per OAC 340:110-3-281.4(b);
- (B) changes in the child's physical or emotional state;
- (C) known minor injuries;
- (D) illness or infestation symptoms that developed or changed;
- (E) a communicable disease or infestation exposure according to program policy per OAC 340:110-3-278(d);
- (F) an administration of a non-life-threatening condition medication that is only administered as needed, such as diaper cream;
- (G) an animal bite to a child, when the skin is not broken; and
- (H) implemented emergency plans and procedures, except for drills.

(4) **Prior.** The program notifies parents prior to each field trip of the date, time, and location. The field trip permission per OAC 340:110-3-281.4(b) meets this requirement when this specific information is included.

(5) **Upon enrollment and prior to changes.** The program notifies parents upon enrollment and prior to a change in the presence of:

- (A) an animal;
- (B) tobacco or simulated tobacco use; and
- (C) weapons, including how safety requirements are met.

340:110-3-281.1. Posted records and documentation

(a) **General.** General records and documentation requirements per Oklahoma Administrative Code (OAC) 340:110-3-281 also apply to the items in this Section. The items are posted at all times in a clear, unobstructed view so they are easily read.

(b) ~~**Post at main entrance — tobacco-free notice.** A tobacco-free environment notice is posted at the program's entrance where the parents and public enter. The notice is not combined with other posted items. When the program is in a family residence, the notice indicates a tobacco-free environment at all times or no tobacco use during the hours of operation. Item is paper only. Items are posted at the program's main entrance where the parents and public enter and (2) through (3) of this subsection are also posted in a conspicuous location within clear view.~~

(1) **Tobacco-free environment notice.** The notice is not combined with other posted items. When the program is in a family residence, the notice indicates a tobacco-free environment at all times or no tobacco use during the hours of operation. Item is paper only.

(2) **Notice to parents.** Oklahoma Department of Human Services (DHS) Publication No. 14-01, Notice to Parents, is posted. Item is paper only.

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- (3) **Program liability insurance exception notification.** The DHS form is posted when program liability insurance is not maintained or program reports being self-insured. Item is paper only.
- (c) **Post in prominent location for parents and public.** Items are posted in a noticeable and frequently visited location for the parents and public to view and may include multiple buildings depending on where parents and public typically visit.
- (1) **Permit or license.** The ~~Oklahoma Department of Human Services~~ (DHS) permit or license is posted. Item is paper only.
- (2) **Notice of denial or revocation.** A denial or revocation notice is posted. Item is paper only.
- (3) **Star certificate.** DHS Star certificate is posted. Item is paper only.
- (4) **Personnel in charge.** The program posts the director's full name and at least one additional personnel responsible for the program in the event the director is not present at the facility. When the individuals listed are not present, the appointed personnel in charge is temporarily posted.
- (5) **Notice to parents.** ~~DHS Publication No. 14-01, Notice to Parents, is posted. Item is paper only.~~
- ~~(6)~~ **Child abuse and neglect notification.** A notice of the Child Abuse and Neglect Hotline number and requirement to report suspected abuse or neglect is posted.
- ~~(7)~~ **Child welfare investigative summary - confirmed and substantiated findings.** DHS form is posted for 120 calendar days from the date the investigation is completed, as indicated on the form. Item is paper only.
- ~~(8)~~ **Program liability insurance exception notification.** ~~DHS form is posted when program liability insurance is not maintained. Item is paper only.~~
- ~~(9)~~ **Evacuation routes.** A floor plan with primary and secondary evacuation routes from each area of the building is posted on each floor. Item is paper only and may only be combined as described per (i) of this Section.
- ~~(10)~~ **Weekly menu.** The menu, including dates and substitutions, is posted. Additional posted menus are duplicates, including substitutions.
- (d) **Post in prominent location for personnel.** Items are posted in a noticeable and frequently visited location for personnel to view and may include multiple buildings.
- (1) **Program information.** The program name and address, with main cross streets or directions to the facility, are posted. Item is paper only.
- (2) **Emergency numbers.** The program posts emergency numbers. Item is paper only. Numbers include:
- (A) 9-1-1, where available, or local law enforcement, fire department, and ambulance service; and
- (B) poison control, 1-800-222-1222.
- (3) **Restricted registry notice.** DHS Publication No. 14-07, Child Care Restricted Registry Notice is posted. Item is paper only.
- (e) **Post in kitchen.** The requirements listed in (1) and (2) of this subsection are met.
- (1) **Weekly menu.** The menu, including dates and substitutions, is posted. Additional posted menus are duplicates, including substitutions.
- (2) **Food allergies.** Known food allergies of children in care are posted near the menu, including the child's full name and classroom.
- (f) **Post on all microwaves - warning.** DHS Publication No. 97-27, Microwave Warning, is posted. However, the program may modify the publication or develop a document, provided the information remains the same or is exceeded. When the program shares the facility, the posting is only required on microwaves used for children's food. Item is paper only.
- (g) **Post near sinks - hand washing procedures.** The program posts DHS Publication No. 14-02 - Hand Washing Procedures Using Paper Towels or DHS Publication No. 14-03 - Hand Washing Procedures Using Mechanical Hand Dryers, where individuals can read the publication while washing their hands. However, the program may modify the publication or develop a document, provided the procedures remain the same or are exceeded.
- (h) **Post in diaper changing areas - procedures.** The program posts DHS Publication No. 14-04 - Diaper Changing Procedures, where individuals can read the publication while changing diapers. However, the program may modify the publication or develop a document, provided procedures remain the same or are exceeded. Item is paper only.
- (i) **Post in classrooms.** Items are posted where personnel and parents can read the items, unless the requirements specifically state otherwise. Two or more classrooms may share the posted items when the classrooms are next to each other and are divided by low height walls or barriers and the items can be read from each classroom.
- (1) **Program information and emergency numbers.** The program posts duplicate items in a prominent location for personnel per (d) of this Section. Items are paper only.
- (2) **First aid kits, emergency supply kits, and fire extinguishers.** The location of kits and fire extinguishers are posted. Items are paper only.
- (3) **Evacuation routes.** A floor plan with primary and secondary evacuation routes from the classroom(s) is posted. Routes are not combined with other posted items, except for program information, emergency numbers, and locations of first aid kits, emergency supply kits, and fire extinguishers per (1) and (2) of this subsection. Items are paper only.
- (4) **Ratios and group sizes.** The applicable program-type ratios and group sizes per OAC 340 Appendix GG - Ratios and Group Sizes are posted.
- (5) **Daily classroom schedule.** The program posts a schedule with the required content per OAC 340:110-3-289(b). Classrooms may only share this item when the schedule is applicable to each classroom.
- (6) **Weekly lesson plans.** The program posts lesson plans with the dates and required content per OAC 340:110-3-289(d). Classrooms may only share this item when the lesson plan is applicable to each classroom.

(7) **Allergies.** The program posts known food and life-threatening allergies, the child's full name, and location of any life-threatening condition medications for children present in classroom(s), when exposure could potentially occur while in care. To protect confidentiality, the item is posted in a location or manner, such as with a cover sheet, so only personnel can read it. Item is paper only.

340:110-3-281.2. Program records and documentation

(a) **General.** General records and documentation requirements per Oklahoma Administrative Code (OAC) 340:110-3-281 also apply to the items in this Section.

(b) **Accessible in prominent location.** Items are located in a noticeable and frequently visited location for the parents and public to view and may include multiple buildings depending on where parents and the public typically visit, and can be accessed without asking personnel.

(1) **Requirements.** Oklahoma Department of Human Services (DHS) Publication No. 14-05, Licensing Requirements for Child Care Programs, is accessible.

(2) **Selecting quality child care.** DHS Publication 87-91, Selecting Quality Child Care - A Parent's Guide, is accessible.

(3) **Compliance file.** Items are originals or copies and are maintained together, with the most recent on top and all child identifying information removed. The compliance file includes items within the last 120 calendar days, at a minimum, from the date on the document or the investigation completion date on the form, unless requirements specifically state otherwise. The compliance file only contains:

(A) compliance monitoring from Licensing, Stars, and tribal agencies, such as:

(i) monitoring visit forms. Include most recent visit; and

(ii) case status information, such as forms and correspondence regarding:

- (I) issuance of permits and licenses;
- (II) non-compliances and Stars violations;
- (III) notices to comply;
- (IV) complaint findings;
- (V) office conferences with Licensing, Stars, and tribal agencies;
- (VI) Stars alternative settlements and reductions; and
- (VII) consent agreements, denials of a request for a license, and revocations of a license;

(B) child welfare investigative summary, regardless of findings. However, confirmed or substantiated findings are maintained in the file for 12 months;

(C) granted criminal history restriction waiver notifications. However, notification is maintained in the file for as long as the individual is employed or is living in the facility; and

(D) other documents indicating placement in the compliance file.

(c) **Available in facility.** Items are available upon request.

(1) **Necessity, issuance, and maintenance of a permit or license.** The requirements listed in (A) and (B) of this subsection are met.

(A) **Fire inspections.** Items are available upon request.

(B) **Health inspections.** Items are available upon request.

(2) **Other business, shared facility, and collaborations - collaboration agreement.** Item is available upon request.

(3) **Policy.** The requirements listed in (A) through (D) of this paragraph are met.

(A) **Program liability insurance policy.** DHS form, completed every 12 months, and a certificate of liability insurance from the insurance agent is available, unless an exception is posted per OAC 340:110-3-278(b).

(B) **Program policy.** Policy includes content per OAC 340:110-3-278(d).

(C) **Personnel policy.** Policy includes content per OAC 340:110-3-278(e).

(D) **Volunteer policy.** Policy includes content per OAC 340:110-3-278(f).

(4) **Emergency preparedness.** The requirements listed in (A) through (G) of this paragraph are met.

(A) **Emergency plans and procedures.** Item includes content per OAC 340:110-3-279(a) and is maintained in a readily available and portable manner for emergencies. Item is paper only.

(B) **Emergency contacts.** Emergency contact information for all personnel and enrolled children is maintained together in a readily available and portable manner for emergencies. Item is paper only.

(C) **Individual smoke and carbon monoxide alarm tests.** Item includes the dates the tests are conducted.

(D) **Central detection and alarm system checks for smoke and carbon monoxide.** Item includes the dates the system is checked or a contract from the company that continuously monitors the system for full-function.

(E) ~~Fire and tornado~~**Emergency preparedness drills.** Item includes dates and times the drills are conducted, with a signature of the director or personnel in charge during the drill.

(F) **Lock-down and relocation procedure reviews.** Item includes dates the reviews are completed by personnel.

(G) **Emergency plans and procedure reviews.** Item includes dates the reviews are completed by the director.

(5) **Attendance.** The requirements listed in (A) through (C) of this paragraph are met.

(A) **Personnel's attendance.** Daily attendance is:
(i) promptly documented on paper, including personnel's full name and arrival and departure time; and

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- (ii) maintained, on paper or electronically, for at least 12 months.
- (B) **Children's attendance.** Daily attendance is:
 - (i) promptly documented on paper, including the child's full name and arrival and departure time; and
 - (ii) maintained, on paper or electronically, for at least 12 months.
- (C) **Transportation attendance.** Attendance is maintained per (d) of this Section.
- (6) **Animals.** The requirements listed in (A) and (B) of this paragraph are met.
 - (A) **Rabies vaccination.** A certificate from a licensed veterinarian for dogs and cats 4 months of age and older is available.
 - (B) **Psittacosis test results.** Negative results from a licensed veterinarian for each bird of the parrot family is available.
- (7) **Parent communication and family engagement - ~~parent conferences.~~** ~~Documentation of conferences offered by a general or individualized notification is available.~~ Requirements listed in (A) through (B) of this paragraph are met.
 - (A) **Parent conferences.** Documentation of conferences offered by general or individualized notification is available.
 - (B) **Parent notifications.** Parents are provided information regarding insurance liability and the compliance file.
 - (i) Parents complete DHS forms every 12 months regarding insurance liability and the compliance file. Forms are maintained at the facility.
 - (ii) When the child is enrolled, parents are provided copies of DHS Form 07LC093E, Insurance Exception Notification, and DHS Publication No. 14-01, Notice to Parents.
- (8) **Health and hygiene.** The requirements listed in (A) and (B) of this paragraph are met.
 - (A) **Injury and poison exposure log.** Incidents requiring an injury or poison exposure report are documented and maintained in one location for at least 12 months, to determine patterns. The log includes, at least the:
 - (i) child's full name and age;
 - (ii) injury date, time, type, and location at facility or off-site; and
 - (iii) personnel present at the time of the injury.
 - (B) **Personnel administering medication.** Item includes full names of personnel designated to administer medication.
- (9) **Physical environment.** The requirements listed in (A) through (E) of this paragraph are met.
 - (A) **Physical environment checklist.** DHS form, or other checklists regarding the same information as the form, is completed at least every 12 months.
 - (B) **Water supply - well water results.** Test results ~~that~~ meeting requirements per OAC 340:110-3-300(k) are available.
- (C) **Impact-absorbing materials.** Documentation of the American Society for Testing and Materials International (ASTM) tested impact-absorbing materials is maintained for the duration of the material's use.
- (D) **Equipment inventory.** DHS form applicable to the program type and ages of children accepted into care is available.
- (E) **Crib compliance.** Verification cribs meet Consumer Product Safety Commission standards is maintained for the duration of the cribs' use.
- (10) **Transportation.** The requirements listed in (A) through (C) of this paragraph are met.
 - (A) **Transportation itinerary.** Item indicates approximate vehicle location at all times. Additional itineraries are duplicates.
 - (B) **Vehicle insurance.** Proof of insurance indicates the specific vehicles covered by the policy.
 - (C) **Vehicle maintenance.** Item includes the dates and full names of the individuals or commercial entities who conducted each inspection of:
 - (i) tire wear and pressure;
 - (ii) brakes;
 - (iii) lights; and
 - (iv) seat belts.
- (d) **Available in vehicle.** The items listed in (1) through (6) of this subsection are maintained in the vehicle.
 - (1) **Program information.** Item includes program name, address, and phone number. Item is paper only.
 - (2) **Vehicle insurance.** Proof of insurance is available. Item is paper only.
 - (3) **Transportation itinerary.** Item indicates approximate vehicle location at all times. Additional itineraries are duplicates.
 - (4) **Emergency contacts and child information.** The full name and emergency contact information for each transported child is available. Item is paper only.
 - (5) **Transportation attendance.** Attendance is:
 - (A) immediately documented each time each child enters and exits the vehicle; and
 - (B) maintained in the vehicle or facility for at least 120 calendar days.
 - (6) **Child passenger check.** Before leaving the vehicle and in addition to the transportation attendance, the driver or last personnel in the vehicle documents completion of at least two methods of inspecting all areas of the vehicle for any remaining children to ensure no children are left on the vehicle.

340:110-3-284. General qualifications, responsibilities, and professional development

- (a) **General.** Personnel are required to meet the general requirements in this Section and those specific to their assigned position(s) per Oklahoma Administrative Code (OAC) 340:110-3-284.1 through 340:110-3-284.4, with or without reasonable accommodations.
- (b) **Qualifications.** Personnel meet the general qualification requirements listed in (1) through (3) of this subsection.

- (1) **Skills.** Personnel possess the skills to perform their position responsibilities.
- (2) **Background investigations.** Personnel meet the background investigation requirements per OAC 340:110-3-282.
- (3) **Oklahoma Professional Development Ladder.** Prior to or within 12 months of employment, teaching personnel obtain and maintain a current Oklahoma Professional Development Ladder (OPDL) certificate, per OAC 340 Appendix FF - Oklahoma Professional Development Ladder.
- (c) **Responsibilities.** Personnel meet the general responsibility requirements listed in (1) through (3) of this subsection.
- (1) **Complying with requirements.** Personnel comply with the requirements.
- (2) **Caring for and educating children.** Personnel:
- (A) individualize the care and learning opportunities to meet each child's needs based upon the child's age and abilities, including reviewing the information provided by parents while respecting confidentiality;
- (B) recognize and act to correct hazards to physical safety, both indoors and outdoors;
- (C) demonstrate good judgment as evidenced by prudent and responsible behavior that reasonably ensures the health and safety of children;
- (D) demonstrate realistic expectations for behavior based on the age, abilities, and needs of children; and
- (E) work with children without physical, psychological, or emotional punishment, mistreatment, or abuse.
- (3) **Reporting child abuse and neglect.** Personnel report suspected child abuse and neglect and human trafficking per OAC 340:110-3-280(b).
- (d) **Professional development.** Personnel meet the general professional development requirements listed in (1) through (8) of this subsection.
- (1) **Professional development verification.** Verification of professional development is maintained per OAC 340:110-3-281.3(b).
- (2) **Professional development plan.** For the director and teaching personnel the program:
- (A) within one month of employment, develops an individualized education plan;
- (B) updates the plan annually; and
- (C) maintains documentation per OAC 340:110-3-281.3(b).
- (3) **Orientation.** Within one week of employment and prior to having sole responsibility for a group of children, personnel obtain orientation, as documented per OAC 340:110-3-281.3(b), ~~that includes~~ including, at least a review of:
- (A) requirements;
- (B) ~~infection~~ prevention and control of infectious disease;
- (C) immunizations;
- (~~C~~D) injury prevention;
- (~~D~~E) handling common childhood emergencies, including choking;
- (F) administration of medication;
- (G) prevention of and response to emergencies due to food and allergic reactions;
- (~~E~~H) reportable infectious disease and mandatory reporting;
- (~~F~~I) child abuse and neglect definition, identification, and mandatory reporting;
- (~~G~~J) appropriate use of discipline;
- (~~H~~K) transportation and general child passenger safety;
- (L) building and physical premise safety including identification of and protection from hazards that can cause bodily injury, such as electrical hazards, bodies of water, and vehicular traffic;
- (M) handling and storage of hazardous materials and appropriate disposal of bio-contaminants;
- (~~I~~N) diaper changing;
- (~~J~~O) prevention of shaken baby syndrome ~~and~~ abusive head trauma;
- (P) prevention of sudden infant death syndrome (SIDS);
- (~~K~~Q) infant safe sleep environments practices; and
- (~~L~~R) program specific information, that includes including, at least:
- (i) policies and procedures;
- (ii) emergency plans and procedures preparedness and response planning for emergencies resulting from a natural disaster or a man-caused event;
- (iii) confidentiality of information regarding children and families;
- (iv) personnel's assigned duties and responsibilities, such as classroom schedules and lesson plans; and
- (v) methods used to inform personnel of children's special health, nutritional, and developmental needs.
- (4) **Safe sleep.** Prior to caring for infants, personnel obtain formal professional development in safe sleep practices.
- (~~4~~5) **Entry Level Child Care Training (ELCCT) or equivalent.** Prior to, or within 90 calendar days of employment, teaching personnel hired after August 1, 2003, complete an approved entry-level training listed on the Oklahoma Professional Development Registry (OPDR) website, such as ELCCT. However, this training is not required when previously received, unless the individual has not been employed at a licensed program within the last five years.
- (~~5~~6) **CPR and first aid.** Cardio-pulmonary resuscitation (CPR) and first aid certifications are age-appropriate for the ages of children accepted into care and are from approved sources listed on the OPDR website. In addition to CPR and first aid certification requirements for individuals listed in (A) through (B) of this subsection, other position specific CPR and first aid certification requirements are also met per OAC 340:110-3-284.1 through 340:110-3-284.4.

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(A) At all times, at least one personnel with current CPR and first aid certification is present with children:

- (i) on-site, including in each building where children are present;
 - (ii) off-site; and
 - (iii) in each vehicle during transportation.
- However, a volunteer with certification from any source meets this requirement, provided the volunteer does not fill another position, excluding driver, per OAC 340:110-3-284.1 through 340:110-3-284.4.

(B) At least the director and master teachers obtain CPR and first aid certifications as required per OAC 340:110-3-284.1(b) and 340:110-3-284.2(b).

(67) **Infection control.** Personnel obtain infection control training at least every 12 months.

(78) **Continuing professional development.** Ongoing professional development is required.

(A) The director obtains at least the required number of professional development clock-hours to maintain a current Oklahoma Director's Credential per OAC 340 Appendix EE - Oklahoma Director's Credential. However, informal professional development clock-hours are limited.

(B) Teaching personnel obtain at least the required number of professional development clock-hours to maintain a current OPDL certificate per OAC 340 Appendix FF - Oklahoma Professional Development Ladder. However, informal professional development clock-hours are limited.

(C) Formal professional development is:

- (i) two or more clock-hours from an OPDR approved training organization; and
- (ii) OPDR approved college credit hours.

(D) Informal professional development is:

- (i) less than two clock-hours from an OPDR approved training organization;
- (ii) any number of clock-hours from an OPDR non-approved training organization; and
- (iii) any training from electronic media, such as videos or DVDs.

(E) Reading and television programs do not count toward required clock-hours.

(89) **Child passenger safety.** When the program provides transportation for 5-year-olds or younger, the program has at least one personnel who obtained child passenger safety training from an approved source listed on the OPDR website, unless the vehicles used are exempt per OAC 340:110-3-305(g). When the trained personnel's employment ends, the program has three months to meet this requirement.

340:110-3-284.1. Director and personnel in charge

(a) **General.** In addition to the position specific requirements in this Section, personnel meet the general requirements per Oklahoma Administrative Code (OAC) 340:110-3-284.

(b) **Director.** The program employs an individual who meets these position specific requirements.

(1) **Position specific qualifications.** The director:

- (A) is at least 21 years of age;
- (B) has satisfactory work experience;
- (C) has a current bronze or higher level certificate per OAC 340 Appendix EE - Oklahoma Director's Credential;
- (D) is not a director or master teacher at another program that operates concurrently at any given time; and
- (E) has a good understanding of the requirements and program policies.

(2) **Position specific responsibilities.** The director is:

- (A) accountable for the day-to-day operation of the program;
- (B) responsible for:
 - (i) maintaining a program that meets or exceeds the requirements;
 - (ii) improving the quality of care;
 - (iii) implementing program development and evaluation;
 - (iv) ensuring personnel and volunteers comply with the requirements;
 - (v) supervising the conduct of personnel, volunteers, and other individuals providing services in the program;
 - (vi) appointing and informing the personnel in charge when the director is not present at the facility;
 - (vii) registering the program as a direct care organization and maintaining information on the Oklahoma Professional Development Registry (OPDR); and
 - (viii) overseeing parent communication and family engagement;

(C) present at the facility during the hours of operation at least 50 percent of the operating hours or 30 hours per week, whichever is less; and

(D) free from direct care responsibilities, when four or more teaching personnel are required to meet ratios, at least three hours per day during the hours of operation to provide program oversight and personnel supervision.

(3) **Position specific professional development.** The director, upon assuming the position:

- (A) completes a DHS requirements compliance review form within one month;
- (B) obtains and maintains cardio-pulmonary resuscitation (CPR) and first aid certifications prior to, or within three months, that meet requirements per OAC 340:110-3-284(d); and
- (C) is exempt from the Entry Level Child Care Training (ELCCT) or equivalent requirement.

(c) **Personnel in charge.** The director appoints an individual who meets the position specific requirements listed in (1) ~~and (2) through (3)~~ of this subsection.

(1) **Position specific qualifications.** The personnel in charge:

- (A) are at least 21 years of age; and

(B) have a good understanding of the requirements and program policies.

(2) **Position specific responsibilities.** The personnel in charge takes responsibility for program operation when the director is not present at the facility.

(3) **Position specific professional development.** The personnel in charge meets specific professional development for his or her regularly assigned position.

340:110-3-284.2. Teaching personnel

(a) **General.** In addition to the position specific requirements in this Section, personnel meet the general requirements per Oklahoma Administrative Code (OAC) 340:110-3-284.

(b) **Master teachers.** The program employs or uses at least the minimum number of required individuals or volunteers who meet these position specific requirements.

(1) **Required master teachers.** At least one master teacher is required for every 60 children of the licensed capacity. Only the required number of master teachers are required to meet all of the master teacher requirements. However, all master teachers meet cardio-pulmonary (CPR) and first aid certification requirements listed in (5) of this subsection.

(2) **Position specific qualifications.** Master teachers:
 (A) are at least 18 years of age;
 (B) have at least a high school diploma, General Education Development (GED), or Licensing approved equivalent; and
 (C) have a current Oklahoma Professional Development Ladder (OPDL) certificate per OAC 340 Appendix FF - Oklahoma Professional Development Ladder of:
 (i) Level 3, specifically met by an Oklahoma Competency Certificate with a Master Teacher emphasis; or
 (ii) Level 4 or higher.

(3) **Director as master teacher.** The director may count as a master teacher when the:

(A) licensed capacity is 30 or less; and
 (B) director meets the master teacher qualifications.

(4) **Position specific responsibilities.** Master teachers:

(A) support other teaching personnel in meeting teacher and assistant teacher responsibilities;
 (B) are responsible for:
 (i) the direct care of children;
 (ii) planning and implementing the lesson plans;
 (iii) classroom arrangement;
 (iv) planning and implementing parent communication and family engagement; and
 (v) providing input on program development and evaluation; and
 (C) are present at the facility during the hours of operation at least 50 percent of operating hours or 30 hours per week, whichever is less.

(5) **Position specific professional development.** ~~Prior to, or within three months of assuming the position, master~~ Master teachers obtain and maintain ~~cardio-pulmonary resuscitation (CPR)~~ and first aid certification that meets the requirements per OAC 340:110-3-284(d). Master teachers assuming the position:

(A) on or after November 1, 2016 obtain the certification within three months; or
 (B) prior to November 1, 2016 obtain the certification before November 1, 2017.

(c) **Teachers.** The program employs individuals or uses volunteers who meet the position specific requirements listed in (1) ~~and (2)~~ through (3) of this subsection.

(1) **Position specific qualifications.** Teachers:
 (A) are at least 18 years of age; and
 (B) have at least:
 (i) a high school diploma, General Educational Development (GED), or Licensing approved equivalent; or
 (ii) completed 10th grade and are in the process of obtaining a GED for a period not to exceed 12 months from employment.

(2) **Position specific responsibilities.** Teachers:
 (A) have the primary responsibility for the direct care of children; and
 (B) participate in:
 (i) lesson plan development and implementation;
 (ii) classroom arrangement;
 (iii) parent communication and family engagement; and
 (iv) program development and evaluation.

(3) **Position specific professional development.** Teachers obtain and maintain CPR and first aid certification that meets the requirements per OAC 340:110-3-284(d). Teachers assuming the position:
 (A) on or after November 1, 2016 obtain the certification within three months; or
 (B) prior to November 1, 2016 obtain the certification before November 1, 2017.

(d) **Assistant teachers.** The program may employ individuals or use volunteers who meet the position specific requirements listed in (1) through ~~(3)~~ (4) of this subsection.

(1) **Position specific qualifications.** Assistant teachers:
 (A) are at least 16 years of age; and
 (B) meet one of these criteria:
 (i) are currently enrolled in high school or an equivalent;
 (ii) have at least a high school diploma, GED, or Licensing approved equivalent; or
 (iii) have completed 10th grade and are in the process of obtaining a GED for a period not to exceed 36 months from employment.

(2) **Position specific responsibilities.** Assistant teachers:
 (A) are responsible for the direct care of children; and

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- (B) carry out assigned tasks that may include participation in:
- (i) lesson plan development and implementation;
 - (ii) classroom arrangement;
 - (iii) parent communication and family engagement; and
 - (iv) program development and evaluation.
- (3) **Position specific professional development.** Assistant teachers obtain and maintain CPR and first aid certification that meets the requirements per OAC 340:110-3-284(d). Assistant teachers assuming the position:
- (A) on or after November 1, 2016 obtain the certification within three months; or
 - (B) prior to November 1, 2016 obtain the certification before November 1, 2017.
- (34) **Position specific limitations.** Assistant teachers:
- (A) are overseen by an on-site director, master teacher, or teacher who:
 - (i) oversees two or fewer assistant teachers at one time; and
 - (ii) provides intervention when needed; and
 - (B) do not have sole responsibility for a group of children:
 - (i) for more than three hours per day; and
 - (ii) during higher risk activities per OAC 340:110-3-290.
- (e) **Substitutes for teaching personnel.** The program may employ individuals or use volunteers or other personnel who meet the position specific requirements listed in (1) through (3) of this subsection.
- (1) **Position specific qualifications.** Substitutes meet the teacher qualifications per (c) of this Section. However, the OPDL certificate is not required until indicated in (3) of this subsection.
 - (2) **Position specific responsibilities.** Substitutes meet the responsibility requirements for the position(s) they are filling.
 - (3) **Position specific professional development.** Substitutes meet the general professional development requirements per OAC 340:110-3-284(d). However, the timeframe for meeting professional development requirements begins when the substitute has worked for the program a total of 80 hours. ~~Prior to being left alone with children.~~ However:
 - (A) orientation is required, prior to being left alone with children; and
 - (B) CPR and first aid certification is met per specific position requirements.
- 340:110-3-289. Learning program principles**
- (a) **General.** Each child is:
- (1) provided an inclusive environment that:
 - (A) meets the needs and encourages full participation of all children; and
 - (B) is equipped and prepared for learning based on each child's age, needs, and interests;
 - (2) provided multiple opportunities to play individually or in small, informal groups the majority of the day;
 - (3) allowed to choose an activity, whether teaching personnel-directed or child-selected; and
 - (4) encouraged, but not forced, to participate in program activities, with adaptations made to ensure safety and participation.
- (b) **Daily classroom schedules.** Classroom schedules provide consistent routines.
- (1) Classroom schedules are:
 - (A) a sequence of activities indicating times of day;
 - (B) developed for each classroom;
 - (C) followed with reasonable regularity;
 - (D) age-appropriate; and
 - (E) posted per Oklahoma Administrative Code (OAC) 340:110-3-281.1(i).
 - (2) Classroom schedules include at least:
 - (A) alternating periods of quiet and active play;
 - (B) indoor and outdoor play;
 - (C) meal and snack time;
 - (D) rest time, when applicable; and
 - (E) transportation, when applicable.
- (c) **Transition times.** Teaching personnel have short-term activities, such as songs, stories, and exercises to reduce waiting periods while children finish an activity or routine and start another.
- (d) **Weekly lesson plans.** Lesson plans provide varying daily activities by including a collection of diverse topics, projects, or ideas influenced by children's curiosity and interests.
- (1) Lesson plans are:
 - (A) developed weekly indicating plans for each day;
 - (B) developed for each classroom;
 - (C) followed with flexibility;
 - (D) different each week; and
 - (E) posted per OAC 340:110-3-281.1(i).
 - (2) Lesson plans include at least daily indoor and outdoor learning activities and experiences that:
 - (A) are developmentally appropriate;
 - (B) meet children's needs and stimulate learning in these developmental areas:
 - (i) social;
 - (ii) emotional;
 - (iii) cognitive;
 - (iv) language, including reading to children at least 15 minutes per day and providing opportunities for writing;
 - (v) creative expression, such as art and music; and
 - (vi) physical, including at least one activity that teaching personnel lead and participate in;
 - (C) balance gross and fine motor activities; and
 - (D) use a variety of equipment and materials.
- (e) **Interest areas.** Play equipment is arranged into interest areas in classrooms with 2-year-olds or older. However, children may move the play equipment between interest areas while playing. Required interest areas include:

- (1) art;
 - (2) blocks;
 - (3) books and language;
 - (4) dramatic play; and
 - (5) manipulatives.
- (f) **Play equipment accessibility.** Required play equipment, per OAC 340 Appendix MM - Equipment, for the:
- (1) licensed capacity is maintained at the facility; and
 - (2) classroom is proportionate in amount and variety to the number of children in attendance and within the reach of children for their use.
- (g) **Play equipment rotation.** Play equipment may be rotated to maintain interest.
- (h) **Outdoor play.** Daily outdoor play is ensured:
- (1) for each child regardless of age, unless the child's health or safety is at risk; and
 - (2) provided weather and environmental conditions do not pose a significant health or safety risk, by:
 - (A) adjusting the time of day for outdoor play, adjusting the amount of time outside, and considering the children's ages; and
 - (B) children wearing weather-appropriate clothing.
- (i) **Electronic and print media.** Media may be used with children, provided these restriction requirements are met.
- (1) Electronic and print media are chosen with discretion and selectivity and are:
 - (A) non-violent;
 - (B) non-vulgar;
 - (C) non-sexually explicit;
 - (D) culturally sensitive; and
 - (E) age-appropriate, according to widely accepted rating systems.
 - (2) When the internet is accessible for children's use, the program ensures children do not have access to inappropriate websites, email, instant messaging, and similar technology.
 - (3) Screen time is:
 - (A) viewing electronic media with a screen, such as television (TV), digital video display (DVD), videos, video games, phones, and computers. Screen time includes viewing screens while others use the media;
 - (B) not used during meal and snack times. However, snacks may be provided during occasional special activities;
 - (C) not used when all children in the group are 1-year-olds or younger; and
 - (D) limited for all other groups whether a teaching personnel-directed or child-selected activity.
 - (i) Screen time is limited to:
 - (I) thirty minutes or less during the day for each child or group. However, Saturday mornings may include an additional 30 minutes for each child or group; and
 - (II) one hour or less during the evening for each child or group in evening or overnight care.
 - (ii) Exceptions to limited screen time include:

- (I) electronic media involving physical activity participation;
 - (II) electronic media when used for children's homework;
 - (III) e-readers when used for reading;
 - (IV) smart boards and tables when used for hands-on learning activities, such as drawing or puzzles;
 - (V) occasional special activities, such as watching a movie; and
 - (VI) assistive or adaptive technology for children with disabilities.
- (4) Personnel do not use electronic media for personal use in the presence of children, with the exception of an e-reader when used during rest time for reading provided supervision is maintained.
- (j) **Program for 1-year-olds and younger.** Awake children:
- (1) spend much of their time playing freely on the floor, including infant "tummy-time"; ~~and~~
 - (2) are not permitted in infant car seats, except during emergency drills, transportation, and arrival and departure with parents; and
 - (23) do not remain for more than 20 minute increments in equipment ~~that restricts~~ restricting freedom of movement, such as rest equipment, swings, high chairs, or stationary activity centers, except while eating in high chairs or similar stationary equipment. Children only sleep in appropriate rest equipment per OAC 340:110-3-296.

340:110-3-296. Rest time

- (a) **Rest equipment and bedding.**
- (1) **Appropriate.** Equipment and bedding meets the requirements in this Section and Oklahoma Administrative Code (OAC) 340:110-3-302.
 - (2) **Size.** Equipment and bedding is of sufficient size to comfortably accommodate the child's size and weight.
 - (3) **Resting surface.** A sheet covers the entire resting surface.
 - (4) **Cover.** A cover is within reach of each child 1-year-old and older.
 - (5) **Individually assigned.** Equipment is assigned to individual children.
 - (6) **Individually used.** Equipment and bedding is in use by one child at a time, except during emergency plan procedures.
 - (7) **Spacing.** Equipment is spaced to allow easy access to children by the teaching personnel and for the safe evacuation of children.
 - (8) **Clean.** Equipment and bedding is cleaned and sanitized per OAC 340:110-3-304.
- (b) **Rest time - infants.**
- (1) **Schedule.** The sleep schedule corresponds to the infant's needs and as closely as possible to the schedule established by the parents. Documentation is maintained per OAC 340:110-3-281.4(b).
 - (2) **Infant safe sleep environment.** Infant safe sleep environments are maintained.

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(A) **Appropriate sleep environment.** The infant safe sleep environment requirements listed in (i) through (v) of this subparagraph are met.

- (i) Infants sleep in cribs or play yards that meet the requirements per OAC 340:110-3-302(b), with the sides fully raised and secured.
- (ii) Infants sleep directly on a tight-fitting sheet covering the mattress.
- (iii) Only pacifiers without attachments to them are in rest equipment with infants, when used.
- (iv) Infants are protected from overheating by adjusting room temperature and clothing.
- (v) Infants birth through three months of age may be swaddled with an infant-sized, thin fabric, such as a receiving blanket, only when:

- (I) requested by the parents and permission is maintained per OAC 340:110-3-281.4(b); and
- (II) the infant is not mobile enough to move the fabric over his or her face.

(B) **Inappropriate sleep environment.** Infant safe sleep environment requirements listed in (i) through (viii) of this subparagraph are met.

- (i) When an infant arrives asleep, the infant is ~~promptly~~immediately moved to appropriate rest equipment.
- (ii) When an infant falls asleep in equipment other than appropriate rest equipment, the infant is immediately moved to appropriate rest equipment ~~within 20 minutes~~.
- (iii) Soft products, such as quilts, comforters, sheepskins, pillows, stuffed toys, and bumper pads are prohibited inside and on the side of infant rest equipment.
 - (I) Covers, including blankets, are prohibited.
 - (II) An exception is swaddling per (A) of this paragraph.
- (iv) Soft sleeping surfaces, such as soft mattresses, waterbeds, sofas, pillows, beanbag chairs, and inflatable mats are prohibited.
- (v) Sleep positioners and elevated mattresses are prohibited, unless there is a medical reason as documented per OAC 340:110-3-281.4(b).
- (vi) Play equipment, and other items, except for pacifiers, are not placed inside, above, or attached to the sides of the infant rest equipment, unless there is a medical reason for a monitor or other device as documented per OAC 340:110-3-281.4(b). However, mobiles may be securely attached or hung above the crib provided no part of the mobile is within reach of the child.
- (vii) Pacifiers are not attached to the infant or his or her clothing when in rest equipment.
- (viii) Bibs are not placed around the infant's neck when in rest equipment.

(C) **Sleep position.**

(i) Infants are placed on their back for sleeping, unless there is a medical reason an infant should not sleep in this position as documented per OAC 340:110-3-281.4(b).

(ii) Infants who are able to turn themselves over, are placed initially on their back for sleeping, but may turn themselves over and sleep in a position they prefer.

(c) **Rest time - 1-year-olds through 4-year-olds.**

- (1) **Schedule.** Children are provided a rest time.
- (2) **Rest equipment.** Children rest on a mat, cot, or bed. However, 1-year-olds may also rest in cribs or play yards that meet requirements per OAC 340:110-3-302(b) with the sides fully raised and secured.
- (3) **Overnight care.** The overnight requirements listed in (A) and (B) of this paragraph are met.

(A) **Rest equipment.** Mats are not used. Cots and beds have a waterproof pad or mattress.

(B) **Bedding.** In addition, cots and beds used overnight have a:

- (i) top sheet and extra covers within reach of the child; and
- (ii) pillow and pillow case.

(d) **Rest time - 5-year-olds and older.**

- (1) **Schedule.** Children are not required to have a rest time.
- (2) **Rest equipment.** When a child chooses to rest, a mat, cot, bed, sofa, futon, bean bag, or other similar rest equipment is provided.
- (3) **Overnight care.** The same requirements as overnight care for 1-year-olds through 4-year-olds are met.

(e) **Restrictions.**

- (1) **Floor.** Personnel do not allow children to sleep on the floor.
- (2) **Covered heads and faces.** Children's heads and faces are not covered while resting. When a child continues to cover their head or face, the cover is removed once the child falls asleep.
- (3) **Restraints.** Restraining children on rest equipment is prohibited.
- (4) **After resting.** Once children have rested, they are not forced to remain on the rest equipment and are provided quiet activities until rest time is over.

(f) **Ratios and supervision.**

- (1) **Ratios - 3- through 5-year-olds.** A rest time ratio exception may apply per OAC 340:110-3-286(a).
- (2) **Light level.** Light levels are maintained for supervision per OAC 340:110-3-300(g).

340:110-3-301. Indoor and outdoor play areas

(a) **Indoor and outdoor play areas.**

- (1) **Facility.** The facility requirements are met per Oklahoma Administrative Code (OAC) 340:110-3-300.
- (2) **Equipment.** The equipment requirements are met per OAC 340:110-3-302.
- (3) **Hazards.** The hazard requirements are met per OAC 340:110-3-303.

- (4) **Cleanliness and sanitation.** The cleanliness and sanitation requirements are met per OAC 340:110-3-304.
- (b) **Indoor play areas.**
- (1) **Square footage for licensed capacity.** A minimum amount of indoor play area is required.
- (A) There is at least 35 square feet of floor space per child for routine use by children.
- (B) However, ~~programs licensed:~~
- (i) ~~on or after January 1, 2016, have at least 40 square feet of floor space per infant in classrooms routinely designated for infants only; or~~
- (ii) ~~before January 1, 2016, that added or converted an existing classroom after January 1, 2005, into a classroom routinely designated for infants only have at least 40 square feet of floor space per infant in that classroom. However, other existing infant classrooms are not required to meet this requirement.~~ new construction, existing space not previously licensed for child care, or programs licensed after November 1, 2016 are required to have 40 square feet of floor space per infant in rooms occupied only by infants.
- (2) **Areas not counted toward licensed capacity or limited for children's use.** Some areas may not be suitable for children's use or only under the conditions listed in (A) through (C) of this paragraph.
- (A) Areas not counted toward the licensed capacity are:
- (i) restrooms, kitchens, and hallways;
- (ii) storage closets and supply rooms;
- (iii) personnel offices, work rooms, and break rooms;
- (iv) areas occupied by furniture not for children's use;
- (v) supplemental areas or rooms used exclusively for eating, rest time, gross motor play, or care of children who are ill; and
- (vi) alternate indoor play areas in shared facilities as described per OAC 340:110-3-277(b).
- (B) Basements, areas partially below ground level, and floors above ground level are only counted toward the licensed capacity when approved by the local or state fire governmental authority having jurisdiction. Fire approval is also required before children use the area for any reason, except as part of the emergency plans and procedures, such as tornados or lock-downs. Fire inspection reports indicate age restrictions. When used by children, basements are finished, dry, and ventilated.
- (C) Large areas, such as gymnasiums are only counted toward the licensed capacity when divided into classrooms for 3-year-olds or older. However, they may be used as a supplemental area for any age.
- (3) **Classroom capacity.** Classrooms are not routinely occupied by more children than can be accommodated by the square footage per (1) of this subsection.
- (4) **Use zones and impact-absorbing materials.** The use zone and impact-absorbing material requirements per
- (c) of this Section are met for indoor climbing equipment with a fall height over four feet.
- (c) **Outdoor play areas.**
- (1) **Square footage for licensed capacity.** A minimum amount of outdoor play area is required.
- (A) When the licensed capacity is for 23 or fewer children there is at least 75 square feet of outdoor play area per child for the licensed capacity.
- (B) When the licensed capacity is for 24 or more children there is at least 75 square feet of outdoor play area per child for at least one-third of the licensed capacity or 1800 square feet, whichever is greater.
- (2) **Areas not counted toward licensed capacity.** Alternate outdoor play areas required in shared facilities per OAC 340:110-3-277(b) are not counted toward the licensed capacity.
- (3) **Outdoor play area capacity.** The outdoor play areas are not routinely occupied by more children than can be accommodated by the square footage per (1) of this subsection. When the program has less than 75 square feet of outdoor play area per child for the licensed capacity, the program follows a rotation schedule as indicated on the classroom schedules.
- (4) **Location.** The outdoor play areas are situated to allow the:
- (A) children to reach them safely; and
- (B) supervision of areas where children cannot be easily seen.
- (5) **Fencing.** The outdoor play areas are enclosed by a building or fence.
- (A) The fence:
- (i) begins at ground level;
- (ii) is at least 48 inches high;
- (iii) poses no risk to children; and
- (iv) is maintained in a good condition, such as stable, secure, and upright.
- (B) However, 5-year-olds and older who are attending or have completed kindergarten may play in an unfenced or partially fenced on-site outdoor play area as part of a scheduled occasional supervised activity when the area is properly protected from traffic and other hazards.
- (6) **Exits and gates.** The outdoor play area(s):
- (A) has at least one exit that remains unlocked during the hours of operation and is away from the building. However, the unlocked exit may have a child-proof latch or a latch out of the reach of children; and
- (B) gates are kept closed, when children are playing outside.
- (7) **Water protection.** Bodies of water and water features meet the water activity requirements per OAC 340:110-3-291.
- (8) **Shade.** The outdoor play areas have shade accessible to children when outdoors.
- (9) **Open area.** The play equipment is arranged to have an open, continuous, uninterrupted, and unobstructed area in at least 25 percent of the required outdoor play

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area. Programs in shared facilities that share their outdoor play areas are exempt from this requirement.

(10) **Use zones.** Use zones are clearance spaces and surfaces under and around a piece of equipment onto which a child falling or exiting from the equipment would be expected to land.

(A) Use zones:

- (i) are free of obstacles, except for multi-axis, swing support structures;
- (ii) around all play equipment are arranged to prevent hazards from conflicting activities;
- (iii) around non-portable play equipment, with a fall height of:

(I) 30 inches or less, extend at least three feet in all directions from the equipment perimeter, unless an exception in (B) of this subsection applies; or

(II) more than 30 inches, extend at least six feet in all directions from the equipment perimeter, unless an exception in (B) of this subsection applies; and

(iv) do not overlap. However, use zones in programs licensed before January 1, 2016, may overlap for existing non-portable play equipment, unless the equipment is moved.

(B) However, use zones:

(i) on the sides of play equipment, where the fall potential in that direction is minimal, are not required, such as play equipment with guardrails or barriers or the sides of swings;

(ii) for single-axis swings that move forward and backward, extend two times the length of the swing chain to the front and rear of the swing midpoint. However, swings secured by a bar or strap and used by 2-year-olds or younger are not required to extend more than six feet; and

(iii) for multi-axis swings, such as tire swings that move in a circle, extend six feet plus the length of the chain in every direction from the midpoint. At least a 30-inch clearance between a fully extended tire swing seat and the support structure is required.

(C) The swing fall height is where the chain attaches at the top of the support structure.

(11) **Impact-absorbing materials.** Impact-absorbing materials:

(A) are required in use zones for:

- (i) climbers;
- (ii) swings;
- (iii) slides; and
- (iv) revolving equipment; and

(B) meet these requirements when obtained after August 1, 2003, as documented per OAC 340:110-3-281.2(c). However, grass is acceptable when the fall height is four feet or less and for swings secured by a bar or strap used by 2-year-olds or younger.

(i) Loose-fill materials, such as sand, pea gravel, wood playground mulch, shredded rubber mulch, and engineered wood fibers (EWF):

(I) are maintained at a depth of at least six inches by replacing, leveling, or raking. In addition, rubber mulch, EWF, and any other loose-fill material that is tested by the American Society for Testing and Materials International (ASTM) must comply with ASTM impact attenuation and EWF guidelines;

(II) remain loose and are not compacted. Grass and weeds in use zones are minimized to prevent compaction; and

(III) may be prevented from displacement by using impact mats that meet ASTM guidelines for impact attenuation.

(ii) Unitary materials, such as rubber mats and poured in place rubber:

(I) comply with ASTM guidelines for impact attenuation;

(II) have an ASTM rating equal to or greater than the fall height; and

(III) do not have rips, tears, and loose seams.

(12) **Surfaces.** At least two surface types are required. Programs licensed:

(A) on or after January 1, 2016, only count surfaces outside of the use zones, including impact-absorbing materials that extend beyond the use zones; and

(B) before January 1, 2016, may count surfaces inside of the use zones, unless square footage is added to the outdoor play area.

APPENDIX EE. OKLAHOMA DIRECTOR'S CREDENTIAL [REVOKED]

APPENDIX EE. OKLAHOMA DIRECTOR'S CREDENTIAL [NEW]

Level	General Education	Early Childhood Education (ECE) Child Development (CD) School-Age (SA) Knowledge and Skills	Administration (admin) Management (mgt) Knowledge and Skills	Experience	Annual Renewal Clock- Hours
Platinum	PhD, EdD ¹ MS, MA ² BS, BA ³	15 ECE/CD/SA credit hours ⁴	9 admin/mgt credit hours ⁴	3 months ⁵	30 hours job related training ⁶
Gold	AA, AS, AAS ⁷	12 ECE/CD/SA credit hours ⁴	6 admin/mgt credit hours ⁴ -or- Directors' Leadership Academy I & II ⁸	6 months ⁵	30 hours job related training ⁶
Silver	3 credit hours ⁴ in English Composition I	Certificate of Mastery ⁹ -or- 9 ECE/CD/SA credit hours ⁴ -or- CDA/CCP ¹⁰	6 admin/mgt credit hours ⁴ -or- Directors' Leadership Academy I & II ⁸ -or- Director's Certificate of Completion ¹¹ -or- Pathway Director Training ¹²	9 months ⁵	30 hours job related training ⁶
Copper Effective 11/1/16	BS, BA ³ , or any advanced degree beyond bachelors level	Not required	Not required	12 months ⁵	30 hours job related training ⁶
Bronze	High School Diploma -or- GED	6 ECE/CD/SA credit hours ⁴ -or- CDA/CCP ¹⁰ -or- Oklahoma Competency Certificate in ECE ¹³	3 admin/mgt credit hours ⁴ -or- approved admin/mgt credential ¹⁴ -or- 40 admin/mgt clock-hours ¹⁵	12 months ⁵	20 hours job related training ⁶

Footnotes

1. Doctoral Degree of Philosophy, Doctoral Degree of Education earned at a regionally-accredited college or university.
2. Master Degree of Science, Master Degree of Art earned at a regionally-accredited college or university.
3. Bachelor Degree of Science, Bachelor Degree of Art earned at a regionally-accredited college or university.
4. Approved college credit hours must be on the Recommended Approved Coursework List (www.cecpcd.org) and earned at a regionally-accredited college or university.
5. Qualifying experience must be as a teacher, master teacher, family child care home primary caregiver, assistant director, or director in a licensed child care setting (30 hours per week).
6. **No more than 6 clock-hours of informal professional development is counted toward annual renewal hours.** Training in the core content areas identified in "Oklahoma Core Competencies for Early Childhood Practitioners": 1) child growth and development; 2) health, safety and nutrition; 3) child observation and assessment; 4) family and community partnerships; 5) learning environments and curriculum; 6) interactions with children; 7) program planning, development and evaluation; and/or 8) professionalism and leadership.
NOTE: Entry Level Child Care Training (ELCCT) cannot be used to meet level or renewal criteria.
7. Associate in Arts, Associate in Science, Associate in Applied Science earned at a regionally-accredited college or university.
8. Directors' Leadership Academy is available through the Center for Early Childhood Professional Development (www.cecpcd.org).
9. The Certificate of Mastery in child development or early childhood education is a minimum 18-credit hour certificate awarded by an Oklahoma community college.
10. Current Child Development Associate (CDA) or Certified Childcare Professional (CCP) credential.
11. Certificate of Completion for directors and assistant directors is issued by the Scholars for Excellence in Child Care (www.okhighered.org/scholars/).
12. Early Care and Education: Director's Pathway to Program Administration is available through Oklahoma Career Technology Centers (www.okhighered.org/scholars/career-tech.shtml).
13. Master Teacher or Director Competency Certificate only awarded by Oklahoma Department of Career Technology.
14. Approved administration/management credential, such as the National Administrator Credential (NAC).
15. Training approved through the Oklahoma Professional Development Registry, with at least 10 clock-hours in any three management core

knowledge areas: Educational Programming & Family Support; Personnel & Professional Self-Awareness; Staff Management & Human Relations; Leadership & Advocacy; Program Operation & Facilities Management; Legal Management; or Fiscal Management.

NOTE: Completion of Director's Entry Level Training (DELT) course meets 20-clock hours of this requirement. Informal professional development is not counted toward meeting this requirement.

[OAR Docket #17-498; filed 6-23-17]

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TITLE 365. INSURANCE DEPARTMENT CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #17-568]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

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

AUTHORITY:

Insurance Commissioner; 59 O.S. § 1302

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

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n/a

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n/a

GIST/ANALYSIS:

365:1-9-18 is amended to reflect a statutory change made in HB2922 during the 2016 legislative session.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2017:

SUBCHAPTER 9. DESCRIPTION OF FORMS AND INSTRUCTIONS

365:1-9-18. Bail bond forms

(a) **Application for bail bondsman license form.** Unless otherwise provided by electronic means by the Insurance Commissioner or an administrator approved by the Commissioner, bail bond applications must be completed by the person making application and, upon completion, must comply with the applicable Oklahoma statutes. The application shall include the license fee, a complete set of fingerprints, one recent credential-size full face photograph, an investigative fee and evidence of completion of sixteen (16) hours of education. The Commissioner may propose any reasonable interrogatories to an applicant for a license.

(b) **Bail bondsman license forms.** The bail bondsman license form, executed under the hand and seal of the Insurance Commissioner, upon execution and delivery, is evidence of an individual's authority to act as a bail bondsman within Oklahoma.

(c) **Bail bond appointment form.** The bail bond appointment form is to be completed by an insurer/~~professional~~ when appointing specific surety bondsmen as agents of the insurer/~~professional~~.

(d) **Bail bond appointment cancellation form.** The notice of cancellation of bondsman insurer/~~professional~~ appointment form is to be used by a ~~insurer/professional~~ insurer when they desire to cancel the appointment of a surety bondsman.

(e) **Professional bondsman and multicounty agent bondsman securities deposit/withdrawal form.** The deposit/withdrawal form (State Form 31) is used for all professional bondsmen and multicounty agent bondsmen for depositing/withdrawing securities with the Insurance Commissioner's office.

(f) **Pledge of Account form.** The bondsman shall execute a pledge of the certificate of deposit to the Insurance Commissioner for the payment of unpaid bond forfeitures.

(g) **Assignment of Account form.** The bondsman shall execute an assignment of the annuity deposit to the Insurance Commissioner for the payment of unpaid bond forfeitures.

(h) **Proof of Courses.** As a prerequisite for submission of a renewal or reinstatement application, when requested by the Insurance Commissioner, each licensee shall have completed the total number of continuing education hours required.

(i) **Required submissions for reinstatement.** After the license expires and within one year after the license expiration date, a licensee shall be eligible for reinstatement by completing required Continuing Education and submitting a new application and double the license fee. A licensee shall not be eligible for reinstatement if previously the license was revoked, suspended or continuance denied.

(j) **Name change on an individual license.** Name changes for an individual license require proper documentation at the time of the written request, such as a copy of a court order, marriage license, or divorce decree. A duplicate license fee shall be submitted for a new license to be issued.

[OAR Docket #17-568; filed 7-5-17]

TITLE 365. INSURANCE DEPARTMENT CHAPTER 10. LIFE, ACCIDENT AND HEALTH

[OAR Docket #17-569]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions

Part 1. General Provisions

365:10-1-17. Life, accident, and health form filings [AMENDED]

Subchapter 5. Minimum Standards; Contract Guidelines

Part 13. Medicare Supplement Insurance Minimum Standards

365:10-5-129. Open enrollment [AMENDED]

AUTHORITY:

Insurance Commissioner; 36 O.S. §§ 307.1, 3611.1

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n/a

GIST/ANALYSIS:

365:10-1-17 is amended to clarify the requirements concerning elimination or restriction of coverage after issuance of a life or accident and health policy.

365:10-5-129 is amended to address premium pricing concerns in Medicare Supplement policies issued to disabled individuals.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2017:

SUBCHAPTER 1. GENERAL PROVISIONS

PART 1. GENERAL PROVISIONS

365:10-1-17. Life, accident, and health form filings

(a) **Purpose.** The purpose of this section is to specify the procedures for submitting form filings to the Insurance Commissioner as required by Sections 3610 and 4402 of the Insurance Code.

(b) **Procedures.** Policy forms, endorsements, and revisions thereto, by insurance companies licensed in Oklahoma, shall be submitted in compliance with this section, or shall be rejected for filing, and the entity that made such submission shall be so notified.

(1) **Filing requirements.** The Insurance Code, Sections 3610 and 4402, requires that each insurer shall make its form filings by line of business directly with the Insurance Commissioner.

(2) **Filing fees.**

(A) Form filings shall be accompanied by the proper fees as specified in the Insurance Code. Fees shall not be paid in cash.

(B) Filings for groups of insurers shall be accompanied by the specified fee for each transaction, regardless of the number of members or subscribers.

(3) **Address requirements.** All filings shall be addressed as follows: Oklahoma Insurance Commissioner, 3625 NW 56th Street, Suite 100, Oklahoma City, Oklahoma 73112.

(4) **Submission.** All filings except those exempted shall be submitted through the System for Electronic Rate and Form Filing (SERFF) pursuant to the SERFF General Instructions, and shall include a description of the filing(s), all exhibits, forms, and additional information required by the Commissioner.

(5) **Effective date of filings.** The effective date of form filings and the dates of required action by the Insurance Commissioner are governed by the applicable provisions of the Insurance Code.

(6) **Notice of Insurance Commissioner action.** The Insurance Commissioner shall indicate action taken through the System for Electronic Rate and Form Filing (SERFF). Nothing in this section shall preclude the Insurance Commissioner from the use of other forms of communication to secure information from the filing entity.

(7) **Property and casualty insurance.** This section does not apply to Property and Casualty filings and such filings shall be made in accordance with the applicable provisions of the Insurance Code and Rules of the Insurance Commissioner.

(8) **Filing form and content.** All filings shall contain the following:

(A) The name of the filing entity and complete mailing address to which correspondence shall be sent.

(B) A brief description of the content and context of the filing.

(C) A list or index of the forms filed or attached thereto including the form numbers and edition date, if applicable.

(D) A complete description and full explanation of the changes made by the filing including the reasoning therefore; illustrative examples, including "John Doe" specimen form; and a comparison of currently approved and proposed materials (side by side comparison or marked copy).

(E) A concise statement to identify the form to be replaced by the filing including the approval date in this jurisdiction and the identifying filing number of the filing containing the form to be replaced as assigned by the Insurance Department.

(F) If a form is being withdrawn or amended due to court decisions in any jurisdiction, the filing entity shall furnish the legal citation, and if from another jurisdiction, a copy of such decision or opinion with its filing.

(G) If a form is being withdrawn or amended due to a federal law or regulation of a federal agency,

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the filing entity shall furnish the legal citation of the pertinent provisions.

- (9) **Withdrawal of pending filings.** Pending filings may be withdrawn by the filing entity upon notice to the Insurance Commissioner prior to the approval or disapproval thereof. The notice shall include the reason for the withdrawal.
- (10) **Duration of filings.** All filings are in effect until withdrawn or amended by the insurer, with approval of the Insurance Commissioner or until abrogated by the Insurance Commissioner.
- (11) **Group filings.** Where filings are made on behalf of more than one insurer, the filing shall list the insurer or insurers by individual name and not by Company group.
- (12) **Resubmittal of filings.** All resubmissions of disapproved or rejected filings shall be presented to the Insurance Commissioner in the same manner as required by this section for an original filing. In addition the cover letter or completed transmittal forms addressed to the Insurance Commissioner shall state the full and complete history of the filing, the reason for disapproval or rejection, and the factors which distinguish the resubmittal so it warrants reconsideration.
- (13) **Retroactive filings.** The Insurance Commissioner has no authority to and shall not approve filings proposing a retroactive effective date except in cases of a filing correcting an error in a previously approved filing and in cases where required or necessitated by Statute or regulation of a federal or state agency.
- (14) **Delivery of policy to insured.** In any instance whereby a policy of insurance is effected the insured shall be furnished with either:
- (A) The original policy;
 - (B) A copy of the original policy or a duplicate policy with ten point or larger type, which, at the insured's election, may be delivered to the insured electronically; or
 - (C) A certificate including provisions and conditions of the original policy printed with ten point or larger type.
- (15) **Coverage elimination after policy issuance.** Any endorsement which eliminates or restricts coverage and which is issued during the policy term shall be identified as accepted by the ~~insured policyholder~~, by the signature of the ~~insured policyholder~~ thereon, and a signed copy (original, computer generated or microfilm) of such endorsement shall be retained in the files of the insurer for one year after the expiration of the policy. Evidence of policyholder acceptance is not required if the change effected by the endorsement is mandated by applicable law.

365:10-5-129. Open enrollment

- (a) An issuer shall not deny or condition the issuance or effectiveness of any Medicare supplement policy or certificate available for sale in this State, nor discriminate in the pricing of such a policy or certificate because of the health status, claims experience, receipt of health care, or medical condition of an applicant in the case of an application for a policy or certificate that is submitted prior to or during the six (6) month period beginning with the first day of the first month in which an individual is both 65 years of age or older and is enrolled for benefits under Medicare Part B. Each Medicare supplement policy and certificate currently available from an issuer shall be made available to all applicants who qualify under this subsection without regard to age.
- (b) If an applicant qualifies under subsection (a) or subsection (d) of this Section and submits an application during the time period referenced in said subsection (a) or subsection (d), and
- (1) as of the date of application, has had a continuous period of creditable coverage of at least six (6) months, the issuer shall not exclude benefits based on a preexisting condition; or
 - (2) as of the date of application, has had a continuous period of creditable coverage that is less than six (6) months, the issuer shall reduce the period of any preexisting condition exclusion by the aggregate of the period of creditable coverage applicable to the applicant as of the enrollment date. The Secretary shall specify the manner of the reduction under this subsection.
- (c) Except as provided in Subsection (b) and Section 365:10-5-140, subsection (a) and subsection (d) of this Section shall not be construed as preventing the exclusion of benefits under a policy, during the first six (6) months, based on a preexisting condition for which the policyholder or certificateholder received treatment or was otherwise diagnosed during the six (6) months before the coverage became effective.
- (d) At least one of the ten standardized Medicare supplement plans currently available from an issuer shall be made available to all applicants who qualify under this subsection by reason of disability. The issuer shall not deny or condition the issuance or effectiveness of any Medicare supplement policy or certificate available for sale in this State because of the health status, claims experience, receipt of health care, or medical condition of an applicant where an application for such policy or certificate is submitted during the six (6) month period beginning with the first month in which an individual first enrolled for benefits under Medicare Part B. The premium rate charged for such disabled person may not exceed the lowest available aged premium rate for such plan.
- (e) In the event Social Security backdates the Medicare enrollment date, the six-month enrollment period shall be calculated from the date the individual first receives notification of approval of Medicare coverage.

[OAR Docket #17-569; filed 7-5-17]

SUBCHAPTER 5. MINIMUM STANDARDS; CONTRACT GUIDELINES

PART 13. MEDICARE SUPPLEMENT INSURANCE MINIMUM STANDARDS

**TITLE 365. INSURANCE DEPARTMENT
CHAPTER 25. OTHER LICENSEES**

[OAR Docket #17-570]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 5. Bail Bondsmen
- Part 1. Continuing Education for Bail Bondsman
- 365:25-5-3. Education requirements [AMENDED]
- 365:25-5-4. Application for course approval [AMENDED]
- 365:25-5-8. Extensions of time [AMENDED]
- Part 5. General Provisions Pertaining to Bail Bondsmen
- 365:25-5-49. Property bondsman requirements [NEW]
- Subchapter 7. Companies
- Part 11. Credit for Reinsurance
- 365:25-7-60. Purpose [AMENDED]
- 365:25-7-63. Credit for reinsurance - Accredited reinsurers [AMENDED]
- 365:25-7-65. Credit for reinsurance - Reinsurers maintaining trust funds [AMENDED]
- 365:25-7-66. Credit for reinsurance required by law [AMENDED]
- 365:25-7-67. Reduction of Asset or reduction from liability for reinsurance ceded to an unauthorized assuming insurer not meeting the requirements of 365:25-7-62 through 66 and 365:25-7-73 [AMENDED]
- 365:25-7-68. Trust agreements qualified under Section 365:25-7-67 [AMENDED]
- 365:25-7-70. Reinsurance contract [AMENDED]
- 365:25-7-72. Letters of credit qualified under 365:25-7-67 [AMENDED]
- 365:25-7-73. Credit for reinsurance - certified reinsurers [NEW]
- Part 15. Company Supervision [NEW]
- 365:25-7-80. Purpose [NEW]
- 365:25-7-81. Definitions [NEW]
- 365:25-7-82. Authorization [NEW]
- 365:25-7-83. Professional confidentiality [NEW]
- 365:25-7-84. Passing on of confidential information [NEW]
- 365:25-7-85. Agreements for information exchange [NEW]
- 365:25-7-86. Supervisory Colleges [NEW]
- Appendix BB. Written Confirmation Statement [NEW]
- Appendix CC. Certificate of Certified Reinsurer [NEW]
- Appendix DD. Annual Reinsurance Review - Property & Casualty Insurers [NEW]
- Appendix EE. Annual Reinsurance Review - Life & Health Insurers [NEW]
- Appendix FF. Small Employer Stop Loss Disclosure [NEW]

AUTHORITY:

Insurance Commissioner; 36 O.S. §§ 307.1, 5124, 7401; 59 O.S. § 1302

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SUPERSEDED EMERGENCY ACTIONS:

Superseded rules:

- Subchapter 7. Companies
- Part 15. Company Supervision [NEW]
- 365:25-7-80. Purpose [NEW]
- 365:25-7-81. Definitions [NEW]
- 365:25-7-82. Authorization [NEW]

- 365:25-7-83. Professional confidentiality [NEW]
- 365:25-7-84. Passing on of confidential information [NEW]
- 365:25-7-85. for information exchange [NEW]
- 365:25-7-86. Supervisory Colleges [NEW]
- Appendix BB. Written Confirmation Statement [NEW]

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- Subchapter 7. Companies
- Part 11. Credit for Reinsurance
- 365:25-7-60. ~~Purpose~~Authority [AMENDED]
- 365:25-7-63. Credit for reinsurance - Accredited reinsurers [AMENDED]
- 365:25-7-65. Credit for reinsurance - Reinsurers maintaining trust funds [AMENDED]
- 365:25-7-66. Credit for reinsurance required by law [AMENDED]
- 365:25-7-67. ~~Reduction of Asset or reduction~~ from liability for reinsurance ceded to an unauthorized assuming insurer not meeting the requirements of 365:25-7-62 through 66 and 365:25-7-73 [AMENDED]
- 365:25-7-68. Trust agreements qualified under Section 365:25-7-67 [AMENDED]
- 365:25-7-70. Reinsurance contract [AMENDED]
- 365:25-7-72. Letters of credit qualified under 365:25-7-67 [AMENDED]
- 365:25-7-73. Credit for reinsurance - certified reinsurers [NEW]
- Appendix CC. Certificate of Certified Reinsurer [NEW]
- Appendix DD. Annual Reinsurance Review - Property & Casualty Insurers [NEW]
- Appendix EE. Annual Reinsurance Review - Life & Health Insurers [NEW]
- Appendix FF. Small Employer Stop Loss Disclosure [NEW]

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INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

365:25-5-3 is amended to clarify that a bail bonds license applicant must pass an examination within one (1) year from the date of completion of prelicensing education as required by 59 O.S. § 1308.1(A). 365:25-5-4 is amended to reflect the fee requirement set forth in 59 O.S. § 1308.1(C). 365:25-5-8 is amended to reflect the continuing education requirements in 59 O.S. § 1308.1(A). 365:25-5-49 provides a further definition of a "Property bondsman" to give clarity to that term as set forth in 59 O.S. § 1301(B)(8). 365:25-5-49 also adds more clarity to the property bond requirements contained at 59 O.S. § 1324.

The changes to Subchapter 7, Part 11 are necessary to implement the provisions of two new pieces of legislation passed in 2016: SB 1488 and HB 2996. 365:25-7-60 is amended to establish the authority for the promulgation of Part 11. Section 63 is amended to allow a reinsurer to obtain accreditation if the Insurance Commissioner finds that it has adequate financial capacity to meet its reinsurance obligations. Section 65 is amended to allow a commissioner with principal regulatory oversight of a trust maintained by a reinsurer to reduce the required surplus level of the trust in certain circumstances, and sets out the manner in which a letter of credit may qualify as an asset of the trust. Section 66 is amended to update references to the appropriate portions of 36 O.S. § 5122. Section 67 is amended to update references to the appropriate portions of 36 O.S. § 5123.1. Section 68 is amended to provide that the failure of the trustee to draw against the letter of credit in circumstances where such draw would be required shall be deemed to be negligence and/or willful misconduct. Section 68 also sets out the provisions required to be included in reinsurance trust agreements. Section 70 is amended to include the correct statutory references and to clarify the required insolvency clause and intermediary clause required in reinsurance contracts. Section 72 is amended to update references. Section 73 is a new rule promulgated to set forth the requirements for reinsurers to become certified reinsurers, and specifies the criteria that will be used to determine a certified reinsurer's mandated collateral security levels. Appendix

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CC is a certificate that all certified reinsurers must submit to the Insurance Department. Appendix DD is an annual reinsurance review for property and casualty insurers. Appendix EE is an annual reinsurance review for life and health reinsurers. Appendix FF is a small employer stop loss disclosure.

The new Subchapter 7, Part 15 allows for the Insurance Commissioner and staff to participate in future Supervisory Colleges. Participation is essential to monitoring the activities of large insurance holding companies that do business in our state but also have international operations. Oklahoma consumers will be harmed by not having their state representatives present for these important regulatory summits. 365:25-7-80 sets out the purpose of the new Part 15, which is to specify the confidential status and handling of certain information contained in the files of the Insurance Commissioner pursuant to various provisions of the Oklahoma Insurance Code (36 O.S. §§ 101-7301). Section 81 provides definitions to the terms "confidential information," "exchange," and "supervisory" used in the Part. Section 82 outlines the authorization for the Commissioner to promulgate these new rules. Section 83 establishes the guidelines for the protection of confidential information by the Commissioner, Department staff, and anyone else acting on behalf of the Commissioner or the Department. Section 84 sets out the procedure for passing on confidential information to other regulators. Section 85 allows for regulators to enter into agreements to facilitate the efficient execution of requests for or provisions of information. Section 86 provides guidelines for the exchange of confidential information through participation in a Supervisory College. Appendix BB is a written statement confirming that an organization will comply with the terms of the rules.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2017:

SUBCHAPTER 5. BAIL BONDSMEN

PART 1. CONTINUING EDUCATION FOR BAIL BONDSMEN

365:25-5-3. Education requirements

(a) **Education verification prior to licensure.** Prior to taking the bail bondsman licensing examination, the applicant shall successfully complete the hours of prelicensing education required by 59 O.S. § 1308.1(A) in subjects pertinent to the duties and responsibilities of a bail bondsman. The prelicensing education shall be valid for one (1) year from the date obtained by the applicant. The applicant must pass the examination and apply within one (1) year from the date of the prelicensing education.

(b) **Continuing education.** All bail bondsmen shall complete eight (8) credit hours of continuing education required by 59 O.S. § 1308.1(A) annually to meet the biennial requirement.

(c) **CE credit for instructor.** An instructor who is a licensed bail bondsman shall receive the same continuing education credit for presenting approved course materials as a licensee who attends an approved classroom instructional session.

365:25-5-4. Application for course approval

(a) **Oklahoma Bondsman Association courses.** The Oklahoma Bondsman Association shall apply for course approval from the Commissioner. The Association shall ~~annually~~ submit a fee of ~~One Hundred Dollars (\$100.00)~~ to the Insurance Commissioner ~~as set forth in 59 O.S. § 1308.1.~~

(b) **Information regarding OBA courses.** The Oklahoma Bondsman Association shall submit the following information concerning educational courses:

- (1) Name, address and qualifications of the instructor;
- (2) Contact person, his or her address and telephone number;
- (3) The location of the courses or programs, unless it is an individual study or correspondence course;
- (4) The number of hours requested for each course;
- (5) Topic outlines which list the summarized topics covered in each course and upon request, a copy of any course materials. If a prior approved course has substantially changed, a summarization of those changes.

(c) **Instructor qualifications.** An instructor shall have one of the following qualifications:

- (1) Three (3) years of recent experience in the subject area being taught; or
- (2) A degree related to the subject area being taught; or
- (3) Two (2) years of recent experience in the subject area being taught and twelve (12) hours of college and/or vocational technical school credit hours in the subject area being taught.

(d) **Losing course approval.** The Commissioner may withhold or withdraw approval of any instructor or course for violation of or non-compliance with any provision of this section.

(e) **Course approval expiration.** Each course approval shall be valid for a period of not more than two (2) years, unless the course has a material change. Material changes to courses require course resubmission for overall course review and approval. Course approval following the review of material changes shall reset the validity period. At the expiration of the validity period, providers shall submit the course for approval by the Commissioner if the provider wants to continue to offer the course for continuing education credit.

365:25-5-8. Extensions of time

For good cause shown, the Commissioner may grant an extension of time during which the requirements imposed by 59 O.S. Section 1308 and 1308.1 may be completed. The extension shall not exceed ~~six (6)~~ twelve (12) months. The extension will not alter the requirements or due date of the succeeding ~~year~~ twenty-four (24) month period. "Good cause" includes disability, natural disaster, or other extenuating circumstances. Each request for extension of time shall be in writing from the licensee and shall include details and any documentation to support the request. Each request must be received by the Commissioner no less than thirty (30) days before the expiration of the license.

PART 5. GENERAL PROVISIONS PERTAINING TO BAIL BONDSMEN

365:25-5-49. Property bondsman requirements

(a) Pursuant to 59 O.S. § 1301(B)(8), a property bondsman means any person who has been approved by the Insurance Commissioner and who pledges real property as a security for a bail bond in a judicial proceeding and charges and receives money for his or her services.

(b) In order to calculate the market value of property pursuant to 59 O.S. § 1324, an applicant that applies for the property line of authority shall submit to the Insurance Commissioner for approval the following documents for each property used to post bonds:

- (1) A certified copy of the Warranty Deed;
- (2) An attorney's Title Opinion, which shall be prepared within the previous sixty (60) days prior to application;
- (3) A written statement from the county assessor stating the property's assessed value and showing the legal description of said property; and
- (4) A written statement from any lien holder stating the current payoff amount on each lien. If there are no liens on the property, an applicant shall submit an Affidavit stating there are no liens.

SUBCHAPTER 7. COMPANIES

PART 11. CREDIT FOR REINSURANCE

365:25-7-60. Purpose Authority

The purpose of this part is to set forth rules and procedural requirements which the Commissioner deems necessary to carry out the provisions of the Law on Credit for Reinsurance, Section 5121 et seq. of the Insurance Code ("the Act"). The actions and information required by this part are hereby declared to be necessary and appropriate in the public interest and for the protection of the ceding insurers in this state. This part is promulgated pursuant to the authority granted by 36 O.S. § 5124.

365:25-7-63. Credit for reinsurance - Accredited reinsurers

(a) Pursuant to Section 5122(C) of the Act, the Commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer which is accredited as a reinsurer in this state as of any date on which statutory financial credit for reinsurance is claimed. An accredited reinsurer is one which:

- (1) Files a properly executed Form AR-1, as set forth in Appendix P of this Chapter, as evidence of its submission to this state's jurisdiction and to this state's authority to examine its books and records;
- (2) Files with the Commissioner a certified copy of a certificate of authority or other acceptable evidence that it is licensed to transact insurance or reinsurance in at least one state, or, in the case of a United States branch of an alien assuming insurer, is entered through and licensed to transact insurance or reinsurance in at least one state;

(3) Files ~~annually~~ with the Commissioner, on or before March 1 of each year, a copy of its annual statement filed with the insurance department of its state of domicile or, in the case of an alien assuming insurer, with the state through which it is entered and in which it is licensed to transact insurance or reinsurance, and a copy of its most recent audited financial statement; and

~~(A) Maintains a surplus as regards policyholders in an amount not less than \$20,000,000 and whose accreditation has not been denied by the Commissioner within ninety (90) days of its submission or~~

~~(B) Maintains a surplus as regards policyholders of less than \$20,000,000, and whose accreditation has been approved by the Commissioner.~~

(4) Maintains a surplus as regards policyholders in an amount not less than \$20,000,000, or obtains the affirmative approval of the Commissioner upon a finding that it has adequate financial capacity to meet its reinsurance obligations and is otherwise qualified to assume reinsurance from domestic insurers.

(b) If the Commissioner determines that the assuming insurer has failed to meet or maintain any of these qualifications, the Commissioner may, upon written notice and hearing, suspend or revoke the accreditation. Credit shall not be allowed a domestic ceding insurer if the assuming insurer's accreditation has been revoked by the Commissioner, or if the reinsurance was ceded while the assuming insurer's accreditation was under suspension by the Commissioner.

365:25-7-65. Credit for reinsurance - Reinsurers maintaining trust funds

(a) Pursuant to Section 5122(E) of the Act, the Commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer which, as of any date on which statutory financial statement credit for reinsurance is claimed, and thereafter for so long as credit for reinsurance is claimed, maintains a trust fund in an amount prescribed below in a qualified United States financial institution for the payment of the valid claims of its United States domiciled ceding insurers, their assigns and successors in interest. The assuming insurer shall report annually to the Commissioner substantially the same information as that required to be reported on the NAIC annual statement form by licensed insurers, to enable the Commissioner to determine the sufficiency of the trust fund.

(b) The following requirements apply to the following categories of assuming insurer:

(1) **Trust fund for a single assuming insurer.** The trust fund for a single assuming insurer shall consist of funds in trust in an amount not less than the assuming insurer's liabilities attributable to reinsurance ceded by U.S. domiciled insurers, and in addition, the assuming insurer shall maintain a trustee surplus of not less than \$20,000,000, except as provided in paragraph (2) of this subsection.

(2) Reduction in required trustee surplus. At any time after the assuming insurer has permanently discontinued underwriting new business secured by the trust for at least three (3) full years, the commissioner with principal

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regulatory oversight of the trust may authorize a reduction in the required trustee surplus, but only after a finding, based on an assessment of the risk, that the new required surplus level is adequate for the protection of U.S. ceding insurers, policyholders and claimants in light of reasonably foreseeable adverse loss development. The risk assessment may involve an actuarial review, including an independent analysis of reserves and cash flows, and shall consider all material risk factors, including when applicable the lines of business involved, the stability of the incurred loss estimates and the effect of the surplus requirements on the assuming insurer's liquidity or solvency. The minimum required trustee surplus may not be reduced to an amount less than thirty percent (30%) of the assuming insurer's liabilities attributable to reinsurance ceded by U.S. ceding insurers covered by the trust.

(23) Trust fund for a group including incorporated and individual unincorporated underwriters.

(A) The trust fund for a group including incorporated and individual unincorporated underwriters shall consist of:

- (i) For reinsurance ceded under reinsurance agreements with an inception, amendment or renewal date on or after ~~August~~ January 1, 1995, funds in trust in an amount not less than the group's several liabilities attributable to business ceded by U.S. domiciled ceding insurers to any member of the group;
- (ii) For reinsurance ceded under reinsurance agreements with an inception date on or before ~~July~~ December 31, 1995, and not amended or renewed after that date, notwithstanding the other provisions of this regulation, funds in trust in an amount not less than the group's several insurance and reinsurance liabilities attributable to business written in the United States; and
- (iii) In addition to these trusts, the group shall maintain a trustee surplus of which \$100,000,000 shall be held jointly for the benefit of the U.S. domiciled ceding insurers of any member of the group for all the years of account.

(B) The incorporated members of the group shall not be engaged in any business other than underwriting as a member of the group and shall be subject to the same level of regulation and solvency control by the group's domiciliary regulator as are the unincorporated members. The group shall, within ninety (90) days after its financial statements are due to be filed with the group's domiciliary regulator, provide to the Commissioner:

- (i) An annual certification by the group's domiciliary regulator of the solvency of each underwriter member of the group; or
- (ii) If a certification is unavailable, a financial statement, prepared by independent public accounts, of each underwriter member of the group.

(34) Trust fund for a group of incorporated insurers under common administration.

(A) The trust fund for a group of incorporated insurers under common administration, whose members possess aggregate policyholders surplus of \$10,000,000,000 (calculated and reported in substantially the same manner as prescribed by the annual statement instructions and Accounting Practices and Procedures Manual of the National Association of Insurance Commissioners) and which has continuously transacted an insurance business outside the United States for at least three (3) years immediately prior to making application for accreditation, shall:

- ~~(i) consist~~ Consist of funds in trust in an amount not less than the assuming insurers' several liabilities attributable to business ceded by United States domiciled ceding insurers to any members of the group pursuant to reinsurance contracts issued in the name of such group ~~and~~;
- ~~(ii)~~ Maintain a joint trustee surplus of which \$100,000,000 shall be held jointly for the benefit of United States domiciled ceding insurers of any member of the group; and
- ~~(iii)~~ File a properly executed Form AR-1 as evidence of the submission to this state's authority to examine the books and records of any of its members and shall certify that any member examined will bear the expense of any such examination.

(B) Within ninety (90) days after the statements are due to be filed with the group's domiciliary regulator, the group shall ~~file~~ file with the Commissioner an annual certification of each underwriter member's solvency by the members' domiciliary regulators and financial statements, prepared by independent public accountants, of each underwriter member.

(c) Credit for reinsurance shall not be granted unless the form of the trust and any amendments to the trust have been approved by either the Commissioner of the state where the trust is domiciled or the Commissioner of another state who, pursuant to the terms of the trust instrument, has accepted responsibility for regulatory oversight of the trust. The form of the trust and any trust amendments also shall be filed with the Commissioner of every state in which the ceding insurer beneficiaries of the trust are domiciled. The trust instrument shall provide that:

- (1) Contested claims shall be valid and enforceable out of funds in trust to the extent remaining unsatisfied thirty (30) days after entry of the final order of any court of competent jurisdiction in the United States.
- (2) Legal title to the assets of the trust shall be vested in the trustee for the benefit of the grantor's United States ceding insurers, their assigns and successors in interest.
- (3) The trust shall be subject to examination as determined by the Commissioner.
- (4) The trust shall remain in effect for as long as the assuming insurer, or any member or former member of a group of insurers, shall have outstanding obligations under reinsurance agreements subject to the trust; and
- (5) No later than ~~March 1~~ February 28 of each year the trustees of the trust shall report to the Commissioner

in writing setting forth the balance in the trust and listing the trust's investments at the preceding year end, and shall certify the date of termination of the trust, if so planned, or certify that the trust shall not expire prior to the next following December 31.

(d) Notwithstanding any other provisions in the trust instrument, if the trust fund is inadequate because it contains an amount less than the amount required by this subsection or if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation or similar proceedings under the laws of its state or country of domicile, the trustee shall comply with an order of the Commissioner with regulatory oversight over the trust or with an order of a court of competent jurisdiction directing the trustee to transfer to the Commissioner with regulatory oversight over the trust or other designated receiver all of the assets of the trust fund.

(1) The assets shall be distributed by and claims shall be filed with and valued by the Commissioner with regulatory oversight over the trust in accordance with the laws of the state in which the trust is domiciled applicable to the liquidation of domestic insurance companies.

(2) If the Commissioner with regulatory oversight over the trust determines that the assets of the trust fund or any part thereof are not necessary to satisfy the claims of the U.S. beneficiaries of the trust, the Commissioner with regulatory oversight over the trust shall return the assets, or any part thereof, to the trustee for distribution in accordance with the trust agreement.

(3) The grantor shall waive any right otherwise available to it under U.S. law that is inconsistent with this provision.

(e) For purposes of this regulation, the term "liabilities" shall mean the assuming insurer's gross liabilities attributable to reinsurance ceded by U.S. domiciled insurers that are not otherwise secured by acceptable means, and, shall include:

(1) For business ceded by domestic insurers authorized to write accident and health, and property and casualty insurance:

- (A) Losses and allocated loss expenses paid by the ceding insurer, recoverable from the assuming insurer;
- (B) Reserves for losses reported and outstanding;
- (C) Reserves for losses incurred but not reported;
- (D) Reserves for allocated loss expenses; and
- (E) Unearned premiums.

(2) For business ceded by domestic insurers authorized to write life, health and annuity insurance:

- (A) Aggregate reserves for life policies and contracts net of policy loans and net due and deferred premiums;
- (B) Aggregate reserves for accident and health policies;
- (C) Deposit funds and other liabilities without life or disability contingencies; and
- (D) Liabilities for policy and contract claims.

(f) Assets deposited in the trust trusts pursuant to 36 O.S. § 5122 and this Section shall be valued according to their fair market value and shall consist only of cash in U.S. dollars,

certificates of deposit issued by a U.S. financial institution as defined in ~~Section 5122(J)(1)~~ 36 O.S. § 5123.1(A), clean, irrevocable, unconditional and "evergreen" letters of credit issued or confirmed by a qualified U.S. financial institution, as defined in 36 O.S. § 5123.1(A), and investments of the type specified in this subsection, but investments in or issued by an entity controlling, controlled by or under common control with either the grantor or beneficiary of the trust shall not exceed five percent (5%) of total investments. No more than twenty percent (20%) of the total of the investments in the trust may be foreign investments authorized under Paragraphs (1)(E), (3), (6)(B) or (7) of this subsection, and no more than ten percent (10%) of the total of the investments in the trust may be securities denominated in foreign currencies. For purposes of applying the preceding sentence, a depository receipt denominated in U.S. dollars and representing rights conferred by a foreign security shall be classified as a foreign investment denominated in a foreign currency. The assets of a trust established to satisfy the requirements of Section 5122 shall be invested only as follows:

(1) Government obligations that are not in default as to principal or interest, that are valid and legally authorized and that are issued, assumed or guaranteed by:

- (A) The United States or by any agency or instrumentality of the United States;
- (B) A state of the United States;
- (C) A territory, possession or other governmental unit of the United States;
- (D) An agency or instrumentality of a governmental unit referred to in Subparagraphs (B) and (C) of this paragraph if the obligations shall be by law (statutory or otherwise) payable, as to both principal and interest, from taxes levied or by law required to be levied or from adequate special revenues pledged or otherwise appropriated or by law required to be provided for making these payments, but shall not be obligations eligible for investment under this paragraph if payable solely out of special assessments on properties benefited by local improvements; or
- (E) The government of any other country that is a member of the Organization for Economic Cooperation and Development and whose government obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC;

(2) Obligations that are issued in the United States, or that are dollar denominated and issued in a non-U.S. market, by a solvent U.S. institution (other than an insurance company) or that are assumed or guaranteed by a solvent U.S. institution (other than an insurance company) and that are not in default as to principal or interest if the obligations:

- (A) Are rated A or higher (or the equivalent) by a securities rating agency recognized by the Securities Valuation Office of the NAIC, or if not so rated, are similar in structure and other material respects to other obligations of the same institution that are so rated;

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- (B) Are insured by at least one authorized insurer (other than the investing insurer or a parent, subsidiary or affiliate of the investing insurer) licensed to insure obligations in this state and, after considering the insurance, are rated AAA (or the equivalent) by a securities rating agency recognized by the Securities Valuation Office of the NAIC; or
- (C) Have been designated as Class One or Class Two by the Securities Valuation Office of the NAIC;
- (3) Obligations issued, assumed or guaranteed by a solvent non-U.S. institution chartered in a country that is a member of the Organization for Economic Cooperation and Development or obligations of U.S. corporations issued in a non-U.S. currency, provided that in either case the obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC;
- (4) An investment made pursuant to the provisions of Paragraph (1), (2) or (3) of this subsection shall be subject to the following additional limitations:
- (A) An investment in or loan upon the obligations of an institution other than an institution that issues mortgage-related securities shall not exceed five percent (5%) of the assets of the trust;
- (B) An investment in any one mortgage-related security shall not exceed five percent (5%) of the assets of the trust;
- (C) The aggregate total investment in mortgage-related securities shall not exceed twenty-five percent (25%) of the assets of the trust; and
- (D) Preferred or guaranteed shares issued or guaranteed by a solvent U.S. institution are permissible investments if all of the institution's obligations are eligible as investments under Paragraphs (2)(A) and (2)(C) of this subsection, but shall not exceed two percent (2%) of the assets of the trust.
- (5) As used in this regulation:
- (A) "Mortgage-related security" means an obligation that is rated AA or higher (or the equivalent) by a securities rating agency recognized by the Securities Valuation Office of the NAIC and that either:
- (i) Represents ownership of one or more promissory notes or certificates of interest or participation in the notes (including any rights designed to assure servicing of, or the receipt or timeliness of receipt by the holders of the notes, certificates, or participation of amounts payable under, the notes, certificates or participation), that:
- (I) Are directly secured by a first lien on a single parcel of real estate, including stock allocated to a dwelling unit in a residential cooperative housing corporation, upon which is located a dwelling or mixed residential and commercial structure, or on a residential manufactured home as defined in 42 U.S.C.A. Section 5402(6), whether the manufactured home is considered real or personal property under the laws of the state in which it is located; and
- (II) Were originated by a savings and loan association, savings bank, commercial bank, credit union, insurance company, or similar institution that is supervised and examined by a federal or state housing authority, or by a mortgagee approved by the Secretary of Housing and Urban Development pursuant to 12 U.S.C.A. Sections 1709 and 1715-b, or, where the notes involve a lien on the manufactured home, by an institution or by a financial institution approved for insurance by the Secretary of Housing and Urban Development pursuant to 12 U.S.C.A. Section 1703; or
- (ii) Is secured by one or more promissory notes or certificates of deposit or participations in the notes (with or without recourse to the insurer of the notes) and, by its terms, provides for payments of principal in relation to payments, or reasonable projections of payments, or notes meeting the requirements of Items (i)(I) and (i)(II) of this subsection.
- (B) "Promissory note," when used in connection with a manufactured home, shall also include a loan, advance or credit sale as evidenced by a retail installment sales contract or other instrument.
- (6) Equity interests.
- (A) Investments in common shares or partnership interests of a solvent U.S. institution are permissible if:
- (i) Its obligations and preferred shares, if any, are eligible as investments under this subsection; and
- (ii) The equity interests of the institution (except an insurance company) are registered on a national securities exchange as provided in the Securities Exchange Act of 1934, 15 U.S.C. §§ 78a to 78kk or otherwise registered pursuant to that Act, and if otherwise registered, price quotations for them are furnished through a nationwide automated quotations system approved by the National Association of Securities Dealers, Inc. A trust shall not invest in equity interests under this paragraph an amount exceeding one percent (1%) of the assets of the trust even though the equity interests are not so registered and are not issued by an insurance company;
- (B) Investments in common shares of a solvent institution organized under the laws of a country that is a member of the Organization for Economic Cooperation and Development, if:
- (i) All its obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC; and
- (ii) The equity interests of the institution are registered on a securities exchange regulated by the government of a country that is a member of the Organization for Economic Cooperation and Development;

(C) An investment in or loan upon any one institution's outstanding equity interests shall not exceed one percent (1%) of the assets of the trust. The cost of an investment in equity interests made pursuant to this paragraph, when added to the aggregate cost of other investments in equity interests then held pursuant to this paragraph, shall not exceed ten percent (10%) of the assets in the trust;

(7) Obligations issued, assumed or guaranteed by a multinational development bank, provided the obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC;

(8) Investment companies.

(A) Securities of an investment company registered pursuant to the Investment Company Act of 1940, 15 U.S.C. § 802, are permissible investments if the investment company:

(i) Invests at least ninety percent (90%) of its assets in the types of securities that qualify as an investment under Paragraph (1), (2) or (3) of this subsection or invests in securities that are determined by the Commissioner to be substantively similar to the types of securities set forth in Paragraph (1), (2) or (3) of this subsection; or

(ii) Invests at least ninety percent (90%) of its assets in the types of equity interests that qualify as an investment under Paragraph (6)(A) of this subsection;

(B) Investments made by a trust in investment companies under this paragraph shall not exceed the following limitations:

(i) An investment in an investment company qualifying under Subparagraph (A)(i) of this paragraph shall not exceed ten percent (10%) of the assets in the trust and the aggregate amount of investment in qualifying investment companies shall not exceed twenty-five percent (25%) of the assets in the trust; and

(ii) Investments in an investment company qualifying under Subparagraph (A)(ii) of this paragraph shall not exceed five percent (5%) of the assets in the trust and the aggregate amount of investment in qualifying investment companies shall be included when calculating the permissible aggregate value of equity interests pursuant to Paragraph (6)(A) of this subsection;

(9) Letters of Credit.

(A) In order for a letter of credit to qualify as an asset of the trust, the trustee shall have the right and the obligation pursuant to the deed of trust or some other binding agreement (as duly approved by the Commissioner), to immediately draw down the full amount of the letter of credit and hold the proceeds in trust for the beneficiaries of the trust if the letter of credit will otherwise expire without being renewed or replaced.

(B) The trust agreement shall provide that the trustee shall be liable for its negligence, willful

misconduct or lack of good faith. The failure of the trustee to draw against the letter of credit in circumstances where such draw would be required shall be deemed to be negligence and/or willful misconduct.

(g) A specific security provided to a ceding insurer by an assuming insurer pursuant to 365:25-7-67 shall be applied, until exhausted, to the payment of liabilities of the assuming insurer to the ceding insurer holding the specific security prior to, and as a condition precedent for, presentation of a claim by the ceding insurer for payment by a trustee of a trust established by the assuming insurer pursuant to this section.

365:25-7-66. Credit for reinsurance required by law

Pursuant to Section ~~5122(F)~~5122(G) of the Act, the Commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of Section 5122(B), (C), (D), ~~or (E)~~, or (F) but only as to the insurance of risks located in jurisdictions where the reinsurance is required by the applicable law or regulation of that jurisdiction. As used in this section, "jurisdiction" means state, district or territory of the United States and any lawful national government.

365:25-7-67. ~~Reduction~~Asset or reduction from liability for reinsurance ceded to an unauthorized assuming insurer not meeting the requirements of 365:25-7-62 through 66 and 365:25-7-73

(a) Pursuant to Section 5123, the Commissioner shall allow a reduction from liability for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of Section 5122 in an amount not exceeding the liabilities carried by the ceding insurer. The reduction shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the exclusive benefit of the ceding insurer, under a reinsurance contract with such assuming insurer as security for the payment of obligations under the reinsurance contract. The security shall be held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer or, in the case of a trust, held in a qualified United States financial institution. This security may be in the form of any of the following:

(1) Cash;

(2) Securities listed by the Securities Valuation Office of the National Association of Insurance Commissioners and qualifying as admitted assets;

(3) Clean, irrevocable, unconditional and "ever-green" letters of credit issued or confirmed by a qualified United States institution, as defined in Section ~~5122(J)(4)~~5123.1(A), effective no later than December 31 of the year for which filing is being made, and in the possession of, or in trust for, the ceding company on or before the filing date of its annual statement. Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance (or confirmation) shall, notwithstanding the issuing (or confirming) institution's subsequent failure to meet applicable standards of issuer

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acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification or amendment, whichever first occurs; or

(4) Any other form of security acceptable to the Commissioner.

(b) An admitted asset or a reduction from liability for reinsurance ceded to an unauthorized assuming insurer pursuant to 365:25-7-67(a)(1) and (2) shall be allowed only when the requirements of 365:25-7-68, 365:25-7-69 or 365:25-7-72 are met.

365:25-7-68. Trust agreements qualified under Section 365:25-7-67

(a) Definitions. As used in this section:

(1) "Beneficiary" means the entity for whose sole benefit the trust has been established and any successor of the beneficiary by operation of law. If a court of law appoints a successor in interest to the named beneficiary, then the named beneficiary includes and is limited to the court appointed domiciliary receiver (including conservator, rehabilitator or liquidator).

(2) "Grantor" means the entity that has established a trust for the sole benefit of the beneficiary. When established in conjunction with a reinsurance agreement, the grantor is the unlicensed, unaccredited assuming insurer.

(3) "Obligations," as used in paragraph (b)(11) of this section, means:

(A) Reinsured losses and allocated loss expenses paid by the ceding company, but not recovered from the assuming insurer;

(B) Reserves for reinsured losses reported and outstanding;

(C) Reserves for reinsured losses incurred but not reported; and

(D) Reserves for allocated reinsured loss expenses and unearned premiums.

(b) Required conditions.

(1) The trust agreement shall be entered into between the beneficiary, the grantor and a trustee which shall be a qualified United States financial institution.

(2) The trust agreement shall create a trust account into which assets shall be deposited.

(3) All assets in the trust account shall be held by the trustee at the trustee's office in the United States.

(4) The trust agreement shall provide that:

(A) The beneficiary shall have the right to withdraw assets from the trust account at any time, without notice to the grantor, subject only to written notice from the beneficiary to the trustee;

(B) No other statement or document is required to be presented in order to withdraw assets, except that the beneficiary may be required to acknowledge receipt of withdrawn assets;

(C) It is not subject to any conditions or qualifications outside of the trust agreement; and

(D) It shall not contain references to any other agreements or documents except as provided for under paragraph (b)(11) or (b)(12) of this section.

(5) The trust agreement shall be established for the sole benefit of the beneficiary.

(6) The trust agreement shall require the trustee to:

(A) Receive assets and hold all assets in a safe place;

(B) Determine that all assets are in such form that the beneficiary, or the trustee upon direction by the beneficiary, may whenever necessary negotiate any such assets, without consent or signature from the grantor or any other person or entity;

(C) Furnish to the grantor and the beneficiary a statement of all assets in the trust account upon its inception and at intervals no less frequent than the end of each calendar quarter;

(D) Notify the grantor and the beneficiary within ten (10) days, of any deposits to or withdrawals from the trust account;

(E) Upon written demand of the beneficiary, immediately take any and all steps necessary to transfer absolutely and unequivocally all right, title and interest in the assets held in the trust account to the beneficiary and deliver physical custody of the assets to the beneficiary; and

(F) Allow no substitutions or withdrawals of assets from the trust account, except on written instructions from the beneficiary, except that the trustee may, without the consent of but with notice to the beneficiary, upon call or maturity of any trust asset, withdraw such asset upon condition that the proceeds are paid into the trust account.

(7) The trust agreement shall provide that at least thirty (30) days, but not more than forty-five (45) days, prior to termination of the trust account, written notification of termination shall be delivered by the trustee to the beneficiary.

(8) The trust agreement shall be made subject to and governed by the laws of the state in which the trust is domiciled.

(9) The trust agreement shall prohibit invasion of the trust corpus for the purpose of paying compensation to, or reimbursing the expenses of, the trustee.

(10) The trust agreement shall provide that the trustee shall be liable for its own negligence, willful misconduct or lack of good faith. The failure of the trustee to draw against the letter of credit in circumstances where such draw would be required shall be deemed to be negligence and/or willful misconduct.

(11) Notwithstanding other provisions of this part, when a trust agreement is established in conjunction with a reinsurance agreement covering risks other than life, annuities and accident and health, where it is customary practice to provide a trust agreement for a specific purpose, the trust agreement may provide that the ceding insurer shall undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer, only for the following purposes:

(A) To pay or reimburse the ceding insurer for the assuming insurer's share under the specific reinsurance agreement regarding any losses and allocated loss expenses paid by the ceding insurer, but not recovered from the assuming insurer, or for unearned premiums due to the ceding insurer if not otherwise paid by the assuming insurer;

(B) To make payment to the assuming insurer of any amounts held in the trust account that exceed 102 percent of the actual amount required to fund the assuming insurer's obligations under the specific reinsurance agreement; or

(C) Where the ceding insurer has received notification of termination of the trust account and where the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged ten (10) days prior to the termination date, to withdraw amounts equal to the obligations and deposit those amounts in a separate account, in the name of the ceding insurer in any qualified United States financial institution apart from its general assets, in trust for such uses and purposes specified in subparagraphs (b)(11)(A) and (B) of this section as may remain executory after such withdrawal and for any period after the termination date.

(12) Notwithstanding other provisions of this regulation, when a trust agreement is established to meet the requirements of Section 365:25-7-67 in conjunction with a reinsurance agreement covering life, annuities or accident and health risks, where it is customary to provide a trust agreement for a specific purpose, the trust agreement may provide that the ceding insurer shall undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer, only for the following purposes:

(A) To pay or reimburse the ceding insurer for:

(i) The assuming insurer's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurer, to the owners of policies reinsured under the reinsurance agreement on account of cancellations of the policies, and

(ii) The assuming insurer's share under the specific reinsurance agreement of surrenders and benefits or losses paid by the ceding insurer, but not yet recovered from the assuming insurer, under the terms and provisions of the policies reinsured under the reinsurance agreement;

(B) To pay to the assuming insurer amounts held in the trust account in excess of the amount necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer; or

(C) Where the ceding insurer has received notification of termination of the trust and where the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged ten (10) days prior to the termination

date, to withdraw amounts equal to the assuming insurer's share of liabilities, to the extent that the liabilities have not yet been funded by the assuming insurer, and deposit those amounts in a separate account, in the name of the ceding insurer in any qualified U.S. financial institution apart from its general assets, in trust for the uses and purposes specified in Subparagraphs (A) and (B) of this paragraph as may remain executory after withdrawal and for any period after the termination date.

(13) ~~The reinsurance agreement may, but need not, contain the provisions required by subparagraph (d)(1)(B) of this section, so long as these required conditions are included in the trust agreement.~~ Either the reinsurance agreement or the trust agreement must stipulate that assets deposited in the trust account shall be valued according to their current fair market value and shall consist only of cash in United States dollars, certificates of deposit issued by a United States bank and payable in United States dollars, and investments permitted by Title 36 of the Oklahoma Statutes or any combination of the above, provided investments in or issued by an entity controlling, controlled by or under common control with either the grantor or the beneficiary of the trust shall not exceed five percent (5%) of total investments. The agreement may further specify the types of investments to be deposited. If the reinsurance agreement covers life, annuities or accident and health risks, then the provisions required by this paragraph must be included in the reinsurance agreement.

(14) ~~Notwithstanding any other provisions in the trust instrument, if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation or similar proceedings under the laws of its state or country of domicile, the trustee shall comply with an order of the Commissioner with regulatory oversight over the trust or court of competent jurisdiction directing the trustee to transfer to the Commissioner with regulatory oversight or other designated receiver all of the assets of the trust fund. The assets shall be applied in accordance with the priority statutes and laws of the state in which the trust is domiciled applicable to the assets of insurance companies in liquidation. If the commissioner with regulatory oversight determines that the assets of the trust fund or any part of the assets are not necessary to satisfy claims of the U.S. beneficiaries of the trust, the assets or any part of the assets shall be returned to the trustee for distribution in accordance with the trust agreement.~~

(c) **Permitted conditions.**

(1) The trust agreement may provide that the trustee may resign upon delivery of a written notice of resignation, effective not less than ninety (90) days after the beneficiary and grantor receive the notice and that the trustee may be removed by the grantor by delivery to the trustee and the beneficiary of a written notice of removal, effective not less than ninety (90) days after the trustee and the beneficiary receive the notice, provided that no such resignation or removal shall be effective until a successor

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trustee has been duly appointed and approved by the beneficiary and the grantor and all assets in the trust have been duly transferred to the new trustee.

(2) The grantor may have the full and unqualified right to vote any shares of stock in the trust account and to receive from time to time payments of any dividends or interest upon any shares of stock or obligations included in the trust account. Any such interest or dividends shall be either forwarded promptly upon receipt to the grantor or deposited in a separate account established in the grantor's name.

(3) The trustee may be given authority to invest, and accept substitutions of, any funds in the account, provided that no investment or substitution shall be made without prior approval of the beneficiary, unless the trust agreement specifies categories of investments acceptable to the beneficiary and authorizes the trustee to invest funds and to accept substitutions which the trustee determines are at least equal in market value to the assets withdrawn and that are consistent with the restrictions in subparagraph (d)(1)(B) of this section.

(4) The trust agreement may provide that the beneficiary may at any time designate a party to which all or part of the trust assets are to be transferred. Such transfer may be conditioned upon the trustee receiving, prior to or simultaneously, other specified assets.

(5) The trust agreement may provide that, upon termination of the trust account, all assets not previously withdrawn by the beneficiary shall, with written approval by the beneficiary, be delivered over to the grantor.

(d) Additional conditions applicable to reinsurance agreements.

(1) A reinsurance agreement may contain provisions that:

(A) Require the assuming insurer to enter into a trust agreement and to establish a trust account for the benefit of the ceding insurer, and specifying what the agreement is to cover;

~~(B) Stipulate that assets deposited in the trust account shall be valued according to their current fair market value and shall consist only of cash (United States legal tender), certificates of deposit (issued by a United States bank and payable in United States legal tender), and investments of the types permitted by the Insurance Code or any combination of the above, provided investments in or issued by an entity controlling, controlled by or under common control with either the grantor or the beneficiary of the trust shall not exceed five percent (5%) of total investments. The reinsurance agreement may further specify the types of investments to be deposited. Where a trust agreement is entered into in conjunction with a reinsurance agreement covering risks other than life, annuities and accident and health, then the trust agreement may contain the provisions required by this paragraph in lieu of including such provisions in the reinsurance agreement;~~

~~(C) Require the assuming insurer, prior to depositing assets with the trustee, to execute assignments or endorsements in blank, or to transfer legal title to the trustee of all shares, obligations or any other assets requiring assignments, in order that the ceding insurer, or the trustee upon the direction of the ceding insurer, may whenever necessary negotiate these assets without consent or signature from the assuming insurer or any other entity;~~

~~(D) Require that all settlements of account between the ceding insurer and the assuming insurer be made in cash or its equivalent; and~~

~~(E) Stipulate that the assuming insurer and the ceding insurer agree that the assets in the trust account, established pursuant to the provisions of the reinsurance agreement, may be withdrawn by the ceding insurer at any time, notwithstanding any other provisions in the reinsurance agreement, and shall be utilized and applied by the ceding insurer or its successors in interest by operation of law, including without limitation any liquidator, rehabilitator, receiver or conservator of such company, without diminution because of insolvency on the part of the ceding insurer or the assuming insurer, only for the following purposes:~~

~~(i) To pay or reimburse the ceding insurer for:~~

~~(I) The assuming insurer's share under specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurer, to the owners of policies reinsured under the reinsurance agreement because of cancellations of such policies;~~

~~(II) The assuming insurer's share of surrenders and benefits or losses paid by the ceding insurer pursuant to the provisions of the policies reinsured under the reinsurance agreement; and~~

~~(III) Any other amounts necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer.~~

~~(ii) To make payment to the assuming insurer of amounts held in the trust account in excess of the amount necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer.~~

(2) The reinsurance agreement may also contain provisions that:

~~(A) Give the assuming insurer the right to seek approval from the ceding insurer, which shall not be unreasonably or arbitrarily withheld, to withdraw from the trust account all or any part of the trust assets and transfer those assets to the assuming insurer, provided the ceding insurer shall not unreasonably or arbitrarily withhold its approval and:~~

~~(i) The assuming insurer shall, at the time of withdrawal, replace the withdrawn assets with other qualified assets having a market value equal to the market value of the assets withdrawn so as~~

to maintain at all times the deposit in the required amount, or

(ii) After withdrawal and transfer, the market value of the trust account is no less than 102 percent of the required amount.

(B) Provide for:

~~(i) The return of any amount withdrawn in excess of the actual amounts required for (d)(1)(E)(i), (ii) and (iii)(d)(1)(D) of this section, or in the case of (d)(1)(E)(iv) of this section, any amounts that are subsequently determined not to be due; and~~

(ii) Interest for interest payments, at a rate not in excess of the prime rate of interest, on the such amounts held pursuant to (d)(1)(E)(iii) of this section.

(C) Permit the award by any arbitration panel or court of competent jurisdiction of:

- (i) Interest at a rate different from that provided in (d)(2)(B)(ii) of this section,
- (ii) Court of arbitration costs,
- (iii) Attorney's fees, and
- (iv) Any other reasonable expenses.

(3) **Financial reporting.** A trust agreement may be used to reduce any liability for reinsurance ceded to an unauthorized assuming insurer in financial statements required to be filed with this department in compliance with the provisions of this part when established on or before the date of filing of the financial statement of the ceding insurer. Further, the reduction for the existence of an acceptable trust account may be up to the current fair market value of acceptable assets available to be withdrawn from the trust account at that time, but such reduction shall be no greater than the specific obligations under the reinsurance agreement that the trust account was established to secure.

(4) **Existing agreements.** Notwithstanding the effective date of this part, any trust agreement or underlying reinsurance agreement in existence prior to the effective date of this rule will continue to be acceptable until at which time the agreements will have to fully comply with this part for the trust agreement to be acceptable.

(5) **Trust agreement beneficiary.** The failure of any trust agreement to specifically identify the beneficiary as defined in (a) of this section shall not be construed to affect any actions or rights which the Commissioner may take or possess pursuant to the provisions of the laws of this state.

365:25-7-70. Reinsurance contract

Credit will not be granted, nor an asset or reduction from liability allowed, to a ceding insurer for reinsurance effected with assuming insurers meeting the requirements of 365:25-7-62, 365:25-7-63, 365:25-7-64, 365:25-7-65, ~~or 365:25-7-67 or 365:25-7-73~~ or otherwise in compliance with Section 5122 of the Act after the adoption of this part unless the reinsurance agreement:

(1) Includes a proper insolvency clause, which states that reinsurance is payable directly to the liquidator or successor without diminution regardless of the status

of the ceding company, pursuant to Section 711 of the Insurance Code; and

(2) Includes a provision pursuant to Section 5122(G)5122(H) of the Act whereby the assuming insurer, if an unauthorized assuming insurer, has submitted to the jurisdiction of an alternative dispute resolution panel or court of competent jurisdiction within the United States, has agreed to comply with all requirements necessary to give such court or panel jurisdiction, has designated an agent upon whom service of process may be effected, and has agreed to abide by the final decision of such court or panel; and

(3) Includes a proper reinsurance intermediary clause, if applicable, which stipulates that the credit risk for the intermediary is carried by the assuming insurer.

365:25-7-72. Letters of credit qualified under 365:25-7-67

(a) The letter of credit must be clean, irrevocable, unconditional and issued or confirmed by a qualified United States institution as defined in Section ~~5122(J)(2)5123.1(A)~~ of the Act. The letter of credit shall contain an issue date and expiration date and shall stipulate that the beneficiary need only draw a sight draft under the letter of credit and present it to obtain funds and that no other document need be presented. The letter of credit also shall indicate that it is not subject to any condition or qualifications outside of the letter of credit. In addition, the letter of credit itself shall not contain reference to any other agreements, documents or entities, except as provided in ~~Subsection (i)(1) of this rule~~section (i)(1) of this rule. As used in this rule~~section~~, "beneficiary" means the domestic insurer for whose benefit the letter of credit has been established and any successor of the beneficiary by operation of law. ~~If delinquency proceedings have been filed, then the beneficiary shall be deemed to be the Insurance Commissioner as Receiver or Conservator.~~If a court of law appoints a successor in interest to the named beneficiary, then the named beneficiary includes and is limited to the court appointed domiciliary receiver (including conservator, rehabilitator or liquidator).

(b) The heading of the letter of credit may include a boxed section containing the name of the applicant and other appropriate notations to provide a reference for the letter of credit. The boxed section shall be clearly marked to indicate that such information is for internal identification purposes only.

(c) The letter of credit shall contain a statement to the effect that the obligation of the qualified United States financial institution under the letter of credit is in no way contingent upon reimbursement with respect thereto.

(d) The term of the letter of credit shall be for at least one year and shall contain an "evergreen clause" that prevents the expiration of the letter of credit without due notice from the issuer. The "evergreen clause" shall provide for a period of no less than thirty (30) days' notice prior to expiration date or nonrenewal.

(e) The letter of credit shall state whether it is subject to and governed by the laws of this state or the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce (~~Publication 500~~)Publication 600 (UCP 600) or

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International Standby Practices of the International Chamber of Commerce Publication 590 (ISP98), or any successor publication, and all drafts drawn thereunder shall be presentable at an office in the United States of a qualified United States financial institution.

(f) If the letter of credit is made subject to the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce (~~Publication 500~~) Publication 600 (UCP 600) or International Standby Practices of the International Chamber of Commerce Publication 590 (ISP98), or any successor publication, then the letter of credit shall specifically address and provide for an extension of time to draw against the letter of credit in the event that one or more of the occurrences specified in Article 17 of ~~Publication 500~~ 36 of Publication 600, or any other successor publication, occur.

(g) ~~The letter of credit shall be issued or confirmed by a qualified United States financial institution authorized to issue letters of credit, pursuant to Section 5122(J)(2) of the Act.~~

(h) If the letter of credit shall be issued or confirmed by a qualified United States financial institution authorized to issue letters of credit, other than a qualified United States financial institution as described in ~~Subsection (g)~~ (a) of this section, then the following additional requirements shall be met:

(1) The issuing ~~qualified United States~~ financial institution shall formally designate the confirming qualified United States financial institution as its agent for the receipt and payment of the drafts; and

(2) The "evergreen clause" shall provide for thirty (30) days' notice prior to expiration date for nonrenewal.

(ih) **Reinsurance agreement provisions.**

(1) The reinsurance agreement in conjunction with which the letter of credit is obtained may contain provisions that:

(A) Require the assuming insurer to provide letters of credit to the ceding insurer and specify what they are to cover;

(B) Stipulate that the assuming insurer and ceding insurer agree that the letter of credit provided by the assuming insurer pursuant to the provisions of the reinsurance agreement may be drawn upon at any time, notwithstanding any other provisions in the agreement, and shall be utilized by the ceding insurer or its successors in interest only for one or more of the following reasons:

(i) To pay or reimburse the ceding insurer for:

(I) The assuming insurer's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurers, to the owners of policies reinsured under the reinsurance agreement on account of cancellations of such policies;

(II) The assuming insurer's share, under the specific reinsurance agreement, of surrenders and benefits or losses paid by the ceding insurer, but not yet recovered from the assuming insurers, under the terms and provisions of the policies reinsured under the reinsurance agreement; and

(III) Any other amounts necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer;

(ii) Where the letter of credit will expire without renewal or be reduced or replaced by a letter of credit for a reduced amount and where the assuming insurer's entire obligations under the specific reinsurance remain unliquidated and undischarged ten (10) days prior to the termination date, to withdraw amounts equal to the assuming insurer's share of the liabilities, to the extent that the liabilities have not yet been funded by the assuming insurer and exceed the amount of any reduced or replacement letter of credit, and deposit those amounts in a separate account in the name of the ceding insurer in a qualified U.S. financial institution apart from its general assets, in trust for such uses and purposes specified in ~~Subsection (i)(1)(B)(i)(h)(1)(B)(i)~~ of this ~~rule~~ section as may remain after withdrawal and for any period after the termination date.

(C) All of the provisions of ~~Paragraph (1) of Subsection (i)(h)(1) of this section~~ shall be applied without diminution because of insolvency on the part of the ceding insurer or assuming insurer.

(2) Nothing contained in ~~Paragraph (1) of Subsection (i)(h)(1) of this section~~ shall preclude the ceding insurer and assuming insurer from providing for:

(A) An interest payment, at a rate not in excess of the prime rate of interest, on the amounts held pursuant to ~~Paragraph (1)(B)(h)(1)(B) of this regulation~~ section; or

(B) The return of any amounts drawn down on the letters of credit in excess of the actual amounts required for the above or any amounts that are subsequently determined not to be due.

365:25-7-73. Credit for reinsurance - certified reinsurers

(a) Pursuant to 36 O.S. § 5122(F), the Commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that has been certified as a reinsurer in this state at all times for which statutory financial statement credit for reinsurance is claimed under this section. The credit allowed shall be based upon the security held by or on behalf of the ceding insurer in accordance with a rating assigned to the certified reinsurer by the Commissioner. The security shall be in a form consistent with the provisions of Sections 5122(F) and 5123 of the Act and 365:25-7-68, 365:25-7-69 or 365:25-7-72. The amount of security required in order for full credit to be allowed shall correspond with the following requirements:

(1) Assuming insurer ratings and security requirements.

(A) Secure - 1: 0% security required

(B) Secure - 2: 10% security required

(C) Secure - 3: 20% security required

(D) Secure - 4: 50% security required

- (E) Secure - 5: 75% security required
 - (F) Vulnerable - 6: 100% security required
- (2) Affiliated reinsurance transactions shall receive the same opportunity for reduced security requirements as all other reinsurance transactions.
- (3) The Commissioner shall require the certified reinsurer to post one hundred percent (100%), for the benefit of the ceding insurer or its estate, security upon the entry of an order of rehabilitation, liquidation or conservation against the ceding insurer.
- (4) In order to facilitate the prompt payment of claims, a certified reinsurer shall not be required to post security for catastrophe recoverables for a period of one year from the date of the first instance of a liability reserve entry by the ceding company as a result of a loss from a catastrophic occurrence as recognized by the Commissioner. The one year deferral period is contingent upon the certified reinsurer continuing to pay claims in a timely manner. Reinsurance recoverables for only the following lines of business as reported on the NAIC annual financial statement related specifically to the catastrophic occurrence will be included in the deferral:
 - (A) Line 1: Fire
 - (B) Line 2: Allied Lines
 - (C) Line 3: Farmowners multiple peril
 - (D) Line 4: Homeowners multiple peril
 - (E) Line 5: Commercial multiple peril
 - (F) Line 9: Inland Marine
 - (G) Line 12: Earthquake
 - (H) Line 21: Auto physical damage
- (5) Credit for reinsurance under this section shall apply only to reinsurance contracts entered into or renewed on or after the effective date of the certification of the assuming insurer. Any reinsurance contract entered into prior to the effective date of the certification of the assuming insurer that is subsequently amended after the effective date of the certification of the assuming insurer, or a new reinsurance contract, covering any risk for which collateral was provided previously, shall only be subject to this section with respect to losses incurred and reserves reported from and after the effective date of the amendment or new contract.
- (6) Nothing in this section shall prohibit the parties to a reinsurance agreement from agreeing to provisions establishing security requirements that exceed the minimum security requirements established for certified reinsurers under this section.
- (b) The procedure for certification of a reinsurer shall be as follows:
 - (1) The Commissioner shall post notice on the Oklahoma Insurance Department's website promptly upon receipt of any application for certification, including instructions on how members of the public may respond to the application. The Commissioner may not take final action on the application until at least thirty (30) days after posting the notice required by this paragraph.
 - (2) The Commissioner shall issue written notice to an assuming insurer that has made application and been approved as a certified reinsurer. Included in such notice

shall be the rating assigned the certified reinsurer in accordance with (a) of this section. The Commissioner shall publish a list of all certified reinsurers and their ratings.

(3) In order to be eligible for certification, the assuming insurer shall meet the following requirements:

(A) The assuming insurer must be domiciled and licensed to transact insurance or reinsurance in a Qualified Jurisdiction, as determined by the Commissioner pursuant to (c) of this section.

(B) The assuming insurer must maintain capital and surplus, or its equivalent, of no less than \$250,000,000 calculated in accordance with (b)(4)(H) of this section. This requirement may also be satisfied by an association including incorporated and individual unincorporated underwriters having minimum capital and surplus equivalents (net of liabilities) of at least \$250,000,000 and a central fund containing a balance of at least \$250,000,000.

(C) The assuming insurer must maintain financial strength ratings from two or more rating agencies deemed acceptable by the Commissioner. These ratings shall be based on interactive communication between the rating agency and the assuming insurer and shall not be based solely on publicly available information. These financial strength ratings will be one factor used by the Commissioner in determining the rating that is assigned to the assuming insurer. Acceptable rating agencies include the following:

- (i) Standard & Poor's;
- (ii) Moody's Investors Service;
- (iii) Fitch Ratings;
- (iv) A.M. Best Company; or
- (v) Any other nationally recognized statistical rating organization.

(D) The certified reinsurer must comply with any other requirements reasonably imposed by the Commissioner.

(4) Each certified reinsurer shall be rated on a legal entity basis, with due consideration being given to the group rating where appropriate, except that an association including incorporated and individual unincorporated underwriters that has been approved to do business as a single certified reinsurer may be evaluated on the basis of its group rating. Factors that may be considered as part of the evaluation process include, but are not limited to, the following:

(A) The certified reinsurer's financial strength rating from an acceptable rating agency. The Commissioner shall use the lowest financial strength rating received from an approved rating agency in establishing the maximum rating of a certified reinsurer. A failure to obtain or maintain at least two financial strength ratings from acceptable rating agencies will result in loss of eligibility for certification. The maximum rating that a certified reinsurer may be assigned will correspond to its financial strength rating as follows:

- (i) Secure - 1 rating:
 - (I) A.M. Best Company = A++

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- (II) Standard & Poor's = AAA
 - (III) Moody's Investor Service = Aaa
 - (IV) Fitch Ratings = AAA
 - (ii) Secure - 2 rating:
 - (I) A.M. Best Company = A+
 - (II) Standard & Poor's = AA+, AA, or AA-
 - (III) Moody's Investor Service = Aa1, Aa2, or Aa3
 - (IV) Fitch Ratings = AA+, AA, or AA-
 - (iii) Secure - 3 rating:
 - (I) A.M. Best Company = A
 - (II) Standard & Poor's = A+ or A
 - (III) Moody's Investor Service = A1 or A2
 - (IV) Fitch Ratings = A+ or A
 - (iv) Secure - 4 rating:
 - (I) A.M. Best Company = A-
 - (II) Standard & Poor's = A-
 - (III) Moody's Investor Service = A3
 - (IV) Fitch Ratings = A-
 - (v) Secure - 5 rating:
 - (I) A.M. Best Company = B++ or B+
 - (II) Standard & Poor's = BBB+, BBB, or BBB-
 - (III) Moody's Investor Service = Baa1, Baa2, or Baa3
 - (IV) Fitch Ratings = BBB+, BBB, or BBB-
 - (vi) Vulnerable - 6 rating:
 - (I) A.M. Best Company = B, B-, C++, C+, C, C-, D, E, or F
 - (II) Standard & Poor's = BB+, BB, BB-, B+, B, B-, CCC, CC, C, D, or R
 - (III) Moody's Investor Service = Ba1, Ba2, Ba3, B1, B2, B3, Caa, Ca, or C
 - (IV) Fitch Ratings = BB+, BB, BB-, B+, B, B-, CCC+, CC, CCC-, or DD.
- (B) The business practices of the certified reinsurer in dealing with its ceding insurers, including its record of compliance with reinsurance contractual terms and obligations:
- (C) For certified reinsurers domiciled in the U.S., a review of the most recent applicable NAIC Annual Statement Blank, either Schedule F (for property/casualty reinsurers) or Schedule S (for life and health reinsurers):
- (D) For certified reinsurers not domiciled in the U.S., a review annually of Form CR-F (for property and casualty reinsurers; attached to this Chapter as Appendix DD) or Form CR-S (for life and health reinsurers; attached to this Chapter as Appendix EE);
- (E) The reputation of the certified reinsurer for prompt payment of claims under reinsurance agreements, based on an analysis of ceding insurer's Schedule F reporting of overdue reinsurance recoverables, including the proportion of obligations that are more than ninety (90) days past due or are in dispute, with specific attention given to obligations payable to companies that are in administrative supervision or receivership:
- (F) Regulatory actions against the certified reinsurer;
- (G) The report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in (b)(4)(H) of this section;
- (H) For certified reinsurers not domiciled in the U.S., audited financial statements (audited U.S. GAAP basis if available; audited IFRS basis statements are allowed but must include an audited footnote reconciling equity and net income to a U.S. GAAP basis, or, with the permission of the Commissioner, audited IFRS statements with reconciliation to U.S. GAAP certified by an officer of the company), regulatory filings, and actuarial opinion (as filed with the non-U.S. jurisdiction supervisor). Upon the initial application for certification, the Commissioner shall consider audited financial statements for the last three (3) years filed with its non-U.S. jurisdiction supervisor;
- (I) The liquidation priority of obligations to a ceding insurer in the certified reinsurer's domiciliary jurisdiction in the context of an insolvency proceeding;
- (J) A certified reinsurer's participation in any solvent scheme of arrangement, or similar procedure, which involves U.S. ceding insurers. The Commissioner shall receive prior notice from a certified reinsurer that proposes participation by the certified reinsurer in a solvent scheme of arrangement; and
- (K) Any other information deemed relevant by the Commissioner.
- (5) Based on the analysis conducted under (b)(4)(E) of this section of a certified reinsurer's reputation for prompt payment of claims, the Commissioner may make appropriate adjustments in the security the certified reinsurer is required to post to protect its liabilities to U.S. ceding insurers, provided that the Commissioner shall, at a minimum, increase the security the certified reinsurer is required to post by one rating level under (b)(4)(A) of this section if the Commissioner finds that:
- (A) more than fifteen percent (15%) of the certified reinsurer's ceding insurance clients have overdue reinsurance recoverables on paid losses of ninety (90) days or more which are not in dispute and which exceed \$100,000 for each cedent; or
- (B) the aggregate amount of reinsurance recoverables on paid losses which are not in dispute that are overdue by ninety (90) days or more exceeds \$50,000,000.
- (6) The assuming insurer must submit a properly executed Form CR-1 (attached to this Chapter as Appendix CC) as evidence of its submission to the jurisdiction of this state, appointment of the Commissioner as an agent for service of process in this state, and agree to provide security for one hundred percent (100%) of the assuming insurer's liabilities attributable to reinsurance ceded by U.S. ceding insurers if it resists enforcement of a final U.S. judgment. The Commissioner shall not certify any assuming insurer that is domiciled in a jurisdiction that

the Commissioner has determined does not adequately and promptly enforce final U.S. judgments or arbitration awards.

(7) The certified reinsurer must agree to meet applicable information filing requirements as determined by the Commissioner, both with respect to an initial application for certification and on an ongoing basis. All information submitted by certified reinsurers which are not otherwise public information subject to disclosure shall be exempted from disclosure under the Oklahoma Open Records Act and shall be withheld from public disclosure. The applicable information filing requirements are as follows:

(A) Notification within ten (10) days of any regulatory actions taken against the certified reinsurer, any change in the provisions of its domiciliary license, or any change in rating by an approved rating agency, including a statement describing such changes and the reasons therefore;

(B) Annually, Form CR-F (attached to this Chapter as Appendix DD) or CR-S (attached to this Chapter as Appendix EE), as applicable;

(C) Annually, the report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in (b)(7)(D) of this section;

(D) Annually, audited financial statements (audited U.S. GAAP basis if available; audited IFRS basis statements are allowed but must include an audited footnote reconciling equity and net income to a U.S. GAAP basis, or, with the permission of the state insurance Commissioner, audited IFRS statements with reconciliation to U.S. GAAP certified by an officer of the company), regulatory filings, and actuarial opinion (as filed with the certified reinsurer's supervisor). Upon the initial certification, audited financial statements for the last three (3) years filed with the certified reinsurer's supervisor;

(E) At least annually, an updated list of all disputed and overdue reinsurance claims regarding reinsurance assumed from U.S. domestic ceding insurers;

(F) A certification from the certified reinsurer's domestic regulator that the certified reinsurer is in good standing and maintains capital in excess of the jurisdiction's highest regulatory action level; and

(G) Any other information that the Commissioner may reasonably require.

(8) If a certified reinsurer has a change in rating, the procedure shall be as follows:

(A) In the case of a downgrade by a rating agency or other disqualifying circumstance, the Commissioner shall upon written notice assign a new rating to the certified reinsurer in accordance with the requirements of (b)(4)(A) of this section.

(B) The Commissioner shall have the authority to suspend, revoke, or otherwise modify a certified reinsurer's certification at any time if the certified reinsurer fails to meet its obligations or security requirements under this section, or if other financial or operating results of the certified reinsurer, or documented significant delays in payment by the certified reinsurer, lead the Commissioner to reconsider the certified reinsurer's ability or willingness to meet its contractual obligations.

(C) If the rating of a certified reinsurer is upgraded by the Commissioner, the certified reinsurer may meet the security requirements applicable to its new rating on a prospective basis, but the Commissioner shall require the certified reinsurer to post security under the previously applicable security requirements as to all contracts in force on or before the effective date of the upgraded rating. If the rating of a certified reinsurer is downgraded by the Commissioner, the Commissioner shall require the certified reinsurer to meet the security requirements applicable to its new rating for all business it has assumed as a certified reinsurer.

(D) Upon revocation of the certification of a certified reinsurer by the Commissioner, the assuming insurer shall be required to post security in accordance with 365:25-7-67 in order for the ceding insurer to continue to take credit for reinsurance ceded to the assuming insurer. If funds continue to be held in trust in accordance with 365:25-7-65, the Commissioner may allow additional credit equal to the ceding insurer's *pro rata* share of such funds, discounted to reflect the risk of uncollectibility and anticipated expenses of trust administration. Notwithstanding the change of a certified reinsurer's rating or revocation of its certification, a domestic insurer that has ceded reinsurance to that certified reinsurer may not be denied credit for reinsurance for a period of three (3) months for all reinsurance ceded to that certified reinsurer, unless the reinsurance is found by the Commissioner to be at high risk of uncollectibility.

(c) The procedure for determining if a jurisdiction is a qualified jurisdiction shall be as follows:

(1) If, upon conducting an evaluation under this section with respect to the reinsurance supervisory system of any non-U.S. assuming insurer, the Commissioner determines that the jurisdiction qualifies to be recognized as a qualified jurisdiction, the Commissioner shall publish notice and evidence of such recognition in an appropriate manner. The Commissioner may establish a procedure to withdraw recognition of those jurisdictions that are no longer qualified.

(2) In order to determine whether the domiciliary jurisdiction of a non-U.S. assuming insurer is eligible to be recognized as a qualified jurisdiction, the Commissioner shall evaluate the reinsurance supervisory system of the non-U.S. jurisdiction, both initially and on an ongoing basis, and consider the rights, benefits and the extent of

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reciprocal recognition afforded by the non-U.S. jurisdiction to reinsurers licensed and domiciled in the U.S. The Commissioner shall determine the appropriate approach for evaluating the qualifications of such jurisdictions, and create and publish a list of jurisdictions whose reinsurers may be approved by the Commissioner as eligible for certification. A qualified jurisdiction shall agree to share information and cooperate with the Commissioner with respect to all certified reinsurers domiciled within that jurisdiction. Additional factors to be considered in determining whether to recognize a qualified jurisdiction, in the discretion of the Commissioner, include but are not limited to the following:

(A) The framework under which the assuming insurer is regulated.

(B) The structure and authority of the domiciliary regulator with regard to solvency regulation requirements and financial surveillance.

(C) The substance of financial and operating standards for assuming insurers in the domiciliary jurisdiction.

(D) The form and substance of financial reports required to be filed or made publicly available by reinsurers in the domiciliary jurisdiction and the accounting principles used.

(E) The domiciliary regulator's willingness to cooperate with U.S. regulators in general and the Commissioner in particular.

(F) The history of performance by assuming insurers in the domiciliary jurisdiction.

(G) Any documented evidence of substantial problems with the enforcement of final U.S. judgments in the domiciliary jurisdiction. A jurisdiction will not be considered to be a qualified jurisdiction if the Commissioner has determined that it does not adequately and promptly enforce final U.S. judgments or arbitration awards.

(H) Any relevant international standards or guidance with respect to mutual recognition of reinsurance supervision adopted by the International Association of Insurance Supervisors or a successor organization.

(I) Any other matters deemed relevant by the Commissioner.

(3) The Commissioner shall consider the list of qualified jurisdictions published through the NAIC Committee Process in determining qualified jurisdictions. If the Commissioner approves a jurisdiction as qualified that does not appear on the list of qualified jurisdictions, the Commissioner shall provide thoroughly documented justification with respect to the criteria provided under (c)(2)(A) through (I) of this section.

(4) U.S. jurisdictions that meet the requirements for accreditation under the NAIC financial standards and accreditation program shall be recognized as qualified jurisdictions.

(d) The Commissioner may recognize a reinsurer's certification in another NAIC accredited jurisdiction according to the following:

(1) If an applicant for certification has been certified as a reinsurer in an NAIC accredited jurisdiction, the Commissioner has the discretion to defer to that jurisdiction's certification, and to defer to the rating assigned by that jurisdiction, if the assuming insurer submits a properly executed Form CR-1 and such additional information as the Commissioner requires. The assuming insurer shall be considered to be a certified reinsurer in this State.

(2) Any change in the certified reinsurer's status or rating in the other jurisdiction shall apply automatically in this State as of the date it takes effect in the other jurisdiction. The certified reinsurer shall notify the Commissioner of any change in its status or rating within 10 days after receiving notice of the change.

(3) The Commissioner may withdraw recognition of the other jurisdiction's rating at any time and assign a new rating in accordance with (b)(8) of this section.

(4) The Commissioner may withdraw recognition of the other jurisdiction's certification at any time, with written notice to the certified reinsurer. Unless the Commissioner suspends or revokes the certified reinsurer's certification in accordance with (b)(8) of this section, the certified reinsurer's certification shall remain in good standing in this State for a period of three (3) months, which shall be extended if additional time is necessary to consider the assuming insurer's application for certification in this State.

(e) In addition to the clauses required under 365:25-7-70, reinsurance contracts entered into or renewed under this section shall include a proper funding clause, which requires the certified reinsurer to provide and maintain security in an amount sufficient to avoid the imposition of any financial statement penalty on the ceding insurer under this section for reinsurance ceded to the certified reinsurer.

(f) The Commissioner shall comply with all reporting and notification requirements that may be established by the NAIC with respect to certified reinsurers and qualified jurisdictions.

PART 15. COMPANY SUPERVISION

365:25-7-80. Purpose

This Part is intended to specify the confidential status and handling of certain information contained in the files of the Insurance Commissioner ("Commissioner") pursuant to various provisions of the Oklahoma Insurance Code (36 O.S. §§ 101-7301).

365:25-7-81. Definitions

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

"Confidential information" means all documents, materials, or other information in the possession or control of the Oklahoma Insurance Department ("Department") pursuant to

the Oklahoma Insurance Holding Company System Regulatory Act, 36 O.S. §§ 1657.1 et seq., and investigatory files, working papers, recorded information, documents, and copies thereof produced by, obtained by, or disclosed to the Commissioner or any other person in the course of an examination made under Sections 309.1 through 309.7 of Title 36 of the Oklahoma Statutes, or in the course of analysis by the Commissioner of the financial condition or market conduct of any person or company.

"Exchange" means sending or receiving information to or from any other Regulator charged with supervision of an insurer or its affiliates, including other state, federal, and international regulatory agencies.

"Supervisory" means those duties of the Commissioner involving the financial condition and solvency of any person or entity engaged, directly or through others, in the business of insurance.

365:25-7-82. Authorization

(a) The Commissioner is authorized to enter into agreements in accordance with Sections 1656.1 and 1657.1 of Title 36 of the Oklahoma Statutes, providing the basis for cooperation between the Commissioner and other regulatory agencies.

(b) Pursuant to various provisions of Title 36, the Commissioner has the legal authority and power to obtain, hold, and exchange certain confidential information in respect to individuals, legal entities, and groups, including the relevant non-regulated entities of such groups when:

(1) the Commissioner considers the information to be necessary for the supervision of insurance legal entities or groups, or when another Regulator considers the information to be necessary, and

(2) the Commissioner is reasonably requested to provide relevant information by another Regulator.

(c) Information necessary for the supervision of insurance legal entities or groups may include, but is not limited to:

(1) Information on the management and operational systems and controls operated by insurers;

(2) Financial data relating to an insurer and its affiliates;

(3) Information concerning individuals holding positions of responsibility in insurers (to include owners, shareholders, directors, managers, employees, or contractors);

(4) Information concerning individuals or insurers involved, or suspected of being involved, in criminal activities;

(5) Information arising from or developed as part of regulatory investigations and reviews, and on any restrictions imposed on the business activities of insurers;

(6) Information requested and gathered from a supervised entity (including appropriate customer transactional information);

(7) Information reported within supervisory groups to meet group supervisory requirements;

(8) Information on a supervised entity and affiliates including, but not limited to, branches, subsidiaries, and non-regulated holding companies; and

(9) Information on prospective and actual insurer transactions and prospective and actual transactions of policyholders.

365:25-7-83. Professional confidentiality

(a) The Commissioner, including the staff of the Department and any individual acting on its behalf (presently or in the past), are required, as a condition of employment or contract, respectively, to protect confidential information in the possession of the Commissioner or the Department, including confidential information received from other Regulators. Wrongful disclosure of confidential information is grounds for termination of employment or termination of contract, as applicable. In addition, any person failing to maintain confidentiality shall be guilty of a misdemeanor pursuant to 36 O.S. § 117.

(b) The Commissioner shall deny any request for confidential information, other than when required by law, or when requested by another Regulator who has a legitimate supervisory interest and the ability to uphold the confidentiality of the requested information.

(c) The exchange of confidential information shall serve no other purposes than those directly related to the fulfillment of a supervisory function.

(d) The Commissioner has a legitimate interest and a valid purpose related to the fulfillment of supervisory functions in seeking information from another Regulator.

(e) Valid purposes may include, but are not limited to:

(1) Licensing;

(2) Competence, experience, and integrity criteria;

(3) Ongoing supervision, including enforcement action and sanctions;

(4) Supervisory practices;

(5) Winding-up, liquidation, or bankruptcy;

(6) Anti-money laundering or combating the financing of terrorism ("AML/CFT").

(f) All Department personnel and contractors, gaining access to confidential information in the course of their duties, are bound by an obligation of professional confidentiality.

(g) The "obligation of professional confidentiality" means that, as a basic rule, confidential information received by the Department shall not be divulged to any person or authority whatsoever, except as provided by law.

(h) The professional confidentiality requirements apply to any person currently or previously employed by or acting on behalf of the Commissioner or the Department.

(i) Confidential information originating from another Regulator must remain subject to equivalent confidentiality protections provided by this Part. Before passing on confidential information to another Regulator, the Commissioner must ascertain that the person receiving the information is bound by professional confidentiality rules or laws substantially similar and equivalent to subsection "A" of Section 1657.1 of Title 36 of the Oklahoma Statutes and who have agreed in writing not to disclose such information.

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365:25-7-84. Passing on of confidential information

(a) Any passing on of confidential information, including information that shall be forwarded by way of official reporting, necessitates prior explicit agreement of the Regulator from whom the information originates and must be subject to agreement, in particular regarding the purpose for which the information shall be used.

(b) Requests from other Regulators for passing on of confidential information shall be decided on a case-by-case basis by the Commissioner.

(c) Without prejudice to the foregoing, the Commissioner may pass on information where it will assist:

(1) Other Regulators in the fulfillment of their supervisory functions; and

(2) Governmental agencies, competent in the financial services field (including central banks), law enforcement agencies, and relevant courts in the performance of their duties.

365:25-7-85. Agreements for information exchange

(a) Agreements may be used to establish a framework between Regulators to facilitate the efficient execution of requests for or provision of information.

(b) Compliance with the strict confidentiality regime, set forth in Section 1657.1 of Title 36 of the Oklahoma Statutes and this Part, is a key prerequisite for the exchange of confidential information. Every agreement to exchange such information shall include a written confirmation statement in substantially the same terms as that found in the Written Confirmation Statement in Appendix BB of this Chapter, and the agreement shall be signed by an appropriate managerial representative of the Regulator.

365:25-7-86. Supervisory Colleges

(a) Information exchange is particularly important for the operation of a Supervisory College as provided by 36 O.S. § 1656.1. The effectiveness of a Supervisory College depends upon the mutual trust and confidence between participating Regulators, particularly in relation to exchange and protection of confidential information.

(b) In connection with the exchange of confidential information between the Commissioner and a Supervisory College, appropriate information exchange agreements must be in place prior to exchange of such information.

(c) Where confidential information exchanged within a Supervisory College is also communicated to other Regulators, there shall be a formal mechanism in place with these Regulators to ensure the protection of the confidential information.

(d) The Commissioner shall inform any other Regulator in its jurisdiction and the Regulators of insurance group entities in other jurisdictions in advance of taking any action that might reasonably be considered to affect those group entities. Where prior notification is not possible, the Commissioner shall inform other relevant Regulators as soon as possible after taking action.

(e) The Commissioner shall proactively exchange material and relevant information with other Regulators. Relevant

proactively provided information includes but is not limited to:

(1) Any information the Commissioner considers will facilitate the effective supervision of groups or entities in the group;

(2) Any event or series of events that may have a significant bearing on the operations of group entities operating in the jurisdictions of other Regulators;

(3) Information that may affect the financial system of another jurisdiction;

(4) Information that may affect the financial condition or other interests of the policyholders of a group entity in another jurisdiction; and

(5) Prior notification to another Regulator of any action to be undertaken which relies on information received from that Regulator, subject to requirements applicable to criminal statutes and other similar laws.

(f) In deciding whether and to what extent to fulfill a request by another Regulator for information, the Commissioner may take into account matters such as, but not limited to:

(1) Whether it would be contrary to the essential interest of Oklahoma;

(2) The existence of a requisite written agreement between the Commissioner and the requesting Regulator to maintain the confidentiality of any information exchanged;

(3) The nature of the information to be exchanged;

(4) The use to which the information will be put.

(g) Requests for information shall be made in writing.

(h) When exchanging relevant information and in responding to requests from Regulators seeking information, the Commissioner shall respond in a timely and comprehensive manner. Strict reciprocity in terms of the level, format and detailed characteristics of information exchanged shall not be required by the Commissioner. The originating Regulator may attach conditions to the subsequent exchange of the information to other Regulators. Conditions imposed by the originating Regulator on the exchange of information should not prevent the receiving Regulator from being able to use the information for its own purposes

(i) Before exchanging confidential information, the Commissioner shall ensure that the party receiving the information is bound by confidentiality requirements.

(j) The Commissioner shall generally permit the information that he or she exchanges with another Regulator to be passed on to other relevant Regulators, provided the necessary confidentiality requirements are in place.

(k) When the Commissioner receives confidential information from another Regulator, the information shall only be used for the purposes specified when the information was requested. Before using such information for another purpose, including exchanging it with other parties, the Commissioner shall obtain the agreement of the originating Regulator.

(l) In the event that the Commissioner is legally compelled to disclose confidential information received from another Regulator, the Commissioner shall promptly notify the originating Regulator, indicating what information he or she is being compelled to release and the circumstances surrounding

the release. Where consent to passing this information on is not given, the Commissioner shall use all reasonable means

to resist the demand and to protect the confidentiality of the information.

APPENDIX BB. WRITTEN CONFIRMATION STATEMENT [NEW]

I confirm, on behalf of _____ [organization] _____, that:

- information to be disclosed to us will be subject to confidentiality provisions equivalent to the professional confidentiality mandate set forth in Part 15 of Subchapter 7 of Chapter 25 of Title 365 of the Oklahoma Administrative Code; and
- we will notify all signatories to this agreement and any supervisory organization composed of Regulators of any changes in the guarantees of professional confidentiality applied to such information which could affect the assessment of the equivalence of these guarantees according to the confidentiality regime set forth in this Regulation.

I also confirm, on behalf of my organization, that in relation to information disclosed by another Regulator:

- we will obtain the prior consent of the Regulator from whom the information originated before voluntarily passing on such information to another Regulator; and
- we will, as far as practicable, promptly notify the originating Regulator of any passing on of information or disclosure prescribed by law, and use our best efforts to resist such demand in practice if so requested by that originating Regulator.

_____[ORGANIZATION]_____

Signature_____

Name:_____

Title:_____

Date:_____

APPENDIX CC. CERTIFICATE OF CERTIFIED REINSURER [NEW]

FORM CR-1

CERTIFICATE OF CERTIFIED REINSURER

I, _____,

(name of officer) (title of officer)

of _____, the assuming
insurer

(name of assuming insurer)

under a reinsurance agreement with one or more insurers domiciled in

_____, in order to be considered for approval in this state, hereby certify
that (name of state)

Insurer”): (“Assuming
(name of assuming insurer)

1. Submits to the jurisdiction of any court of competent jurisdiction in

(ceding insurer’s state of
domicile)

for the adjudication of any issues arising out of the reinsurance agreement, agrees to comply with all requirements necessary to give such court jurisdiction, and will abide by the final decision of such court or any appellate court in the event of an appeal. Nothing in this paragraph constitutes or should be understood to constitute a waiver of Assuming Insurer’s rights to commence an action in any court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another court as permitted by the laws of the United States or of any state in the United States. This paragraph is not intended to conflict with or override the obligation of the parties to the reinsurance agreement to arbitrate their disputes if such an obligation is created in the agreement.

2. Designates the Insurance Commissioner of

(ceding insurer’s state of domicile)

as its lawful attorney upon whom may be served any lawful process in any action, suit or proceeding arising out of the reinsurance agreement instituted by or on behalf of the ceding insurer.

3. Agrees to provide security in an amount equal to 100% of liabilities attributable to U.S. ceding insurers if it resists enforcement of a final U.S. judgment or properly enforceable arbitration award.

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4. Agrees to provide notification within 10 days of any regulatory actions taken against it, any change in the provisions of its domiciliary license or any change in its rating by an approved rating agency, including a statement describing such changes and the reasons therefore.
5. Agrees to annually file information comparable to relevant provisions of the NAIC financial statement for use by insurance markets in accordance with 365:25-7-73.
6. Agrees to annually file the report of the independent auditor on the financial statements of the insurance enterprise.
7. Agrees to annually file audited financial statements, regulatory filings, and actuarial opinion in accordance with 365:25-7-73.
8. Agrees to annually file an updated list of all disputed and overdue reinsurance claims regarding reinsurance assumed from U.S. domestic ceding insurers.
9. Is in good standing as an insurer or reinsurer with the supervisor of its domiciliary jurisdiction.

Dated: _____
_____ (name of assuming insurer)

BY: _____
_____ (name of officer)

(title of officer)

Form CR-F – PART 2
 Ceded Reinsurance as of December 31, Current Year (000 Omitted)

1	2	3	4	5	6	Reinsurance Recoverable On								Reinsurance Payable		18	19	
Company Code or ID Number		Name of Reinsurer	Domiciliary Jurisdiction	Reinsurance Contracts Ceding 75% or More of Direct Premiums Written	Reinsurance Premiums Ceded	7	8	9	10	11	12	13	14	15	16	17	Net Amount Recoverable From Reinsurers Cols 15 - (16 + 17)	Funds Held by Company Under Reinsurance Treaties
						Paid Losses	Paid LAE	Known Case Loss Reserves	Known Case LAE Reserves	IBNR Loss Reserves	IBNR LAE Reserves	Unearned Premiums	Contingent Commissions	Cols 7 through 14 Totals	Ceded Balances Payable	Other Amounts Due to Reinsurers		
9999999	TOTALS																	

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APPENDIX FF. SMALL EMPLOYER STOP LOSS DISCLOSURE [NEW]

Date Prepared: _____

Insurer Name: _____

Plan Sponsor/Employer: _____

Policy ID/#: _____

Policyholder: _____

Plan Name: _____

Policy Effective Date: _____

Policy Expiration Date: _____

Plan expenses are eligible if incurred from _____ to _____

Plan expenses are eligible if paid from _____ to _____

Individual Attachment Point for Specific Coverage: _____

This Policy [does] [does not] (circle one) have different Individual Attachment Point(s) for certain individuals or conditions.

If it does, describe:

Aggregate Attachment Point: _____

Producer: _____

Important Policyholder/Plan Sponsor Information:

You have purchased a policy that provides reimbursement to you for losses of your self-funded health Plan identified above, subject to the terms and conditions of your Policy.

Your Policy is not a policy that pays for the direct medical expenses incurred by your employees or the beneficiaries of your Plan. Your Policy is NOT A GROUP OR INDIVIDUAL medical insurance policy offering health insurance benefits. You are responsible for payment of your employees' claims covered by your self-funded health Plan.

The insurer issuing this Policy is not responsible for the payment of the benefits provided by your Plan. The insurer is only responsible for reimbursing you for covered claims which you have paid as provided by the Policy.

Self-funding an employer medical benefit plan may subject you to financial obligations and regulatory requirements that are not present when you purchase a group health insurance policy. YOU SHOULD CONSULT WITH A QUALIFIED ACTUARY, PRODUCER, CONSULTANT, OR ATTORNEY REGARDING YOUR OBLIGATIONS AS A SELF-FUNDED PLAN SPONSOR, and YOUR SELECTION OF STOP LOSS POLICY TERMS.

This disclosure is provided as required by Section 7401 of Title 36 of the Oklahoma Statutes, and is for your information only. In the event of a conflict between this disclosure and your Policy, the terms and conditions of your Policy will apply.

[OAR Docket #17-570; filed 7-5-17]

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TITLE 365. INSURANCE DEPARTMENT CHAPTER 40. HEALTH MAINTENANCE ORGANIZATIONS (HMO)

[OAR Docket #17-571]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 5. Life, Accident & Health Division and Consumer Assistance and Claims Division Rules

Part 13. Termination of Members, Providers and Continuation of Benefits
365:40-5-74. Certification of creditable coverage [REVOKED]

AUTHORITY:

Insurance Commissioner; 36 O.S. § 307.1

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

January 24, 2017

COMMENT PERIOD:

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PUBLIC HEARING:

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SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

March 29, 2017

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 13, 2017

FINAL ADOPTION:

June 13, 2017

EFFECTIVE:

September 15, 2017

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

365:40-5-74 is repealed due to the authorizing statute being repealed in the 2015 legislative session.

CONTACT PERSON:

Barron B. Brown, Assistant General Counsel, Oklahoma Insurance Department, 3625 NW 56th St., Suite 100, Oklahoma City, OK 73112, (405) 521-2749

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,
THE FOLLOWING RULES ARE CONSIDERED
FINALLY ADOPTED AS SET FORTH IN 75 O.S.,
SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE
DATE OF SEPTEMBER 15, 2017:**

SUBCHAPTER 5. LIFE, ACCIDENT & HEALTH DIVISION AND CONSUMER ASSISTANCE AND CLAIMS DIVISION RULES

PART 13. TERMINATION OF MEMBERS, PROVIDERS AND CONTINUATION OF BENEFITS

365:40-5-74. Certification of creditable coverage [REVOKED]

~~(a) For the purpose of this Section, "creditable coverage" shall have the same meaning as described in Section 2701(e) of the Federal Public Health Service Act.~~

~~(b) An HMO shall issue to individuals and members of a group a certificate of creditable coverage when individual or group coverage terminates. Said certificates shall be issued in accordance with the requirements and specifications of Sections 2701(c), (d), and (e) of the Federal Public Health Service Act.~~

[OAR Docket #17-571; filed 7-5-17]

TITLE 380. DEPARTMENT OF LABOR CHAPTER 25. BOILER AND PRESSURE VESSEL RULES

[OAR Docket #17-624]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions
380:25-1-3 [NEW]

AUTHORITY:

Department of Labor; 40 O.S. § 141.3 and 40 O.S. § 141.16

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

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Approved by Governor's declaration on June 13, 2017

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June 13, 2017

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September 15, 2017

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

Pursuant to 40 O.S. § 141.16, the adopted rule establishes a schedule of administrative fees for the registration, inspection, and operation of boilers, pressure vessels, and steam lines.

CONTACT PERSON:

Daniel A. Mares, Assistant General Counsel, (405) 521-6186 or daniel.mares@labor.ok.gov or James Buck, Deputy Commissioner of Labor, (405) 521-6111 or james.buck@labor.ok.gov.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,
THE FOLLOWING RULES ARE CONSIDERED
FINALLY ADOPTED AS SET FORTH IN 75 O.S.,
SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE
DATE OF SEPTEMBER 15, 2017:**

SUBCHAPTER 1. GENERAL PROVISIONS

380:25-1-3. Fees

(a) Upon the effective date of this rule, the following schedule of administrative fees shall apply to the registration, inspection, and operation of boilers, pressure vessels, and steam lines. The following schedule of administrative fees are derived from statute and shall supersede the fees provided for in 40 O.S. § 141.16.

- (b) Annual certificate of operation fee shall be as follows:
- (1) with manway state inspector \$75.00
 - (2) without manway state inspector \$50.00
 - (3) any size special - or owner/user inspector \$50.00
 - (4) each public hot water supply heater (biennially) \$25.00
 - (5) each public boiler inspection/certification \$25.00
 - (6) Only one certificate of operation fee per year may be charged; except an additional fee equal to the certificate of operation fee may be charged for witnessing a hydrostatic test required after repairs, provided a fee equal to the total fees identified in paragraph 1 or 2 of subsection b of this section, whichever is appropriate, and paragraph 5 of subsection c of this subsection may be charged when the pressure-retaining item is not prepared and ready pursuant to rules promulgated by the Commissioner of Labor at the time of the inspection.

(c) Labor Fees

- (1) hydrostatic test of steam pipeline per day \$150.00
- (2) hydrostatic test of steam pipeline for each additional half-day or part thereof \$75.00
- (3) shop review fees \$3,000.00
- (4) boiler or pressure vessel inspection fee for certificate inspections by state inspectors \$160.00
- (5) authorized inspector services for weld repairs or alterations, per eight-hour day or part thereof \$300.00
- (6) public hot water supply heater inspection fee \$75.00

(d) Other fees

- (1) licensing fees
 - (A) repair, service, install (annually) \$100.00
 - (B) boiler operator (biennially) \$100.00
 - (C) owner/user operator fee \$50.00
- (2) certificate of competency fee \$15.00
- (3) examination fee \$50.00
- (4) issuance of duplicate licenses and certificates \$25.00
- (5) installer permit fee \$10.00

(e) All institutions owned or operated by the State of Oklahoma or its agencies or by any county, municipality, or school district, and such institutions or agencies, and all owners or users of boilers or pressure vessels of historical significance as specified in subsection D of Section 141.5 of Title 40 of the Oklahoma Statutes are exempt from the payment of only those fees provided for in paragraphs (c) and (d) of this section.

(f) All fees shall be paid directly to the Department of Labor.

[OAR Docket #17-624; filed 7-11-17]

**TITLE 380. DEPARTMENT OF LABOR
CHAPTER 40. OKLAHOMA
OCCUPATIONAL HEALTH AND SAFETY
STANDARDS ACT RULES**

[OAR Docket #17-625]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- 380:40-1-5 [AMENDED]
- 380:40-1-16 [AMENDED]
- 380:40-1-21 [AMENDED]
- 380:40-1-24 [NEW]

AUTHORITY:

Department of Labor; 40 O.S. §§ 407 and 412, Oklahoma Occupational Health and Safety Standards Act of 1970

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

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INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The adopted rules establish a schedule of administrative fines for violations of the Oklahoma Occupational Health and Safety Standards Act. All monies collected for violations of the Oklahoma Occupational Health and Safety Standards Act shall be deposited to the Department of Labor Administrative Penalty Revolving Fund for transfer to the General Revenue Fund. The adopted rules decrease injury and illness reporting requirements to conform to Department of Labor practices.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2017:

380:40-1-5. Recordkeeping

(a) The currently published Federal Occupational Safety and Health Standard 29 CFR 1904, et seq., shall be automatically adopted by incorporation as published in the Code of Federal Regulations and as may hereafter be revised in the Code of Federal Regulations with the following exceptions:

- (1) that Subpart B (1904.1, 1904.2, 1904.3 and Appendix A), 1904.37, 1904.38, 1904.39, 1904.40, 1904.41, 1904.42, 1904.45, and, in 1904.7(b)(2), the sentence

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stating, "You must also report any work-related fatality to OSHA within eight (8) hours, as required by '1904.39' shall not be included;

(2) that the definition of "Act" pursuant to 29 CFR 1904 shall mean the Oklahoma Occupational Safety and Health Act of 1970 Title 40 O.S. Section 401 et seq.;

(3) that all references in 29 CFR 1904 to the Assistant Commissioner or Regional Commissioner of the Bureau of Labor Statistics be changed to Oklahoma Department of Labor;

(4) that all references in 29 CFR 1904 to OSHA No. 300 shall be changed to OK 300; all references to OSHA 300A shall be changed to OK 300A; and references to OSHA No. 301 shall be changed to OK 301;

(5) the definition of "you" in 29 CFR 1904.46 shall mean "employer" as defined in 40 O.S. 402.

(6) that 29 CFR 1904.46 Definition of Establishment (2) shall be changed to: (2) Can an establishment include more than one physical location? Yes, but only if the direct daily supervision of all staff is the responsibility of one common individual.

(b) In accordance with 40 O.S. § 417, the State and all its political subdivisions which has in its employ one or more individuals performing services for it in employment shall report to the Oklahoma Department of Labor all injury and illness related information, as requested. This information shall be submitted/reported on forms including but not limited to the OK 300, OK 300A and OK 301, and in a manner prescribed by the Oklahoma Department of Labor. This information includes, but is not limited to; amounts and types of injuries and illnesses, ~~experience modification rates, worker's compensation premiums and claims information~~ and; injury and illness case characteristics and demographics.

(c) Employers shall notify the Department of Labor Statistical Research Unit within ninety (90) days of the closing, merging, or opening of a new facility.

380:40-1-16. Citations

(a) Upon determination that the employer has violated a standard, rule or order promulgated pursuant to the Act, or of any substantive rule published in this chapter, the PEOSH Inspector shall issue to the employer a citation.

(b) An appropriate citation shall be issued even though after being informed of an alleged violation by the PEOSH Inspector, the employer immediately abates, or initiates steps to abate, such alleged violation. No citation may be issued under this section after the expiration of 6 months following the occurrence of any alleged violation.

(c) Any citation shall describe with particularity the nature of the alleged violation, including a reference to the provision(s) of the Act, standard, rule, or regulation, alleged to have been violated. Any citation shall also fix a reasonable time or times for the abatement of the alleged violation.

(d) No citation may be issued to an employer because of a rescue activity undertaken by an employee of that employer with respect to an individual in imminent danger.

(e) Violations of the Act shall be classified as follows:

(1) Serious: a condition creating substantial probability that death or serious physical harm could result. The condition is the result of one or more practices, means, methods, operations, or processes that have been adopted or are in use, unless the employer did not, and could not with the exercise of reasonable diligence, know of the condition that is the basis of the violation.

(2) Other than serious: the most serious injury or illness that would be the likely result of the violation cannot reasonably be predicted to cause death or serious physical harm to exposed employees, but does have a direct and immediate relationship to the employees' safety and health.

(3) Willful: a violation in which the employer either knowingly failed to comply with a legal requirement (purposeful disregard) or acted with plain indifference to employee safety.

(4) Repeated: the employer has been cited previously for the same or a substantially similar condition within the past five years.

(5) Regulatory: the violation involves posting requirements or injury and illness recordkeeping requirements.

380:40-1-21. Authority over volunteers

Volunteer fire departments that exist as a subdivision of a larger municipal organization are within Oklahoma Department of Labor jurisdiction if that larger municipal organization employs one or more paid workers. In such cases, the inspection and enforcement jurisdiction of ODOL extends to all duties performed by any worker or volunteer on behalf of the Volunteer Fire Department. For purposes of this Chapter, "fire department" means any duly constituted fire department operating under the authority of Title 11 ~~article XXIX~~ fire departments or Title 19 ~~Chapter 21~~ fire protection districts meeting the definition of employer. Industrial fire brigades are excluded from this definition. However, fire departments and industrial fire brigades are covered by regulations of other agencies. For purposes of injury and illness recordkeeping and the Public Sector Survey, injuries occurring to those employees who are classified as volunteers are not recordable and are not included in the survey.

380:40-1-24. Fines

(a) In addition to citations issued under OAC 380:40-1-16, the Commissioner of Labor, or his or her designee, may issue an administrative fine for any and all violations of the Oklahoma Occupational Health and Safety Standards Act. All monies collected for violations of the Oklahoma Occupational Health and Safety Standards Act shall be deposited to the Department of Labor Administrative Penalty Revolving Fund for transfer to the General Revenue Fund. The following schedule of fines shall apply on a per-violation, per-day basis:

(1) Serious: \$1,000.00

(2) Other than serious: \$500.00

(3) Willful: \$5,000.00

(4) Repeated: \$5,000.00

(5) Regulatory: \$500.00

(b) Payment for the fines set forth in subsection (a) of this section shall be due within thirty (30) days of issuance of a citation by the Commissioner or designee. Any person wishing to contest any of the aforementioned fines shall, within thirty (30) days of issuance of the fine or fines, petition the Commissioner or designee, in writing, for an administrative hearing. If requested, the hearing shall then be scheduled by the Commissioner or designee as provided in the Administrative Procedures Act.

(c) Employers who voluntarily request an onsite inspection shall not be subject to monetary penalties for hazards identified during the course of the voluntary inspection, provided that such hazards are corrected within the timeframes established during the consultation visit.

(d) Funds collected as payment from a violator for administrative fines imposed for violation of the Oklahoma Occupational Health and Safety Standards Act shall not be retained by the Department of Labor, but shall be deposited to the Department of Labor Administrative Penalty Revolving Fund for transfer to the General Revenue Fund.

[OAR Docket #17-625; filed 7-11-17]

**TITLE 380. DEPARTMENT OF LABOR
CHAPTER 50. ABATEMENT OF FRIABLE
ASBESTOS MATERIALS RULES**

[OAR Docket #17-626]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 5. Contractor, Supervisor, and Worker Licensing and Requirements

380:50-5-5 [AMENDED]

380:50-5-6 [REVOKED]

380:50-5-7 [REVOKED]

380:50-5-8 [AMENDED]

380:50-5-10 [AMENDED]

380:50-5-11 [AMENDED]

380:50-5-12 [AMENDED]

Subchapter 7. Violations

380:50-7-3 [NEW]

Subchapter 11. Laboratory Requirements

380:50-11-5 [AMENDED]

Subchapter 17. Minimum Abatement Standards

380:50-17-9 [AMENDED]

Subchapter 25. Contractor Work Fee

380:50-25-1 [AMENDED]

380:50-25-3 [AMENDED]

Appendix A. Vehicle Warning Signs [NEW]

AUTHORITY:

Department of Labor; 40 O.S. §§ 452, 453, and 456.

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GIST/ANALYSIS:

The rules amend the schedule of administrative fees for the application, licensing, examination, and certification of asbestos abatement contractors for asbestos abatement. The rules amend the schedule of administrative fees paid to the Department of Labor for each separate containment area, glovebag, or miniature containment area of any asbestos abatement project. The rules remove the operation and maintenance ("O&M") contractor and worker licensing category. The rules establish a schedule of administrative penalties and fines for violation of the Oklahoma Asbestos Control Act, with the funds to be transferred to the General Revenue Fund. The rules require that one technician performing on-site air monitoring shall be present at all times while abatement work is being performed. In accordance with 40 O.S. § 452, the rules do not exempt public entities from the contractor's work fee.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2017:

SUBCHAPTER 5. CONTRACTOR, SUPERVISOR, AND WORKER LICENSING REQUIREMENTS

380:50-5-5. Licensing of asbestos abatement contractors

Licensing requirements for asbestos abatement contractors are as follows:

(1) Applications shall be submitted on forms prescribed by the Commissioner. Submission of such application shall include a non-refundable one thousand five hundred dollar (~~\$1,000.00~~\$1,500.00) processing fee.

(2) ~~After the statutory one hundred twenty (120) day waiting period, if~~ If a contractor's application is accepted, the contractor will be notified by the Commissioner and required to submit at that time the five seven hundred fifty dollar (~~\$500.00~~\$750.00) license fee. If a contractor fails to provide all required documentation ~~within the one hundred twenty (120) day waiting period~~, the application will be denied.

(3) The applicant shall designate a minimum of one, or a maximum of two, responsible parties to be named on the license. Such responsible parties shall have and maintain the training credentials required for licensing. Documentation of satisfactory completion of the required training and all subsequent refresher training shall accompany the application.

(A) In the absence of such responsible party in the employee of the contractor, the contractor will not be

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allowed to perform asbestos abatement work in the State of Oklahoma.

(B) The responsible party shall have successfully completed and shall have documentation provided for not fewer than two asbestos training courses. One such course shall be an asbestos abatement supervisor's course which fully meets the requirements of Section 380:50-6-3 and 380:50-6-8. The Commissioner shall maintain updated lists of additional training courses acceptable for licensing.

(C) Responsible parties may be changed or added to the license at any time, by paying a fee of ~~fifty~~seventy-five dollars (~~\$50.00~~\$75.00) per change or addition. Documentation of satisfactory completion of required training and all applicable subsequent refresher training shall be submitted.

(4) Prior to issuance of the license, the contractor must have a respirator program meeting all requirements of OSHA or DOL, whichever is most stringent.

(5) Licenses shall be issued for a period of one year.

(6) No contractor may perform any asbestos abatement after expiration of the license.

(7) ~~If a contractor allows the license to lapse for more than thirty (30) days, the license may not be renewed, and licensing will be permitted only after meeting all requirements for a new license, including the one hundred twenty (120) day waiting period.~~

(8) License applicants must be of good character. Conviction for a felony by an applicant, if a proprietor or partner; by an officer, if a corporation; or by a responsible party, shall be grounds for denial of, or revocation of, a contractor's license.

(9) The Commissioner may refuse to issue an asbestos abatement contractor's license to any applicant, if there are records of Notice of Violation (NOV) of NESHAPS regulations by the applicant, or any principal, partner, or officer of the applicant's firm or associated firms, as maintained by EPA.

380:50-5-6. Licensing of operation and maintenance (O&M) contractors [REVOKED]

Licensing requirements for asbestos abatement operation and maintenance (O&M) contractors are as follows:

(1) A special, restricted contractor's license may be issued to a facility owner for performance of asbestos abatement for O&M purposes only. Any such asbestos abatement activity performed under an O&M license shall be limited to the scope of work described in a site specific operations and maintenance program approved by, and at the discretion of the Commissioner.

(2) The one thousand dollar (\$1,000.00) processing fee shall not apply in the case of an O&M license application.

(3) The applicant shall designate one responsible party to be named on the license.

(A) The responsible party shall have and maintain the training credentials required for licensing. Documentation of satisfactory completion of the required

training and all subsequent refresher training shall accompany the application.

(B) ~~In the absence a responsible party in the employee of the contractor, the contractor will not be allowed to perform asbestos abatement work in the State of Oklahoma.~~

(C) ~~The responsible party shall have successfully completed and shall have documentation provided for an asbestos abatement supervisor's course which fully meets the requirements of Section 380:50-6-3 and 380:50-6-8.~~

(D) ~~Responsible parties may be changed or added to the license at any time, by paying a fee of fifty dollars (\$50.00) per change or addition. Documentation of satisfactory completion of required training and all applicable subsequent refresher training shall be submitted.~~

(E) ~~Responsible parties shall be issued, at no charge, a DOL identification card, which must be available at the job site for inspection by the Department of Labor.~~

(4) Prior to issuance of the license, the contractor must have a respirator program meeting all requirements of OSHA or DOL, whichever is most stringent.

(5) Licenses shall be issued for a period of one year. No asbestos abatement will be permitted after the expiration of a contractor's O&M license.

380:50-5-7. Licensing of operation and maintenance (O&M) workers [REVOKED]

Licensing requirements for operation and maintenance (O&M) workers are as follows:

(1) ~~Applications shall be submitted on forms prescribed by the Commissioner.~~

(2) ~~The license fee shall be twenty five dollars (\$25.00) per year.~~

(3) ~~The license shall be issued for a period not to exceed one year and shall expire concurrently with the asbestos training and subsequent refresher training. There will be no grace period wherein a worker will be allowed to work with an expired license.~~

(4) ~~Any worker who has not taken the required refresher course within two years of the previous asbestos worker training or refresher course, shall repeat the asbestos worker training requirements of Section 380:50-6-2 and 380:50-6-7.~~

(5) ~~O&M workers shall have successfully completed and shall provide documentation for an asbestos abatement worker's course and all subsequent worker refresher courses which fully meet the requirements of Section 380:50-6-2 and 380:50-6-7, except O&M workers who perform only small scale, short duration activities may be licensed as O&M workers by completion of an approved O&M course.~~

(6) ~~The licenses shall be issued in the name of the individual applicant and shall be valid only when working for a licensed contractor.~~

(7) License cards shall be available at the job site for inspection by the Department of Labor.

380:50-5-8. Licensing of asbestos abatement supervisors

Licensing requirements for asbestos abatement supervisors are as follows:

- (1) Applications shall be submitted on forms prescribed by the Commissioner.
- (2) The license fee shall be ~~twenty-five~~five fifty dollars (~~\$25.00~~\$50.00) per year.
- (3) The license shall be issued for a period not to exceed one year and shall expire concurrently with the asbestos training and subsequent refresher training. There will be no grace period wherein a supervisor will be allowed to work with an expired license.
- (4) Asbestos abatement supervisors shall have successfully completed and shall provide documentation for:
 - (A) an asbestos abatement supervisor's course and all subsequent supervisor refresher training which fully meets the requirements of Section 380:50-6-3 and 380:50-6-8.
 - (B) a two day, or equivalent, course in ~~an~~ confined space entry following the NIOSH curriculum in confined space entry.
 - (C) the NIOSH 582 course in Analysis of Airborne Asbestos Dust, or equivalent, or a minimum of a two day course in air monitoring techniques.
 - (D) current cardiopulmonary resuscitation (CPR) training, which may be provided by The National Heart Association, The American Red Cross, or other approved training provider.
 - (E) current first aid training, which may be provided by The National Heart Association, ~~the~~ The American Red Cross, or other approved training provider.
 - (F) six (6) months experience as an asbestos abatement worker on job sites that have been inspected by DOL, including a minimum of six (6) different abatement projects or containments, or one year experience as an asbestos abatement worker and six months as an asbestos abatement supervisor on projects which have not been inspected by DOL.
- (5) Licenses shall be issued in the name of the applicant and shall be valid only when working for a licensed contractor.
- (6) License cards shall be available at the job site for inspection by the Department of Labor.

380:50-5-10. Licensing of AHERA asbestos inspectors

Licensing requirements for AHERA asbestos inspectors are as follows:

- (1) Inspection for asbestos-containing materials in any facility under the jurisdiction of Title 40, Sections 450 through 456 shall be performed only by persons who are licensed as AHERA inspectors by the Oklahoma Department of Labor.

(2) AHERA inspectors shall be licensed as a special category of asbestos worker and shall have completed a 24-class-hour course for AHERA Inspectors and all subsequent asbestos inspector refresher training which fully meet the requirements of Sections 380:50-6-4 and 380:50-6-9.

- (3) Applications shall be submitted on forms prescribed by the Commissioner.
- (4) The license fee shall be ~~twenty-five~~five fifty dollars (~~\$25.00~~\$50.00) per year.
- (5) The license shall be issued in the name of the individual applicant.
- (6) The license shall be issued for a period not to exceed one year and shall expire concurrently with the asbestos training and subsequent refresher training. There will be no grace period wherein an inspector will be allowed to work with an expired license.
- (7) Any inspector who has not taken the required AHERA inspector refresher training course within two years of the previous Inspector training or refresher course, shall repeat the AHERA inspector training requirements of Sections 380:50-6-4 and 380:50-6-9.
- (8) License cards shall be available at the job site for inspection by the Department of Labor.

380:50-5-11. Licensing of AHERA asbestos management planners

Licensing requirements for AHERA asbestos management planners are as follows:

- (1) Preparation of management plans specifying response actions for asbestos-containing materials in any facility under the jurisdiction of Title 40, Sections 450 through 456 shall be performed only by persons who are licensed as AHERA management planners by the Oklahoma Department of Labor.
- (2) AHERA Management Planners shall be licensed as a special category of asbestos contractor, shall have a bachelor's degree in a technical subject, or equivalent, and, in addition to the AHERA Inspector training outlined in Section 380:50-5-10(2), shall have completed a 16-hour course for AHERA Asbestos Management Planners which fully meets the requirements of Sections 380:50-6-5 and 380:50-6-10.
- (3) Applications shall be submitted on forms prescribed by the Commissioner.
- (4) The license fee shall be ~~five~~seven hundred five fifty dollars (~~\$500.00~~\$750.00) per year. If the applicant holds a current AHERA project designer license, there shall be no additional fee charged.
- (5) The license shall be issued in the name of the individual applicant.
- (6) The license shall be issued for a period not to exceed one year and shall expire concurrently with the initial management planner training and subsequent management planner refresher training.
- (7) Any management planner who has not taken the required AHERA management planner refresher training

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course within two years of the previous management planner training or refresher course, shall repeat the AHERA inspector training requirements of Sections 380:50-6-4 and 380:50-6-9.

380:50-5-12. Licensing of AHERA project designers

Licensing requirements for AHERA project designers are as follows:

- (1) Preparation of plans and/or specifications for response actions for asbestos-containing materials in any facility under the jurisdiction of Title 40, Sections 450 through 456 shall be performed only by persons who are licensed as AHERA project designers by the Oklahoma Department of Labor.
- (2) AHERA project designers shall have met all requirements for accreditation for asbestos abatement contractor or project designer, and in addition, shall have a bachelor's or advanced degree in architecture, engineering, or industrial hygiene, or an equivalent combination of education, training, and experience as determined by the Commissioner.
- (3) Applications shall be submitted on forms prescribed by the Commissioner.
- (4) The license fee shall be ~~five~~seven hundred ~~five~~ty dollars (~~\$500.00~~\$750.00) per year. If the applicant holds a current AHERA management planner license, there shall be no additional fee charged.
- (5) The license shall be issued in the name of the individual applicant.
- (6) The license shall be issued for a period not to exceed one year and shall expire concurrently with the initial asbestos contractor or project designer training and subsequent project designer refresher training. There will be no grace period wherein a project designer will be allowed to work with an expired license.
- (7) Any project designer who has not taken the required AHERA project designer refresher training course within two years of the previous initial contractor or project designer training or project designer refresher course, shall repeat the initial project designer training requirements of Sections 380:50-6-6 and 380:50-6-11.

SUBCHAPTER 7. VIOLATIONS

380:50-7-3. Fines

(a) In addition to violations issued under OAC 380:50-7-1, the Commissioner of Labor, or his or her designee, may issue an administrative fine for any and all violations of the Oklahoma Asbestos Control Act. All monies collected for violations of the Oklahoma Asbestos Control Act shall be deposited to the Department of Labor Administrative Penalty Revolving Fund for transfer to the General Revenue Fund. The following schedule of fines shall apply to violations of the Oklahoma Asbestos Control Act, per violation per day.

- (1) Serious violations up to \$1000.00
- (2) Non-serious violations up to \$200.00

(3) Unauthorized performance of the work of an asbestos abatement contractor in violation of 40 O.S. § 452(A) up to \$5000.00

(b) Payment for the fines set forth in subsection (a) of this section shall be due within thirty (30) days of issuance of a citation by the Commissioner or designee. Any person wishing to contest any of the aforementioned fines shall, within thirty (30) days of issuance of the fine or fines, petition the Commissioner or designee, in writing, for an administrative hearing. If requested, the hearing shall then be scheduled by the Commissioner or designee as provided in the Administrative Procedures Act.

(c) Funds collected as payment from a violator for administrative fines imposed for violation of the Oklahoma Occupational Health and Safety Standards Act shall not be retained by the Department of Labor, but shall be deposited to the Department of Labor Administrative Penalty Revolving Fund for transfer to the General Revenue Fund.

SUBCHAPTER 11. LABORATORY REQUIREMENTS

380:50-11-5. Technician's requirements

- (a) All reports of analyses shall be signed by the technician performing the analysis.
- (b) All technicians performing on-site air monitoring shall have:
 - (1) The NIOSH course No. 582 on "Sampling and Analysis of Airborne Asbestos Dust", or equivalent. Such course shall have been provided by a government agency or educational institution except, any person with training recognized by DOL prior to the effective date of these rules shall continue to be recognized.
 - (2) A valid asbestos worker, asbestos supervisor, asbestos inspector, asbestos management planner, or asbestos project designer license.
- (c) All technicians performing PCM analysis shall have The NIOSH course No. 582 on "ASampling and Analysis of Airborne Asbestos Dust", or equivalent. Such course shall have been provided by a government agency or educational institution except, any person with training recognized by DOL prior to the effective date of these rules shall continue to be recognized.
- (d) All technicians performing bulk analyses must have a four-day course, or equivalent, in the bulk analysis of asbestos-containing materials.
- (e) All technicians performing on-site air monitoring must follow the sampling procedures identified in 380:50-11-1, 380:50-11-2, and where applicable, the approved project design.
- (f) All technicians performing on-site air monitoring shall maintain an on-site daily activity log. The log shall include:
 - (1) Time of on-site arrival and departure.
 - (2) Times of entrance into the regulated area to ensure sample integrity.
 - (3) Signature of on-site asbestos supervisor.

(4) All cassettes must be properly labeled as they are placed for sample collection.

(g) At least one technician performing on-site air monitoring shall be present on the job site at all times while asbestos abatement work is being performed.

SUBCHAPTER 17. MINIMUM ABATEMENT STANDARDS

380:50-17-9. Asbestos disposal procedures

Asbestos abatement disposal procedures are as follows:

(1) As the work progresses, to prevent exceeding available storage capacity on site, sealed and labeled containers of asbestos waste shall be removed and transported to the disposal location.

(2) Disposal must occur at an authorized site in accordance with regulatory requirements of EPA and applicable state and local guidelines and regulations.

(3) Transportation to the landfill.

(A) Once drums, bags, and wrapped components have been removed from the work area, they shall be loaded into a vehicle for transportation.

(B) Asbestos shall be transported only in enclosed trucks or trailers, except when components containing asbestos to be hauled to a disposal or re-use site are of such a size and/or shape that transport in an enclosed truck or trailer is not feasible.

(C) The cargo area of the truck shall be free of debris and lined with 6-mil poly to prevent contamination from leaking or spilled containers. Floor sheeting shall be installed first and extend up the side walls. Wall sheeting shall be overlapped and taped into place.

(D) Drums shall be placed on level surfaces in the cargo area and packed tightly together to prevent shifting and tipping. Large structural components shall be secured to prevent shifting and bags placed on top. Do not throw containers into truck cargo area.

(E) Personnel loading asbestos-containing waste, not in secured containers, shall be protected by disposable clothing including head, body and foot protection and at a minimum, half face-piece, air-purifying, dual-cartridge respirators equipped with high-efficiency filters. Plastic bags and paper drums shall not be considered secured containers.

(F) Any debris or residue observed on containers or surfaces outside of the work area resulting from cleanup or disposal activities shall be immediately cleaned up using HEPA filtered vacuum equipment and/or wet methods as appropriate.

(G) All contractors' vehicles being used at an asbestos abatement site, including trucks and/or trailers used to haul asbestos shall be required to have current ~~inspection stickers~~ and vehicle licensing as required by state law.

(H) Trucks and/or trailers used to haul asbestos from an abatement site are subject to inspection by DOL prior to use, unless such inspection is waived.

(I) Any time asbestos-containing materials are being loaded or unloaded, transportation vehicles or trailers shall have warning signs visible from all sides of the vehicle or trailer. Such signs shall be a minimum 20 inches by 14 inches upright format and shall contain the legend set forth in Appendix A of this Chapter.

DANGER ASBESTOS DUST HAZARD CANCER AND LUNG DISEASE HAZARD
Authorized Personnel Only Notation
1 inch Sans Serif, Gothic, or Block
1 inch Sans Serif, Gothic, or Block
3/4 inch Sans Serif, Gothic, or Block
14 Point Gothic

(J) Anytime asbestos-containing materials are being transported on public roadways in quantities greater than three disposal bags, one disposal barrel, or any amount as wrapped bulk material, the vehicle or trailer shall display U.S. Department of Transportation CLASS 9 placards on each side and each end. No such placard shall be displayed by any vehicle or trailer which does not contain asbestos materials.

(K) Components exposed to the elements must be wrapped with at least two layers of reinforced 6-mil poly secured with tape.

(L) Elongate wrapped components shall be wrapped with a spiral winding of duct tape or other securing medium.

(M) Bulk wrapped components shall be sufficiently wrapped with duct tape or other securing medium as to prevent dislodging of the wrapping.

(4) Disposal at the landfill.

(A) Upon reaching the landfill, trucks are to approach the dump location as closely as possible for unloading of the asbestos-containing waste.

(B) Bags, drums and components shall be examined as they are off-loaded at the disposal site. Material in damaged containers shall be repacked in empty drums or bags as necessary. (Local requirements may not allow the disposal of asbestos waste in drums. Check with appropriate agency and institute appropriate alternative procedures.)

(C) Waste containers shall be placed on the ground at the disposal site, not pushed or thrown out of trucks, unless bulk containers, designed and manufactured to be mechanically unloaded are utilized, provided:

(i) Such containers are handled in accordance with manufacturers specifications.

(ii) Care is taken to prevent puncture or rupture of such containers.

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(D) Personnel off-loading containers at the disposal site shall wear protective equipment consisting of head, body and foot protection and, at a minimum, half face-piece, air-purifying, dual-cartridge respirators equipped with high-efficiency filters.

(E) Following the removal of all containerized waste, the truck cargo area shall be decontaminated using HEPA vacuums and/or wet methods to meet the no-visible-residue criterion. Poly shall be removed and discarded along with contaminated cleaning materials and protective clothing, in bags or drums at the disposal site.

(2) For projects which are not a part of a definite containment area, or are performed with multiple glovebags or miniature containments, a fee of ~~Two Hundred Dollars (\$200.00)~~ Three Hundred Fifty Dollars (\$350.00), plus ~~Five Dollars (\$5.00)~~ Ten Dollars (\$10.00) per such glovebag or miniature containment, shall be paid.

(3) Abatement projects which are undertaken by an owner or agent of an owner as a part of an operation and maintenance program under Section 380:50-14 shall be charged a fee of ~~one hundred fifty dollars (\$150.00)~~ Two hundred fifty dollars (\$250.00) per month for any month in which abatement took place. Failure to pay the required fee will void the operation and maintenance program, making subsequent abatement fall under the full scope of this Chapter.

SUBCHAPTER 25. CONTRACTOR WORK FEE

380:50-25-1. Contractor fee

Contractors shall pay to the Department of Labor a fee of:

(1) ~~Six hundred dollars (\$600.00)~~ One thousand dollars (\$1000.00) for each separate containment area of any asbestos abatement project.

380:50-25-3. Public entity exemption from fees

Asbestos abatement projects on property owned by any political subdivision of the State of Oklahoma are not exempt from the contractor's work fee.

APPENDIX A. VEHICLE WARNING SIGNS [NEW]

<u>DANGER ASBESTOS DUST HAZARD CANCER AND LUNG DISEASE HAZARD</u>
<u>Authorized Personnel Only Notation</u>
<u>1 inch Sans Serif, Gothic, or Block</u>
<u>1 inch Sans Serif, Gothic, or Block</u>
<u>3/4 inch Sans Serif, Gothic, or Block</u>
<u>14 Point Gothic</u>

[OAR Docket #17-626; filed 7-11-17]

Permanent Final Adoptions

TITLE 380. DEPARTMENT OF LABOR CHAPTER 55. AMUSEMENT RIDE SAFETY RULES

[OAR Docket #17-627]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 1. General Provisions
380:55-1-3 [NEW]
Subchapter 5. Fees
380:55-5-1 [AMENDED]
380:55-5-5 [AMENDED]
380:55-5-6 [NEW]
Subchapter 11. Insurance
380:55-11-2 [AMENDED]
Subchapter 15. Waiver Self-Inspections
380:55-15-1 [AMENDED]
380:55-15-2 [AMENDED]
380:55-15-3 [REVOKED]

AUTHORITY:
Department of Labor; 40 O.S. §§ 460, 463, and 469, Amusement Ride Safety

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SUPERSEDED EMERGENCY ACTIONS:
n/a

INCORPORATIONS BY REFERENCE:
n/a

GIST/ANALYSIS:
The rules establish a schedule of administrative fees for the registration and inspection of amusement rides. The rules eliminate the "Kiddie Ride" classification and establish six categories of amusement rides. The rules establish a maximum administrative fine that may be assessed. The rules modify the experience requirements for Insurance Inspectors to include NAARSO level I certification. The rules modify the waiver inspection program procedures so that initial inspections are conducted by a Department of Labor inspector, with temporary amusement devices then being inspected by the Department of Labor at one mid-season inspection and one annual safety compliance audit. The rules remove the existing waiver self-inspection frequency provisions. The circumstances which created the need for the rules are that SB1199 changed the classifications for amusement rides contained in 40 O.S. § 463.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2017:

SUBCHAPTER 1. GENERAL PROVISIONS

380:55-1-3. Penalties

(a) For any violation of the Oklahoma amusement ride safety statutes or rules, the Commissioner may assess an administrative fine of not more than one thousand dollars (\$1000.00) per violation, per day, which fine may be assessed in addition to any other penalty provided pursuant to this Act. All funds received as payment for administrative fines shall be deposited to the Department of Labor Administrative Penalty Revolving Fund for transfer to the General Revenue Fund.

(b) Payment for the fines set forth in subsection (a) of this section shall be due within thirty (30) days of issuance of a citation by the Commissioner or designee. Any person wishing to contest any of the aforementioned fines shall, within thirty (30) days of issuance of the fine or fines, petition the Commissioner or designee, in writing, for an administrative hearing. If requested, the hearing shall then be scheduled by the Commissioner or designee as provided in the Administrative Procedures Act.

(c) Any person failing to comply with a fine assessment or other administrative order of the Department within ninety (90) days of issuance of such assessment or order shall be subject to suspension and/or revocation of all certificates of inspection issued to the person by the Department of Labor. The Department may not renew a certificate of inspection until all outstanding fine assessments have been paid unless timely appeal of the assessment(s) was made and the appeal is still pending.

SUBCHAPTER 5. FEES

380:55-5-1. Three different fees

(a) There are three different fees effective September 15, 2017:

- (1) A fee is charged for the annual ride registration.
- (2) A per ride inspection fee is charged for inspection which includes physical inspection of the ride during erection and/or set up, inspection of the ride prior to and/or during operation for rides designated KIDDIE (K) and a separate fee for rides designated MAJOR (M).
- (3) An hourly fee is charged for actual inspection time which includes physical inspection of the ride during erection and/or set up, inspection of the ride prior to and during operation for rides designated OTHER (O). An annual safety compliance audit fee may be charged, which includes a review of safety-related processes and documentation.

(b) In the event that an owner or operator's show will not arrive at the inspection site as scheduled, the Department of Labor shall be notified 24 hours in advance otherwise a fee shall be charged for the scheduled inspection of all active kiddie, major and other (@ 1 hour) rides at \$100.00 per hour.

380:55-5-5. Criteria for type determination

Criteria for type determination of amusement rides are as follows:

(1) ~~KIDDIE RIDES: Primarily designed and/or engineered for children although adults may or may not fit into carriers or tubs. Inflatables rides are kiddie rides~~ Permanent amusement device: a device which is used, or intended to be used, as an amusement device that is erected to remain a lasting part of the premises.

(2) ~~MAJOR RIDES: Primarily designed and/or engineered for adults and families. Children usually fit into the carriers or tubs. Water park rides are major rides~~ Temporary amusement device: a device which is used as an amusement device that is regularly relocated with or without disassembly.

(A) Complex: any temporary amusement device with a setup time of one man-hour or more.

(B) Non-complex: any temporary amusement device with a setup time of less than one man-hour.

(3) ~~OTHER RIDES~~ Inflatable amusement device: an amusement ride or device consisting of air-filled structures designed for commercial use where the public pays a price to rent or use such a device as specified by the manufacturer, and may include, but not be limited to, bounce, climb, slide or interactive play. They are made of flexible fabric, kept inflated by continuous air flow by one or more blowers and rely upon air pressure to maintain their shape.

(A) SIZE:

- (i) ~~When erected are large.~~
- (ii) ~~May be transported on several tractor trailer rigs.~~
- (iii) ~~Encompass large amounts of ground space.~~
- (iv) ~~Usually are exceptionally tall, wide or deep.~~

(B) COMPLEXITY:

- (i) ~~May have independent self-propelled carriers.~~
- (ii) ~~May require several pre-setup inspections at various stages of erection due to many parts or sub assemblies.~~
- (iii) ~~Requires many temporary or permanent fasteners of different types.~~
- (iv) ~~Generally have large or many integrated systems involving electronic, hydraulic, mechanical or pneumatic devices.~~
- (v) ~~Drive systems usually involve two or more belt, cable, chain, rod or shaft devices.~~

(C) The water quality of water park rides shall be included in this category.

(4) Substantial amusement device: a device which is used as an amusement device and is substantial in its size or complexity, such that an inspection of the device is complex.

(5) Water amusement device: an amusement device that uses water as a means of transport or entertainment and its height exceeds 18 feet or its structure is complex.

(6) Other amusement device: all other amusement devices not classified in paragraphs (1)-(5) of this subsection.

380:55-5-6. Fees

(a) The annual amusement ride registration fee shall be up to \$100.00.

(b) The annual inflatable registration fee shall be up to \$50.00.

(c) The inspection fee shall be:

(1) up to \$100.00 per amusement ride, per inspection;

(2) up to \$50.00 per inflatable, per inspection, when 1-20 inflatables are inspected at one time;

(3) up to \$35.00 per inflatable, per inspection, when more than 20 inflatables are inspected at one time;

(4) up to \$500.00 per substantial amusement device, per inspection;

(5) up to \$50.00, for one seasonal safety compliance audit;

(6) up to \$100.00 per water park ride, per dry inspection;

(7) up to \$50.00 per water park ride, per wet inspection;

(8) up to \$300.00 per other ride, per inspection;

(d) The licensing fee for third party inspectors shall be \$50.00.

(e) Prior to the beginning of each calendar year, the Commissioner of Labor shall prepare a schedule of fees to be charged during the following year for the registration and inspection, by amusement ride type, of all amusement rides in this state. No fee shall exceed the maximum fee listed in this section for each amusement ride type. The fee schedule shall be posted on the Department of Labor's publicly accessible website and shall be made available at the Department of Labor's office. The schedule of fees shall be accompanied by an explanation of the Amusement Ride Safety Program's revenue and expenses for the preceding fiscal year and the Amusement Ride Safety Program's expected revenue and expenses for the upcoming fiscal year. The schedule of fees shall be designed to generate revenues sufficient to implement and enforce the Department of Labor's Amusement Ride Safety Program but projected fiscal year revenues should not exceed projected fiscal year expenses.

SUBCHAPTER 11. INSURANCE

380:55-11-2. Inspectors

(a) Insurance Inspectors shall be licensed (no fee) by the Labor Commissioner. The requirements to become licensed are as follows:

(1) The inspector shall be a full-time employee of an insurance carrier of loss prevention authorized to do business by the Insurance Commission of Oklahoma.

(2) The inspector's most recent 7 years experience shall include 5 years in the field of amusement ride inspection; inspector must, at a minimum, have a current NAARSO level I certification and must provide the Department of Labor with a copy of the certification.

(3) The application shall be in affidavit form specifying that the inspector will abide by all rules adopted by the Labor Commissioner.

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(b) The license shall be issued for one (1) year, and is renewable on or before January 31 each year, accompanied by proof of continued employment by the insurance carrier. The license may be revoked for cause.

(c) Insurance inspectors shall transmit legible copies of inspection reports to the Department of Labor within seven (7) calendar days after inspection.

SUBCHAPTER 15. WAIVER SELF-INSPECTIONS

380:55-15-1. Applicability

The Department of Labor has developed a waiver self-inspection program for companies operating temporary amusement devices in order to decrease inspection burdens on owners and operators of temporary amusement devices. Waiver self-inspections are only applicable to ~~shows~~ owners and/or operators who operate in Oklahoma for more than 5 (five) sites/locations within the calendar year.

380:55-15-2. Waiver requirements

(a) Waiver self-inspection requirements are as follows:

(1) Owners/Operators must retain, on each site, manufacturers' ride manuals with all bulletins and changes updated and Department of Labor approved ride inspection checklists. The ride manuals and ride inspection checklists shall be under control of the waiver inspector. Current copies of the ride inspection checklists shall be provided to the Department of Labor to be retained on file. Owners/Operators must also retain, on each site, a current copy of the Oklahoma Amusement Ride Safety Act.

(2) For homemade or out-of-production rides, the owner/operator shall develop an inspection checklist, to be approved by the Department of Labor. The inspection checklist shall be retained on site, under the control of the waiver inspector. Current copies of the ride inspection checklist shall be provided to the Department of Labor to be retained on file.

(3) After the initial Department of Labor inspection and waiver approval, ~~The~~ the ride owner/operator shall cause the initial pre-opening inspections of all amusement rides at each site, including the generator(s), electrical systems, and general midway safety by the approved waiver inspector. The waiver inspector shall be responsible for inspecting all rides on the midway including booked in rides. Inspection documents shall be provided by the owner/operator. The waiver inspector shall also monitor that all rides are being operated in a safe manner on a daily basis. In the event of an unforeseeable emergency or illness, the approved waiver inspector may appoint a substitute waiver inspector who must be approved by the Commissioner of Labor or the Commissioner's designee prior to the inspection.

(4) The ride owner/operator shall cause the daily pre-opening inspection of each ride, by the operator. Inspection documents shall be maintained by the owner/operator.

(5) The waiver inspector shall review the operators' daily pre-opening inspection documents on a daily basis. The waiver inspector shall supervise the operators performing daily pre-opening inspections.

(6) Waiver inspection reports shall be maintained at each site and held for the remainder of the current operating season or calendar year. They shall then be maintained at winter quarters location for not less than 3 (three) years. The Department of Labor may request copies of waiver inspection reports at no charge.

(7) Waiver self-inspections shall not apply to the Oklahoma State Fair, the Tulsa State Fair, and any midway sites with over 25 (twenty-five) rides.

(8) The Department of Labor (~~Safety Standards Division~~) shall be informed of all show dates and locations within Oklahoma. The ride owner/operator must provide the Department with itinerary updates with new additions, cancellations, or other changes. The Department will also be provided a complete list of all rides owned/operated. The list will include ride name, manufacturer, serial number, and Oklahoma registration number, where possible.

(9) Waiver requests will be granted on an annual basis.

(10) Department of Labor inspectors may spot check rides and self-inspection documentation at any time, without prior notification, ~~at no charge.~~

(11) If the approved waiver inspector is not the actual ride/show owner, he must have on file with the Department of Labor a formal letter from the ride/show owner that said waiver inspector is empowered to order cessation of ride operation due to unsafe conditions (mechanical or operational) to include booked in rides.

(12) Non-compliance with waiver requirements, or public safety violations found at the time of the spot checks may result in any or all of the following:

(A) Shut down of the ride(s).

(B) Department of Labor inspection(s) at next set-up(s).

(C) Formal Department of Labor hearing regarding the cancellation of the waiver request for the remainder of the Oklahoma operating season or a period to be determined by the hearing officer.

(D) Issuance of an administrative penalty.

(13) Only approved Department of Labor waiver inspectors may conduct waiver inspections. The Department shall maintain a list of persons who are approved to act as a waiver inspector. No other person may act as, or perform any part of, the waiver inspection.

(b) In addition to the requirements contained in subsection (a), complex temporary amusement device waiver inspections must meet the following requirements:

(1) All complex temporary amusement devices shall have the initial inspection completed by the Department of Labor prior to final waiver approval or operation. After the

Oklahoma Department of Labor completes initial inspection, the Department will conduct one mid-season inspection and an annual safety compliance audit. The dates of state inspections are at the discretion of the Department of Labor. The designated waiver inspector for an owner/operator of complex temporary amusement devices shall be required to perform waiver self-inspections on rides that are included in the initial inspection conducted by Department of Labor.

(2) Owners may add new devices to their current waiver cycle only after they have submitted a revised ride list and have been inspected by the Department of Labor.

(3) Complex temporary amusement device waiver self-inspections are subject to NAARSO inspector certification requirements.

(c) In addition to the requirements contained in subsection (a), non-complex temporary amusement device waiver inspections must meet the following requirements:

(1) Non-complex temporary amusement devices shall have the initial inspection completed by the Department of Labor prior to final waiver approval or operation. After the Department of Labor completes the initial inspection, rides requiring less than one (1) man-hour setup time shall receive one Department of Labor mid-season inspection and a Department of Labor annual safety compliance audit.

(2) Owners may add new devices to their current waiver cycle only after they have submitted a revised ride list and have been inspected by the Department of Labor.

(3) Non-complex temporary amusement device self-inspections are exempt from NAARSO inspector certification requirements and may be inspected by the business owner designee who must maintain all inspection records and make said records available to the Department of Labor.

(d) Inflatable amusement devices must meet the following requirements:

(1) At the beginning of each year, and any time an owner or operator of inflatable amusement devices adds a new inflatable device for operation, the owner or operator shall provide an inventory to the Department of Labor and shall pay the registration fee for each inflatable. If the inflatable device is set up with temporary amusement devices or permanent amusement devices, the inspection schedule will coincide with the temporary and/or permanent amusement devices.

(2) The Department of Labor may inspect any and all inflatable devices at any time upon complaint, or at the request of the owner/operator or the public, or if the Commissioner of Labor determines inspection is necessary for the safety of the public.

(3) An inflatable amusement device is subject to all the other provisions regarding amusement devices included in these rules and the Oklahoma Statutes including requirements for maintaining liability insurance and reporting injuries.

380:55-15-3. Waiver self-inspection frequency [REVOKED]

~~Waiver self inspections frequency is determined as follows:~~

~~(1) Non-complex portable rides intended for less than 12 (twelve) patrons and requiring less than 1 (one) man-hour setup time, shall receive a Department of Labor inspection 3 (three) times per operating season or approximately every 60 (sixty) days whichever is more frequent.~~

~~(2) Non-complex portable ride waiver self-inspections are exempt from NAARSO inspector certification requirements.~~

~~(3) All other portable rides shall be Department of Labor inspected at approximately one third of the locations in Oklahoma. The dates of state inspections are at the total discretion of the Department of Labor.~~

[OAR Docket #17-627; filed 7-11-17]

**TITLE 380. DEPARTMENT OF LABOR
CHAPTER 70. ELEVATOR SAFETY ACT**

[OAR Docket #17-628]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions

380:70-1-2 [AMENDED]

380:70-1-3 [NEW]

Subchapter 3. Administration

380:70-3-5 [AMENDED]

380:70-3-9 [AMENDED]

380:70-3-10 [AMENDED]

380:70-3-11 [AMENDED]

380:70-3-12 [AMENDED]

380:70-3-13 [AMENDED]

380:70-3-15 [AMENDED]

Subchapter 5. Licenses

380:70-5-3 [AMENDED]

Subchapter 11. General Requirements

380:70-11-8 [AMENDED]

380:70-11-10 [AMENDED]

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INCORPORATIONS BY REFERENCE:

n/a

Permanent Final Adoptions

GIST/ANALYSIS:

The rules provide for the issuance of licenses to third party inspectors to conduct periodic inspections. The rules make minor changes to the procedures in place for periodic inspections which are currently performed by Department of Labor inspectors, allowing for periodic inspections by third party inspectors. The rules remove the criminal penalties for violations of the Elevator Safety Act, which remain in statute at 59 O.S. § 3021(B). The rules set a maximum administrative fine for violations of the Elevator Safety Act and provide for administrative appeals of any citations issued. All monies collected for violations of the Elevator Safety Act shall be deposited in the Department of Labor Administrative Penalty Revolving Fund and transferred to the General Revenue Fund. The rules require that any fines assessed must be paid prior to issuance or renewal of a license. The rules establish a schedule of administrative fees for the implementation of the Elevator Safety Act.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2017:

SUBCHAPTER 1. GENERAL PROVISIONS

380:70-1-2. Definitions

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

"Acceptance Test" means a test or a group of tests required by the applicable standard that are performed prior to a conveyance being placed into service or after an approved alteration.

"The Act" means the Oklahoma Elevator Safety Act, Title 59 of the Oklahoma Statutes, Sections 3020 et seq. and the Administrative Rules contained in this Chapter.

"Alteration" means any change, including major repair, made to an existing elevator, escalator, moving walkway or conveyance, its hoistway, enclosure, doors, and controls, other than the repair or replacement of damaged, worn, or broken parts necessary for normal operation. The changing of the speed governor shall be considered an alteration.

"Annually" means a period of twelve (12) ~~calendar~~ calendar months.

"ANSI" means the American National Standards Institute, 1819 L Street NW, 6th Floor, Washington, D.C., 20036.

"ASME" means the American Society of Mechanical Engineers, 3 Park Avenue, New York, NY, 10016-5990.

"ASSE" means the American Society of Safety Engineers, 1800 E. Oakton St., Des Plaines, IL., 60018.

"AWS" means the American Welding Society, 550 N.W. LeJune Road, Miami, Florida 33126.

"Chief Elevator Inspector" means the Chief Elevator Inspector appointed under the Act.

"Commissioner" means the Commissioner of Labor or his/her authorized representative.

"Certificate of Operation" means a document issued by the Commissioner of Labor, affixed to an elevator or conveyance that indicates it has been inspected, tested and found to be in compliance for operation as required by the Act.

"Conveyance" means any elevator, escalator, moving walkway, wheelchair lift or other such device subject to the provisions of the Act.

"Department" means the ~~Elevator Inspection Bureau of the Safety Standards Division of the~~ Oklahoma Department of Labor, 3017 N. Stiles, Suite 100, Oklahoma City, OK 73105.

"Deputy Inspector" means an inspector appointed by the Chief Elevator Inspector subject to the approval of the Commissioner under the provisions of the Act.

"Elevator" means any device for lifting or moving people, cargo, or freight within, or adjacent and connected to, a structure or excavation, and includes any escalator, power driven stairway, moving walkway or stairway chair lift. It does not mean any of the following:

(A) Amusement ride or device subject to inspection and regulation under the provisions of Section 460 et seq. of Title 40 of the Oklahoma Statutes;

(B) Mining equipment subject to inspection and regulation by the Department of Mines;

(C) Aircraft, railroad car, boat, barge, ship, truck, or other self-propelled vehicle or component thereof;

(D) Any boiler grate stoker or other similar firing mechanism subject to inspection under the provisions of the Oklahoma Boiler and Pressure Vessel Safety Act; or

(E) A dumbwaiter, conveyor, chain or bucket hoist, construction hoist or similar devices used for the primary purpose of elevating or lowering materials. This list is not exhaustive.

"Elevator Apprentice" means an unlicensed person registered with the Department of Labor who works under the direct supervision of a licensed elevator mechanic, licensed elevator contractor, or licensed elevator inspector.

"Existing Installation" means any elevator, escalator, moving walkway or other conveyance subject to the provisions of this Act in operation before the effective date of this Act.

"Expedited Inspection" means an inspection performed by the Commissioner, Chief Elevator Inspector, or Deputy Inspector that is to be performed during the same calendar month as it is requested.

"Freight Elevator" means an elevator used for carrying freight and on which only the operator and the person(s) necessary for loading and unloading are permitted to ride.

"Installation Permit" means a document issued by the Commissioner to a licensed elevator contractor upon receipt of an application to install or construct an elevator or conveyance which indicates Department approval of the proposed installation or construction project.

"ICC" means the International Code Council, 5360 Workman Mill Road, Whittier, California, 90601-2298.

"Maintenance" means a process of routine examination, lubrication, cleaning, and adjustment of parts, components, and/or subsystems for the purpose of ensuring performance in accordance with the applicable Code requirements.

"May" means that an action or requirement is optional and non-mandatory.

"Mobility Restricted" means a person or persons unable to move freely without the aid of mechanical assistance such as walkers, wheelchairs, crutches or canes, and/or an inability to move freely because of a physical or mental disability, handicap or restriction.

"New Installation/New Construction" means a completely new elevator or conveyance installation or construction occurring on or after the effective date of this Act.

"NFPA" means The National Fire Protection Association, Inc., One Batterymarch Park, Quincy, Massachusetts, 02169-7471.

"Night Time Inspection" means any inspection that does not occur during "reasonable hours."

"Occurrence" means any event involving an elevator, escalator, moving walkway, wheel chair lift or other conveyance subject to the provisions of this Act, that the operation of which has caused personal injury or property damage.

"Owner-Occupied Private Residence" means a separate dwelling, or a separate apartment in a multiple dwelling/complex, which is occupied by the legal owner and/or his/her family.

"Periodic Test" means a group of tests performed at common time intervals required by the authority having jurisdiction.

"Personnel Hoist" means a mechanism and its hoistway for use in connection with the construction, alteration, ongoing maintenance or demolition of a building, structure or other work. It is used for hoisting and lowering workers or materials or both, and is equipped with a car that moves vertically on guide members

"Professional Engineer" means a mechanical engineer registered as such in one or more states, or the equivalent certification registration if from another country.

"Reasonable Hours" means that period of time beginning one hour prior to normal advertised business hours and ending one hour after normal advertised business hours. For facilities normally open twenty-four (24) hours, reasonable hours shall be that period of time beginning at 7:00 a.m. and ending at 6:00 p.m.

"Red Tag" means a document issued by a licensed elevator inspector and attached to an elevator or conveyance declaring that any further operation of the elevator or conveyance shall constitute a violation of the Oklahoma Elevator Safety Act.

"Repair" means reconditioning or renewal of parts, components, and/or subsystems, not constituting an alteration, necessary to keep equipment in compliance with applicable Code requirements and for which a permit is not required.

"Responsible Party" means that person(s) so named and designated on an elevator contractors license required to have met and maintain training credentials and knowledge necessary to satisfy the requirements of the Act.

"Shall" means that an action or requirement as stated in this Chapter is mandatory.

"Special Inspector" means an inspector, licensed by the Department, who is regularly employed by an insurance

company providing liability insurance on an elevator, escalator, moving walkway, chairlift or conveyance subject to the provisions of the Act.

"State Special" means the designation applied to an elevator or conveyance subject to the provisions of this Act that is of special or unique construction and cannot be constructed, installed and/or operated in accordance with the applicable ASME Code and the provisions of this Act.

"Temporarily Dormant" means an elevator or conveyance whose power supply has been disconnected by removing fuses and placing a padlock on the mainline disconnect switch in the "OFF" position.

"Temporary Certificate of Operation" means a document issued by a licensed elevator inspector granting the temporary continued operation of a non-compliant elevator or conveyance for a period not to exceed ~~thirty (30)~~ sixty (60) days so that repairs can be performed; or to a licensed elevator contractor for the temporary continued operation of an elevator or personnel hoist for a specified period of time not to exceed the length of the applicable construction project.

"Triennially" means a period of thirty-six (36) ~~ealen-~~ calendar months.

380:70-1-3. Fees

(a) Upon the effective date of this rule, the following schedule of administrative fees shall apply to implementation of the Elevator Safety Act. The following schedule of administrative fees is derived from statute and shall supersede the fees provided for in 59 O.S. § 3024.

(b) Fees shall be as follows:

- (1) Elevator mechanic examination \$100.00
- (2) Initial and renewal elevator contractor license \$200.00
- (3) Initial and renewal elevator inspector license \$100.00
- (4) Initial and renewal elevator mechanic license \$75.00
- (5) Annual elevator apprentice registration \$50.00
- (6) Late renewal - in addition to license fee \$10.00
- (7) Replacement of lost or mutilated license \$25.00
- (8) Reinstatement - in addition to license fee \$100.00
- (9) Existing elevator - certification of operation \$25.00
- (10) New elevator - permit review \$500.00
- (11) New elevator - inspection and certification \$150.00
- (12) Elevator temporary certification \$25.00
- (13) Elevator temporary mechanic license for 30 days \$25.00
- (14) Labor for chief elevator inspector or deputy elevator inspector to perform inspection for issuance of certificate of operation, per site visit:
 - (A) any escalator or moving walkway \$250.00
 - (B) elevator, two-four floors \$200.00
 - (C) elevator, five-ten floors \$250.00
 - (D) elevator, eleven-fifteen floors \$300.00
 - (E) elevator, greater than fifteen floors \$300.00 plus \$10 per floor over fifteen floors
 - (F) wheelchair lift \$50.00

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- (15) Labor for chief elevator inspector or deputy elevator inspector to perform expedited inspection for issuance of certificate of operation for new installation \$1,000.00
- (c) Fees shall be paid directly to the Department of Labor.

SUBCHAPTER 3. ADMINISTRATION

380:70-3-5. Inspection frequencies; variations

(a) Elevators, escalators, moving walkways, chairlifts and conveyances subject to the provisions of this Act shall be inspected for the purpose of issuing a Certificate of Operation in accordance with the following frequencies:

- (1) Any hydraulic elevator or conveyance shall be inspected not less than once every 2 (two) years;
- (2) Any wire rope elevator, regardless of floors, shall be inspected annually;
- (3) Escalators and moving walkways shall be inspected annually;
- (4) Wheelchair lifts shall be inspected triennially;
- (5) Temporary elevators shall be inspected at each installation/erection; and
- (6) Any elevator or other such conveyance subject to the provisions of this Act located in a structure whose occupants are mobility restricted, such as hospitals, nursing homes and residential care facilities, shall be inspected annually;
- (7) Any other type of elevator or conveyance not addressed under these provisions, in the Act or rules, shall be inspected annually.

(b) Elevators and conveyances located in owner-occupied private residences shall be exempt from the provisions of these rules, except:

- (1) All such devices shall be designed, constructed, and installed in accordance with the applicable ASME Code and this Act.
- (2) New installations shall receive a Final Acceptance Inspection ~~from the Department~~ in accordance with the provisions of this Act. Any Final Acceptance Inspection conducted by a third party inspector must be submitted to the Department for approval.
- (3) Any elevator or conveyance located in an owner-occupied private residence shall be evaluated and tested by a licensed elevator mechanic or inspected by a licensed elevator ~~certificate~~ inspector as provided in this Chapter, prior to a transfer of title or ownership of the property.
- (4) All occurrences shall be reported to the Department and investigated in accordance with the provisions of this Act and these Rules.

(c) Based upon documentation of such actual service conditions by the owner or user of the operating equipment, the Commissioner may, at his/her discretion, permit variations in the inspection frequency as provided in the Act.

(d) The inspections herein required shall be made by the Commissioner, Chief Elevator Inspector, Deputy Inspector, Certificate Inspector or a Special Inspector as provided for in the Act. Owners or lessees shall not be relieved of the duty to have the aforementioned periodic inspections performed

in a timely manner whether the inspections are performed by the Department or a third party inspector. Inspectors shall have free access during reasonable hours, to any premises in the state where an elevator, escalator, moving walkway, wheelchair lift, conveyance or other device covered by this Act, is being installed, constructed, repaired, altered, or operated, for the purpose of ascertaining whether such device is being constructed, installed, repaired, altered and/or operated in accordance with the provisions of the Act. Inspections may be conducted without prior notice.

(e) Anytime the Chief or Deputy Elevator Inspectors arrive for a scheduled inspection of an elevator or conveyance and said inspection cannot be conducted because the elevator or conveyance is not ready for inspection and therefore needs to be rescheduled, the Department will still charge the fee for the labor and costs associated with the originally scheduled inspection in accordance with the fees listed in ~~59 O.S. 3024(B)(15)~~ OAC 380:70-1-3, in addition to any other fines or penalties assessed.

380:70-3-9. Temporary Certificates of Operation

(a) Temporary Certificates of Operation may be issued for established elevators or conveyances after the required inspection to renew a Certificate of Operation subject to the following conditions:

(1) When a routine inspection is performed and the inspector finds that the elevator or conveyance does not comply with the provisions of the Act, the inspector will explain what the violations are, what repairs are required, and shall also document them on an inspection report and/or checkoff list. Upon agreement of a reinspection date between the inspector and the owner or lessee of not more than 60 days, the inspector may issue a Temporary Certificate of Operation for the elevator or conveyance.

(2) Elevators or conveyances granted a Temporary Certificate of Operation shall be re-inspected prior to the expiration date of the Temporary Certificate of Operation. If any of the conditions that caused the issuance of a Temporary Certificate of Operation are found to have not been corrected, no further Certificates shall be issued and the Chief Elevator Inspector shall be consulted about future operations of the unit including but not limited to extensions of time, restricted operations or up to being Red Tagged.

(3) ~~In addition to any other fee provided for in the Act, a fee for the issuance of a Temporary Certificate of Operation shall be assessed.~~

(4) The issuance of a Temporary Certificate of Operation shall be reported to the Department by the inspector within 24 hours or the first working day after its issuance.

(b) Temporary Certificates of Operation may be issued for new elevators or conveyances at the request of a licensed elevator contractor for elevators or conveyances and personnel hoists in accordance with the following requirements:

(1) Issuance for Elevators. The Chief Elevator Inspector or a Special or Certificate Inspector may allow the temporary use of any elevator for passenger or freight service, not for use by the general public, during its new

installation or alteration under the authority of a Temporary Certificate of Operation, issued for each class of service. Such limited certificates shall not be issued for elevators until the elevator has been tested, electric elevators with a capacity of 125% load test of the brake holding and stopping, and rated load test of, and the car safety-safeties, hydraulic elevators test with the rated load, working and relief pressure, hoistway door interlocks, car door switch, and terminal stopping devices have been tested to determine the safety of the equipment for the specified construction purposes. These test reports shall be kept on site for the inspector to review.

(2) Issuance for Personnel Hoists. The Chief Elevator Inspector may allow the temporary use of any personnel hoist under the authority of a Temporary Certificate of Operation. Such limited certificate shall not be issued until the personnel hoist has been tested with a rated load, and the car safety, hoistway door interlocks, car door switch, and terminal stopping devices have been tested to determine the safety of the equipment.

(3) Expiration. Temporary Certificates of Operation issued in accordance with Subsections (b)(1) and (b)(2) shall expire pursuant to the following:

(A) Temporary Certificates of Operation for new elevators or conveyances may be issued for a period not to exceed ninety (90) days.

(B) Temporary Certificates of Operation for personnel hoists may be issued for a period of time not to exceed ~~the length of the applicable construction project~~ ninety (90) days.

(C) Such certificates may be renewed at the discretion of the Chief Elevator Inspector upon receiving a written request showing justifiable cause for renewal.

(c) In addition to any other fee provided for in the Act, a fee for the issuance of a Temporary Certificate of Operation shall be assessed and paid to the Department.

380:70-3-10. Noncomplying conveyances

(a) Whenever the Commissioner or his/her duly appointed representative determines that an elevator or conveyance is subject to the provisions of this Act and that the operation of such conveyance is exposing the public to an unsafe condition likely to result in serious personal injury or property damage, he/she may immediately order in writing that the use of the elevator or conveyance be stopped until such time as it is determined that the conveyance has been made safe for use by the public. Any such written order shall constitute an immediate suspension of any valid Certificate of Operation granted under the provisions of this Act.

(b) Whenever the Commissioner or his/her duly appointed representative determines that the provisions of this Act and these rules and regulations have not been complied with, he/she may refuse to issue or renew, or may revoke or suspend a Certificate of Operation.

(c) Written notification as required in subsection (a) of this section may be in the form of a "Red Tag" affixed to the elevator or conveyance at the time of inspection by the elevator inspector, Commissioner, Chief Elevator Inspector, or Deputy

Inspector stating that any further operation of the conveyance is in violation of the provisions of the Elevator Safety Act. If a Certificate Inspector or Special Inspector reasonably believes that the operation of a conveyance is exposing the public to an unsafe condition likely to result in serious personal injury or property damage, the Certificate Inspector or Special Inspector shall immediately contact the Chief Elevator Inspector to request authority to issue a "Red Tag" for that specific elevator or conveyance.

(d) Any elevator or conveyance "Red Tagged" shall be rendered disabled by the owner/user or their authorized agent or contractor in the presence of the elevator inspector issuing the "Red Tag" and such elevator or conveyance shall remain inoperative until further operation is authorized by the Commissioner after reinspection and the elevator or conveyance has been found to be in compliance with the provisions of this Act.

380:70-3-11. Appeals and/or hearings

Any denial of an issuance of a Certificate of Operation, Temporary Certificate of Operation, or any order issued by the Commissioner, or any Red Tag notification may be appealed and the appropriate party(ies) shall be afforded the opportunity for a hearing pursuant to the provisions of the Administrative Procedures Act, if written request is received by the Department within fifteen days (15) of the denial letter or notification. Any Special Inspector or Certificate Inspector who has denied the issuance of a Certificate of Operation or Temporary Certificate of Operation, or who has issued a Red Tag, the denial or issuance of such having been appealed, shall be required to attend the hearing and provide testimony regarding such denial or issuance and shall be required to produce all documents relevant to such denial or issuance.

380:70-3-12. Operation of unsafe conveyance

(a) No person shall operate, permit to be operated or use any elevator or conveyance subject to the provisions of this Act if such person knows, or reasonably should know that such operation or use could expose the public to an unsafe condition which is likely to result in personal injury or property damage.

(b) Any licensed elevator contractor, licensed elevator mechanic, or licensed elevator inspector that fails to immediately report an unsafe conveyance to the Chief Elevator Inspector shall be guilty of a misdemeanor and subject to such fine and/or imprisonment as provided for in the Act.

(c) Any licensed elevator contractor, licensed elevator mechanic, or licensed elevator inspector that fails to immediately report an unsafe conveyance to the Chief Elevator Inspector shall be subject to an administrative fine as provided for in OAC 380:70-3-15.

380:70-3-13. Operation without Certificate; operation not in accordance with Act or Rules; operation after refusal to issue or after revocation of Certificate

(a) No person shall operate, use, or permit to be operated any elevator or conveyance subject to the provisions of this Act,

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without a valid Certificate of Operation ~~unless the absence of a valid certificate is the result of the Commissioner's failure to inspect such elevator or conveyance.~~

(b) No person shall operate, use, or permit to be operated any elevator or conveyance subject to the provisions of this Act, other than in accordance with this Act and the rules and regulations promulgated hereunder.

(c) No person shall operate, use, or permit to be operated any elevator or conveyance subject to the provisions of this Act, after the Commissioner or a Special or Certificate Inspector has refused to issue the Certificate of Operation for such elevator or conveyance or after the Commissioner has suspended or revoked the Certificate of Operation for such elevator or conveyance.

380:70-3-15. Penalties

(a) ~~Any person violating the provisions of the Act and this Chapter shall be guilty of a misdemeanor and, upon conviction, subject to a fine of not more than Five Hundred Dollars (\$500.00) for the first offense and up to One Thousand Dollars (\$1,000.00) for each additional offense, or imprisonment in the county jail for not more than ten (10) days, or both such fine and imprisonment. Each day's violation shall constitute a separate offense. Conviction as provided herein shall not preclude any filing of a civil action.~~

(b) ~~The Commissioner shall have subpoena powers and shall have the right to seek injunctive relief to prevent the operation of elevators and/or conveyances lacking a Certificate of Operation after November 1, 2006, or failing inspection.~~

(e) ~~For any violation of the Elevator Safety Act, including failure to pay any invoice issued by the Department as directed by instruction on the invoice, the Commissioner may assess an administrative fine of not more than Five Hundred One Thousand Dollars (\$500.00\$1000.00) per violation, per day, which fine may be assessed in addition to any other penalty provided pursuant to this Act.~~

(c) Payment for the fines set forth in subsection (c) of this section shall be due within thirty (30) days of issuance of a citation by the Commissioner or designee. Any person wishing to contest any of the aforementioned fines shall, within thirty (30) days of issuance of the fine or fines, petition the Commissioner or designee, in writing, for an administrative hearing. If requested, the hearing shall then be scheduled by the Commissioner or designee as provided in the Administrative Procedures Act.

(d) Any person failing to comply with a fine assessment or other administrative order of the Department within ninety (90) days of issuance of such assessment or order shall be subject to license suspension and/or revocation. The Department may not renew a license until all outstanding fine assessments have been paid unless timely appeal of the assessment(s) was made and the appeal is still pending.

(e) Funds collected as payment from a violator for administrative fines imposed for violation of the Elevator Safety Act shall not be retained by the Department of Labor, but shall be deposited to the Department of Labor Administrative Penalty Revolving Fund and transferred to the General Revenue Fund.

SUBCHAPTER 5. LICENSES

380:70-5-3. Elevator Inspector's License: Issuance, denial, and renewal

(a) Elevator Witness Inspector. No elevator witness inspector's license shall be granted to any person unless he or she demonstrates to the satisfaction of the Commissioner or Chief Elevator Inspector that he/she meets the current ASME QEI-1 Standards for the Qualification of Elevator Inspectors or equivalent standard as determined by the Commissioner. No elevator witness inspector's license shall be granted to any person who also holds an elevator contractor's license or an elevator mechanic's license. The elevator witness inspector applicant must have at least one (1) year of experience in designing, installing, maintaining or inspecting elevators, escalators and other such conveyances. An elevator witness inspector license allows the licensee to witness periodic tests as required by the Elevator Safety Act and administrative rules.

(b) Elevator Certificate Inspector. Applicants for a license to inspect/conduct periodic, but not initial, inspections of elevators or conveyances for the purpose of recommending the issuance of Certificates of Operation as required by this Act shall be required to meet the following qualifications:

(1) Have at least two (2) years of experience as a licensed elevator witness inspector for elevators, escalators and other such conveyances;

(2) Have successfully passed the written examination for elevator inspectors administered by an organization accredited by the ASME to certify elevator inspectors in accordance with the ASME, QEI-1 Standard or equivalent standard as determined by the Commissioner.

(3) An Elevator Inspector's license may be granted to an individual not satisfying the requirements contained in 380:70-5-3(b)(1) and (2) at the discretion of the Commissioner upon the review of documents attesting to comparable qualifications.

(4) Must not be employed by or have any financial interest in any business or operation which manufactures, installs, repairs, modifies or services elevators, escalators, or other such conveyances. This qualification does not prohibit employees of insurance companies insuring elevators and conveyances from obtaining a license as an elevator inspector.

(5) No elevator certificate inspector's license shall be granted to any person who also holds an elevator contractor's license or an elevator mechanic's license.

(6) An elevator certificate inspector may witness periodic tests and conduct inspections for the purpose of recommending a certificate of operation for existing elevators and conveyances as well as a temporary certificate of operation for elevators, but not personnel hoists, pursuant to OAC 380:70-3-9(b).

(c) Elevator Special Inspector. No elevator special inspector's license shall be granted to any person unless he or she demonstrates to the satisfaction of the Commissioner or Chief Elevator Inspector that he/she meets the current ASME QEI-1 Standards for the Qualification of Elevator Inspectors or equivalent standard as determined by the Commissioner.

No elevator special inspector's license shall be granted to any person who also holds an elevator contractor's license or an elevator mechanic's license. The elevator special inspector applicant must have at least one (1) year of experience in designing, installing, maintaining or inspecting elevators, escalators and other such conveyances. Elevator inspector's licenses for special inspectors may be issued and renewed upon receipt of payment of such fees as provided for in the Act and receipt of documentation on company letterhead from the inspector's employer that the licensee is an employee of the company. An elevator special inspector license allows the licensee to witness periodic tests and inspect elevators or conveyances insured by the special inspector's employer for the purpose of recommending the issuance of Certificates of Operation for existing elevators and conveyances as well as a temporary certificate of operation for elevators, but not personnel hoists, pursuant to OAC 380:70-3-9(b), as required by the Elevator Safety Act and administrative rules.

(d) The Commissioner may appoint a Chief and Deputy Elevator Inspector who at the time of appointment are not in possession of a valid ASME QEI Certification or equivalent standard as determined by the Commissioner, but are in a trainee status, provided they successfully complete the required examination within twenty-four (24) months of appointment.

(e) Applications for an elevator inspector's license shall be on forms provided by the Department.

(f) Elevator inspector licenses shall be valid for a period of one (1) year and shall expire each year on the last day of the month of initial issuance. Elevator inspector's licenses not renewed on or before the expiration date shall become invalid.

(g) Elevator inspector's licenses not renewed prior to the expiration date shall be subject to late fees and renewal fees as provided for in this Act.

(h) The Department may revoke or deny approval or renewal of an elevator inspector's license for cause. The Department shall mail written notice to the applicant of the revocation or denial, the reason for the revocation or denial, and a statement that the applicant or licensee may be afforded the opportunity for a hearing pursuant to the provisions of the Administrative Procedures Act, provided their written request is received by the Department within fifteen (15) days of the date of the revocation or denial notice.

SUBCHAPTER 11. GENERAL REQUIREMENTS

380:70-11-8. Major repairs and alterations: Permits

(a) Prior to the alteration or major repair of any elevator or conveyance subject to the provisions of this Act, an alteration permit shall be obtained from the Department. Applications for alteration permits shall be on forms provided by the Department and shall be submitted by the installing licensed elevator

contractor. The application shall require the submission of detailed plans and specifications bearing the seal of a registered professional engineer familiar with elevators and conveyances.

(b) All alterations and major repairs to elevators and conveyances shall be made in conformity with the requirements of the applicable ASME Code(s) and this Chapter.

(c) Upon receipt of an application for an alteration permit to perform an alteration or major repair, and the required plan and specifications, the Department shall review the application for compliance with the Act and this Chapter. The Department may issue an alteration permit or shall notify the applicant in writing of the reason(s) the alteration permit was denied.

(d) Any applicant who has been denied a permit or alteration of major repair by the Department may appeal that denial to the Commissioner, provided written request to appeal is received by the Department within fifteen (15) days of the date of the applicant's notice of denial.

(e) When an elevator or conveyance with a valid Certificate of Operation undergoes an alteration or major repair, the Certificate of Operation shall become invalid until such time as the conveyance undergoes an inspection by ~~a licensed elevator inspector~~ the Commissioner, Chief Inspector, or Deputy Inspector. Reports of such alteration or major repair shall be ~~filed with~~ provided to the Department ~~within thirty (30) days~~ of prior to the inspection and shall be on forms acceptable to the Department.

(f) If the Report of Inspection required by this Chapter indicates that there is a failure to comply with the plans and specifications approved by the Department, or provisions this Act, the Certificate of Operation may be denied. The Department shall notify the owner of the conveyance in writing of the reason(s) for the denial.

(g) An owner who has been denied an operating permit by the Department may appeal that denial to the Commissioner, provided a written request to appeal is received by the Commissioner within fifteen (15) days of the date of the owner's notice of denial.

380:70-11-10. Periodic testing

(a) Periodic testing of elevators covered under ASME, A17.1, 8.11.1.3 shall be as outlined in Appendix A. Such tests shall be performed by a licensed elevator mechanic and witnessed and reported by a licensed elevator inspector.

(b) Fees for the labor required to have the Chief Elevator Inspector or a Deputy Elevator Inspector witness any periodic testing as prescribed in Appendix A shall be in accordance with the fee schedule listed in ~~Title 59 of the Oklahoma statutes, Section 3024(B)(15)~~ OAC 380:70-1-3.

[OAR Docket #17-628; filed 7-11-17]

Permanent Final Adoptions

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

[OAR Docket #17-478]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

390:10-1-5 [AMENDED]

390:10-1-8 [NEW]

AUTHORITY:

Council on Law Enforcement Education and Training; 70 O. S., Section 3311.2 through 3311.13.

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Approved by Governor's declaration on June 13, 2017

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SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

Amendments to 390:10-1-5 are necessary to remove Director's authority to allow additional challenges of the certification examination for students who are returning to Oklahoma law enforcement after a break of service in Oklahoma of more than five years. This limits each officer to two attempts to pass the examination prior to being required to attend the full peace officer academy. New rule 390:10-1-8 requires peace officers to notify CLEET when they are arrested, charges are filed, or protective orders are filed naming them as the defendant/respondent.

CONTACT PERSON:

Norma Floyd, Council on Law Enforcement Education and Training, 2401 Egypt Road, Ada, Oklahoma 74820-0669, norma.floyd@cleet.state.ok.us, 405-239-5166 or 405-439-0134.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

390:10-1-5. Requirements for certification

(a) No person may be certified as a peace officer under the laws and the rules of this chapter until the following requirements have been met.

(1) The agency employing an officer seeking certification, or in the case of an elected official, the elected official himself must certify to CLEET that the employment standards set forth in 70 O.S. Section 3311 (E)(F)(G)(J) have

been met. This certification shall be in a format accepted by CLEET.

(2) Having met the employment standards set forth herein, an officer must certify to CLEET that he or she is physically able to fully participate in and complete all phases of the CLEET Basic Peace Officer Certification Academy. This certification shall be in writing on forms to be provided by CLEET. CLEET shall reserve the right to refuse training to persons found to be physically unable to complete all phases of basic certification training.

(3) The head of the agency employing an officer enrolling in a CLEET Basic Certification Academy, shall first certify to CLEET that the officer's employing agency will fully assume all medical expenses incurred by said officers as a result of any injury or illness incurred during basic certification training.

(4) Any officer seeking peace officer certification must successfully complete all phases of a CLEET Basic Certification Academy, or a CLEET - approved basic certification academy.

(5) Every full-time peace officer, certified by the Council, who has not been employed as a full-time officer in Oklahoma for five or more years, upon re-entry to full-time status, must complete refresher training as prescribed by CLEET and successfully pass a written examination as prescribed by the Council, within one (1) year of employment.

(A) Trainees must achieve a passing score as determined by CLEET on the examination.

(B) Any trainee that fails the examination will be permitted to retake that examination within ten (10) business days of the first examination.

~~(C) If the trainee fails the retake examination, the trainee's agency head must petition the Director in writing, to receive additional training and examination opportunities.~~

~~(D)~~ While attending refresher training, trainees will fully participate and follow all CLEET policies and rules.

(b) The Council on Law Enforcement Education and Training, pursuant to relevant provisions of the Americans with Disabilities Act, will not discriminate against persons capable of performing essential functions required in peace officer training programs with or without reasonable accommodation.

390:10-1-8. Notification of legal proceedings against officer

(a) All criminal proceedings initiated against an officer shall be reported by the affected officer to CLEET immediately, upon arrest or discovery of the filing of such proceeding. All officers shall be required to report when a Victim's Protective Order has been issued against the officer, including such orders issued on an emergency basis and all Final Orders of Protection. Any verbal report of such proceedings shall be followed by a written report, bearing the original signature of the reporter, within ten (10) days after arrest or discovery of the filing of such proceeding.

(b) All civil proceedings initiated against an officer related to matters under the purview of Title 70, Section 3311 shall be reported to CLEET no later than ten (10) days after the officer is served with notice of said proceeding. Any verbal report of such proceedings shall be followed by a written report, bearing the original signature of the reporter, within ten (10) days after discovery of the filing of such proceeding.

(c) This notification shall provide the following information:

- (1) Nature of the proceeding;
- (2) Court in which proceeding has been filed;
- (3) Docket or case number; and
- (4) Parties to the proceeding.

(d) Failure to give notice pursuant to the rules of this Chapter may be cause to initiate an action against the officer, by CLEET.

[OAR Docket #17-478; filed 6-22-17]

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

[OAR Docket #17-479]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 1. Basic Academy Programs
- 390:15-1-21 [NEW]
- Subchapter 3. Collegiate Officer Program
- 390:15-3-8 [AMENDED]
- 390:15-3-9 [AMENDED]

AUTHORITY:

Council on Law Enforcement Education and Training; 70 O.S., Section 3311 through 3311.13; 20 O.S., Section 1313.2.

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SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

390:15-1-21 is a new rule regarding basic academy registration fees. This fee will be charged to law enforcement agencies to cover the cost of meals provided to basic academy students.

Amendments to 390:15-3-8 reduces the number of attempts Collegiate Officer Program student can challenge the qualification examination from two to one retest.

Changes to 390:15-3-9 requires skills instructors who are not lead instructors, and are assisting in a Collegiate Officer academy to teach in a CLEET academy, or an approved academy every three years.

CONTACT PERSON:

Norma Floyd, Council on Law Enforcement Education and Training, 2401 Egypt Road, Ada, Oklahoma 74820-0669, norma.floyd@cleet.state.ok.us 405-239-5166 or 405-439-0134.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 1. BASIC ACADEMY PROGRAMS

390:15-1-21. Registration fees

(a) CLEET has established a registration fee for each agency to cover the cost of meals provided during the CLEET basic academy.

(1) The registration fee covers the cost of meals incurred by CLEET during the basic academy training and payment is due by the 25th of each month preceding expected expenditures.

(2) An agency shall receive only one (1) invoice for the total amount due, but may elect to pay on a monthly basis, or payment can be made in full at the beginning of the training cycle.

(3) Payment will be accepted in a format described in 390:1-1-13.

(b) Agencies failing to make other arrangements approved by the Executive Director or meet the obligation established by enrollment of an officer into the basic academy shall be precluded from future participation of any employee from the delinquent organization in the CLEET basic academy.

SUBCHAPTER 3. COLLEGIATE OFFICER PROGRAM

390:15-3-8. Qualification examination

(a) The CLEET qualification which is administered to COP students by an authorized CLEET representative, is a comprehensive objective examination which covers, at a minimum, those topical areas set forth in 390:15-1-2 and 390:15-3-6. Should additional topical areas be added, the qualification examination may be expanded to cover such additions.

(b) The qualification examination shall be administered on a quarterly basis at times and locations to be determined by CLEET.

(c) Students may take the qualification examination prior to their twenty-first birthday but shall not be certified until their twenty-first birthday.

(d) Students who pass the qualification examination prior to becoming commissioned shall have two-years from the date

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the associate's or bachelor's degree is conferred, or two years from their twenty-first birthday, whichever is latest, in which to obtain their certification. Certification shall be withheld until they have been commissioned and all requirements of 70 O.S., Section 3311 have been met.

- (e) Successful achievement of the qualification examination will be at a standard established by CLEET.
- (f) Students who fail their initial qualification examination may be given only ~~two re-tests~~ one retest.

390:15-3-9. Instructor requirements

- (a) Skills area instructors of record, or lead instructors, are required to meet the instructor specifications set forth in 390:25-1-9 through 390:25-1-12.
- (b) Instructors of record are required to participate as an instructor in the appropriate skills training block of a CLEET Basic Academy or CLEET approved academy city/agency basic academy, at least one time in the year preceding their scheduled participation as a COP skills instructor.
- (c) To remain active as a COP skills instructor, COP skills instructors must instruct annually within a CLEET or approved academy city/agency basic academy.
- (d) Skills instructors who are not lead instructors or instructors of record, shall meet the CLEET specialized instructor requirements set forth in 390:25-1-9 through 390:25-1-12. They must also assist in a CLEET basic academy or an approved city/agency basic academy every three years.
- (e) Instructors, other than skills instructors, shall meet the requirements of the institution sponsoring the COP.
- (f) Instructors for portions of the COP legal block identified by CLEET must be taught by an attorney currently licensed by the Oklahoma Bar Association.

[OAR Docket #17-479; filed 6-22-17]

TITLE 390. COUNCIL ON LAW ENFORCEMENT EDUCATION AND TRAINING

CHAPTER 20. RESERVE OFFICER CERTIFICATION AND TRAINING

[OAR Docket #17-480]

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390:20-1-6 [AMENDED]

AUTHORITY:
Council on Law Enforcement Education and Training; 70 O. S., Section 3311 through 3311.13; 11 O.S., Section 34-101; 19 O.S., Section 547; 63 O.S., Section 683.1 et. seq.

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SUPERSEDED EMERGENCY ACTIONS:
n/a

INCORPORATIONS BY REFERENCE:
n/a

GIST/ANALYSIS:
Amendments to 390:20-1-6 requires reserve academy coordinators to submit a list of all skills instructors who will be utilized in an academy. The list must be submitted not less than 90 days prior to the start of, or the opening date of the reserve academy.

CONTACT PERSON:
Norma Floyd, Council on Law Enforcement Education and Training, 2401 Egypt Road, Ada, Oklahoma 74820-0669, norma.floyd@cleet.state.ok.us 405-239-5166 or 405-439-0134.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

390:20-1-6. Duties of Reserve Academy Coordinator

In addition to the letter of request found in 390:20-1-4, the following must be submitted to CLEET not less than ninety (90) days prior to the proposed opening date of the Basic Reserve Peace Officer Academy:

- (1) An academy schedule, showing the dates and times of each class session, and the topics to be taught;
- (2) A list of CLEET certified instructors to be used, and the topics each will teach; and
- (3) A list of guest instructors to be used with the topics each will teach, and a resume' for each, showing their training, experience, or other qualifications for guest lecturer status.
- (4) An instructor may not also be a trainee in the Reserve Academy.
- (5) A list of CLEET certified skills instructors and their area of instruction. CLEET will verify skills instructor compliance with 390:20-1-16 prior to academy approval.

[OAR Docket #17-480; filed 6-22-17]

TITLE 390. COUNCIL ON LAW ENFORCEMENT EDUCATION AND TRAINING

CHAPTER 25. CONTINUING LAW ENFORCEMENT EDUCATION

[OAR Docket #17-481]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
390:25-1-3 [AMENDED]

390:25-1-8 [AMENDED]
390:25-1-14 [AMENDED]

AUTHORITY:

Council on Law Enforcement Education and Training; 70 O. S., Section 3311 through 3311.13.

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GIST/ANALYSIS:

Amendment to 390:25-1-3 removes "course catalog" from the tag line. CLEET no longer produces a course catalog, all classes are listed on the CLEET website. 390:25-1-8 changes the length of time outside agencies must maintain copy of rosters from two to three years to meet the length of time the course is accredited by CLEET. 390:25-1-14 adds requirement for reserve officer continuing education pursuant to SB 1202 last year. The language states reserve officers must meet requirements found in 70 O.S. Section 3311.4. There is also a statutory citation correction in the amendment.

CONTACT PERSON:

Norma Floyd, Council on Law Enforcement Education and Training, 2401 Egypt Road, Ada, Oklahoma 74820-0669, norma.floyd@cleet.state.ok.us 405-239-5166 or 405-439-0134.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

390:25-1-3. Enrollment and tuition

(a) **Who may attend.** Full-time, certified peace officers shall have enrollment priority in CLEET Continuing Education Schools and Seminars. If classroom space is available, reserve peace officers, retired certified peace officers, who are instructors and are maintaining their instructor certifications, non-sworn law enforcement employees, and others who work directly with law enforcement may enroll in such schools and seminars. CLEET shall reserve the right to restrict certain schools and seminars to full-time, certified peace officers only, based on the subject of the school.

(b) **Tuition and expenses.** Generally, there shall be no tuition or other enrollment fees charged by CLEET for attending Continuing Education Schools or Seminars. Generally, CLEET shall not provide food or lodging to officers or employees attending such schools or seminars. Specific course offerings may require payment of tuition, fees or other expenses.

(c) **Notification of schools; ~~course catalog.~~** CLEET shall publish a schedule of Continuing Education Schools on the website. This published schedule shall include the dates, locations, course descriptions, instructors, enrollment procedures, and other information related to the Continuing Education Program. This shall not preclude the scheduling of schools in addition to schools so scheduled.

390:25-1-8. Outside law enforcement schools and seminars

(a) **Centralized peace officer training records.**

(1) CLEET shall maintain a centralized depository of training records for each full-time, certified peace officer in the State of Oklahoma. Schools and Seminars attended by such officers may be entered into their individual training files upon request.

(2) Local "in-service" training or informational sessions of less than one (1) hour shall not be entered.

(3) Requests for individual training record entries shall be in format approved by CLEET.

(4) Requests for training entries shall minimally contain the following documentation:

(A) The date(s), location and title of the school or seminar; and

(B) An official school Attendance Roster or electronic roster, showing the name, CLEET number, and employing agency of each full-time, certified officer in attendance; and

(C) One of the following:

(i) The name and address of the instructor(s); or

(ii) A copy of the completion or attendance certificate issued by the school, and the requesting officer's name, CLEET number, and employing agency and the authorized signature of the agency head or designee certifying attendance.

(D) Training may not be recorded when names provided on the roster or electronic record cannot be matched to CLEET records by the CLEET number or name until additional identifying information is provided.

(E) Agencies or individuals submitting rosters or electronic records shall maintain a file copy, subject to inspection, for a period of ~~two~~three years.

(b) **Local training incentive accreditation.**

(1) For the purposes of this sub-section, "ACCREDITATION" means that CLEET will assign a course accreditation number and send a confirmation letter to the agency requesting such accreditation for a lesson plan submitted by that agency. It will be the responsibility of the agency requesting accreditation to retain the lesson plan and all supporting material. All lesson plans and supporting materials on file with the agency requesting an accreditation number will be considered by CLEET to be copyrighted. Regarding any law enforcement concepts, practices, methods, techniques, products, or devices as might be taught, promoted, or otherwise espoused in outside schools or seminars, there is no intent, expressed

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or implied, that "accreditation" indicates or in any way conveys "CLEET approval" of such concepts, practices, methods, techniques, products, or devices, unless such approval is explicitly stated by CLEET.

(2) For the purpose of qualifying for training or educational pay increases, or for other training incentives which might be initiated by law enforcement agencies, and for which CLEET accreditation is a requisite, the rules and procedures set forth in (3) and (4) of this subsection shall apply.

(3) Requests for local training incentive accreditation for any outside school or seminar, shall be made in writing in a format approved by CLEET and shall minimally contain the following information:

- (A) A description of the subject of the school or seminar;
- (B) A resume' or summary of each known instructor's qualifications, describing his or her training and experience in the particular subject.

390:25-1-14. Mandatory Continuing Education

(a) All full-time and reserve, certified, active peace officers shall successfully complete the minimum amount of hours of mandatory continuing education as set forth in 70 O.S., Section 3311.4, per year. The Council shall grant credit only for courses conducted by the Council or for courses accredited pursuant to OAC 390:25-1-8.

(1) All full-time and reserve, certified, active peace officers employed/commissioned/appointed for a period of ninety (90) days in a calendar year, who become inactive prior to the end of a calendar year, are responsible for meeting the mandatory continuing education requirements as set forth in 70 O.S., Section 3311.4 upon return to active peace officer status within sixty (60) days of the date of his/her employment/commission/appointment. Failure to complete the required mandatory continuing education within sixty (60) days may result in disciplinary action as set forth in OAC 390:2.

(2) Full-time and reserve certified peace officers who return to active status within the calendar year they became inactive will have the remaining portion of the calendar year to complete the annual mandatory continuing education requirements outlined in 70 O.S., Section 3311.4.

(b) Failure to meet annual training requirements shall subject the officer to suspension of their certification in accordance with the procedures in Chapter 2 of the Rules Governing the Council and 70 O.S., Section 3311.4.

(1) A reasonable time as set forth in 70 O.S., ~~Section 3311.4(D)~~ Section 3311.4(E) shall mean no more than thirty (30) calendar days after the notice of intent to suspend certification has been received, except in situations of documented medical or military leave. Training rosters for mandated training should be submitted as soon as training is conducted. Intent notices will be generated based upon training rosters submitted by the first working day in January.

(2) Travel, Food and Lodging Expenses. The Council will not be responsible for travel, food and lodging

expenses incurred by officers attending the mandatory training pursuant to 70 O.S., Section 3311.4. These expenses shall be the responsibility of the employing agency or the individual officer.

(c) Any full time certified active peace officer who fails to complete evidence-based sexual assault and sexual violence training by January 1, 2012, shall be subject to suspension of their certification in accordance with Chapter 2 of the rules governing the Council.

[OAR Docket #17-481; filed 6-22-17]

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

[OAR Docket #17-482]

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RULES:

Subchapter 5. License Requirements

390:35-5-1 [AMENDED]

390:35-5-2 [AMENDED]

390:35-5-3 [AMENDED]

390:35-5-4 [AMENDED]

390:35-5-9 [AMENDED]

390:35-5-13 [AMENDED]

Subchapter 7. Application Procedure

390:35-7-4 [AMENDED]

390:35-7-7 [AMENDED]

390:35-7-8 [NEW]

Subchapter 9. Violations and Investigations

390:35-9-4 [AMENDED]

Subchapter 11. Insurance and Bond Requirements

390:35-11-3 [AMENDED]

Subchapter 13. Use of Firearms

390:35-13-2 [AMENDED]

Subchapter 15. Training Requirements

390:35-15-8 [AMENDED]

APPENDIX C [REVOKED]

APPENDIX D [NEW]

AUTHORITY:

Council on Law Enforcement Education and Training; 59 O.S., Section 1350.1 et seq.; 59 O.S., Section 1750.1 through 1750.14; 70 O.S., Section 3311 et seq.

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GIST/ANALYSIS:

390:35-5-1. States in numerous places that documents must have original signatures and changes will not be accepted over the phone, by fax or by email. The changes include adding a letter of good standing from licensees who were licensed out of state and are applying in Oklahoma. 390:35-5-2 Adds that license will not be issued if person is named as a respondent in a final victim's protective order. Also adds that license will not be issued for 5 years after final determination of deferred prosecution. 390:35-5-3 Limits individuals to one (1) conditional license for each 5-year period and requires an OSBI Name check prior to receiving conditional license. 390:35-5-4 Specifies that Special Event licensees are unarmed only and limits an individual to 2, 7-day licenses per year. 390:35-5-9 Includes armed private investigator as a type of individual identification card issued by CLEET. 390:35-5-13 Requires name and address changes within 10 days and stipulates that they will not be accepted by phone, fax or email. 390:35-7-4 States license will not be issued if any disqualifying charges are pending in any court. Changes preclusive period for a deferred sentence from three years to five years to match statute. 390:35-7-7 Adds requirement for an upgrade application when going from an unarmed to an armed license. 390:35-7-8 is a new rule regarding individual private security applicant requirements. 390:35-9-4 Adds arrests to legal action that must be reported to CLEET by licensed security guards and private investigators. 390:35-11-3 Adds requirement for surety bond or insurance information to be maintained and provided to CLEET within 10 days of change. 390:35-13-2 Requires written statement from licensee after telephone report of discharge of firearm, adds required information to be included in written report. 390:35-15-8 Adds failure to provide a report or summary to CLEET when requested, as a violation of licensed security guards, investigators and agencies.

Appendix C. Revoked to make revisions to Fine Schedule for Private Security.

Appendix D. New Fine Schedule for Private Security

CONTACT PERSON:

Norma Floyd, Council on Law Enforcement Education and Training, 2401 Egypt Road, Ada, Oklahoma 74820-0669, norma.floyd@cleet.state.ok.us 405-239-5166 or 405-439-0134.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 5. LICENSE REQUIREMENTS

390:35-5-1. Agency license requirements

(a) All licensed security guard and private investigative agencies, shall maintain a place of business within the State of Oklahoma, and shall maintain an operative telephone having a published listing, in the agency name. The agency must also provide proof of published phone number in a format specified by CLEET. Every license issued under this chapter shall be posted conspicuously in the licensee's principal place of business in this state. The phone number shall be on file with CLEET. The office of such business may be maintained at the personal residence of the executive officer, manager, or supervisor of such office. Such notification shall include both the geographical location (street address) and the mailing address. Any changes in the above shall be submitted to CLEET in writing, with an original signature, within 10 days of the effective date of the change. Notice of change of address will not be accepted over the phone, phone, fax, or by email.

(b) The executive officer, manager, or other person in charge of supervising security guards and/or private investigators shall be a resident of the State of Oklahoma.

(1) The executive officer, manager, or other person in charge of supervising security guards in the performance of their duties shall be a licensed security guard.

(2) The executive officer, manager, or other person in charge of supervising private investigators in the performance of their duties shall be a licensed private investigator.

(c) Agency licenses are not transferrable upon the sale of a company. The Council may approve the transfer of a license to a new entity providing that one or more of the original licensees retain ownership in the new entity, and the new licensee meets the qualifications listed in (d) of this section. The licensee shall notify CLEET in writing, with an original signature, within ten (10) days of any change of identity of the licensee, or as it relates to an agency license, any of its owners, partners, directors, or in the case of a corporation, officers and registered agents (branch managers); and any substitute in the person enumerated must satisfy the requirements listed in (d) of this section; and be approved by CLEET. Notice will not be accepted over the phone, by fax, or by email. CLEET retains the right to inform an agency that the Agency Name they are submitting is a duplicate or too similar to an existing agency name licensed in the state.

(d) Every applicant for an agency license, or any of its owners, partners, directors, or in the case of a corporation, each officer and registered agent (branch manager), shall meet the following qualifications before it may engage in any business licensed under this chapter:

- (1) be 21 years of age;
(2) be a citizen of the United States or a resident alien;
(3) not have been convicted of a felony or crime involving moral turpitude unless waived by the Council pursuant to O.S. Title 59, Section 1750.5 (H);
(4) not have had his license revoked or application for such license denied by CLEET or any other state and must provide letter of good standing from any other state previously licensed;
(5) be of good moral character; and
(6) in the case of a corporation, be incorporated under the laws of this state, or shall be duly qualified to do business within this state.

(e) Alarm Companies who respond to electrical, electronic or mechanical alarm signal devices, burglar alarms, television cameras or still cameras used to manually or automatically signal or detect burglary, fire, breaking or entering, shoplifting, pilferage, theft, or hold-up are required to be licensed as a Security Agency, and individually license employees as security guards, or armed security guards, who provide the response.

(f) Temporary employment agencies who that provide guards or private investigators to its clients on a contractual basis falls within the definition of a contract security or investigative company and must be licensed pursuant to the Act, and individually license employees utilized in this service. Act.

(g) Employee leasing services who provide an administrative service only for handling the

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payroll, employee's salaries, and benefits, who do not make assignments, supervise or direct the work of the employee, or select the employees, but who lease the employee back to the licensed agency, do not fall within the definition of a contract security or investigative company and are not required to obtain an agency license. Licensed agencies who utilize the employee leasing services, are responsible for the duties such as reporting employments, terminations, address changes to our agency, providing appropriate liability insurance coverage, etc., as if the employee were paid by the agency.

(h) ~~Agency licenses that have expired for a period of more than three (3) years, must complete the entire application process.~~ CLEET retains the right to inform an agency applicant that the Agency Name they are submitting is a duplicate too similar to an existing agency name licensed in the state.

(i) Agency licenses that have expired for a period of more than thirty (30) days must complete the entire application process. If an agency renewal application is received more than thirty (30) days after the agency license expiration date, a letter will be mailed to the Agency address of record with instructions to submit a completed new application and complete licensing fee.

390:35-5-2. Security guard, armed security guard, and private investigator licenses

(a) Applicants for security guard, private investigator, or armed security guard licenses must meet and satisfy the requirements set forth in 59 O.S., Section 1750.1 et seq., The Oklahoma Security Guard and Private Investigator Act.

(b) Applicants for Armed Security Guard or armed private investigator licenses must further:

- (1) Successfully pass a psychological evaluation by a licensed psychologist; provided that the applicant shall bear the cost of such evaluation.
- (2) Successfully complete the firearms phase of private security training;
- (3) Be twenty-one (21) years of age, and
- (4) Applicants for an armed security guard license must submit an affidavit that they are gainfully employed as an armed security guard and that a firearm is required within the scope of their employment.

(c) An Armed Security Guard License grants no authority to carry a firearm when not acting directly in the course and scope of employment.

(d) No licensee shall brandish, point, exhibit, or otherwise display a firearm at any time, except as authorized by law, and the rules of this Chapter.

(e) ~~If the applicant is the defendant in a criminal prosecution that is pending, disqualifying charge that is pending in any court in this state, another state, tribal court, or pursuant to the United States Code, or is named as a respondent in a final victim's protective order, no license will be issued until final resolution of the criminal prosecution is issued.~~

(f) ~~If the applicant is the subject of an order deferring imposition of judgment and sentence, no license will be issued until completion of the deferred sentence and dismissal of the criminal prosecution without a finding of guilt or deferred prosecution in any court in this state or another state or pursuant~~

to federal authority for the commission of a disqualifying offense, no license will be issued. The preclusive period shall be for five (5) years and shall begin upon the final determination of the matter.

390:35-5-3. Conditional licenses

(a) Conditional licenses may be issued only to employees of security or investigative agencies and will only be issued for unarmed security guard applicant or unarmed private investigator applicants. Conditional licenses will NOT be issued for armed security guard applicants or armed private investigator applicants.

(b) Conditional licenses may be issued to such employees when the following requirements have been met:

(1) Receipt of an applicant's completed license application form. An application form shall be considered complete when all applicable spaces have been filled in properly, required documents have been provided, and it has been signed and notarized;

(2) Receipt of two (2) properly completed, CLEET-issued "applicant" fingerprint cards or fingerprints submitted electronically through a fingerprint system approved by CLEET;

(3) Receipt of correct license fees;

(4) Receipt of a completed OSBI records name check.

(c) Conditional licenses may be issued to an applicant one time per new application every five (5) years. This does not include renewal applications.

390:35-5-4. Special Event Licenses

(a) Special Event Licenses may be issued only to employees of security agencies.

(b) Applications for Special Event Status shall be made only by the security agency which has contracted to provide unarmed security guards for a particular event.

(c) Such applications shall be submitted on forms to be provided by CLEET, and not less than seven business days prior to the event. Exceptions may be granted when good cause is shown that a timely request could not be made.

(d) Applications for Special Event Status shall contain information as prescribed by CLEET, but shall contain at least the following:

(1) The name and location of the event;

(2) The dates for which security guards will be provided at the event;

(3) The nature of the event;

(4) Justification for Special Event Status including an explanation as to why regularly licensed guards may not be used;

(5) Examples of duties to be performed by the licensees; and

(6) The projected number of guards to be licensed.

(e) When an application for Special Event Status has been approved, the contracting agency shall apply in writing, to CLEET, for individual licenses. Such applications for individual licenses shall contain information as prescribed by CLEET, but shall contain at least the following:

- (1) Each applicant's name, race, gender, date of birth, social security number, home address, citizenship status;
 - (2) Certification that the employing agency has conducted a criminal history check with the sheriff in the county of residence of each applicant, and that such criminal history check was conducted within thirty (30) days prior to the date of the event to be licensed;
 - (3) Certification that each applicant is covered by the employing agency's bond or liability insurance, pursuant to the Act;
 - (4) Proper fee payment, which shall be seven dollars (\$7.00) per individual applicant.
- (f) Regularly licensed and conditionally licensed guards shall be exempt from the provisions of this section.
- (g) No person shall be issued more than two (2), seven (7) day Special Event Licenses in any calendar year.

390:35-5-9. Individual identification cards

- (a) An identification card shall be issued to all licensees. This card shall clearly indicate that the licensee is authorized by the State of Oklahoma to conduct business as a security guard, armed security guard, ~~or private investigator~~, or armed private investigator.
- (b) The identification card shall not be altered or defaced in any manner.
- (c) The licensee shall not knowingly allow any other person to carry or use his identification card for any purpose whatsoever.
- (d) The licensee shall carry his identification card on his person at all times while acting within the course and scope of his employment as a security guard or private investigator.
- (e) The licensee shall present his identification card upon demand, for inspection by any person, within the course and scope of his employment as a security guard, armed security guard, or private investigator, unless the licensee is involved in a bonafide, covert investigation at the time. The card must be presented, upon demand, for inspection by a law enforcement officer or by a representative of CLEET, at any time.
- (f) All identification cards or other written authorization shall remain the property of CLEET, and the licensee shall surrender his identification card to the Director or his designated representative upon written notice setting forth the reasons for such surrender.
- (g) Agencies shall maintain a copy of the individual identification card for all employees.

390:35-5-13. Notification of change of name or address or telephone number

- (a) Private investigators, ~~armed security guards~~, and ~~unarmed security guards~~ shall maintain, with the Council, ~~current residential addresses~~ a current residential address and a current telephone number. ~~Notice of change of address or telephone number must be made and shall notify in writing, with an original signature within ten (10) days of the effected change, the Council of any change of name. Notification of change of name shall include copies of any marriage license or court document which reflects the change of name. Notice~~

~~of change of address or telephone number must be made within ten (10) days of the effected change. Notices will not be accepted over the phone by fax, or by email.~~

(b) Private investigators and security guards shall notify, in writing, with an original signature, the Council of any change of name. Notification of change of name shall include copies of any marriage license or court document which reflects the change of name. Notices will not be accepted over the phone, by fax, or by email.

~~(bc)~~ The Agency owner or branch manager (in the instances of national corporations) shall notify the Council in writing, with an original signature of changes in the business address and/or telephone number within 10 days of the effective date of the change. Notices will not be accepted over the phone, by fax, or by email.

~~(ed)~~ Failure to notify the Council of business address changes, business telephone changes, or residential address changes, in accordance with the provisions of this Section, shall be considered a violation.

~~(de)~~ If failure to comply with this Chapter results in Council Action, the use of "lack of notice" shall not be deemed as a valid defense in any proceeding.

SUBCHAPTER 7. APPLICATION PROCEDURE

390:35-7-4. Background investigation of applicants

(a) The requirements of the Act will necessitate an investigation into the personal history, employment history, and moral character of each applicant. Local, state, and federal criminal indices will be examined in the normal processing of applications for evidence of any prior criminal record. In addition to those offenses set forth in the Statutes, convictions of crimes set forth in Appendix A of this Chapter, shall be deemed as disqualifying convictions.

(b) Failure to provide the information necessary to complete this background investigation, including certified copies of ~~judgement and sentence, final dispositions~~, shall preclude any further processing and shall result in denial of said application.

(c) Fingerprint cards or electronically captured fingerprints submitted by an applicant which have been rejected by the Oklahoma State Bureau of Investigation (OSBI) or Federal Bureau of Investigation (FBI), have failed to meet the statutory requirement of 59 O. S. Section 1750.6 (A)(1) for providing "classifiable fingerprints to enable the search of criminal indices for evidence of prior criminal record".

(1) Upon notice to CLEET from the OSBI or FBI that fingerprints have been rejected, CLEET shall send written notice to the applicant requesting resubmission of fingerprints.

(2) Failure to resubmit fingerprints within thirty (30) days of the request for resubmittal shall preclude any further processing and shall result in denial, suspension or revocation of any license held by the applicant.

(3) Upon the third rejection of fingerprints by the OSBI or FBI or the expiration of one-hundred-eighty days (180) days, whichever occurs first, from the original date of issuance of any license, such license shall be suspended or

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revoked until such time that classifiable fingerprints have been submitted and criminal history reports have been received from OSBI and FBI.

- (d) An applicant shall state any and all names previously used by the applicant, and the date of any name change.
- (e) An applicant shall provide information on any previous licenses held as a private security guard or private investigator, whether in this state or other state, and any previous revocations or suspensions of any such license.
- (f) No license shall be issued under the following circumstances:

(1) A ~~felony or misdemeanor~~ disqualifying charge is pending in any court in this state, another state, in tribal court, or pursuant to the United States Code. ~~The preclusive period shall be until the final determination of the matter.~~

(2) The applicant is subject to the provisions of a deferred sentence or deferred prosecution in any court in this state or another state, tribal court, or pursuant to federal authority for the commission of a felony or misdemeanor of any disqualifying offense. The preclusive period shall be for ~~three (3)~~ five (5) years and shall begin upon the final determination of the matter.

390:35-7-7. Changing/Upgrading from an unarmedssecurity guard license to an armed security guard license

An existing unarmed security guard license may be ~~changed/~~ upgraded to an armed security guard license, under the following conditions:

- (1) The applicant must ~~request the change;~~ submit a completed Upgrade Application;
- (2) The applicant must meet all the additional requirements for an armed security guard license;
- (3) A criminal history update may be conducted by CLEET, but ~~no additional fingerprint cards, nor neither additional fingerprint cards, nor~~ additional fingerprint fees shall be needed;
- (4) If an applicant wants to retain the expiration date and the number of the original license, the applicant must pay the difference between an unarmed and armed license fee;
- (5) If an applicant wants his armed security guard license to be effective for a full three-year term, he must accept a new license number and pay the full armed license fee;
- (6) If a change is requested under this sub-section while the license is still in a conditional status, the balance payable for issuance of the armed security guard license shall be the fee difference between the unarmed and armed license.

AGENCY NOTE: Fees may conflict with 59 O.S. 2010 Section 1750.6. Where such conflict exists, the statute shall supersede.

390:35-7-8. Individual private security applicant requirements

(a) Applicants for a License issued pursuant to Title 59, Section 1750.1 through 1750.13 must:

(1) Be a citizen of the United States or an alien legally residing in the United States and have a minimum of six (6) months legal residence documented in this state;

(2) Be at least Eighteen (18) years of age for an unarmred license and at least twenty one (21) years of age for an armed license;

(3) Proof of successful completion of the training and psychological evaluation requirements for the license applied for, and related testing, as prescribed by CLEET;

(4) Be of good moral character;

(5) Have no final victim protection orders issued in any state in which applicant is the respondent / defendant;

(6) Have no record of a felony conviction or any expungement or a deferred judgment or suspended sentence for a felony offense;

(A) If the applicant is the defendant in a criminal prosecution that is pending, no license will be issued until final resolution of the criminal prosecution.

(B) If the applicant is the subject of an Order Deferring Imposition of Judgment and Sentence, no license will be issued until completion of the deferred sentence and dismissal of the criminal prosecution without a finding of guilt.

(C) If the Applicant was convicted of a felony, and the sentence was completed more than fifteen (15) years prior to the date of application, and the Applicant otherwise meets the licensing requirements, an Unarmed Security or Private Investigator License may be issued, but an Armed Security or Private Investigator License may not be issued to the Applicant. The Applicant must supply all documentation required by CLEET.

(7) Have no record of conviction for assault or assault and battery, aggravated assault and battery, larceny, theft, false pretense, fraud, embezzlement, false impersonation of an officer, any offense involving moral turpitude, any offense involving a minor as a victim, any nonconsensual sex offense, any offense involving the possession, use, distribution, or sale of a controlled dangerous substance, any offense of driving while intoxicated or driving under the influence of intoxicating substance, any offense involving a firearm, or any other offense as prescribed by the Council.

(b) If an applicant was convicted of a disqualifying crime, and the sentence was completed more than five (5) years prior to the application date and the Council is convinced the offense constituted an isolated incident and the applicant has been rehabilitated, the Council may, in its discretion, waive the conviction disqualification as provided for in this paragraph and issue an unarmed Security or Private Investigator license, but shall not issue an armed Security or Private Investigator license if the offense involved the use of a firearm, was violent in nature, or was a felony offense other than a driving offense. The passage of five (5) years from completion of the sentence does

not mean that the applicant is entitled to a license. The decision on whether the disqualifying conviction is waived is within the sole discretion of CLEET. The applicant must supply all documentation required by CLEET for consideration of a possible waiver.

(c) If it is discovered that a disqualifying conviction exists, the Council shall immediately revoke or deny any license;

(d) Under oath, the applicant shall certify that the applicant has no disqualifying convictions as specified in the Private Security Licensing Act or by CLEET rule, or must disclose the disqualifying convictions and state that more than five (5) years have lapsed since the completion of the sentence for a disqualifying conviction.

(e) The applicant must provide CLEET and the Oklahoma State Bureau of Investigation with individual fingerprints for a state and national criminal history records search.

(f) The applicant must supply CLEET two (2) current individual passport - sized photographs with the completed CLEET application.

(g) The applicant must provide certified copies of all court documents showing the disposition of any criminal charges. If no certified copies are available, the applicant must provide a "no records letter" from the appropriate court. Obtaining and providing certified copies is the responsibility of the applicant.

(h) The applicant must state, under oath, that the applicant is not currently undergoing treatment for a mental illness, condition, or disorder.

(i) The applicant must state, under oath, whether the applicant has ever been adjudicated incompetent or committed to a mental institution.

(j) The applicant must state, under oath, whether the applicant has any history of illegal drug use or alcohol abuse.

(k) Upon presentation by the Council of the name, gender, date of birth, and address of the applicant to the Department of Mental Health and Substance Abuse Services, the Department of Mental Health and Substance Abuse Services shall notify the Council within ten (10) days whether the computerized records of the Department indicate the applicant has ever been involuntarily committed to an Oklahoma state mental institution.

(l) The applicant must state, under oath, whether the applicant has ever been charged with any misdemeanor domestic violence offense.

(m) The applicant must provide proof of liability insurance or an individual bond in a minimum amount established by the Private Security Licensing Act.

(n) The applicant must complete all the training requirements, and pass the appropriate examinations related to training.

(o) The signature of the applicant on the Application shall be considered an attestation that the Applicant has read these Rules, and agrees to obey these Rules.

(p) Private Security guard and or private investigator licenses are not transferrable.

(q) Any changes in licensee's information shall be provided to CLEET in writing within ten (10) days of the effective date of the change. Notice of changes of Licensee information will not be accepted over the phone.

SUBCHAPTER 9. VIOLATIONS AND INVESTIGATIONS

390:35-9-4. Notification of legal proceedings against licensee

(a) All arrests and criminal proceedings initiated against a licensee shall be reported by the affected licensee to CLEET immediately, upon arrest or discovery of the filing of such proceeding. All licensees shall be required to report when a Victim's Protective Order has been issued against the licensee, including such orders issued on an emergency basis and all Final Orders of Protection. Any verbal report of such proceedings shall be followed by a written report, bearing the original signature of the reporter, within ten (10) days after arrest or discovery of the filing of such proceeding.

(b) All civil proceedings initiated against a licensee related to matters under the purview of the Act shall be reported to CLEET no later than ten (10) days after the licensee is served with notice of said proceeding. Any verbal report of such proceedings shall be followed by a written report, bearing the original signature of the reporter, within ten (10) days after discovery of the filing of such proceeding.

(c) This notification shall provide the following information:

- (1) Nature of the proceeding;
- (2) Court in which proceeding has been filed;
- (3) Docket or case number; and
- (4) Parties to the proceeding.

(d) Failure to give notice pursuant to the rules of this Chapter may be cause to initiate an action against the licensee, by CLEET.

(e) Private Security Agencies shall be responsible to ensure that licensed employees comply with the provisions of the Act, and the rules of this Chapter, and the laws of the United States, the State of Oklahoma, and political subdivisions therein. Violations of the Act and/or the rules of this Chapter, committed by any employee or a private security agency, shall be cause to initiate an action against said agency's license, by CLEET, if said violation or offense occurred within the course and scope of employment with said agency.

SUBCHAPTER 11. INSURANCE AND BOND REQUIREMENTS

390:35-11-3. Liability coverage

(a) Licensed security guards, armed security guards, and private investigators shall be individually responsible for obtaining and maintaining their own liability insurance or surety bond when they leave the employment of an agency, and/or when they are self-employed.

(b) No private security license issued in accordance to 59 O.S., Section 1750.1 et seq. shall be valid when the licensee fails to maintain the prescribed liability coverage.

(c) Proof of insurance or surety bond shall be provided to CLEET by submitting a certificate of insurance, such as the Accord Form; or a copy of the policy, or a copy of the bond; or a letter from the issuing company. Regardless of the method

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chosen, the proof submitted shall at least contain the following information:

- (1) Name of insured
 - (2) Name and address of insurer
 - (3) Policy limits, coverages, and amounts
 - (4) Effective dates of policy
 - (5) If covered by a bond, the original bond proof of coverage must include an original or copy of the Notification of Bond and Power of Attorney. Proof of renewal of the bond does not require a copy of the Power of Attorney, only submission of the Notification of Bond.
- (d) Any company providing insurance or surety bonds must be licensed to do business in the State of Oklahoma.
- (e) Every licensee shall ensure that their insurance or bond will not be cancelled or modified unless ten (10) days prior written notice is submitted to CLEET.
- (f) A violation of the rules of this subchapter will constitute grounds for immediate suspension or revocation of a license, and/or disciplinary penalty or fine.
- (g) Insurance or surety bond must be maintained and current insurance information must be provided to CLEET within ten (10) days of the date of previous insurance or surety bond expiration.

SUBCHAPTER 13. USE OF FIREARMS

390:35-13-2. Reporting the discharge of firearms

(a) The discharge of a firearm by a licensee, pursuant to Section 1750.9 (C) of the Act, shall be reported by phone immediately by the licensee to CLEET, Private Security Division during working hours (8:00 a.m. to 4:30 p.m. Mon-Fri). If other than during working hours, calls and reports shall be made the next working day to CLEET. The telephonic report shall be followed up by a written statement to CLEET from the licensee and shall include:

- (1) Name of licensee discharging firearm;
 - (2) Name of employer;
 - (3) Location of incident;
 - (4) A brief narrative of what happened;
 - (5) Whether death, personal injury or property damage resulted; ~~and~~
 - (6) Whether the incident is being or was investigated by a law enforcement agency.
 - (7) Whether criminal charges were filed or anticipated against the licensee; and
 - (8) Any disciplinary action taken by the employer.
- (b) CLEET, when deemed appropriate, shall immediately proceed to the scene of the incident and the investigation shall include, but not be limited to:

- (1) Name, address, telephone number and license number of licensee discharging firearm;
 - (2) Name, address and telephone number of employing agency, if employed by an agency;
 - (3) Name of person making the report;
 - (4) Exact location, date and time of the incident and indicate if the location was residential, business or rural;
 - (5) A detailed description of what happened;
 - (6) Name of any person(s) killed or injured and the extent of any property damage;
 - (7) Name, address and telephone number of any witnesses;
 - (8) If incident was investigated by a law enforcement agency, the name of the investigating officer and employing agency;
 - (9) Whether criminal charges were filed or anticipated against the licensee; and
 - (10) Any disciplinary action taken by the employer.
- (c) The employing agency shall assure that the involved licensee completes a "Report of Firearm Discharge", to be forwarded by the licensee to CLEET.
- (d) Within twenty-four (24) hours after the firearms discharge incident, a separate written report shall be made to CLEET by each, the licensee who discharged a firearm and the employing agency. If the licensee is self-employed, he shall be personally responsible for reporting any discharge of firearms.

SUBCHAPTER 15. TRAINING REQUIREMENTS

390:35-15-8. Additional violations

The following, in addition to all other laws, rules and regulations shall constitute unacceptable practices for licensed security guards, investigators and agencies subjecting the violator(s) to administrative actions.

- (1) Failure to provide written reports/summaries of activities to clients, or the Council, when requested.
- (2) Providing false or misleading information to a client, or the Council.
- (3) Failure to supply CLEET with names of employees, payroll records, roster of employees, job status of employees, employee/employer contractual agreements, proof of legally required deductions and contributions, or any other evidence of employment required to establish employee status and compliance with statutes, upon request.
- (4) Giving false statements, oral, written or otherwise to any member of the CLEET staff or any law enforcement officer in this state.
- (5) Failure to maintain good moral character.

APPENDIX C. DISCIPLINARY PENALTY AND FINE SCHEDULE [REVOKED]

Description	1st	2nd	3rd

All violations subject to revocation			
General Civil Penalty and Fine Provision for violation of any rule adopted by the Council or statute	\$ 150	\$ 300	\$ 500
Allowing any other person to carry or use individual identification card	\$ 250	\$ 500	Revoke
Conducting or advertising business without valid insurance or bond	\$ 500	\$1,500	Revoke
Conducting or advertising business without a valid license	\$2,000	Criminal Charges	
Employing unlicensed guards or investigators-armed	\$ 150	\$ 250	\$ 500
Employing unlicensed guards or investigators-unarmed	\$ 100	\$ 200	\$ 500
Failure to carry identification card while working	\$ 50	\$ 75	\$ 100
Failure to maintain physical address in Oklahoma (Agencies)	\$ 50	\$ 75	\$ 100
Failure to notify of address or phone change	\$ 50	\$ 75	\$ 100
Failure to notify of changes in owners, partners, corporation officers within 10 days	\$ 50	\$ 75	\$ 100
Failure to notify of insurance cancellation	\$ 50	\$ 75	\$ 100
Failure to obtain approval for courses advertised as CLEET approved	\$ 500	\$1,000	\$1,500
Failure to obtain mandated continuing education training	\$ 50	\$ 75	\$ 100
Failure to obtain special event license	\$ 50	\$ 75	\$ 100
Failure to provide a list of licensed employees upon request	\$ 500	\$1,000	\$1,500
Failure to provide employment records upon request	\$ 500	\$1,000	\$1,500

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Failure to provide proof of insurance by January 30th of the new year-Agencies	\$ 50	\$ 75	\$ 100
Failure to provide written reports or summaries to clients or the council	\$ 500	\$1,000	\$1,500
Failure to report criminal proceedings initiated against a licensee	\$ 50	\$ 75	\$ 100
Failure to report hirings and terminations within 5 days	\$ 50	\$ 75	\$ 100
Failure to show identification to law enforcement officer or CLEET official upon request	\$ 500	\$1,000	\$1,500
Firearms violation. Brandishing, pointing or exhibiting a firearm	\$ 500	\$1,500	Revoke
Firearms violation. Carrying unauthorized weapon or ammunition	\$ 100	\$ 500	\$1,000
Firearms violation. Carrying while not on duty	\$ 100	\$ 500	\$1,000
Firearms violation. Failure to report discharge within 24 hours	\$ 100	\$ 500	\$1,000
Firearms violation. Inappropriate discharge	\$ 500	\$1,000	\$1,500
Firearms violation. Involving drugs or alcohol	\$1,000	\$2,000	Revoke
Impersonating a local, state, or federal government employee	\$ 500	\$1,000	Revoke
Impersonating a local, state, or federal government law enforcement officer	\$1,000	Revoke	
Impersonating a private investigator or security guard	\$ 500	\$1,000	\$1,500
Insurance/Bond. Failure to obtain and maintain liability insurance or surety bond	\$ 500	\$1,500	\$2,000
License Fee. Late filing fee for renewal of agency license	\$ 100	\$ 100	\$ 100

APPENDIX D. DISCIPLINARY PENALTY AND FINE SCHEDULE [NEW]

1st	2nd	Description	3rd

All violations subject to revocation General Civil Penalty/Fine Provision for violation of any rule adopted by the Council or statute		\$ 150	\$ 300 \$ 500
Allowing any other person to carry or use individual identification card		\$ 250	\$ 500 Revoke
Conducting or advertising business without valid insurance or bond		\$ 500	\$1,500 Revoke
Conducting or advertising business without a valid license		\$2,000	Criminal Charges
Employing unlicensed guards or investigators-armed		\$ 150	\$ 250 \$ 500
Employing unlicensed guards or investigators-unarmed		\$ 100	\$ 200 \$ 500
Failure to carry identification card while working		\$ 50	\$ 75 \$ 100
Failure to maintain physical address in Oklahoma (Agencies)		\$ 50	\$ 75 \$ 100
Failure to notify of address or phone change within ten (10) days of change		\$ 50	\$ 75 \$ 100
Failure to notify of changes in owners, partners, corporation officers within 10 days		\$ 50	\$ 75 \$ 100
Failure to notify of insurance cancellation		\$ 50	\$ 75 \$ 100
Failure to obtain approval for courses advertised as CLEET approved		\$ 500	\$1,000 \$1,500
Failure to obtain mandated continuing education training		\$ 50	\$ 75 \$ 100
Failure to obtain special event license		\$ 50	\$ 75 \$ 100
Failure to provide a list of licensed employees upon request		\$ 500	\$1,000 \$1,500
Failure to provide employment records upon request		\$ 500	\$1,000 \$1,500
Failure to provide proof of insurance continuation within ten (10) days		\$ 50	\$ 75 \$ 100
Failure to provide written reports or summaries to clients or the council		\$ 500	\$1,000 \$1,500
Failure to report criminal proceedings initiated against a licensee		\$ 50	\$ 75 \$ 100
Failure to report hirings and terminations within 5 days		\$ 50	\$ 75 \$ 100
Failure to show identification card to law enforcement officer or CLEET official upon request		\$ 500	\$1,000 \$1,500
Firearms violation. Brandishing, pointing or exhibiting a firearm		\$ 500	\$1,500 Revoke
Firearms violation. Carrying unauthorized weapon or ammunition		\$ 100	\$ 500 \$1,000
Firearms violation. Carrying while not on duty		\$ 100	\$ 500 \$1,000
Firearms violation. Failure to report discharge within 24 hours		\$ 100	\$ 500 \$1,000
Firearms violation. Inappropriate discharge		\$ 500	\$1,000 \$1,500
Firearms violation. Involving drugs or alcohol		\$1,000	\$2,000 Revoke
Impersonating a local, state, or federal government employee		\$ 500	\$1,000 Revoke
Impersonating a local, state, or federal government law enforcement officer		\$1,000	Revoke
Impersonating a private investigator or security guard		\$ 500	\$1,000 \$1,500
Insurance/Bond. Failure to obtain and maintain liability insurance or surety bond		\$ 500	\$1,500 \$2,000
License Fee. Late filing fee for renewal of agency license		\$ 100	\$ 100 \$ 100
License Fee. Late filing fee for renewal of individual license		\$ 25	\$ 25 \$ 25
License Fee. Reinstatement fee of suspended agency license		\$ 100	\$ 100 \$ 100
License Fee. Reinstatement fee of suspended armed individual license		\$ 50	\$ 50 \$ 50
License Fee. Reinstatement fee of suspended unarmed individual license		\$ 25	\$ 25 \$ 25
Out-of-state practitioners. Failure to obtain temporary license		Warning	\$ 500 \$1,000
Performing service as a guard or investigator without a valid license		\$ 100	Criminal Charges
Private Investigator. Divulging information gained in employment except to employer or required by law		\$ 500	\$1,000 \$1,500
Private Investigator. Prohibited from willfully making false report to employer or client		\$ 500	\$1,000 \$1,500
Providing false or misleading information to a client or the council		\$ 500	\$1,000 Revoke
Schools. Failure to adhere to established standards		\$ 500	\$1,000 Revoke
Schools. Failure to cooperate in efforts to ensure compliance		\$ 500	\$1,000 Revoke
Schools. Failure to maintain records required for 5 years		\$ 100	\$ 250 \$ 500
Schools. Failure to obtain approved school status		\$ 500	\$1,000 Revoke
Schools. Failure to provide course completion notice within 7 days		\$ 50	\$ 75 \$ 100
Schools. Falsification of documents submitted to CLEET		\$1,000	Revoke
Schools. Use of non-approved curricula or other instructional materials		\$ 500	\$1,000 Revoke
Schools. Use of non-approved instructors		\$ 500	\$1,000 \$1,500

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State Seal. Improper use on badge, patch, letterhead or any display	\$ 250	\$ 500	Revoke
Uniform. Allowing security guards to work without proper identifying markings	\$ 50	\$ 75	\$ 100
Unlicensed supervisor or guards and/or investigators	\$ 500	\$1,000	Revoke
Vehicle. Operating a vehicle with red or blue lens covers	\$ 150	\$ 300	\$ 500
Vehicle. Violation of security vehicle markings	\$ 150	\$ 300	\$ 500

[OAR Docket #17-482; filed 6-22-17]

**TITLE 390. COUNCIL ON LAW ENFORCEMENT EDUCATION AND TRAINING
CHAPTER 45. RETIRED PEACE OFFICER FIREARMS PERMITS**

[OAR Docket #17-483]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
390:45-1-3 [AMENDED]
390:45-1-5 [AMENDED]
390:45-1-6 [AMENDED]
390:45-1-7 [AMENDED]
390:45-1-7.1 [NEW]

AUTHORITY:
Council on Law Enforcement Education and Training; 21 O.S., Section 1289.8 and 1290.1 et seq.; 70 O.S., Section 3311 et seq., 74 O.S. Section 150.9
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 5, 2017

COMMENT PERIOD:
February 1, 2017 through March 8, 2017

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APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's Declaration on June 13, 2017

FINAL ADOPTION:
June 13, 2017

EFFECTIVE:
September 11, 2017

SUPERSEDED EMERGENCY ACTIONS:
n/a

INCORPORATIONS BY REFERENCE:
n/a

GIST/ANALYSIS:
Amendments to 390:45-1-3 removes the definition of concealed handgun and adds the definition for firearm. 390:45-1-5, 390:45-1-6 are changed to make eligibility requirements and verification letter for a retired peace officer firearms permit match the changes in Senate Bill 959 passed last session. 390:45-1-7 adds an expiration date for retired peace officer firearms permits every ten years. 390:45-1-7.1 is a new rule regarding renewals of retired peace officer firearms permits to match the statute change. Renewals will include a renewal fee (fingerprint fee) pursuant to Title 74, Section 150.9.

CONTACT PERSON:
Norma Floyd, Council on Law Enforcement Education and Training, 2401 Egypt Road, Ada, Oklahoma 74820-0669, norma.floyd@cleet.state.ok.us 405-239-5166 or 405-439-0134.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

390:45-1-3. Definitions

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

"Act" means the Oklahoma Firearms Act Title 21 O.S., Section 1289.8. and applicable sections of the Oklahoma Self-Defense Act Title 21 O.S., Sections 1290.1 et seq.

"Applicant" means a person applying for a retired peace officer's firearms permit under the provisions of the Act.

"CLEET" means the Council on Law Enforcement Education and Training, and its administrative officers and personnel.

~~"Concealed handgun" means a loaded or unloaded pistol carried hidden from the detection and view of another person either upon or about the person, in a purse or other container belonging to the person, or in a vehicle which is operated by the person or in which the person is riding as a passenger.~~

"Council" means the appointed members of the Council on Law Enforcement Education and Training, as defined in Title 70 O.S., Section 3311.

"Director" means the Director of the Council on Law Enforcement Education and Training, or his designated agent.

"Firearm" means a loaded or unloaded pistol carried upon or about the person, in a purse or other container belonging to the person, or in a vehicle which is operated by the person or in which the person is riding as a passenger.

"Peace Officer" means any peace officer as defined in 21 O.S. Section 99, and who is authorized to carry a firearm in the performance of official duties. The term does not include auxiliary, private security, private investigators or military police.

"Pistol" means any derringer, revolver, or semi-automatic firearm which:

- (A) has an overall length of less than sixteen (16) inches.
- (B) is capable of discharging a projectile composed of any material which may reasonably be expected to be able to cause lethal injury,
- (C) is designed to be held and fired by the use of a single hand, and
- (D) uses either gunpowder, gas or any means of rocket propulsion to discharge the projectile.

"Retired" means any fire marshal inspector, state, county, or municipal peace officer of this state or any federal law enforcement officer who meets the criteria and definition in 21 O.S. Section 1289.8.

"SDA" means the Oklahoma Self-Defense Act.

"State" means the State of Oklahoma.

390:45-1-5. Eligibility requirements

(a) Each retiree shall meet the following criteria to obtain and retain a firearms permit:

- (1) State, county, or municipal peace officer of this state or any federal law enforcement officer.
- (2) Have obtained retired peace officer ~~status; status as attested to by the Chief Administrative Officer from the retiree's retirement agency;~~
 - (A) ~~From an appropriate retirement system; or~~
 - (B) ~~If the applicant did not participate in a retirement system, the officer must have worked for the~~

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~~minimum number of years required to vest in the retirement system appropriate for the type of law enforcement agency from which the officer retired or served.~~

- (3) Possess no physical or mental impairment which would preclude proper and safe handling of a sidearm.
- (4) Not have a conviction or currently be subject to any pending criminal prosecution for any ~~felony offense, drug related offense, aggravated assault and battery or any offense involving impairment by drugs or alcohol.~~
- (5) ~~Have no~~ preclusions listed in 21 O.S. Section 1290.10 or 1290.11.
- (b) ~~A state and national criminal history search will be conducted by the OSBI every four (4) years to verify the applicant still meets the requirements for the permit.~~

390:45-1-6. Application procedure

- (a) Any person who wishes to apply for a permit under the Act, may do so in writing to CLEET, 2401 Egypt Road, Ada, Oklahoma 74820-0669.
- (b) The completed application form shall constitute a sworn affidavit signed by the applicant attesting to eligibility requirements and notarized.
- (c) All applicants must submit a notarized statement from the appropriate retirement system verifying the status of the person as a retired peace officer of the jurisdiction and effective date of retirement or if the retired officer does not participate in a retirement system, a statement from the appropriate law enforcement agency verifying the status of the person as a retired peace officer of that jurisdiction and the reason why the retired officer does not participate in a retirement system.
- ~~(d) For officers not participating in a retirement system, years of service will be cumulative and determined by CLEET records. Any claimed service not reflected in CLEET records must be supported by a written statement verified by the appropriate agency administrator or agency head of the retiree's agency verifying the status of the applicant as a retired peace officer of that jurisdiction.~~
- (ed) Retired reserve officers must submit the same documentation indicated in (c) above, and meet the eligibility requirements provided in 390:45-1-5.
- (fe) All information on the application or any related document must be complete and accurate to the best of the applicant's knowledge.

390:45-1-7. Permits

- (a) A firearm permit shall be issued to all eligible applicants. This card shall clearly indicate that the licensee is authorized by the State of Oklahoma to carry a firearm under the provisions of this Act.
- (b) The permit to carry a weapon is not valid unless the permit card is in the person's possession.
- (c) The licensee shall present his firearm permit upon demand, for inspection by a law enforcement officer.

- (d) All permit cards or other written authorization shall remain the property of CLEET, and the licensee shall surrender his card to the Director or his designated representative upon written notice setting forth the reasons for such surrender.
- (e) All permit holders must maintain a current address or telephone number with CLEET and report changes within a 30 day period of the change.
- (f) Failure to provide the information necessary to complete the application shall preclude any further processing and shall result in denial of said application.
- (g) Permits shall ~~not~~ expire, but eligibility to retain the permit will be reviewed every four (4) years through a state and national criminal record check by the OSBI ten, (10) years from the date of issue.

390:45-1-7.1. Renewal

- (a) The card shall be valid for a period of ten, (10) years from date of issue.
- (b) Upon expiration, or not more than 90 days prior to the listed expiration, the applicant may submit a renewal application to CLEET.
- (c) In addition to the renewal application, and as provided in section 150.9 of Title 74 of the Oklahoma Statutes, the applicant shall submit two fingerprint cards and a nonrefundable fee for a national criminal history record check by fingerprint analysis. Fees will only be accepted in a format described in 390:1-1-13.
- (1) Upon completion of a criminal history check that is clear from preclusions listed in 1290.10 or 1290.11 of the Oklahoma Self-Defense Act, a new card shall be issued which shall be valid for a period of 10 years from date of issue.
- (2) If a preclusion from 1290.10 and 1290.11 is found no card shall be issued and the applicant be notified, in writing, and given explanation of the denial. Additionally, CLEET shall hold a hearing before taking any action to suspend or revoke the authority to carry a firearm pursuant to this rule.

[OAR Docket #17-483; filed 6-22-17]

TITLE 390. COUNCIL ON LAW ENFORCEMENT EDUCATION AND TRAINING CHAPTER 60. REGULATING BAIL ENFORCERS

[OAR Docket #17-484]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions
390:60-1-5 [AMENDED]
Subchapter 7. Disciplinary Actions
390:60-7-2 [AMENDED]
Subchapter 11. Restrictions
390:60-11-2 [AMENDED]

AUTHORITY:

Council on Law Enforcement Education and Training; 59 O.S., Section 1301, 1303, 1327, 1328, 1329, 1332 and 1332.1.1; 59 O.S., Section 1350.1 through 1350.20; 59 O.S. Section 1750.1 through 1750.14; 70 O.S., Section 3311 et seq.

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EFFECTIVE:

September 11, 2017

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

Changes to 390:60-1-5 address reserve officers authority to assist a bail enforcer pursuant to Senate Bill 952 passed last session. 390:60-7-2 Adds Alford Plea as grounds for action against a bail enforcer pursuant to Senate Bill 952. 390:60-11-2 requires the words "Bail Enforcer" or "Bail Enforcement" to be visible on apparel pursuant to Senate Bill 952.

CONTACT PERSON:

Norma Floyd, Council on Law Enforcement Education and Training, 2401 Egypt Road, Ada, Oklahoma 74820-0669, norma.floyd@cleet.state.ok.us 405-239-5166 or 405-439-0134.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 1. GENERAL PROVISIONS

390:60-1-5. Acting as a Bail Enforcer

(a) No person may perform, or assist in the performance of, any function or service as a Bail Enforcer if the person's license as a Bail Enforcer has been suspended, revoked, surrendered, or denied.

(b) A licensed Bail Enforcer may not assist, aid, or conspire with an unlicensed person (whether never licensed, or whose license as a Bail Enforcer or Bail Bondsman has been suspended, revoked, surrendered, or denied) to engage in any function or service as a Bail Enforcer.

(c) An active duty commissioned ~~Peace Officer~~full-time or reserve peace officer who is off duty may assist a Bail Enforcer if permitted by the ~~Peace Officer's~~full-time or reserve peace officer's employing Agency. The assisting ~~Peace Officer~~full-time or reserve peace officer need not be a licensed Bail Enforcer for purposes of this rule.

SUBCHAPTER 7. DISCIPLINARY ACTIONS

390:60-7-2. Grounds for actions

(a) CLEET may take a disciplinary action against a license issued under this Chapter, if the Licensee:

- (1) violates any provisions of the Bail Enforcement and Licensing Act or CLEET Rules;
- (2) practices fraud, deceit or misrepresentation;
- (3) commits an act which would disqualify the Licensee;
- (4) is convicted of a crime related to the practice of the occupation;
- (5) is willfully or grossly negligent in failing to comply with substantial provisions of federal law or state statute governing the practice of the occupation;
- (6) invades the privacy of a defendant without lawful authority;
- (7) divulges any information gained by the Licensee in the course of employment, unless as directed by the client, as permitted by law, or as required by statute or rule;
- (8) willfully makes a false report to any person;
- (9) attempts to locate, recover, or surrender a defendant without having in the Licensee's possession a certified copy of the undertaking or bail bond contract;
- (10) carries any firearm or weapon in the recovery of a defendant without a valid Armed Bail Enforcer license;
- (11) carries any firearm or weapon when wearing Bail Enforcer apparel and not actively engaged in the recovery of a defendant, unless provided otherwise by the Act and these Rules;
- (12) points, displays, brandishes, or discharges a firearm or weapon in the recovery of a defendant without lawful authority and training as provided by statute and Rules;
- (13) administers a noxious substance without lawful authority and training as provided by statute and Rules;
- (14) unlawfully enters the dwelling house, structure, property, or vehicle of a defendant or a third party;
- (15) improperly uses force against a defendant or third-party;
- (16) disobeys any local ordinance, state, federal, or tribal law, including traffic laws, in attempting to locate, recover, or surrender a defendant;
- (17) makes any erroneous or false statement in an application for a license;
- (18) fails to successfully complete any prescribed course of training and testing;
- (19) is convicted of, or enters a plea of guilty or no contest, or an "Alford" plea to any crime listed in the Bail Enforcement and Licensing Act;
- (20) uses any beverage containing alcohol while armed with a firearm or other weapon;
- (21) impersonates a law enforcement officer;
- (22) is charged in a court of competent jurisdiction with any crime involving a minor.

(b) A certified copy of a Judgment and Sentence, or of an Order Deferring Imposition of Judgment and Sentence, or of a plea of guilty or no contest shall be considered clear and

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convincing evidence of the court proceedings set out in the document.

(c) A certified copy of an Information or Indictment shall be considered clear and convincing evidence of institution of criminal charges involving a minor.

(d) The involuntary commitment of a Licensee in a mental institution or licensed private mental health facility for any mental illness, condition or disorder that is diagnosed by a licensed physician or psychologist as a substantial disorder of thought, mood, perception, psychological orientation, or memory that significantly impairs judgment, behavior, capacity to recognize reality, or ability to meet the ordinary demands of life. Provided, the license may be reinstated if at least one (1) year has passed since the date of involuntary commitment and upon the Council receiving notification of a psychological evaluation conducted by a licensed physician or psychologist which attests and states by affidavit that the Licensee and the evaluation test data of the Licensee have been examined and that, in the professional opinion of the physician or psychologist, the Licensee is psychologically suitable to return to duty as a Bail Enforcer.

SUBCHAPTER 11. RESTRICTIONS

390:60-11-2. Uniforms and markings

All uniformed, licensed Bail Enforcement personnel shall conform to the following requirements regarding the bail enforcement uniform:

- (1) The words "~~Bail Enforcer~~", "Bail Enforcer" or "Bail Enforcement" shall be visibly displayed in a prominent manner.
- (2) Licensees shall not wear a uniform, insignia, badge, etc., that would lead a reasonable person to believe that the Licensee is connected with federal, state, local, or tribal government.
- (3) A Licensee may not use a fictitious name in the recovery of a defendant.

[OAR Docket #17-484; filed 6-22-17]

TITLE 405. OKLAHOMA DEPARTMENT OF LIBRARIES CHAPTER 25. STATE AID GRANTS TO PUBLIC LIBRARIES

[OAR Docket #17-513]

RULEMAKING ACTION:

Permanent final adoption

RULES:

- 405:25-1-2 [AMENDED]
- 405:25-1-3 [AMENDED]
- 405:25-1-6 [AMENDED]

AUTHORITY:

Oklahoma Department of Libraries Board; 65 O.S. § 2-106(m)

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

December 16, 2016

COMMENT PERIOD:

January 17, 2017 through February 22, 2017

PUBLIC HEARING:

February 23, 2017

ADOPTION:

February 24, 2017

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

February 28, 2017

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 13, 2017

FINAL ADOPTION:

June 13, 2017

EFFECTIVE:

September 11, 2017

GIST/ANALYSIS:

The purpose of the amendments is to provide more flexibility to local communities to clarify requirements of the rules and to bring the rules into alignment with industry practices since the rules were last amended.

CONTACT PERSON:

Jan Davis, Administrative Archivist, Oklahoma Department of Libraries, 200 NE 18th Street, Oklahoma City, OK 73015, 405-522-3191, jan.davis@libraries.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

405:25-1-2. Definitions

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

"**Bibliographic access**" means the provision of author, title, and subject indexes to the library materials, and classification using ~~either the Dewey or the Library of Congress classification system~~ and location.

"**Free library service**" means that libraries will provide circulation of books and library materials and admittance to library programs without charge in their service area, i.e., town, city, county or library system.

"**Library system**" means libraries organized under Title 65, Article 4 of the Oklahoma Statutes and funded under Article 10, § 10 A of the Oklahoma Constitution.

"**Long range plan**" means a written strategy for action for improvement of library service over a specified period of time officially adopted by the library board.

"**ODL**" means the Oklahoma Department of Libraries as defined in 65 O.S. § 3-101.

"**Statement of purpose**" means a written declaration of the role the library has chosen to serve its community officially adopted by the library board.

405:25-1-3. Eligibility for State aid grants to public libraries

Eligibility for state aid grants to public libraries is governed by the following requirements:

(1) Basic requirements.

- (A) Libraries must meet the definition of a public library ~~as given in Oklahoma Library Association/Oklahoma Department of Libraries, Levels of Library~~

Development, 4th edition, 1998, p. 2 as defined in 65 O.S. § 1-104.

(B) Libraries must be legally established and operating according to Oklahoma Statutes, Title 65, Article 4, § 101 and Title 11, Article 31; and Article 10, § 10A of the Oklahoma Constitution.

(2) **User service requirements.**

(A) Libraries must provide free library service.

(B) Libraries shall be open to the public the minimum number of hours stipulated in the following schedule. These hours shall be maintained year round. Single county systems organized under 65 O.S., §§ 151 and 552 which have branch libraries may aggregate their hours, if, discounting overlap, the citizens are served according to the following schedule:

(i) cities and towns under 2,000 population will be open 15 hours a week. The schedule will include at least two hours after 5 p.m. each week;

(ii) cities and towns of at least 2,000 but less than 5,000 people, will be open ~~30~~ 33 hours a week. The schedule will include at least two hours after 5 p.m. each week and ~~three hours on Saturday~~ weekend hours are recommended;

(iii) cities with at least 5,000 but less than 10,000 people, will be open 35 hours a week. The schedule will include at least four hours after 5 p.m. each week and ~~three hours on Saturday~~ weekend hours;

(iv) cities with at least 10,000, but less than 25,000, will be open 50 hours a week. The schedule will include at least eight hours after 5 p.m. each week and ~~four hours on Saturday~~ weekend hours; and

(v) cities with 25,000 or more will be open 60 hours a week. The schedule will include ~~seven hours on Saturday~~ a minimum of five weekend hours.

(C) Libraries must have a telephone located in the library with a listed number.

(D) All libraries and branches must provide internet access to the public. The library shall have a written internet use policy.

(E) All libraries shall at a minimum offer programming for youth under 18 years of age.

(F) A public library shall have a collection of materials (e.g., books, periodicals, audio-visual materials, etc.) that is circulated to the community.

(i) Libraries shall provide bibliographic access to its collection for customers.

(ii) The library shall offer interlibrary loan to customers and participate in interlibrary loan networks or consortia to borrow materials not held in the library upon request for customers. Libraries shall promote the service to customers through promotional materials and/or signs in the library and on its website to make customers aware of the service.

(iii) The library shall do an age and condition study on its collection every four years as determined by the Oklahoma Department of Libraries and report the findings to its library board and the Oklahoma Department of Libraries.

(3) **Administration and finance requirements.**

(A) Legally established libraries that are not part of a library system must complete and submit to the Oklahoma Department of Libraries' online annual report for the preceding fiscal year to the Department of Libraries by August 15th and library systems must submit such reports by October 1st.

(B) Libraries must have a board of trustees appointed by the city and or county government officials which holds regularly scheduled meetings at least quarterly and all libraries must file annually a list of trustees, terms of office and meeting times with the Oklahoma Department of Libraries. The board shall approve the policies by which the library operates. The board shall review all required policies within a four year cycle as determined by the Oklahoma Department of Libraries and shall report all current policies to the Oklahoma Department of Libraries. Required policies are:

(i) Circulation policy which shall include interlibrary loan;

(ii) Library materials selection policy; and

(iii) Internet use policy.

(C) Libraries must receive operating income from local government sources, i.e. town, city or county. A public library is primarily supported by either municipal funds or a direct library levy on a permanent basis.

(D) Local government must continue to expend an amount for library service, i.e., operating expenditures, not less than that of the preceding fiscal year, as reported on the Annual Report for Public Libraries. Public library systems organized under 65 O.S. Sections 151-161 and Sections 551-561, ~~§ 4-101-108~~ Sections 4-101-107.1 and Sections 4-201-206 may not reduce their millage levy. Exemption waivers to drop in operating income based on special circumstances shall be considered.

(i) If a city or county has less total income for the most recent fiscal year as compared to the immediate fiscal year, exemption to the requirement in (D) of this paragraph may be made. ~~If this condition exists, libraries must so notify the Oklahoma Department of Libraries by August 15th.~~ The Oklahoma Department of Libraries will then supply forms for city or county officials to certify that the library's budget sustained no greater reduction than the total percentage reduction of income of the city or county budget. ~~At such time as the city or county budget increased, the library budget must receive not less than the percentage increase of the total budget.~~

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- (ii) The requirement in (D) of this paragraph may be waived in those years when the budget is decreased according to (i) of this subparagraph.
- (E) Libraries must have paid permanent employees who are employees of the town, city, county or system. Town, city, county or system must pay said employees at least the federally required minimum wage and meet the requirements of the Fair Labor Standards Act.
- (F) All library directors and all personnel who work more than twenty (20) hours a week must attend at least one continuing education program each year. ~~offered by the Oklahoma Department of Libraries, or approved by the Oklahoma Department of Libraries from institutions of higher education, vo tech schools or library associations.~~ Staff in library systems or public libraries serving over 25,000 may meet this requirement with in-house training. Personnel are exempt if they have been employed at the library less than one (1) year.
- (G) Multi-county library systems must abide by the Oklahoma Department of Libraries' rules concerning systems as set forth in Chapter 10 of this title.
- (H) Libraries must file with the Oklahoma Department of Libraries, Office of Library Development, a report of expenditures made with state aid grant funds each preceding fiscal year by August 15th and library systems must submit such reports by October 1st.
- (I) Libraries must have a written statement of purpose.
- (J) ~~Libraries must submit performance measures data as outlined in the rotation schedule given in Oklahoma Library Association/Oklahoma Department of Libraries, Levels of Library Development 4th edition, 1998. Libraries shall provide annual library visits each year on the annual report to the Oklahoma Department of Libraries.~~
- (K) Libraries must provide bibliographic access to their collections.
- (L) Libraries serving a population of 10,000 or more must have submitted to the Oklahoma Department of Libraries a long range plan written or updated within the last 3 years. This document must address future directions of the library for services and resources, and must be approved by the local library board.
- (M) Libraries that are a department of municipal government in cities serving a population of ~~20,000~~25,000 or more must employ a director with a Master's Degree in Library and Information Science from a library school accredited by the American Library Association or an alternate degree as follows. A comparable master's degree in business, education, school library media, or public administration, with a minimum of five years of prior supervisory library experience shall also be acceptable. For those with an alternate degree but without prior experience working in a library, the director shall complete the Institute

in Public Librarianship Certification Program within two years of employment as director. Exemptions will be made for such libraries, until the resignation of the current librarian of record as of July 1, 1998.

(N) Libraries will evaluate, deselect and maintain their collections on a five (5) year schedule ensuring that their collections include up-to-date and useful materials and report the figures to its library board and to the Oklahoma Department of Libraries.

(O) Libraries shall submit performance measures to the Oklahoma Department of Libraries on a schedule as determined by the Oklahoma Department of Libraries.

405:25-1-6. State aid formula

The Oklahoma Department of Libraries will utilize the latest ~~census information available each year from the State Data Center of the Department of Commerce~~population estimates from the United States Census Bureau to determine per capita payments for the distribution of state aid funds for public libraries.

[OAR Docket #17-513; filed 6-23-17]

TITLE 420. OKLAHOMA LIQUEFIED PETROLEUM GAS BOARD CHAPTER 10. LIQUEFIED PETROLEUM GAS ADMINISTRATION

[OAR Docket #17-590]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

420:10-1-5. Permits [AMENDED]

420:10-1-8. Processing and handling of applications and examinations [AMENDED]

420:10-1-13. Responsible employees and managers who shall be required to have technical qualifications and manager's permits [AMENDED]

420:10-1-14. Standards for the storage and handling of liquefied petroleum gas [AMENDED]

AUTHORITY:

Oklahoma Liquefied Petroleum Gas Board; Pursuant to statute 420.3. Oklahoma Liquefied Petroleum Gas Board - Rules, regulations and specifications. Subsection (G)(H).

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

January 25, 2017

COMMENT PERIOD:

February 15, 2017 through March 17, 2017

PUBLIC HEARING:

March 20, 2017

ADOPTION:

March 20, 2017

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

March 27, 2017

APPROVAL BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 13, 2017

FINAL ADOPTION:

June 13, 2017

EFFECTIVE:

September 11, 2017

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

Incorporated standards:

The standards for the storage and handling of liquefied petroleum gases adopted by the National Fire Protection Association and published in its pamphlets No. 58, and the standards for the installation of gas appliances and gas piping adopted by said National Fire Protection Association published in its pamphlet No. 54 have been adopted by the legislature in 52 O.S. 1991, Section 420.3 (e) and shall be accepted standards for the State of Oklahoma.

Incorporating rules:

420:10-1-14

Availability:

Oklahoma liquefied Petroleum Gas Administration, 3815 N. Santa Fe, Suite 117, Oklahoma City, Oklahoma, 73118, 405-521-2458. Office hours are from 7:30 a.m., to 4:30 p.m., Monday through Friday.

GIST/ANALYSIS:

The proposed amendments to 420:10-1-5 deletes the authority that a Class III permit holder can operate a DOT cylinder filling station. This particular authority is covered under the Class VI permit. A separate endorsement is proposed that will allow a Class III permit holder with the III-A endorsement to invoice the end-user for bulk deliveries when the LP Gas is delivered by a Class I permit holder. Traditionally, only a Class I permit holder is authorized to invoice the end-user for bulk deliveries. However, this type of third party billing between a Class III permit holder and the end-user has become more prevalent in the industry. The amendment also ensures that a Class I permit holder is delivering the gas and safety is not compromised. The annual fee for III-A endorsement has been set at \$300.00.

The Class VI permit is being amended to update antiquated language relative to a charging station which is now more commonly referred to as a dispensing station. The Class VI permit is being amended to require a permit for each DOT cylinder dispensing station and/or motor fuel station. Language requiring the permit holder to pass a written examination has been deleted. An amendment is being proposed to require a Class VI permit holder to secure a Class VI-A permit for a person actively in charge of an LP Gas dispensing operation. The annual fee for the Class VI permit is increasing from \$100.00 to \$150.00.

The Class VI-A permit is being amended to reflect the changes made to the Class VI permit. As proposed the amendment would require that a Class VI-A LP Gas Dispensing permit be required for a person actively in charge of LP Gas dispensing operations for the holder of a Class VI permit. All Class VI-A permit holders must be an employee of said Class VI permit holder. The annual fee for the Class VI-A permit is increasing from \$25.00 to \$35.00.

The proposed amendments to 420:10-1-8 would delete the requirement that a Class VI permit applicant must pass a written examination. Based on the proposed amendments the Class VI-A employee will be the person actively in charge of the dispensing operations for the Class VI permit holder and the Class VI-A permit applicant is required to pass a written examination.

The proposed amendments to 420:10-1-13 would redefine how a Class X manager is considered to be actively supervising the LP Gas related sales and/or service being offered to the public at each separate branch or base of operation of a Class I permit holder which is operated as a relatively independent operation free from the day to day immediate supervision and control of the holder of the Class I permit, or the manager of a non-personal Class I permit holder. The proposed new language will clarify what is considered to be actively supervising and only allows a Class X manager to supervise a maximum of two separate branches or bases of operation. The language being stricken was subject to interpretation and difficult to enforce.

An amendment is also being proposed for an additional exemption as it relates to the requirement that each bulk retail delivery shall be measured by a suitable LP Gas liquid meter system. The additional exemption is specifically stated as a delivery of a full transport load from the terminal to the end-user with a bill of lading.

An amendment is being proposed to delete the requirement that any person installing an underground container must notify the Administrator prior to installation. Underground container installation is currently covered by NFPA 58.

An amendment is being proposed to add language to the minimum storage requirements. The proposed language further defines what constitutes the minimum storage being considered properly maintained.

CONTACT PERSON:

Mr. Ed Welton, Administrator, (405)521-2458.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

420:10-1-5. Permits

(a) **Permits required.** No person, firm, corporation, association or other entity shall engage in the manufacturing, assembling, fabrication, installing or selling of any system, container, or apparatus to be used in this State in or for the transportation, storing, dispensing, or utilization of LPG, nor shall any transporter, distributor, or retailer of LPG store, dispense and/or transport over the highways of this State any LPG for use in this State in any system, container, apparatus or appliance without having first obtained a permit to do so as provided in this section.

(b) **Permit classifications.** The permits required for engaging in business shall be divided into the following classifications:

(1) **Class I - Dealer permit.** The Class I Dealer Permit permits the holder to engage in any phase of the LP Gas business. A Class X Manager's permit must be secured for the person actually in charge of an LP Gas operation at each separate branch or base of operation of a Class I permit holder. The initial permit fee for a Class I is One Thousand Dollars (\$1,000.00) The annual fee for the Class I permit is Four Hundred Dollars (\$400.00).

(A) Class I holder can go on inactive status, but will have to meet all the requirements of the permit, including paying the renewal fee, and having proper insurance requirements filed with the Administrator, before going back on active status. If requirements are not met the permit will then be revoked. All Class I holders, active and inactive, are required to pay the annual renewal fee.

(B) Applicant must furnish to the Board, evidence of the following insurance:

- (i) A minimum of \$1,000,000.00 general liability insurance, as per 420:10-1-18;
- (ii) Worker's Compensation insurance shall be required as per state requirements;
- (iii) Motor vehicle insurance must meet State and Federal requirements.

(C) Brokers/wholesalers selling LP Gas to anyone other than Class I permit holders or refinery/gas processing type facilities shall obtain a Class I permit and meet the requirements thereof, except for minimum storage and metering, when said sales are by transport bulkhead to bulkhead.

(D) Before testing for a Class I permit, an applicant must meet the following requirements as approved by the Board:

- (i) Five (5) years experience as an active Class X Manager or equivalent; and
- (ii) Forty (40) hours of specified training.

(2) **Class II - Truck Transporter permit.** The Class II Transporter Permit permits the holder to transport LP

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Gas as a common carrier or private carrier to another of the following: a person, firm, or corporation engaged in the production or manufacture of LP Gas and/or selling or reselling LP Gas to transporters, industrial consumers, processors, distributors, retailers, and/or to holders of Class I, III, or VI permits. A Class II permit shall not authorize the resale of LP Gas to an end-user. A Class II permit shall not be a substitute where a Class I is needed. A transport must meet all CFR 49 requirements. The initial permit fee for a Class II is One Thousand Dollars (\$1,000.00). The annual fee for a Class II permit is Four Hundred Dollars (\$400.00).

(3) **Class III - DOT Cylinder Transporter Permit.**

(A) The Class III DOT Cylinder Transporter Permit permits the holder to operate ~~DOT cylinder filling station and~~ a cylinder delivery service. The separate endorsement will be as follows: III-A, permits the holder to invoice the end-user for bulk deliveries only when the LP Gas is delivered by a Class I permit holder.

(B) The annual fee for a Class III permit is One Hundred Fifty Dollars (\$150.00). The annual fee for the separate endorsement is Three Hundred Dollars (\$300.00).

(4) **Class IV - Installer permit.**

(A) The Class IV Installer Permit permits the holder to install and service LP Gas systems, appliances, and other LP Gas equipment. The applicant is required to have immediate supervision for two (2) weeks with a Class IV, IV-D, Class X, or a person licensed by Oklahoma Construction Industries Board with a Mechanical License, and then shall be required to pass a written examination for each separate endorsement. The endorsements will be as follows:

- (i) LP, Low Pressure systems covered by NFPA 54;
- (ii) HP, High Pressure systems covered by NFPA 58;
- (iii) RV, Recreational Vehicle systems covered by NFPA 1192;
- (iv) MC, Meter Calibration systems covered by NIST Handbook 44;
- (v) TI, Truck Inspections and Piping covered by NFPA 58 and CFR 49;
- (vi) DO, Dispenser Operator for Class IV permit holders that also dispense propane.

(B) Exception from two (2) week training period would be anyone already licensed by Oklahoma Construction Industries Board with a Mechanical License. If the supervising person determines that the new applicant is properly trained, proper documentation of the training is on file, and a Class IV application has been forwarded to the LP Gas Administration, the applicant at that time may begin performing the duties of a Class IV permit holder until such time as the test is administered and the permit issued. This time shall not exceed thirty (30) days or the applicant shall cease to perform these duties. Current Class IV's, as of

September 1, 1994, are not required to take a written exam. Upon renewal, endorsements will be based on services provided as authorized by the Administrator. The annual fee for a Class IV permit with one (1) endorsement is Seventy Dollars (\$70.00). Each additional endorsement is Ten Dollars (\$10.00).

(C) Class IV permit does not permit the holder to install or service LP-Gas carburetion systems.

(D) Any installer not under the personal and direct supervision of a Class X holder at the immediate time and location of installation shall be required to have a Class IV or IV-D permit.

(5) **Class IV-D - Driver/Installer Permit.**

(A) The Class IV-D Driver/Installer Permit permits the holder to deliver LP Gas by bobtail and install and service LP Gas systems, appliance, and other LP Gas equipment. Class IV-D permit can only be issued under a Class I permit. New applicants must be under immediate supervision from a current Class IV-D, or Class X while in a minimum of a two (2) week training period before testing. Permit holder shall be required to pass a written examination. The tests shall be given according to current policies of the LP Gas Administration. If the supervising Class X determines that the new applicant is properly trained, proper documentation of the training is on file, and a Class IV-D application has been forwarded to the LP Gas Administration, the applicant at that time may begin performing the duties of a Class IV-D permit holder until such time as the test is administered and the permit issued. This time shall not exceed thirty (30) days or the applicant shall cease to perform these duties. Current Class IV permit holders, as of September 1, 1994, properly trained in delivery of LP Gas will not be required to take the test and will be issued a IV-D permit. The annual fee for a Class IV-D is Fifty Dollars (\$50.00).

(B) Class IV-D permit does not permit the holder to install or service LP Gas carburetion systems.

(C) Any installer not under the personal and direct supervision of a Class X holder at the immediate time and location of installation shall be required to have a Class IV or IV-D permit.

(6) **Class VI - DOT Cylinder &/or LP Gas Motor Fuel Station Operator Permit.**

(A) The Class VI DOT Cylinder and/or LP Gas Motor Fuel Station Operator Permit permits the holder to operate DOT cylinder ~~charging~~dispensing station and/or a motor fuel dispenser for public resale. A permit is required for each DOT cylinder dispensing station and/or motor fuel station. Applicant shall be required to pass an approved written examination for each separate endorsement depending upon the type of LP Gas motor fuel dispenser to be installed. The endorsements will be as follows:

- (i) AAG, This Attended Autogas "AAG" endorsement permits the holder to operate LP Gas dispenser stations that fill DOT cylinders and/or

Attended LP Gas motor fuel refueling dispensers for resale.

(ii) UAG, This Unattended Autogas "UAG" endorsement permits the holder to operate Unattended self-service LP Gas motor fuel dispenser stations; however, these installations require more stringent regulations than those that are attended. In addition to the requirements in this section, the permit holder shall be required to install equipment that meets or exceeds the minimum installation and performance standards described in OAC Section 420:10-1-14(28). For the purpose of defraying the cost and expenses of administering and enforcing this rule, persons, firms and corporations shall pay at the time of initial inspection a fee of Three Hundred Dollars (\$300.00) for each unattended LP Gas motor fuel dispenser station. Thereafter, the annual inspection fee is One Hundred Fifty Dollars (\$150.00) for each unattended LP Gas motor fuel dispenser station.

~~(B) Examination shall be administered by a Safety Code Enforcement Officer, or by a Class X Manager. In either case, the test fee for the Class VI permit is Ten Dollars (\$10.00). Permit holder is responsible for the safety of the dispensing operation and training and safety of the employees dispensing LP Gas. Class VI locations may not become operational until a permit has been issued. A Class VI-A LP Gas Dispensing permit must be secured for the person actually in charge of an LP Gas dispensing operation of a Class VI permit holder. A permit will not be issued until the proper fee has been paid and certificate of insurance is received by the LP Gas Administration. The annual fee for a Class VI permit is One Hundred Dollars (\$100.00) One Hundred Fifty Dollars (\$150.00).~~

(7) **Class VI-A - LP Gas Dispensing Permit.** All employees involved in dispensing LP Gas must acquire a Class VI-A permit, except a Class IV, Class IV-D, ~~Class VI,~~ and Class X. A Class VI-A LP Gas Dispensing permit is required for a person actively in charge of LP Gas dispensing operations for the holder of a Class VI permit. All Class VI-A permit holders must be an employee of said Class VI permit holder. Class VI-A applicants must be properly trained by a Class VI or Class X on proper filling of ASME tanks and DOT cylinders, and inspection thereof per NFPA 58. Applicants shall be required to pass an approved written examination. Test shall be administered by a Safety Code Enforcement Officer, or by Class X manager. In either case, the test fee for the Class VI-A permit is Ten Dollars (\$10.00). Holder must carry permit and attend the annual safety school once every year. This does not prohibit any person, firm or corporation from filling his own equipment from his own supply line, or dispensing motor fuel from an approved limited access self-service dispenser. The annual fee for a Class VI-A permit is ~~Twenty Five Dollars (\$25.00) Thirty Five Dollars (\$35.00).~~

(8) **Class VII - Cylinder Exchange Program Permit.** The Class VII Cylinder Exchange Program Permit permits the holder to participate in the cylinder exchange program. A permit is required for each cylinder exchange location. Class VII locations may not become operational until a permit has been issued. Permits will not be issued until the proper fee has been paid and certificate of insurance is received by the LP Gas Administration. The annual fee for a Class VII permit is Fifty Dollars (\$50.00).

(9) **Class IX - LP Gas Container Sales Permit.** The Class IX Gas Container Sales Permit permits the holder to manufacture and/or sell LP Gas containers. This permit is required by both wholesalers and retailer. The annual fee for a Class IX permit is Seventy Dollars (\$70.00).

(10) **Class IX-A - Mobile Homes and Recreation Sales Permit.**

(A) The Class IX-A Mobile Homes and Recreation Sales Permit permits the holder to manufacture, fabricate and sell all LP Gas facilities or systems used in mobile homes, campers, recreational vehicles and portable buildings whether such LP Gas system is manufacture, fabricated or sold separately or as an integral part of such trailer, camper, recreational vehicle or portable building. The annual fee for a Class IX-A is Seventy Dollars (\$70.00).

(B) This shall not be construed to require a permit for a sale by the owner of a mobile home or recreational vehicle who is not engaged in such business on a commercial basis and does not make over two such sales in one year.

(11) **Class X - Manager's Permit.**

(A) A Class X Manager's permit is required for a person actively in charge of LP Gas operation for holder of Class I permit and at each separate branch or base of operation of a Class I permit. All Class X holders must be a full-time employee of said Class I holder. The annual fee for a Class X permit is One Hundred Fifty Dollars (\$150.00).

(B) Before testing for a Class X permit, an applicant must meet the following requirements as approved by the Board:

- (i) Hold an active Class IV or Class IV-D permit and employed under an active Class I Dealer for a minimum of three (3) years or equivalent; and
- (ii) One (1) year of the minimum three (3) years required experience can be satisfied with forty (40) hours of specified training.

(C) Temporary exemptions for emergency conditions can be granted by the Administrator.

(12) **Additional permits required for employees of Class I dealers.** Class IV, IV-D, VI-A, and X permits are the only additional permits that may be required for the employees of a Class I dealer, or as may be required by future Board action.

(13) **Truck, Trailer or Cargo Tank inspections.** For the purpose of defraying the cost and expenses of administering and enforcing this act, persons, firms and corporations shall also pay at the time of inspection an

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annual inspection fee of One Hundred Fifty Dollars (\$150.00) for each LP Gas truck, trailer or cargo tank belonging to a person who holds a permit authorizing the use of such truck, trailer or cargo tank and One Hundred Fifty Dollars (\$150.00) for each such truck, trailer or cargo tank belonging to a person who does not hold a permit. All requirements imposed subsequent to these inspections must be met within thirty (30) days of the initial inspection. Failure to comply will necessitate a re-inspection at a charge of One Hundred Fifty Dollars (\$150.00) for each inspection. The inspection fee shall increase to Three Hundred Dollars (\$300.00) per vehicle if said inspection is not completed within sixty (60) days of the expiration date, or at the discretion of the Administrator.

(14) **Containers or cylinders.** There is hereby levied the following fee, to be paid to the Administrator, upon all first sales, purchases, rentals or uses in this state of liquefied petroleum gas containers or cylinders; on all Department of Transportation (DOT) cylinders, vehicle fuel containers, a fee of Three Dollars (\$3.00) each, and on all other containers, a fee of Ten Dollars (\$10.00) each.

420:10-1-8. Processing and handling of applications and examinations

(a) **Scheduling.** Upon the receipt of an application for a permit for Class I or Class X permit the Board or Administrator shall schedule the applicant provided therein for examination at the next periodic written examination, unless the application be filed less than 30 days prior to the next scheduled written examination.

(b) **Passing score.** A score of 80% correct shall be a passing grade for all examinations.

(c) **Examinations.**

(1) **Class I examination.** Questions for a Class I examination shall be selected at random from a reservoir of questions consisting of no less than 500 questions but no more than 1000 questions. Questions shall be of four-part, multiple choice. Prior to being placed in the reservoir the questions shall be reviewed by the Board. For each examination a total of 150 questions shall be drawn from the reservoir. All applicants sitting at one time shall receive identical examinations. Questions shall be from NFPA pamphlets 58 and 54 and rules and regulations promulgated by the Board. All exams shall be coded in such a manner that identity of the applicant shall be unknown to the grading authority.

(2) **Qualified Managers examination.** Questions for a Class X Qualified Managers Examination shall be selected at random from a reservoir of questions consisting of no less than 500 questions but no more than 1000 questions. Questions shall be of four-part, multiple choice. Prior to being placed in the reservoir the questions shall be reviewed by the Board. For each examination a total of 100 questions shall be drawn from the reservoir. All applicants sitting at one time shall receive identical examinations. Questions shall be from NFPA pamphlets 58 and 54 and rules and regulations promulgated by the Board.

All exams shall be coded in such a manner that identity of the applicant shall be unknown to the grading authority.

(3) **Class IV and IV-D examinations.** Class, IV and IV-D examinations consist of standardized examinations. Class IV examinations will consist of 50 questions and Class IV-D exam will consist of 75 questions, each to be prepared by the Administrator.

(4) **Class II, III, ~~VI~~, VI-A, VII examinations.** Class II, III, ~~VI~~, VI-A, and VII examinations shall be standard concerning basics of safety and handling of LP Gas. The examination to be prepared by the Administrator.

(d) **Applicant information.**

(1) All applicants for the same type permit sitting at any one time shall receive identical examinations.

(2) All applications and examinations except Class I and Class X shall be scheduled by the Administrator at such times as he may deem appropriate.

(3) Applicants may review their examination papers at the Administration Office within 30 days after examination date.

420:10-1-13. Responsible employees and managers who shall be required to have technical qualifications and manager's permits

(a) **Class X requirements.** A qualified manager possessing a Class X permit shall be required to actively supervise the LP Gas related sales and/or service being offered to the public at each separate branch or base of operation of a Class I permit holder which is operated as a relatively independent operation free from the day to day immediate supervision and control of the holder of the Class I permit, or the manager of a non-personal Class I permit holder. ~~A Class X manager shall be considered to be actively supervising if such a manager is present at the separate branch or base of operation at least fifty percent (50%) of the reasonably normal hours of operation of such separate branch or base of operation.~~ A Class X manager shall be considered to be actively supervising if such a manager is employed by the Class I permit holder to be the responsible party for the day to day immediate supervision of no more than two (2) separate branches or bases of operation, including training and oversight of employees, and is readily available to address daily operational needs and unforeseen events and emergencies. If the Administrator approves a request to operate LP gas related sales and/or services offered to the public without the active supervision of a Class X manager, then such request shall be subject to future review by the Administrator in his or her sole discretion. In determining whether such a separate branch or base of operation exists, the Administrator shall consider the following:

(1) The distance of the LP Gas related sales and/or service being provided from the location of the main or central base of operation. In any case where a truck is stationed twenty-five (25) miles or more away from the direct supervision of a Class X managed operation, then the burden of proof is on the Class I permit holder to prove that it is not a separate branch or base of operation and meets all the requirements of the Oklahoma Rules and Regulations.

(2) The type and kind of LP Gas related sales and/or service offered to the public. Sales and/or service to residential customers and public buildings is considered to require more supervision than sales and/or service to industrial, agricultural and motor fuel customers;

(3) Any and all other pertinent information which indicates that a separate branch or base of operation exists.

(b) **Exception hearing.** After a determination has been made by the Board, the Class I permit holder shall be notified of the Board's determination in writing. The Class I permit holder shall then have ten (10) days thereafter to request in writing a hearing before the Board for the purpose of presenting any facts and circumstances which would indicate that a Class X permit holder is not required where the separate LP Gas related sales and/or service is offered. Failure to request such a hearing from the Board by the Class I permit holder shall constitute acquiescence in the Board's determination. If the Board determines that a Class X is needed at the separate branch or base of operation then the Class I permit holder has 120 days or until the next Board meeting to secure a Class X permit holder.

(c) **Class X cancellations.** Class X permits are immediately and without notice canceled when a holder thereof leaves the employment of a Class I permit holder. The Class X permit holder must notify the Board within ninety (90) days of their intent to place the Class X permit on inactive status. The inactive Class X permit holder must attend the required safety seminar and pay the annual permit renewal. Thereafter, the inactive Class X holder can make application to the Board for issuance of an active Class X permit, upon proof of full-time employment by a Class I permit holder and with Board approval.

420:10-1-14. Standards for the storage and handling of liquefied petroleum gas

(a) **NFPA standards.** The standards for the storage and handling of liquefied petroleum gases adopted by the National Fire Protection Association and published in its pamphlets No. 58, and the standards for the installation of gas appliances and gas piping adopted by said National Fire Protection Association published in its pamphlet No. 54 have been adopted by the Legislature in 52 O.S. 1991, Section 402.3 (e) and shall be accepted standards for the State of Oklahoma. All Class I permit holders must have a current copy of NFPA 58 and 54 on file at each separate branch.

(b) **Supplemental standards.** The following standards are supplemental to NFPA pamphlet No. 58 and shall be part of the rules and regulations of the Oklahoma Liquefied Petroleum Gas Board:

(1) **Definitions.**

(A) The word "approved" as used in this section means acceptable to the State Liquefied Petroleum Gas Administrator. A device or system having materials or forms different from those detailed in this section may be examined and tested according to the intent of the regulations and if found equivalent, may be approved.

(B) In this section those provisions which are considered essential for adequate protection of life and property from fire are indicated by the words "shall" and "must. The words "should" or "preferably" indicate advisory provisions concerning which the State Liquefied Petroleum Gas Administrator of Oklahoma should be consulted.

(C) In each place mentioned in NFPA No. 54 and NFPA No. 58 where it refers to "the authority having jurisdiction" this would mean the Liquefied Petroleum Gas Administrator.

(D) An "important building" shall be any building, open to the public, or inhabited by people, in which any LP Gas system or any type is installed.

(2) **Submittal of plans.**

(A) Prior to the installation of new, or the modification of liquefied petroleum gas plumbing systems, excluding tank change outs, in school buildings, churches, courthouses, office building and other building to which the public is invited, such as cafes, dance halls, tourist courts and parks, plans and specifications for such installation in duplicate, shall be submitted to, and approved, by the State Liquefied Petroleum Gas Administrator, and before such systems are filled with liquefied petroleum gas, they shall be physically inspected and approved by a licensed installer and a report made by him to the State Liquefied Petroleum Gas Administrator on LPG Form 4, or its revision, furnished by the LP Gas Administrator's office.

(B) Plans must be submitted and approved on any dispenser used to fill DOT cylinders and/or ASME containers, and used for public resale of LP Gas, including unattended self-service LP Gas motor fuel dispenser stations. These plans must be submitted by a Class I permit holder to the Administration office along with the proper fee, and an onsite inspection must be performed by a Safety Code Enforcement Officer prior to final approval and before the dispenser can be placed into service. A One Hundred Dollar (\$100.00) plan review fee must accompany all dispenser plans submitted. If a dispenser is taken out of service, written notice must be given to the Administration office within seven (7) working days. If a dispenser is moved to a new location, new plans must be submitted to the Administrator and onsite inspection performed by a Safety Code Enforcement Officer prior to final approval and dispenser being placed into service. A complete list of dispensers by location shall be submitted to the LP Gas Administration as indicated on Class I permit renewal forms.

(C) Plans must be submitted to, and approved, by the Administrator on any fixed installation with individual water capacity of 2,000 gallons or more, or aggregate water capacity exceeding 4,000 gallons.

(3) **Report of accident.** In case of accident or fire at any location where a liquefied petroleum gas system or equipment is involved, or any accident involving liquefied

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petroleum gas systems or equipment, the dealer owning, operating or servicing the equipment or installation shall notify the State Liquefied Petroleum Gas Administrator. This notification shall be forwarded as soon as feasibly possible after the dealer has knowledge of the accident in order that an inspection may be made by the State Liquefied Petroleum Gas Administrator before the site has been disturbed.

(4) **Piping - including pipe, tubing and fittings.**

(A) No person, firm, or corporation shall connect a liquefied petroleum gas tank to any piping without having first determined that such piping complies with the laws of the State of Oklahoma and the rules and regulations of the State Liquefied Petroleum Gas Administrator relative to liquefied petroleum gas piping.

(B) All installations, installed after July 1, 2002, of storage containers, with more than 4,000 gallon water capacity, shall have internal valves installed as per NFPA 58.

(C) On installations of stationary or portable storage, with an aggregate of more than 4,000 gallon water capacity, a bulkhead approved by the LP Gas Administrator shall be required on each liquid line of one and one-half (1-1/2) inch or larger and each vapor line of one and one-quarter (1-1/4) inch or larger.

(5) **Vaporizers and housings.**

(A) The minimum capacity of the storage container feeding the vaporizer shall not be less than ten (10) times the hourly capacity of the vaporizer in gallons.

(B) The minimum capacity of a storage container being heated by a direct fired tank heater shall not be less than ten (10) times the hourly vaporizing capacity of the tank heater in gallons.

(6) **Container charging.** DOT cylinders with water capacity less than 300 pounds shall be charged by weight, except containers as per NFPA 58.

(7) **Liquid metering systems.** Each bulk retail delivery of liquid LP Gas shall be measured by a suitable LP Gas liquid meter system, except those deliveries of liquid LP Gas in cylinders which are filled by weight, and deliveries of LP Gas vapor through vapor meters otherwise and a delivery of a full transport load from the terminal to the end-user with a bill of lading, are exempt from the requirements of this paragraph.

(A) LP Gas Liquid meters shall indicate deliveries in terms of gallons and to the nearest tenth of a gallon.

(B) The LP Gas liquid meter shall meet, in addition to the other requirements of this paragraph, the following requirements:

(i) The system shall include a device (such as a differential back-pressure regulator) so designed and installed that the product being measured will remain in a liquid state during passage through the meter.

(ii) No means shall be provided by which any measured liquid can be diverted from the measuring chamber, differential valve equipment or the discharge line therefrom.

(iii) Effective January 1, 1994, in accordance with the National Institute of Standards and Technology (NIST) Handbook 44, all LP Gas Liquid meters used for bulk delivery shall be designed with the necessary equipment for mechanically printing gallons on a delivery ticket and the customer served thereby shall be given a ticket mechanically imprinted by the printing device. The customer's name and Class I Dealer's name must be included on the metered ticket. Meters used for stationary dispensing of motor fuel will not be required to be equipped with such printing device.

(iv) All bulk metered sales of propane, via bobtail or transport, shall be made by temperature compensated measure. Except, any truck now operating without a temperature compensation meter shall be retrofitted by no later than July 1, 2003.

(C) All meters where product is sold to the public must be proved annually by an approved meter tester/inspector and have written certification on file at permit holders place of business. All meters and temperature compensators must be accurate within the manufacturers tolerance not to exceed + or -1% at any time. The LP Gas liquid meter system shall be designed and constructed to provide for applying lead-and-wire seals in such a manner that no modifications or adjustments which would affect the accuracy of deliveries, can be made without mutilating the seal or seals. If a seal is broken, notification must be made to the Administrator and resealed by a Safety Code Enforcement Officer, an approved meter tester, or a person approved by the Administrator. In addition, the Administrator at his discretion may require proving of metering system to determine the accuracy.

(D) No dealer or firm controlled or affiliated with a dealer may calibrate or certify its own meters. All meters must be tested with a volumetric meter prover.

(8) **Qualified personnel.** Each holder of an LP Gas permit shall be responsible for having qualified personnel operating and installing LP Gas equipment.

(9) **Filling unsafe or unapproved dispensing or storage tanks prohibited.** No person, firm, or corporation shall introduce liquefied petroleum gas into a dispensing or storage tank in the State with knowledge that such dispensing or storage tank or piping is known to be in an unsafe operating condition.

(10) **Basement installations.** No appliance shall be installed in any basement or semi-basement unless it is fully automatically controlled and properly vented and must have the approval of the State Liquefied Petroleum Gas Administrator.

(11) **Standards for containers.**

(A) In accordance with 52 O.S. Sec. 420.5, all first sales, rentals, purchases or uses of DOT cylinders and ASME tanks in this State, must have Oklahoma Identification tags attached to such cylinders or tanks. However, all DOT cylinders and ASME tanks in Oklahoma, with a manufacturers date prior to September 1, 1993, are not required to have Oklahoma Identification tags. These Oklahoma Identification tags are not transferable from one cylinder or tank to another.

(B) Any new container sold or installed in Oklahoma for use in this State shall carry a five year warranty covering workmanship and material. This warranty shall provide that any container not in compliance with this regulation must be repaired or replaced by the fabricator at no expense to the dealer or customer. This provision is to take care of "pin-hole" leaks in the weld that were not detected at the time of fabrication and does not apply to fittings.

(C) Containers shall be filled or used only upon authorization of the fee simple owner. The name of the fee simple owner, if other than the consumer, shall be conspicuously shown on the container.

(D) Any stationary storage container converted from anhydrous ammonia to propane shall be converted as follows:

(i) The container shall be purged of anhydrous ammonia by water flooding, steam or other methods described by the National Propane Gas Association's (NPGA) Recommendation for Prevention of Ammonia Contamination; and

(ii) It shall then be properly purged with propane vapor and tested with the red litmus paper as described in NFPA 58 or by any other test approved by the Board; and

(iii) The test shall be completed by the permit holder that performs the conversion; and

(iv) The results shall be documented and shall contain the container manufacturer, water capacity, serial number, the results of the test, the capacity of the relief valve, the date of the test, and the signature of the permit holder conducting the test. A copy of the results shall be provided to the owner of the container; and

(v) Any dealer filling a converted anhydrous ammonia container for the first time shall either be provided a copy of the test or complete the test as described above; and

(vi) The container shall meet all requirements of NFPA 58.

(12) **Underground containers.**

(A) Underground containers before being reinstalled must be inspected by the State Liquefied Petroleum Gas Administrator, and a fee of \$25.00 paid to the State Liquefied Petroleum Gas Administrator's office, and reinstalled by a licensed LP Gas installer.

(B) Underground containers shall be dug up at the expense of the owner at any time at the discretion of the State Liquefied Petroleum Gas Administrator.

~~(C) Any person installing an underground container must notify the Administrator prior to installation.~~

(13) **Minimum storage.** All new Class I permit holders must provide bulk propane storage capacity of not less than an aggregate of 18,000 water gallons. The minimum storage must be maintained and operational, with installation approved by the authority having jurisdiction, and within a fifty (50) mile radius of the corporate office or branch location. The minimum storage shall be considered maintained if the area meets the requirements of NFPA 58, the rules and regulations established by the Board and is kept reasonably clear of long, dry grass, weeds, debris, and any other combustible material. Any exceptions to the minimum storage requirement may be granted by the Board. Current active Class I permit holders, as of September 1, 1994, are not required to meet this minimum storage requirement. After a change of ownership the new Class I permit holder must secure the minimum storage requirement within one year.

(14) **Painting.** All bulk storage containers of a capacity 120 gallons water capacity or greater shall be painted a heat reflection color.

(15) **Lettering bulk storage and dispensers.**

(A) All bulk storage 2,000 gallons and above shall be lettered with the name of the contents, such as LP Gas, butane, propane, and a "No Smoking" sign in letters not less than six (6) inches high.

(B) In addition to subparagraph (A) of this paragraph, all bulk storage used for loading and unloading facilities, and all container filling storages (dispensers) shall include the name of the person, firm, or corporation operating the bulk storage or dispenser and their phone number in letters not less than two (2) inches high. This information shall be placed so as to be readily visible to the public.

(C) For all size bulk storage containers the name of the fee simple owners, if other than the consumer, shall be conspicuously shown on the container.

(16) **Extinguishers required.** Extinguishers of the dry chemical type, with a B:C or A:B:C rating, are required. Extinguishers shall have a net content of not less than the current NFPA 58 requirements and shall be inspected at least once each year by an authorized inspector such as Fire Departments or Fire Appliance Company representatives. Current weatherproof inspection tags shall be attached to the extinguisher.

(17) **Marking cargo vehicles.** Every tank vehicle used for transportation of liquefied petroleum gas shall be marked and placarded according to current DOT requirements. Each tank vehicle must also have the name of the person, firm or corporation on each side of the cargo tank in letters a minimum of two (2) inches in height. This information shall be placed so as to be readily visible to

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the public. This name shall be the same as permit holder has designated on the Class I or Class II permit.

(18) **Parking and garaging LP gas tank vehicles.** Any tank vehicle used for transportation of Liquefied petroleum gas shall not be parked beneath or adjacent to any electric transmission line in such position that there is a possibility of a conductor contacting the tank in event of breakage.

(19) **Filling unapproved truck, trailer or cargo tanks prohibited.**

(A) An inspection form, when properly completed, and a LPG registration decal (the serial number of which is shown on the inspection form), shall be evidence that the liquefied petroleum gas truck, trailer or cargo tank described on the inspection form by its serial number has been approved by the Liquefied Petroleum Gas Administrator for use in the transportation of liquefied petroleum gas. Such LPG registration decal and inspection form also shall authorize the person, firm or corporation whose name appears on the inspection form or its bona fide employees to operate the truck or trailer tank described on the inspection form, and further shall authorize the filling of such truck, trailer or cargo tank with liquefied petroleum gas.

(B) The LPG registration decal shall be displayed at all times in an easily visible location on the left front of the cargo tank, which is on the driver's side. A copy of the inspection form shall be retained, until the expiration date, in the office of the person, firm or corporation whose name appears thereon. It will not be necessary to keep or display a copy of the inspection form on the truck, trailer or cargo tank.

(C) No person, firm or corporation shall operate a truck, trailer or cargo tank in the transportation of liquefied petroleum gas in this State unless such person, firm or corporation has been issued a LPG registration decal and an inspection form certifying that such tank has been registered with and approved by the State Liquefied Petroleum Gas Administrator, or unless its operation has been specifically approved by a communication from the State Liquefied Petroleum Gas Administrator.

(D) The LPG registration decal and the inspection form required in this paragraph are not transferable by the person, firm or corporation to whom they are issued or from one truck, trailer or cargo tank to another, and they are not to be used after the expiration date of the fiscal year for which they were issued, or in the event the Class I permit becomes inactive.

(20) **Vaporizers.** Exhaust gases shall not be used as a direct means of heat supply for the vaporization of fuel.

(21) **Stationary engines in building.**

(A) All engine rooms shall be well ventilated at the floor level.

(B) When engines are installed below grade level, suitable floor level mechanical exhaust ventilation

shall be provided and operated continuously or adequate means shall be provided to purge the room before the engine is started. In any case the mechanical ventilation shall be in operation when the engine is running. Before and during any repairs to the engine the room shall be ventilated.

(C) Automatic fire doors shall be provided at openings in the engine room that open into other sections of the building.

(D) Exhaust gases shall be discharged outside the building in a manner that will not create a fire or any other hazard.

(E) Regulators and pressure relief valves installed in buildings and engine rooms shall be vented to the outside and discharge at least five feet away from any building opening. Such venting will not be required for combination engine fuel vaporizing - fuel reducing - fuel metering devices providing an acceptable automatic shut-off valve is installed immediately ahead of such devices.

(22) **Storage outside of buildings.** Valves and safety relief devices shall be protected against accumulations of ice and snow. Protective caps shall be deemed adequate.

(23) **Appliances.** Any mobile home, travel trailer, camper or recreational vehicle shall be delivered to the buying public by the permit holder with the system properly installed and free of leaks.

(24) **Maximum vapor pressure and container working pressure.**

(A) The maximum vapor pressure of the product at 100 degree Fahrenheit which may be transferred to a container shall not exceed the design working pressure of the container. Exception: 200 psig ASME working pressure vessels in LP Gas service in Oklahoma prior to January 1, 1994, may be continued in service for commercial propane, provided that they are fitted with relief valves and meet the start-to-leak setting in relation to the design pressure of the container, shall be in accordance with NFPA 58. For the purpose of this exception, "commercial propane" is defined as having a vapor pressure not in excess of 210 psig at 100 degree Fahrenheit. This exception does not apply to LP Gas motor fuel and mobile fuel containers.

(B) Any stationary 200 psig ASME containers brought into Oklahoma from out of state and intended for stationary LP Gas installation in Oklahoma at any facility requiring submission of plans and specification must be tested by at least two (2) of the following nondestructive test methods recognized by ASME to determine if the container or assembly is safe for LP Gas use in Oklahoma. The following test results must be submitted to the Oklahoma LP Gas Administration for approval.

(i) Hydrostatic Test;

(ii) Ultrasonic thickness test;

(iii) Wet particle fluorescent or magnaflux.

(25) Testing, leakage and visual inspection, and meter calibration.

(A) Hydrostatic testers operating in Oklahoma that are hydrostatic testing cargo containers for LP Gas use in Oklahoma must be approved by the Oklahoma LP Gas Board and shall:

- (i) Hold a Federal C.T. number;
- (ii) Include in their testing the use of a calibrated pressure chart recorder;
- (iii) Hold a Class IV installer permit.

(B) Leakage and visual inspectors operating in Oklahoma and performing this inspection on cargo containers and their systems for LP Gas use in Oklahoma must be approved by the Oklahoma LP Gas Board and meet the following requirements:

- (i) Inspectors shall hold a Federal C.T. number;
- (ii) If the inspection includes repairs that require the LP Gas system to be re-plumbed, a Class IV permit is required.

(C) Meter calibrators operating in Oklahoma that are calibrating meters for LP Gas use in Oklahoma must be approved by the Oklahoma LP Gas Board and meet the following requirements:

- (i) Meters shall be tested in accordance to Oklahoma Rules and Regulations, Section 420:10-1-14(7);
- (ii) Meter calibrators shall furnish the meter owner a copy of the calibration showing the correct gear numbers and temperature compensator settings;
- (iii) Meter calibration results shall be on a form approved by the LP Gas Administrator and a copy of the completed form shall be furnished to the meter owner;
- (iv) Meter calibrators shall hold a Class IV permit.
- (v) Meter calibration testers shall test meters according to National Institute of Standards and Technology (NIST) standards.

(26) Cylinder exchange stations.

(A) Cylinder exchange cabinets shall be constructed as per NFPA 58.

(B) The cabinet shall have the following signs affixed to it and readily visible to the public:

- (i) "Propane" or "Flammable Gas" and "No Smoking" in letters not less than two (2) inches high;
- (ii) "Net Weight ____ lbs." with the net weight of the cylinders to be specified, all of which shall be displayed on the front of the cabinet in letters not less than two (2) inches high;
- (iii) Name of Class I permit holder who supplies the cylinders;
- (iv) 24-hour Emergency telephone number.

(C) The cabinet shall be located for distance and number of cylinders as per NFPA 58.

(D) The cylinder storage area shall be kept free of wood, debris, and other combustible/flammable material not necessary to the storage for a distance of ten (10) feet, not to include the construction materials of the building itself.

(E) Protection against vehicle impact shall be provided in accordance with good engineering practice where vehicle traffic normally is expected at the location as per NFPA 58.

(F) A fire extinguisher shall be provided as per NFPA 58.

(G) A warning sign shall be posted at or near any entrance doorway stating the "LP GAS EXCHANGE CYLINDERS EMPTY OR FULL SHALL NOT BE TAKEN INDOORS FOR ANY REASON."

(H) The Class I permit holder shall provide safety training materials to the Class VII permit holder. The Class VII permit holder is responsible for providing appropriate safety information to the individual exchanging the cylinder. This documentation of training will be kept by the Class VII permit holder at the Class VII location.

(I) Automated cylinder exchange cabinets that include an automated vending system for exchanging cylinders shall comply with the following additional requirements:

- (i) Electrical equipment installed in cylinder storage compartments shall comply with the requirements for Class I, Division 2 equipment in accordance with NFPA 70, National Electrical Code;
- (ii) Cabinets shall be designed such that cylinders can be placed inside only in the upright position;
- (iii) Door releases for access to stored cylinders shall be permitted to be pneumatic, mechanical or electrically powered;
- (iv) A manual override control shall be permitted for use by authorized personnel;
- (v) The vending system shall not be capable of returning to automatic operation after a manual override until the system has been inspected and reset by authorized personnel.

(J) A Class I permit shall be required in order to supply exchange cylinders for the cylinder exchange permit holder.

(K) A busy sidewalk and thoroughfare, as referenced in NFPA 58, shall be further defined as not being located on private property. A busy sidewalk is alongside a public road and a thoroughfare is a public road.

(27) Recreational vehicles. Installations or repairs on LP Gas systems on recreational vehicles shall be performed as per NFPA 1192, Standard on Recreational Vehicles.

(28) Minimum installation and performance standards of unattended self-service LP Gas motor fuel dispenser stations.

Permanent Final Adoptions

(A) Unattended self-service LP Gas motor fuel dispenser stations shall meet the applicable sections of the rules and regulations of the Oklahoma Liquefied Petroleum Gas Board and NFPA 58.

(B) Any unattended self-service LP Gas motor fuel dispenser shall also meet all Alternative Provisions for Installations of ASME containers found in NFPA 58 regardless of tank size. This includes Redundant Fail Safe Product Control and Low Emission Transfer requirements.

(C) The delivery valve and nozzle combination shall be designed, installed, and operated, so that LP Gas will not be released unless the valve is correctly attached to the filler coupling on the receiving valve of the LP Gas motor fuel container.

(D) To maintain minimum performance standards, the following shall be considered minimum system performance requirements:

- (i) Dispensing rate minimum of eight (8) gallons per minute (GPM) per manufacturer's specifications;
- (ii) Vehicle fueling area, ground where vehicle is parked, shall be reasonably level to allow for complete fuel fills.

(E) The dispenser shall have the following signs affixed to the dispenser and readily visible to the public:

- (i) Step by step operating instructions, approved in advance by the Administrator;
- (ii) A warning sign(s) stating, "WARNING, STATE LAW PROHIBITS FILLING ANY PORTABLE DOT CONTAINERS AT THIS DISPENSER" and "All vehicles refueling at this dispenser must have an appropriate ASME container fitted with an operational OPD valve" in letters not less than two (2) inches high;
- (iii) Proper name of LP Gas being dispensed, as specified by federal regulations at CFR-Title 49, in letters not less than two (2) inches high;
- (iv) "No Smoking" in letters not less than two (2) inches high;
- (v) 24-hour emergency telephone number in letters not less than two (2) inches high;
- (vi) Name of the Class 1 permit holder that services the dispenser, in letters not less than two (2) inches high.

[OAR Docket #17-590; filed 7-6-17]

TITLE 428. LONG-RANGE CAPITAL PLANNING COMMISSION CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #17-550]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:

Subchapter 1. General Provisions
428:1-1-2. Official office [AMENDED]
428:1-1-5. Agenda items [AMENDED]
428:1-1-6. Open records [AMENDED]

AUTHORITY:

62 O.S. §901; Long-Range Capital Planning Commission

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n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The purpose of these amendments is to update and clarify the rules and to correct scrivener's errors.

CONTACT PERSON:

Kimberlee Williams, Deputy General Counsel, OMES, (405) 522-3615 or Kimberlee.Williams@omes.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 1. GENERAL PROVISIONS

428:1-1-2. Official office

The Long-Range Capital Planning Commission offices are located at 2401 North Lincoln Boulevard, Suite 206, Oklahoma City, OK 73105, within the offices of the Office of Management and Enterprise Services, ~~Division of Capital Assets and serves employees of which serve as staff to the Commission.~~ The telephone number of the Commission is (405) 522-0440 and the facsimile machine number is (405) 521-6403. The office hours are from 8:00 a.m. to 5:00 p.m. Central Time, Monday through Friday, except legal holidays.

428:1-1-5. Agenda items

~~The Division of Capital Assets Management Office of Management and Enterprise Services~~ prepares an agenda on behalf of the Commission for each meeting of the Commission. The agenda is filed and posted in accordance with the Oklahoma Open Meeting Act. Members of the public may request the Commission to place matters on the agenda for a meeting.

428:1-1-6. Open records

All requests for the public records of the Commission will be made through the ~~Division of Capital Assets Management Office of Management and Enterprise Services, which~~ will be charged with making the public records of the Commission available for inspection by, or copying to, the requesting party during normal business hours. The Commission will charge \$0.25 per page for each copy of a public record with the dimension of 8-1/2 by 14 inches or smaller. For all other records, the Commission will charge the actual direct cost of reproduction. The ~~Division of Capital Assets Management Office of Management and Enterprise Services~~ will decide if the request is for a record not otherwise deemed confidential under Oklahoma Law. Except information that is confidential under Oklahoma or federal law, all documents or other records of the Commission will be open for public inspection and copying.

[OAR Docket #17-550; filed 6-29-17]

**TITLE 428. LONG-RANGE CAPITAL
PLANNING COMMISSION
CHAPTER 10. ADMINISTRATION OF
THE STATE CAPITAL IMPROVEMENT
PLANNING ACT**

[OAR Docket #17-551]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 1. General Provisions
- 428:10-1-3. Definitions [AMENDED]
- Subchapter 3. State Capital Plan
- Part 1. State Entity Requests
- 428:10-3-1. Request format [AMENDED]
- 428:10-3-2. Procedures for capital outlay requests [AMENDED]
- Part 3. Preparation of State Capital Plan
- 428:10-3-3. Contents of the Plan [AMENDED]
- 428:10-3-4. Formulation and submission of the Plan [AMENDED]
- 428:10-3-5. Implementation of the Plan [NEW]
- 428:10-3-6. Emergency Projects [NEW]

AUTHORITY:

62 O.S. §901; Long-Range Capital Planning Commission

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INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The purpose of these amendments is to update and clarify the rules and to correct scrivener's errors.

CONTACT PERSON:

Kimberlee Williams, Deputy General Counsel, OMES, (405) 522-3615 or Kimberlee.Williams@omes.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 1. GENERAL PROVISIONS

428:10-1-3. Definitions

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

"The Act" means the State Capital Improvement Planning Act, 62 O.S., Section 900 et.seq.

"Capital item" ~~means an item with a value or cost of \$25,000 or more and a useful life of at least five years. It will further mean a group of like items, purchased together or components of one another, with a cost or value of \$25,000 or more and a useful life of at least five years. Equipment being leased with the intent to own at the end of the lease terms with the cost or value of \$25,000 or more and useful life of at least five years will also be considered capital in nature.~~

"Capital project" is defined as a planned expense for a facility or physical item requiring a minimum expenditure of \$25,000, having a useful lifespan of five years or more, and meeting one of the following definitions:

- (A) Involves the acquisition or construction of any physical facility;
- (B) Involves the acquisition of land;
- (C) Involves the acquisition or construction of public utilities;
- (D) Involves the acquisition of major equipment or physical systems, such as computer technology, communications systems, major specialized vehicles, etc.;
- (E) Involves modifications to facilities, including additions to existing facilities, which increases the useful life of the facility, and/or
- (F) Capital maintenance or replacement projects on existing facilities, which are defined as non-recurring projects to repair, maintain or replace existing facilities for the purpose of protecting the state's investment in a facility and minimizing future maintenance and replacement costs. To be considered a capital maintenance project, a project must have an interval between expenditures of at least five years. Capital projects do not include normal operating expenditures for salaries, routine maintenance or repair, or activities associated with or consumed during a single fiscal year.

Permanent Final Adoptions

"The Commission" means the Long-Range Capital Planning Commission established pursuant to 62 O.S., Section 901.

"Decision package" means the capital project information and supporting documentation that an agency submits as a capital outlay request.

"Inventory of capital facilities" means a schedule of capital items held by state government entities. Such schedule shall include, but not be limited to, a description of property, date of acquisition, useful/remaining life, and replacement value.

"The Plan" or "Plan" means the state capital plan to be prepared annually by the Long-Range Capital Planning Commission.

"Remaining useful life" means an estimate of the period of time over which the facility or item shall continue to serve its intended function, based on its current condition. The current condition should be assessed each year at the time the inventory is prepared and the remaining useful life should be determined according to this annual assessment.

"Replacement cost" means the cost to replace the item at the time the inventory is being prepared. That is, the current replacement cost, rather than the cost of replacing the item at the end of its useful life.

SUBCHAPTER 3. STATE CAPITAL PLAN

PART 1. STATE ENTITY REQUESTS

428:10-3-1. Request format

(a) State governmental entities requesting completion of existing projects or new capital projects must prepare and submit ~~the Project Request Form~~ a decision package as provided by the Commission and the ~~Office of State Finance~~ Office of Management and Enterprise Services.

(b) The ~~Capital Project Request Form~~ decision package shall include, ~~but not be limited to~~ at a minimum, the following information:

- (1) Description of project;
- (2) Length and phasing of project;
- (3) Estimate of project ~~cost~~ costs (by fiscal year);
- (4) Sources of funds to be used for the project;
- (45) Operational cost changes; and
- (56) ~~Master Plan~~ Supporting documentation to justify project need.

(c) ~~The Commission's Criteria Rating Sheet must be included with each project request as well.~~

All project submissions shall be rated using the commission's Capital Outlay Request Evaluation Criteria by the agency submitting the request. The Commission's Capital Outlay Request Evaluation Criteria are available by request through the Office of Management and Enterprise Services.

(d) Project requests that do not contain information required by (b) and (c) of this section shall not be considered for inclusion in the Capital Improvements Plan or Annual Capital Budget.

428:10-3-2. Procedures for capital outlay requests

(a) ~~The Office of State Finance and the State Bond Advisor's Office~~ Office of Management and Enterprise Services shall provide sufficient training to state entity personnel regarding the ~~revised Capital Project Request Form~~ process for submitting capital outlay requests.

(b) ~~Capital Project Request Forms will be delivered~~ The process for submitting capital outlay requests shall be provided to state governmental entities no later than May 1 of each calendar year.

(c) State governmental entities shall submit completed ~~Capital Project Request Forms~~ capital outlay requests to the ~~Office of State Finance~~ Office of Management and Enterprise Services, along with any and all attachments required for a decision package, no later than July 1 of the same calendar year. ~~Five copies of the Capital Project Request Forms and attachments must be submitted, as well as five copies of the Criteria Rating Sheet.~~

PART 3. PREPARATION OF STATE CAPITAL PLAN

428:10-3-3. Contents of the Plan

(a) The Plan shall include, but not be limited to, the mandates of Section 901 ~~(D)(2)(b)~~ of the Act.

(b) The Commission will review and evaluate ~~Capital Project Request Forms~~ capital outlay requests submitted by state government entities. ~~The~~ As a result of the evaluation, ~~the Commission~~ Commission's evaluation will formulate and recommend a detailed list of capital projects for the executive and legislative branches to ~~recommend~~ consider for funding during the next two fiscal years. In addition, a listing of recommended projects for the ~~three~~ six fiscal years following the aforementioned two, will be prepared by the Commission.

428:10-3-4. Formulation and submission of the Plan

(a) ~~The Commission shall meet with the Policy Advisory Committee at least once during the preparation of the plan for advice on the development of the plan and other debt management and planning issues as may be deemed appropriate.~~

(b) The State Capital Plan shall be submitted to the Governor, Speaker of the House of Representatives and President Pro-Tempore of the Senate no later than December 1 of each year, ~~beginning December 1, 1993.~~

(b) An itemized and prioritized list of proposed projects set forth in the Plan shall be submitted to the Governor, Speaker of the House of Representatives and President Pro-Tempore of the Senate within the first seven days of a regular legislative session.

(c) The Legislature will have a period of 45 days from the date that the list is submitted to pass a concurrent resolution disapproving any or all of the proposed projects. If the Legislature does not pass a concurrent resolution by the end of the 45th day following the submittal of the list, the projects shall be deemed to have been approved by the Legislature.

(d) Upon approval of all or any part of the list of proposed projects, the Office of Management and Enterprise Services is

authorized to expend funds for approved projects in order of the priority set forth in the Plan, as funding is available in the Maintenance of State Buildings Revolving Fund.

428:10-3-5. Implementation of the Plan

(a) The Office of Management and Enterprise Services manages approved capital projects, including but not limited to: bidding, contract management, purchase orders and expenditure of approved funds. Funds from the Maintenance of State Buildings Revolving Fund shall not be distributed directly to state governmental entities for capital project implementation.

(b) State governmental entities with approved capital projects shall initiate their approved capital project following procedures established by the Office of Management and Enterprise Services.

(c) Change orders to approved capital projects will be made in accordance with change order rules set forth by the Office of Management and Enterprise Services - Construction and Properties. Project changes falling outside of those rules shall be approved by the Commission.

(d) Implementation of approved capital projects shall be initiated within the fiscal year in which the project was approved and shall be completed within two fiscal years of approval. Projects that are not implemented within the fiscal year of approval will be considered void. Funding from the Maintenance of State Buildings Revolving Fund that has been allocated for voided capital projects shall be released to be used for other approved capital projects by order of priority in the Plan. Voided projects may be resubmitted for consideration by the Commission at a later date.

428:10-3-6. Emergency Projects

(a) Emergency capital needs may be considered for funding through the Maintenance of State Buildings Revolving Fund if the following criteria have been met:

(1) The owning agency has declared the capital need an emergency pursuant to 61 O.S. §130;

(2) The Director of the Office of Management and Enterprise Services has determined that there are sufficient funds in the Maintenance of State Buildings Revolving Fund to pay for the emergency need;

(3) The Director of the Office of Management and Enterprise Services has submitted the emergency capital need and cost information to the Speaker of the House of Representatives and the President Pro Tempore of the Senate; and

(4) The Speaker of the House of Representatives and the President Pro Tempore of the Senate have approved the funding of the emergency capital need within five calendar days of the submittal from the Director of the Office of Management and Enterprise Services.

(b) At each regular meeting of the Commission, the Office of Management and Enterprise Services shall provide the Commission with a report of all emergency project approvals that have been approved since the previous commission meeting.

[OAR Docket #17-551; filed 6-29-17]

**TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES
CHAPTER 1. ADMINISTRATION**

[OAR Docket #17-576]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Information

450:1-1-1.1. [AMENDED]

450:1-1-7. [AMENDED]

450:1-1-9. [AMENDED]

450:1-1-10. [AMENDED]

450:1-1-11. [AMENDED]

Subchapter 3. Contracts for Mental Health, Substance Abuse, and Residential Care Services

Part 1. Eligibility to Contract

450:1-3-5. [AMENDED]

Subchapter 9. Certification and Designation of Facility Services

450:1-9-12. [AMENDED]

AUTHORITY:

Oklahoma Department of Mental Health and Substance Abuse Services Board; 43A O.S. §§ 2-101, 3-110, 3-306, 3-306.1, 3-314.1, 3-315, 3-317, 3-318, 3-319 and 3-415; 74 O.S. §85.9G.

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SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

In accordance with the Administrative Procedures Act the proposed rule revisions to Chapter 1 are part of the Department's review of Title 450. The proposed rules are intended to update the Department's physical address as well as to update provider requirements and certification application procedures.

CONTACT PERSON:

Taylor Rains-Sims, Senior Director, Policy & Provider Regulation, Oklahoma Department of Mental Health and Substance Abuse Services, 2000 N. Classen Blvd, Suite E600, Oklahoma City, Oklahoma 73106, (405) 248-9345.

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

Permanent Final Adoptions

FINALLY ADOPTED AS SET FORTH IN 75 O.S.,
SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE
DATE OF OCTOBER 1, 2017:

SUBCHAPTER 1. GENERAL INFORMATION

450:1-1-1.1. Definitions

The following words or terms, as defined below, when used in Chapters 1, 15, 16, 17, 18, 21, 22, 23, 24, 27, 30, 50, 53, 55, 60, 65 and 70, shall have the following meaning, unless the context clearly indicates otherwise and will prevail in the event there is a conflict with definitions included elsewhere in Chapters 1, 15, 16, 17, 18, 21, 22, 23, 24, 27, 30, 50, 53, 55, 60, 65 and 70:

"Administrative Hearing Officer" means an individual who is an attorney licensed to practice law in the State of Oklahoma and is appointed by the Commissioner of ODMHSAS to preside over and issue a proposed order in individual proceedings.

"AOA" means American Osteopathic Association.

"Behavioral Health Aide (BHA)" means individuals must have completed sixty (60) hours or equivalent of college credit or may substitute one year of relevant employment and/or responsibility in the care of children with complex emotional needs for up to two years of college experience, and:

- (A) must have successfully completed the specialized training and education curriculum provided by the ODMHSAS; and
- (B) must be supervised by a bachelor's level individual with a minimum of two years case management experience or care coordination experience; and
- (C) treatment plans must be overseen and approved by a LBHP or Licensure Candidate; and
- (D) must function under the general direction of a LBHP, Licensure Candidate and/or systems of care team, with a LBHP or Licensure Candidate available at all times to provide back up, support, and/or consultation.

"Board" means the Oklahoma State Board of Mental Health and Substance Abuse Services.

"CARF" means Commission on Accreditation of Rehabilitation Facilities (CARF).

"Certification" means a status which is granted to a person or an entity by the Oklahoma State Board of Mental Health and Substance Abuse Services or the ODMHSAS, and indicates the provider is in compliance with minimum standards as incorporated in OAC 450 to provide a particular service. In accordance with the Administrative Procedures Act, 75 O.S. § 250.3(8), certification is defined as a "license."

"Certified Alcohol and Drug Counselor (CADC)" means Oklahoma certification as an Alcohol and Drug Counselor.

"Certified Behavioral Health Case Manager" or **"CM"** means any person who is certified by the ODMHSAS as a Behavioral Health Case Manager pursuant to Oklahoma Administrative Code, Title 450, Chapter 50.

"Certified facility" means any facility which has received a certification status by the Oklahoma State Board of Mental Health and Substance Abuse Services or the ODMHSAS.

"Certification report" means a summary of findings documented by ODMHSAS related to an applicant's compliance with certification standards.

"COA" means the Council on Accreditation of Services for Families and Children, Inc.

"Contractor" or **"contractors"** means any person or entity under contract with ODMHSAS for the provision of goods, products or services.

"Employment Consultant (EC)" means an individual who (i) has a high school diploma or equivalent; and (ii) successful completion of Job Coach training.

"Entities" or **"entity"** means sole proprietorships, partnerships and corporations.

"Facilities" or **"facility"** means entities as described in 43A O.S. § 1-103(7), community mental health centers, residential mental health facilities, community-based structured crisis centers, certified services for the alcohol and drug dependent, programs of assertive community treatment, eating disorder treatment, gambling addiction treatment, and narcotic treatment programs.

"Family Support and Training Provider (FSP)" means

- (A) have a high school diploma or equivalent;
- (B) be 21 years of age and have successful experience as a family member of a child or youth with serious emotional disturbance, or ~~a minimum of 2 years experience working with children with serious emotional disturbance or be equivalently qualified by education in the human services field or a combination of work experience and education with one year of education substituting for one year of experience~~ (preference is given to parents or care givers of child with SED) have lived experience as the primary caregiver of a child or youth who has received services for substance use disorder and/or co-occurring substance use and mental health, or have lived experience being the caregiver for a child with Child Welfare/Child Protective Services involvement;
- (C) successful completion of Family Support Training according to a curriculum approved by the ODMHSAS and pass the examination with a score of 80% or better;
- (D) pass OSBI background check;
- (E) treatment plans must be overseen and approved by a LBHP or Licensure Candidate; and
- (F) must function under the general direction of a LBHP, Licensure Candidate or systems of care team, with a LBHP or Licensure Candidate available at all times to provide back up, support, and/or consultation.

"Individual proceeding" means the formal process employed by an agency having jurisdiction by law to resolve issues of law or fact between parties and which results in the exercise of discretion of a judicial nature.

"Institutional Review Board" or **"IRB"** means the ODMHSAS board established in accordance with 45 C.F.R. Part 46 for the purposes expressed in this Chapter.

"Intensive Case Manager (ICM)" means an individual who is designated as an ICM and carries a caseload size of not more than twenty-five (25) individuals. They are a LBHP, Licensure Candidate, CADC, or certified as a Behavioral Health Case Manager II, and have:

- (A) a minimum of two (2) years Behavioral Health Case Management experience,
- (B) crisis diversion experience, and
- (C) successfully completed ODMHSAS ICM training.

"IRB approval" means the determination of the IRB that the research has been reviewed and may be conducted within the constraints set forth by the IRB and by other agency and Federal requirements.

"Levels of performance" or **"level of performance"** means units of service by types of service.

"Licensed Alcohol and Drug Counselor" or **"LADC"** means any person who is licensed through the State of Oklahoma pursuant to the provisions of the Licensed Alcohol and Drug Counselors Act.

"Licensed Behavioral Health Professional" or **"LBHP"** means:

- (A) allopathic or osteopathic physicians with a current license and board certification in psychiatry or board eligible in the state in which services are provided, or a current resident in psychiatry;
- (B) practitioners with a license to practice in the state in which services are provided issued by one of the following licensing boards:
 - (i) Psychology;
 - (ii) Social Work (clinical specialty only);
 - (iii) Professional Counselor;
 - (iv) Marriage and Family Therapist;
 - (v) Behavioral Practitioner; or
 - (vi) Alcohol and Drug Counselor;
- (C) advanced practice nurse (certified in a psychiatric mental health specialty), licensed as a registered nurse with a current certification of recognition from the board of nursing in the state in which services are provided; or
- (D) a physician assistant who is licensed in good standing in the state and has received specific training for and is experienced in performing mental health therapeutic, diagnostic, or therapy functions.

"Licensed dietitian" means a person licensed by the Oklahoma Board of Medical Licensure and Supervision as a dietitian.

"Licensed mental health professional" or **"LMHP"** as defined in Title 43A §1-103(11).

"Licensed physician" means an individual with an M.D. or D.O. degree who is licensed in the state of Oklahoma to practice medicine.

"Licensed practical nurse" means an individual who is a graduate of an approved school of nursing and is licensed in the State of Oklahoma to provide practical nursing services.

"Licensure candidate" means practitioners actively and regularly receiving board approved supervision, and extended supervision by a fully licensed clinician if board's supervision requirement is met but the individual is not yet licensed, to become licensed by one of the following licensing boards:

- (A) Psychology;
- (B) Social Work (clinical specialty only);
- (C) Professional Counselor;
- (D) Marriage and Family Therapist;
- (E) Behavioral Practitioner; or
- (F) Alcohol and Drug Counselor.

"Minimal risk" means that the probability and magnitude of harm or discomfort anticipated in the research are not greater, in and of themselves, than those ordinarily encountered in daily life or during the performance of routine physical or psychological examination or tests.

"ODMHSAS" or **"Department"** means the Oklahoma Department of Mental Health and Substance Abuse Services.

"Oklahoma Administrative Code" or **"OAC"** means the publication authorized by 75 O.S. § 256 known as The Oklahoma Administrative Code, or, prior to its publication, the compilation of codified rules authorized by 75 O.S. § 256(A)(1)(a) and maintained in the Office of Administrative Rules.

"Paraprofessional" means a person who does not have an academic degree related to the scope of treatment or support services being provided but performs prescribed functions under the general supervision of that discipline.

"Peer Recovery Support Specialist" or **"PRSS"** means an individual certified by ODMHSAS as a Peer Recovery Support Specialist pursuant to requirements found in OAC 450:53.

"Probationary certification" means a certification status granted for a period less than three (3) years.

"Psychiatrist" means a licensed physician who specializes in the assessment and treatment of individuals having psychiatric disorders and who is fully licensed to practice medicine in the state in which he or she practices and is certified in psychiatry by the American Board of Psychiatry and Neurology, or has equivalent training or experience.

"Registered nurse" means an individual who is a graduate of an approved school of nursing and is licensed in the state of Oklahoma to practice as a registered nurse.

"Rehabilitative services" means face-to-face individual or group services provided by qualified staff to develop skills necessary to perform activities of daily living and successful integration into community life.

"Reimbursement rates" means the rates at which all contractors are reimbursed (paid) for services they provide under their ODMHSAS contract.

"Research" means a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge. Activities which meet this definition constitute research for purposes of this Chapter, whether or not they are conducted or supported under a program that is considered research for other purposes. For example, some demonstration and service programs may include research activities.

Permanent Final Adoptions

"Respondent" means the person(s) or entity(ies) named in a petition for an individual proceeding against whom relief is sought.

"Service area" means a geographic area established by the Department of Mental Health and Substance Abuse Services for support of mental health [43A O.S. § 3-302(1)].

"Service Provider" means a person who is allowed to provide substance abuse services within the regulation and scope of their certification level or license.

"Site Review Protocol" means an ODMHSAS document developed as a work document in the certification site visit(s) that is based primarily upon the rules (standards/criteria) being reviewed. The Site Review Protocol is used in preparing the Certification Report, which is provided to the facility as well as to the Board for its consideration and action related to certification.

"Support Services Provider (SSP)" means an individual age eighteen (18) or older with a high school diploma or equivalent.

"TJC" means The Joint Commission formerly referred to as the Joint Commission on Accreditation of Healthcare Organizations or JCAHO.

"Volunteer" means any person who is not on the program's payroll, but provides services and fulfills a defined role within the program and includes interns and practicum students.

450:1-1-7. Requests for agency public information

Any person making a request pursuant to 450:1-1-6 shall comply with the following:

(1) The request must be in writing and may be mailed to Oklahoma Department of Mental Health and Substance Abuse Services, P.O. Box 53277, Oklahoma City, Oklahoma 73152-3277, or sent via facsimile to (405) 522-3650, or made in person during regular office hours between 8:00 a.m. and 5:00 p.m. at 2000 N. Classen, Suite E600, Oklahoma City.

(2) The request must describe the record(s) requested, be signed by the party making the request, and have the party's mailing address and telephone number.

(3) Whenever possible, requests shall be made to the division or area of the Department that maintains the records. Requests by attorneys in formal litigation must go through the Legal Division. Requests for personnel records that are not confidential must go through the Human Resources Management Division. Requests for records regarding facilities or programs certified by the Board must be directed to the Provider Certification Division. Requests for records regarding persons or entities contracting with the Department must be directed to the Contracts Division. Requests from the media for records must go through the Communications Division. Requests for records regarding Board meetings must go through the Office of the Commissioner. If the division or area that maintains the records is unknown to the party making the request, the request should be directed to the Legal Division.

(4) The requesting party shall pay a fee for copies. Said fee shall be twenty-five cents (25¢) per page, twelve dollars (\$12.00) per 3½-inch diskette, and \$1.00 per page for certified documents. For commercial requests or those that would cause excessive disruption of office function, such as documents that are archived, either internally or with the Oklahoma Archives and Records Commission, a search fee will be charged based upon the hourly rate of the individual(s) searching for, and locating, the requested records.

(5) Mental health and substance abuse treatment records are confidential and not subject to release by statutes and federal regulations including, but not limited to, 43A O.S. §§ 1-109, 3-313, 3-422 and 3-423; 63 O.S. § 1-1502; and 42 CFR, Part 2.

(6) Certain ODMHSAS employee personnel records are confidential and not subject to the Oklahoma Open Records Act, including employee evaluations, payroll deductions, applications submitted by persons not hired by ODMHSAS; internal personnel investigations including examination and selection material, employees' home addresses, telephone numbers, and social security numbers, medical and employee assistance records, and other personnel records where disclosure would constitute a clear invasion of privacy. Personnel records information that are subject to release are the application of a person who becomes an employee of the Department, gross receipt of public funds, dates of employment, title or position and any final disciplinary action resulting in loss of pay, suspension, demotion or termination.

(7) Any other document protected, as confidential, by any Oklahoma or federal law, or Oklahoma or federal administrative rule, or by order of a court of competent jurisdiction, is not subject to the Oklahoma Open Records Act.

450:1-1-9. Procedures to secure a declaratory ruling as to the applicability of any rule or order of ODMHSAS

(a) Any person subject to the rules contained in rules of ODMHSAS (Oklahoma Administrative Code Title 450) may petition for a declaratory ruling as to the applicability of a specific rule and its effect on petitioner. In petitioning ODMHSAS for a declaratory ruling, the following procedures must be followed:

(1) The petition must be in writing and submitted to the Rules Liaison of ODMHSAS ~~in person at 4200 N.E. 13th Street~~ 2000 N. Classen, Suite E600, Oklahoma City or by mail to P.O. Box 53277, Oklahoma City, OK 73152-3106;

(2) The petition shall state with specificity the rule in question;

(3) The petition shall state clearly and with specificity the bases for the action and the action or relief sought;

(4) The petition shall pose the specific question(s) to be answered by ODMHSAS; and

(5) The petitioner or petitioner's authorized representative shall print his or her name address and telephone number on the petition and sign it.

(b) The petition will be stamped upon receipt by ODMHSAS to show the date of submission. The petition shall be referred to the appropriate staff persons to make a recommendation to the Commissioner, who shall issue a ruling within 30 days.

(c) The petitioner shall be notified of the declaratory ruling in writing by the U.S. Postal Service's Certified Mail with Return Receipt Requested.

(d) The ruling shall become final unless, within 10 days, the petitioner files with the Rules Liaison a written request for a hearing before the Board. If the petitioner requests such a hearing, the matter shall be placed on the agenda of the next scheduled Board meeting if it is filed ten (10) calendar days or more prior to the meeting. If the request is filed less than ten (10) days prior to the next scheduled Board meeting, it will be placed on the agenda of the following meeting.

(e) At the hearing of the matter by the Board, the petitioner and Department staff shall be permitted to present oral argument to the Board, the length of which shall be limited by the chair of the Board. At the conclusion of the presentation of the matter, the Board shall render a decision on the petition and a written decision shall follow within 10 days.

(f) A declaratory ruling or refusal to issue such ruling, shall be subject to judicial review in the manner provided for review of decisions in individual proceedings in the Oklahoma Administrative Procedures Act (75 O.S. § 307).

450:1-1-10. Procedures to petition the ODMHSAS to request the promulgation, amendment or repeal of a rule

Any person affected either by a rule adopted and promulgated by ODMHSAS, or the lack of a rule and regulation may petition ODMHSAS to promulgate, adopt, amend or repeal the rule pursuant to 75 O.S. § 305 and in accordance with this section.

(1) The petition must be in writing and submitted to the Rules Liaison of ODMHSAS ~~in person at 1200 N.E. 13th Street~~ 2000 N. Classen, Suite E600, Oklahoma City or by mail to P.O. Box 53277, Oklahoma City, OK 7315273106 setting forth:

- (A) The proposed amendment, promulgation, or repeal of a specific rule
- (B) The reason for the petition to repeal, promulgate, or amend a rule; and
- (C) The effect that the repeal, amendment or promulgation of the rule would have on the petitioner.

(2) The petitioner must print his or her name, address and telephone number on the petition and it must be signed by the petitioner.

(3) The Department shall timely respond to such petition, either by initiating rulemaking proceedings or by denying the petition.

(4) The petitioner will be notified by regular mail if rulemaking proceedings are initiated.

(5) A petition for rulemaking will be deemed denied if the Department has not initiated rulemaking proceedings within thirty (30) calendar days after the petition is submitted.

450:1-1-11. Procedures to request suspension of rules for performance improvement study

(a) Any person or entity subject to the rules contained in rules of ODMHSAS (Oklahoma Administrative Code Title 450) may petition for a suspension of a particular rule or rules as applied for by the petitioner if necessary for the petitioner to undergo performance improvement studies to determine the validity of the rule or rules and such study is being funded by either a state or federal authority.

(b) In petitioning ODMHSAS for a declaratory ruling, the following procedures must be followed:

- (1) The petition must be in writing and submitted to the Rules Liaison of ODMHSAS in person at ~~1200 N.E. 13th Street~~ 2000 N. Classen, Suite E600, Oklahoma City or by mail to P.O. Box 53277, Oklahoma City, OK 7315273106;
- (2) The petition shall state with specificity the rule or rules in question;
- (3) The petition shall state clearly and with specificity the bases for the suspension, the funding source of the study, and the time period the suspension will be needed; and
- (4) The petitioner or petitioner's authorized representative shall print his or her name address and telephone number on the petition and sign it.

(c) The petition will be stamped upon receipt by ODMHSAS to show the date of submission. The petition shall be referred to the appropriate staff persons to make a recommendation to the Commissioner, who shall issue a ruling within 30 days.

(d) The petitioner shall be notified whether the suspension is granted in writing by the U.S. Mails, certified mail, return receipt requested.

SUBCHAPTER 3. CONTRACTS FOR MENTAL HEALTH, SUBSTANCE ABUSE, AND RESIDENTIAL CARE SERVICES

PART 1. ELIGIBILITY TO CONTRACT

450:1-3-5. Staff qualifications for contracted entities

(a) All staff who provide clinical or supportive services for an agency contracting with ODMHSAS shall have documented qualifications, licensing or training specific to the clinical services they provide.

(b) The following service providers, as defined in 450:1-1-1.1, may provide behavioral health treatment and support services as agreed upon per contract between ODMHSAS and the contractor:

- (1) Behavioral Health Aide (BHA);
- (2) Behavioral Health Case Manager (CM);
- (3) Certified Alcohol and Drug Counselor (CADC);
- (4) Employment Consultant (EC);
- (5) Family Support and Training Provider (FSP);
- (6) Gambling Treatment Professional (GTP);
- (7) Intensive Case Manager (ICM);
- (78) Licensed Behavioral Health Professional (LBHP);
- (89) Licensure Candidate;

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- (910) Licensed Mental Health Professional (LMHP);
- (4011) Licensed Physician;
- (4112) Licensed Practical Nurse;
- (4213) Paraprofessional;
- (4314) Psychiatrist;
- (4415) Peer Recovery Support Specialist (PRSS);
- (4516) Registered Nurse;
- (4617) Support Services Provider (SSP).

(c) Compliance with 450:1-3-5 shall be determined by a review of staff personnel files and other supporting documentation provided.

(d) Failure to comply with 450:1-3-5 will result in the initiation of procedures to deny, suspend and/or revoke certification.

SUBCHAPTER 9. CERTIFICATION AND DESIGNATION OF FACILITY SERVICES

450:1-9-12. Reapplication following denial, suspension, revocation or voluntary relinquishment of certification

(a) Reapplication for consideration of certification for any program for which certification has been suspended, revoked or ~~voluntarily~~ relinquished pending administrative sanction will not be accepted or considered unless at least ~~six (6)~~ twelve (12) months ~~has~~ have passed since issuance of an Order of suspension or revocation.

(b) Reapplication for consideration of certification for any program for which certification has been voluntarily relinquished pursuant to a mutual agreement between the program and ODMHSAS will not be accepted or considered unless at least six (6) months have passed since the relinquishment.

(~~b~~c) The cost of certification review, the record, and administrative sanction proceedings shall be advanced by ODMHSAS. Where a certification review results in an administrative sanction, the cost of the certification review, the record, and administrative sanction proceedings shall be surcharged against the sanctioned facility. Costs of administrative sanction proceedings shall include costs of prosecution of the sanction imposed. Reapplication for consideration of certification will not be considered unless and until the sanctioned facility pays such costs to ODMHSAS.

[OAR Docket #17-576; filed 7-6-17]

TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES

CHAPTER 15. CONSUMER RIGHTS

[OAR Docket #17-577]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 3. Consumer Rights
Part 7. Consumer Access to Health Information, Facilities Operated by ODMHSAS

450:15-3-63. [AMENDED]
Subchapter 7. Office Of Consumer Advocacy and Department Investigations
Part 1. Office of Consumer Advocacy
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Oklahoma Department of Mental Health and Substance Abuse Services Board; 43A O.S. §§ 2-101, 2-108 and 2-109.

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n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

In accordance with the Administrative Procedures Act the proposed rule revisions to Chapter 15 are part of the Department's review of Title 450. The proposed rules are intended to update the Department's physical address as well as update qualifications for the Advocate General to comply with statutory changes.

CONTACT PERSON:

Traylor Rains-Sims, Senior Director, Policy & Provider Regulation, Oklahoma Department of Mental Health and Substance Abuse Services, 2000 N. Classen Blvd, Suite E600, Oklahoma City, Oklahoma 73106, (405) 248-9345.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF OCTOBER 1, 2017:

SUBCHAPTER 3. CONSUMER RIGHTS

PART 7. CONSUMER ACCESS TO HEALTH INFORMATION, FACILITIES OPERATED BY ODMHSAS

450:15-3-63. Consumer's request for review of denial of access to the designated record set from facilities operated by ODMHSAS

(a) If a facility denies a request for access to the designated record set on the basis of one of the grounds for denial for which review is available, the consumer may initiate the review process by making a request for review of the denial in writing and submitting it to the ODMHSAS Privacy Officer at ~~4200 N.E. 13th, P.O. Box 53277 Street~~ 2000 N. Classen, Suite E600, Oklahoma City, Oklahoma 73152-3277 73106.

(b) The ODMHSAS Privacy Officer or designee shall select a licensed mental health professional, who did not participate in the original decision to deny access, to review the denial. This reviewer will complete the review within a reasonable period of time and forward his or her findings to the ODMHSAS Privacy Officer or designee. The reviewer's decision is final.

(c) The Privacy Officer shall promptly inform the consumer by letter of the outcome of the review.

- (1) If a decision is made to grant access, the letter will explain the process to fulfill the request for access.
(2) If a decision is made to uphold the denial of access, the letter shall state the reasons for denial.

SUBCHAPTER 7. OFFICE OF CONSUMER ADVOCACY AND DEPARTMENT INVESTIGATIONS

PART 1. OFFICE OF CONSUMER ADVOCACY

450:15-7-3. Advocate General

The Advocate General shall be an attorney appointed by the Board. He or she is responsible for the Office of Consumer Advocacy and coordinates its system-wide implementation. The Advocate General shall have the following powers and duties:

- (1) To serve as an advocate for consumers.
(2) To supervise personnel assigned to the Office of Consumer Advocacy.
(3) To make recommendations to Commissioner and provide regular or special reports regarding unresolved grievances or other issues affecting consumer rights and quality of care to the Commissioner and Board.
(4) To carry out the powers and duties of the Office of Consumer Advocacy.
(5) To perform other duties as assigned by the Board or Commissioner.

[OAR Docket #17-577; filed 7-6-17]

TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES
CHAPTER 17. STANDARDS AND CRITERIA FOR COMMUNITY MENTAL HEALTH CENTERS

[OAR Docket #17-578]

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RULES:

- Subchapter 1. General Provisions 450:17-1-2. [AMENDED]
Subchapter 3. Required Services
Part 1. Required Services 450:17-3-2. [AMENDED]
Part 3. Screening, Intake, Assessment and Referral [AMENDED]

- 450:17-3-21. [AMENDED]
450:17-3-22. [AMENDED]
Part 9. Medication Clinic Services
450:17-3-81. [AMENDED]
Part 11. Case Management
450:17-3-103. [AMENDED]
Subchapter 5. Optional Services
Part 11. Community Living Programs
450:17-5-56. [AMENDED]
Part 25. Certified Community Behavioral Health Clinics
450:17-5-173. [AMENDED]
450:17-5-174. [AMENDED]
450:17-5-176. [AMENDED]
450:17-5-178. [AMENDED]
450:17-5-183. [AMENDED]
450:17-5-184. [AMENDED]
450:17-5-190. [AMENDED]
450:17-5-191. [AMENDED]
Subchapter 7. Facility Clinical Records
450:17-7-5. [AMENDED]
450:17-7-9. [AMENDED]
Subchapter 15. Performance Improvement and Quality Management
450:17-15-1.1. [AMENDED]
450:17-15-5. [AMENDED]
Subchapter 23. Facility Environment
450:17-23-1. [AMENDED]
450:17-23-3. [NEW]

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n/a

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In accordance with the Administrative Procedures Act the proposed rule revisions to Chapter 17 are part of the Department's review of Title 450. The proposed rules are intended to update terminology and definitions as well as create new standards requiring facilities certified by ODMHSAS to implement tobacco free workplaces. Proposed rules also require facilities certified under Chapter 17 to complete a root cause analysis for any sentinel event that occurs at the facility.

CONTACT PERSON:

Traylor Rains-Sims, Senior Director, Policy & Provider Regulation, Oklahoma Department of Mental Health and Substance Abuse Services, 2000 N. Classen Blvd, Suite E600, Oklahoma City, Oklahoma 73106, (405) 248-9345.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF OCTOBER 1, 2017:

SUBCHAPTER 1. GENERAL PROVISIONS

450:17-1-2. Definitions

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

"Abuse" means the causing or permitting of harm or threatened harm to the health, safety, or welfare of a consumer by a staff responsible for the consumer's health, safety, or welfare, including but not limited to: non-accidental physical injury or mental anguish; sexual abuse; sexual exploitation; use of mechanical restraints without proper authority; the intentional use of excessive or unauthorized force aimed at hurting or injuring the resident; or deprivation of food, clothing, shelter, or healthcare by a staff responsible for providing these services to a consumer.

"Adults who have a ~~serious mental illness~~ Serious Mental Illness" means persons eighteen (18) years of age or older who show evidence of points of (A), (B) and (C) below:

(A) The disability must have persisted for six months and be expected to persist for a year or longer.

(B) A condition or ~~serious mental illness~~ **Serious Mental Illness** as defined by the most recently published version of the DSM or the International Classification of Disease (ICD) equivalent with the exception of DSM "V" codes, substance abuse, and developmental disorders which are excluded, unless they co-occur with another diagnosable ~~serious mental illness~~ **Serious Mental Illness**.

(C) The adult must exhibit either (i) or (ii) below:

(i) Psychotic symptoms of a ~~serious mental illness~~ **Serious Mental Illness** (e.g. Schizophrenia characterized by defective or lost contact with reality, often hallucinations or delusions); or

(ii) Experience difficulties that substantially interfere with or limit an adult from achieving or maintaining one or more developmentally appropriate social, behavioral, cognitive, communicative, or adaptive skills. There is functional impairment in at least two of the following capacities (compared with expected developmental level):

(I) Impairment in self-care manifested by a person's consistent inability to take care of personal grooming, hygiene, clothes and meeting of nutritional needs.

(II) Impairment in community function manifested by a consistent lack of appropriate behavioral controls, decision-making, judgment and value systems which result in potential involvement or involvement with the criminal justice system.

(III) Impairment of social relationships manifested by the consistent inability to develop and maintain satisfactory relationships with peers.

(IV) Impairment in family function manifested by a pattern of disruptive behavior

exemplified by repeated and/or unprovoked violence, disregard for safety and welfare of self or others (e.g., fire setting, serious and chronic destructiveness, inability to conform to reasonable limitations and expectations.

(V) Impairment in functioning at school or work manifested by the inability to pursue educational or career goals.

"Advance Practice Registered Nurse" means a registered nurse in good standing with the Oklahoma Board of Nursing, and has acquired knowledge and clinical skills through the completion of a formal program of study approved by the Oklahoma Board of Nursing Registration and has obtained professional certification through the appropriate National Board recognized by the Oklahoma Board of Nursing. Advance Practice Registered Nurse services are limited to the scope of their practice as defined in 59 Okla. Stat. § 567.3a and corresponding rules and regulations at OAC 485:10-5-1 through 10-16-9.

"AOA" means American Osteopathic Association

"ASAM" means the American Society of Addiction Medicine.

"ASAM criteria" means the most current edition of the American Society of Addiction Medicine's published criteria for admission to treatment, continued services, and discharge.

"Behavioral Health Home or BHH" means a specifically organized entity that functions within a currently ODMHSAS certified mental health treatment program organization to promote enhanced integration and coordination of primary, acute, behavioral health, and long-term services and supports for persons across the lifespan with chronic illness. BHHs ensure comprehensive team-based health care, meeting physical, mental health, and substance use disorder care needs. Health care is delivered utilizing a whole-person, patient-centered, coordinated care model for adults with ~~serious mental illness~~ **Serious Mental Illness** (SMI) and children with ~~serious emotional disturbance~~ **Serious Emotional Disturbance** (SED). Care coordination is provided for all aspects of the individual's life and for transitions of care the individual may experience.

"Case management services" means planned referral, linkage, monitoring and support, and advocacy provided in partnership with a consumer to assist that consumer with self sufficiency and community tenure and take place in the individual's home, in the community, or in the facility, in accordance with a service plan developed with and approved by the consumer and qualified staff.

"CARF" means Commission on Accreditation of Rehabilitation Facilities

"Child with Serious Emotional Disturbance" or **"SED"** means a child under the age of 18 who shows evidence of points of (A), (B) and (C) below:

(A) The disability must have persisted for six months and be expected to persist for a year or longer.

(B) A condition or ~~serious emotional disturbance~~ **Serious Emotional Disturbance** as defined by the most recently published version of the DSM or the International Classification of Disease (ICD) equivalent with the exception of DSM "V" codes, substance

use disorders, and developmental disorders which are excluded, unless they co-occur with another diagnosable serious emotional disturbance.

(C) The child must exhibit either (i) or (ii) below:

(i) Psychotic symptoms of a ~~serious mental illness~~ **Serious Mental Illness** (e.g. Schizophrenia characterized by defective or lost contact with reality, often hallucinations or delusions); or

(ii) Experience difficulties that substantially interfere with or limit a child or adolescent from achieving or maintaining one or more developmentally appropriate social, behavioral, cognitive, communicative, or adaptive skills. There is functional impairment in at least two of the following capacities (compared with expected developmental level):

(I) Impairment in self-care manifested by a person's consistent inability to take care of personal grooming, hygiene, clothes and meeting of nutritional needs.

(II) Impairment in community function manifested by a consistent lack of age appropriate behavioral controls, decision-making, judgment and value systems which result in potential involvement or involvement with the juvenile justice system.

(III) Impairment of social relationships manifested by the consistent inability to develop and maintain satisfactory relationships with peers and adults.

(IV) Impairment in family function manifested by a pattern of disruptive behavior exemplified by repeated and/or unprovoked violence to siblings and/or parents, disregard for safety and welfare or self or others (e.g., fire setting, serious and chronic destructiveness, inability to conform to reasonable limitations and expectations which may result in removal from the family or its equivalent).

(V) Impairment in functioning at school manifested by the inability to pursue educational goals in a normal time frame (e.g., consistently failing grades, repeated truancy, expulsion, property damage or violence toward others).

"Children's Health Home Specialist" means an individual within the children's Behavioral Health Home interdisciplinary team that will provide support, coaching and activities that promote good physical and mental health to individuals, families and groups. The focus of the Children's Health Home Specialist will include nutrition, healthy living habits, exercise, and preventing and/or managing chronic health conditions. Children's Health Home Specialists must be credentialed by ODMHSAS as a Behavioral Health Aide or higher and complete training in Well Power or credentialed as a Wellness Coach through ODMHSAS.

"Chronic Homelessness" refers to an individual with a disabling condition who has either: (a) been continuously

homeless for a year or more, or (b) has had at least 4 episodes of homelessness in the past 3 years. For this condition, the individual must have been on the streets or in an emergency shelter (i.e. not transitional housing) during these episodes. Chronic homelessness only includes single individuals, not families. A disabling condition is a diagnosable substance abuse disorder, serious mental illness, or developmental disability, including the co-occurrence of two or more of these conditions.

"Clinical privileging" means an organized method for treatment facilities to authorize an individual permission to provide specific care and treatment services to consumers within well-defined limits, based on the evaluation of the individual's license, education, training, experience, competence, judgment, and other credentials.

"Clubhouse" means a psychiatric rehabilitation program currently certified as a Clubhouse through the International Center for Clubhouse Development (ICCD).

"Community living programs" means either transitional or permanent supported housing for persons not in crisis who need assistance with obtaining and maintaining an independent living situation.

"Community-based Structured Crisis Center" or **"CBSCC"** means a program of non-hospital emergency services for mental health and substance abuse crisis stabilization as authorized by 43A O.S. §3-317, including, but not limited to, observation, evaluation, emergency treatment and referral, when necessary, for inpatient psychiatric or substance abuse services. This service is limited to CMHC's and Comprehensive Community Addiction Recovery Centers (CCARCs) who are certified by the Department of Mental Health and Substance Abuse Services or facilities operated by the Department of Mental Health and Substance Abuse Services.

"Community mental health center" or **"CMHC"** means a facility offering a comprehensive array of community-based mental health services, including but not limited to, inpatient treatment, outpatient treatment, partial hospitalization, emergency care, consultation and education; and, certain services at the option of the center, including, but not limited to, prescreening, rehabilitation services, pre-care and aftercare, training programs, and research and evaluation.

"Consumer" means an individual, adult, adolescent, or child, who has applied for, is receiving or has received evaluation or treatment services from a facility operated or certified by ODMHSAS or with which ODMHSAS contracts and includes all persons referred to in OAC Title 450 as client(s) or patient(s) or resident(s) or a combination thereof.

"Consumer advocacy" includes all activities on behalf of the consumer to assist with or facilitate resolution of problems in the acquisition of resources or services needed by the consumer.

"Consumer committee" or **"consumer government"** means any established group within the facility comprised of consumers, led by consumers and meets regularly to address consumer concerns to support the overall operations of the facility.

"Co-occurring disorder" (COD) means any combination of mental health symptoms and substance use disorder symptoms or diagnoses that affect a consumer and are typically

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determined by the current Diagnostic and Statistical Manual of Mental Disorders.

"Co-occurring disorder capability" means the organized capacity within any type of program to routinely screen, identify, assess, and provide properly matched interventions to consumers with co-occurring disorders.

"Co-occurring disorder enhanced" means that the program (or subunit of the program) provides a specialized service designed for individuals with co-occurring disorders, usually with a higher level of available service capacity or intensity for the co-occurring substance use disorder than would be the case in a comparable co-occurring disorder capable program.

"Crisis Diversion" means an unanticipated, unscheduled situation requiring supportive assistance, face-to-face or telephone, to resolve immediate problems before they become overwhelming and severely impair the individual's ability to function or maintain in the community.

"Crisis Intervention" means actions taken, and services provided to address emergency psychological, physiological, and safety aspects of alcohol, drug-related, and mental health crises.

"Crisis stabilization" means emergency, psychiatric, and substance use disorder treatment services for the resolution of crisis situations and may include placement of an individual in a protective environment, basic supportive care, and medical assessment, and, if needed, referral to an ODMHSAS certified facility having nursing and medical support available.

"Critical incident" means an occurrence or set of events inconsistent with the routine operation of a facility, service setting, or otherwise routine care of a consumer. Critical incidents specifically include but are not necessarily limited to the following: adverse drug events; self-destructive behavior; deaths and injuries to consumers, staff and visitors; medication errors; residential consumers that are absent without leave (AWOL); neglect or abuse of a consumer; fire; unauthorized disclosure of information; damage to or theft of property belonging to consumers or the facility; other unexpected occurrences; or events potentially subject to litigation. A critical incident may involve multiple individuals or results.

"Cultural competency" means the ability to recognize, respect, and address the unique needs, worth, thoughts, communications, actions, customs, beliefs and values that reflect an individual's racial, ethnic, religious, sexual orientation, and/or social group.

"DSM" means the most current edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association.

"Emergency detention" means the detention of a person who appears to be a person requiring treatment in a facility approved by the Commissioner of Mental Health and Substance Abuse Services as appropriate for such detention after the completion of an emergency examination, either in person or via telemedicine, and a determination that emergency detention is warranted for a period not to exceed one hundred twenty (120) hours or five (5) days, excluding weekends and holidays, except upon a court order authorizing detention beyond a one hundred twenty (120) hour period or pending the hearing on

a petition requesting involuntary commitment or treatment as provided by 43A of the Oklahoma Statutes.

"Emergency examination" means the examination of a person who appears to be a mentally ill person, an alcohol-dependent person, or drug-dependent person and a person requiring treatment, and whose condition is such that it appears that emergency detention may be warranted by a licensed mental health professional to determine if emergency detention of the person is warranted.

"Face-To-Face" for the purposes of the delivery of behavioral health care, means a face-to-face physical contact and in-person encounter between the health care provider and the consumer, including the initial visit. The use of telemedicine shall be considered a face-to-face encounter.

"Facilities or Facility" means entities as described in Title 43A O.S. § 1-103(7), community mental health centers, residential mental health facilities, community based structured crisis centers, certified services for the alcohol and drug dependent, programs of assertive community treatment, eating disorder treatment, gambling addiction treatment, and narcotic treatment programs.

"Gambling disorder treatment services" means treatment activities for consumers by a gambling treatment professional that include, but are not limited to, the following:

- (A) Assessment and diagnostic impression, ongoing;
- (B) Treatment planning and revision, as necessary;
- (C) Individual, group and family therapy;
- (D) Case management;
- (E) Psychosocial rehabilitation; and
- (F) Discharge planning.

"Gambling related disorders/problems" means persistent and recurrent problematic gambling behavior leading to clinically significant impairment or distress, as defined by the most recent edition of the DSM.

"Gambling disorder treatment professional" means an individual holding a valid NCGC I or II certification or has documented completion of at least thirty hours of ODMHSAS recognized core problem gambling training requirements and documented completion of ten hours of problem gambling specific continuing education every twelve months; and is either a Licensed Behavioral Health Professional or Licensure Candidate.

"General psychiatric rehabilitation" or **"PSR"** means a type of psychiatric rehabilitation program which focuses on long term recovery and maximization of self-sufficiency, role function and independence. General psychiatric rehabilitation programs may be organized within a variety of structures which seek to optimize the participants' potential for occupational achievement, goal setting, skill development and increased quality of life.

"Historical timeline" means a method by which a specialized form is used to gather, organize and evaluate information about significant events in a consumer's life, experience with mental illness, and treatment history.

"Home-based services to children and adolescents" means intensive therapeutic services provided in the home to

children for the purpose of reduction of psychiatric impairment and preventing removal of the child to a more restrictive setting for care. Services include a planned combination of procedures developed by a team of qualified mental health professionals, including a physician.

"Homeless" refers to a person who is sleeping in an emergency shelter; sleeping in places not meant for human habitation, such as cars, parks, sidewalks, or abandoned or condemned buildings; spending a short time (30 consecutive days or less) in a hospital or other institution, but ordinarily sleeping in the types of places mentioned above; living in transitional/supportive housing but having come from streets or emergency shelters; being evicted within a week from a private dwelling unit and having no subsequent residence identified and lacking the resources and support networks needed to obtain access to housing; being discharged from an institution and having no subsequent residence identified and lacking the resources and support networks needed to obtain access to housing; or is fleeing a domestic violence situation and no subsequent residence has been identified and the person lacks the resources and support networks needed to obtain housing.

"Hospital liaison" means an individual within the Behavioral Health Home interdisciplinary team that works closely with hospital staff to assess the suitability of transition plans for consumers enrolled in a Behavioral Health Home. Hospital Liaisons will also work with other long term, residential facilities to plan for coordination of care during and after the consumer's residential stay. Hospital liaisons must be certified by ODMHSAS as a Behavioral Health Case Manager I or II and complete trainings as required by ODMHSAS.

"ICCD" means the International Center for Clubhouse Development.

"Independent living skills, assistance in development of" means all activities directed at assisting individuals in the development of skills necessary to live and function within the community, e.g., cooking, budgeting, meal planning, house-cleaning, problem-solving, communication and vocational skills.

"Licensed Behavioral Health Professional" or "LBHP" means:

- (A) Allopathic or Osteopathic Physicians with a current license and board certification in psychiatry or board eligible in the state in which services are provided, or a current resident in psychiatry;
- (B) Practitioners with a license to practice in the state in which services are provided by one of the following licensing boards:
 - (i) Psychology;
 - (ii) Social Work (clinical specialty only);
 - (iii) Professional Counselor;
 - (iv) Marriage and Family Therapist;
 - (v) Behavioral Practitioner; or
 - (vi) Alcohol and Drug Counselor.
- (C) Advanced Practice Nurse (certified in a psychiatric mental health specialty), licensed as a registered nurse with a current certification of recognition from the board of nursing in the state in which services are provided.

- (D) A Physician Assistant who is licensed in good standing in the state and has received specific training for and is experienced in performing mental health therapeutic, diagnostic, or counseling functions.

"Licensed mental health professional" or "LMHP" as defined in Title 43A §1-103(11).

"Licensure candidate" means practitioners actively and regularly receiving board approved supervision, and extended supervision by a fully licensed clinician if board's supervision requirement is met but the individual is not yet licensed, to become licensed by one of the following licensing boards:

- (A) Psychology;
- (B) Social Work (clinical specialty only);
- (C) Professional Counselor;
- (D) Marriage and Family Therapist;
- (E) Behavioral Practitioner; or
- (F) Alcohol and Drug Counselor.

"Linkage" refers to the communication and coordination with other service providers to assure timely appropriate referrals between the CMHC and other providers.

"Medical resident" means an allopathic physician or an osteopathic physician who is a graduate of a school of medicine or college of osteopathic medicine and who is receiving specialized training in a teaching hospital under physicians who are certified in that specialty.

"Medically necessary" means health care services or supplies needed to prevent, diagnose or treat an illness, injury, condition, disease or its symptoms and that meet accepted standards of medicine.

"Medication error" means an error in prescribing, dispensing or administration of medication, regardless if the error reached the consumer, e.g., omission of prescribed drugs, giving drugs not prescribed, prescribing inappropriate drugs, prescribing or administering incorrect dosages, incorrectly filling or labeling prescriptions, incorrectly transcribing medication orders.

"NCGC" means Nationally Certified Gambling Counselor, offered at levels I or II through the National Council on Problem Gambling.

"Nurse Care manager" means a Licensed Practical Nurse (LPN) or a Registered Nurse (RN).

"ODMHSAS" means the Oklahoma Department of Mental Health and Substance Abuse Services.

"Oklahoma Administrative Code" or "OAC" means the publication authorized by 75 O.S. § 256 known as The Oklahoma Administrative Code or, prior to its publication, the compilation of codified rules authorized by 75 O.S. § 256(A) (1) (a) and maintained in the Office of Administrative Rules.

"Peer Recovery Support Specialist" or "PRSS" means an individual who meets the qualifications and is certified as a PRSS pursuant to OAC 450:53.

"Performance Improvement" or "PI" means an approach to the continuous study and improvement of the processes of providing health care services to meet the needs of consumers and others. Synonyms, and near synonyms include continuous quality improvement, continuous improvement, organization-wide quality improvement and total quality management.

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"Permanent supported housing" means a type of Community Living Program, either permanent scattered site housing or permanent congregate housing, where consumers are assisted with locating housing of their choice and are offered on-going support services based on need and choice to ensure successful independent living.

"PICIS System" means a management information system based on national standards for mental health and substance abuse databases. Information gathered through PICIS is used for prior authorizations, service utilization management and continuous quality improvement processes. PICIS data is reported throughout the treatment episode to ensure service recipients receive appropriate types and levels of care and are making satisfactory progress. Numerous reports are developed using PICIS data and are provided to clinicians, administrators and the general public.

"Primary Care Practitioner (PCP)" means a licensed allopathic physician, osteopathic physician, Advance Practice Registered Nurse (APRN), or Physician Assistant (PA) licensed in the State of Oklahoma.

"Program of Assertive Community Treatment" or **"PACT"** is a clinical program that provides continuous treatment, rehabilitation, and support services to persons with mental illness in settings that are natural to the consumer.

"Progress notes" mean a chronological written description of services provided to a consumer, resident, client, or patient that documents, utilizing acceptable documentation practices, the consumer's response related to the intervention plan or services provided.

"Psychological-Social evaluations" are in-person interviews conducted by professionally trained personnel designed to elicit historical and current information regarding the behavior and experiences of an individual, and are designed to provide sufficient information for problem formulation and intervention.

"Psychotherapy" or **"Therapy"** means a goal directed process using generally accepted clinical approaches provided face-to-face by a qualified service provider with consumers in individual, group or family settings to promote positive emotional or behavioral change.

"Rehabilitation Services" means face-to-face individual or group services provided by qualified staff to develop skill necessary to perform activities of daily living and successful integration into community life.

"Resident" means a person residing in a community living program certified by ODMHSAS.

"Residential treatment" means a structured, 24-hour supervised treatment program for individuals who are mentally ill with a minimum of twenty-one (21) hours of therapeutic services provided per week with the emphasis on stabilization and rehabilitation for transfer to a less restrictive environment. Stay in the program is time limited.

"Restraint" refers to manual, mechanical, and chemical methods that are intended to restrict the movement or normal functioning of a portion of an individual's body.

"Risk Assessment" means a clinical function that aims to determine the nature and severity of the mental health problem,

determine which service response would best meet the needs of the consumer, and how urgently the response is required.

"Screening" means the process to determine whether the person seeking assistance needs further comprehensive assessment.

"Sentinel event" is a type of critical incident that is an unexpected occurrence involving the death or serious physical or psychological injury to a consumer, or risk thereof. Serious injury specifically includes loss of limb or function. The phrase "or risk thereof" includes a variation in approved processes which could carry a significant chance of a serious adverse outcome to a consumer. These events signal the need for immediate investigation and response. Sentinel events include, but are not limited to: suicide, homicide, criminal activity, assault and other forms of violence, including domestic violence or sexual assault, and adverse drug events resulting in serious injury or death.

"Service area" means a geographic area established by the Department of Mental Health and Substance Abuse Services for support of mental health and substance abuse services [43A O.S. §3-302(1)].

"Service Intensity" means the frequency and quantity of services needed, the extent to which multiple providers or agencies are involved, and the level of care coordination required.

"Service plan" or **"Treatment plan"** means the document used during the process by which a qualified service provider and the consumer together and jointly identify and rank problems, establish agreed-upon immediate short-term and long-term goals, and decide on the treatment process and resources to be utilized.

"Socialization" means all activities, which encourage interaction and the development of communication, interpersonal, social and recreational skills and can include consumer education.

"SoonerCare" means Oklahoma's Medicaid program.

"Supportive services" refers to assistance with the development of problem-solving and decision-making skills to maintain or achieve optimal functioning within the community and can include consumer education.

"Systems of Care values" means a philosophy, which embraces a family-driven, child-centered model of care that integrates and coordinates the efforts of different agencies and providers to individualize care in the least restrictive setting that is clinically appropriate.

"TJC" means The Joint Commission formerly referred to as the Joint Commission on Accreditation of Healthcare Organizations or JCAHO.

"Tobacco" means any nicotine delivery product or device that is not approved by the U.S. Food and Drug Administration (FDA) for the purpose of nicotine dependence treatment, including, but not limited to cigarettes, cigars, snuff, chewing tobacco, electronic cigarettes and vaping devices.

"Transitional housing program" means a type of Community Living Program in which the consumer's stay in the residence is considered temporary and time-limited in nature. The actual program model may include a range of approaches,

including but not limited to supervised transitional living programs and supervised transitional housing programs.

"**Trauma informed capability**" means the capacity for a facility and all its programs to recognize and respond accordingly to the presence of the effects of past and current traumatic experiences in the lives of its consumers.

"**Vocational assessment services**" means a process utilized to determine the individual's functional work-related abilities and vocational preferences for the purpose of the identification of the skills and environmental supports needed by the individual in order to function more independently in an employment setting, and to determine the nature and intensity of services which may be necessary to obtain and retain employment.

"**Vocational placement services**" means a process of developing or creating an appropriate employment situation matched to the functional abilities and choices of the individual for the purpose of vocational placement. Services may include, but are not limited to, the identification of employment positions, conducting job analysis, matching individuals to specific jobs, and the provision of advocacy with potential employers based on the choice of the individual served.

"**Vocational preparation services**" means services that focus on development of general work behavior for the purpose of vocational preparation such as the utilization of individual or group work-related activities to assist individuals in understanding the meaning, value and demands of work; to modify or develop positive work attitudes, personal characteristics and work behaviors; to develop functional capacities; and to obtain optimum levels of vocational development.

"**Volunteer**" means any person who is not on the program's payroll, but provides services and fulfills a defined role within the program and includes interns and practicum students.

"**Walk through**" means an exercise in which staff members of a facility walk through the program's treatment processes as a consumer. The goal is to view the agency processes from the consumer's perspective for the purpose of removing barriers and enhancing treatment.

"**Wellness**" means the condition of good physical, mental and emotional health, especially when maintained by an appropriate diet, exercise, and other lifestyle modifications.

"**Wellness Coach**" means an individual who is actively working on personal wellness and who is designated to collaborate with others to identify their personal strengths and goals within the eight dimensions of wellness (spiritual, occupational, intellectual, social, physical, environmental, financial, and emotional).

(A) In order to qualify to be a Wellness Coach, individuals shall:

- (i) Have a behavioral health related associates degree or two years of experience in the field and/or have an active certification and/or license within the behavioral health field (e.g. PRSS, Case Management, LBHP, LPN, etc.); and
- (ii) Complete the ODMHSAS Wellness Coach Training Program and pass the examination with a score of 80% or better.

(B) Wellness Coach roles and responsibilities include:

- (i) Role model wellness behaviors and actively work on personal wellness goals;
- (ii) Apply principles and processes of coaching when collaborating with others;
- (iii) Facilitate wellness groups;
- (iv) Conduct motivational interventions;
- (v) Practice motivational interviewing techniques;
- (vi) Provide referrals to community resources for nutrition education, weight management, Oklahoma Tobacco Helpline, and other wellness-related services and resources;
- (vii) Create partnerships within local community to enhance consumer access to resources that support wellness goals;
- (viii) Raise awareness of wellness initiatives through educational in-service and community training;
- (ix) Elevate the importance of wellness initiatives within the organization;
- (x) Promote a culture of wellness within the organization for both consumers and staff;
- (xi) Respect the scope of practice and do not practice outside of it, referring people to appropriate professionals and paraprofessionals as needed.

"**Wraparound approach**" means a team-based planning and implementation process to improve the lives of children with complex needs and their families by developing individualized plans of care. The key characteristics of the process are that the plan is developed by a family centered team, is individualized based on the strengths and culture of the child and their family, and is driven by needs rather than services.

"**Young Adults in Transition**" are persons between sixteen to twenty-five (16-25) years of age who have a Serious Mental Illness (ages 18 - 25), or Serious Emotional Disturbance (ages 16 - 18).

SUBCHAPTER 3. REQUIRED SERVICES

PART 1. REQUIRED SERVICES

450:17-3-2. Core community mental health services

- (a) Each CMHC shall provide the following services:
 - (1) Screening ~~intake~~, assessment and referral services;
 - (2) Emergency services;
 - (3) Outpatient therapy;
 - (4) Case management services;
 - (5) Psychiatric rehabilitation services;
 - (6) Medication clinic services;
 - (7) Service to homeless individuals;
 - (8) Peer Support Services, and
 - (9) Wellness Activities and Support.
- (b) Compliance with 450:17-3-2 shall be determined by a review of the following:

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- (1) On-site observation;
- (2) Staff interviews;
- (3) Written materials;
- (4) Program policies;
- (5) Program Evaluations;
- (6) Data reporting; and
- (7) Clinical records.

PART 3. SCREENING, ~~INTAKE~~, ASSESSMENT AND REFERRAL

450:17-3-21. Integrated screening, ~~intake~~, and assessment services

(a) CMHC policy and procedure shall require that a screening of each consumer's service needs is completed in a timely manner. An integrated screening should be welcoming and culturally appropriate, include screening of whether the consumer is a risk to self or others, including suicide risk factors, as well as maximize recognition of the prevalence of co-occurring disorders among those who typically present for services at a Community Mental Health Center.

(b) Upon determination of appropriate admission, consumer ~~intake~~, and assessment information shall include, but not be limited to, the following:

- (1) Behavioral, including substance use, abuse, and dependence;
- (2) Emotional, including issues related to past or current trauma;
- (3) Physical;
- (4) Social and recreational; and
- (5) Vocational.

(c) The consumer and family as appropriate shall be an active participant(s) in the screening, ~~intake~~ and assessment process.

(d) The CMHC shall have policy and procedures specific to each program service which dictate timeframes by when assessments must be completed and documented. In the event the consumer is not admitted and as a result the assessment is not included in the clinical record, the policy shall specify how screening and assessment information is maintained and stored.

(e) Compliance with 450:17-3-21 shall be determined by a review of clinical records, and policy and procedures.

450:17-3-22. Screening, ~~intake~~ and assessment services, access or referral to needed services

(a) Written policy and procedures governing the screening, ~~intake~~ and assessment services shall specify the following:

- (1) The information to be obtained on all applicants or referrals for admission;
- (2) The procedures for accepting referrals from outside agencies or organizations;
- (3) The procedure to be followed when an applicant or referral is found to be ineligible for admission;

- (4) Methods of collection of information from family members, significant others or other social service agencies;
- (5) Methods for obtaining a physical examination or continued medical care where indicated;
- (6) Referral to other resources when the consumer has treatment or other service needs the facility cannot meet;
- (7) Emphasis on welcoming all consumers and conveying a recovery oriented hopeful message; and
- (8) No barriers to entry based solely on the presence of current or recent substance use.

(b) Compliance with 450:17-3-22 shall be determined by a review of the facility's written policy and procedures.

PART 9. MEDICATION CLINIC SERVICES

450:17-3-81. Medication clinic services

(a) Medication clinic services shall include an assessment of each individual's condition and needs; and an assessment of the effectiveness of those services.

(b) Medication clinic services shall be co-occurring capable and shall utilize accepted practice guidelines for psychopharmacologic management of co-occurring disorders.

(c) CMHCs shall offer comprehensive medication clinic services to consumers in need of this service, including, but not limited to:

(1) Prescribing or administering medication, including evaluation and assessment of the medication services provided.

(2) Medication orders and administration:

(A) Licensed staff allopathic physicians, osteopathic physicians, medical residents or consultant physicians shall write medication orders and prescriptions. Physician's assistants and nurse practitioners may write medication orders, or prescriptions consistent with state and federal law.

(B) A list of those allopathic physicians and osteopathic physicians authorized to prescribe medications shall be maintained and regularly updated.

(C) Only authorized licensed staff shall administer medications

(D) A list of licensed staff members authorized to administer medications shall be maintained and regularly updated.

(d) CMHCs shall ensure that consumers who have transitioned to the CMHC from a higher level of care have their medication needs met within two (2) weeks of being discharged from the facility providing the higher level of care.

~~(e)~~ Compliance with 450:17-3-81 shall be determined by on-site observation and a review of the following: clinical records, written policy and procedures, and roster of licensed, credentialed staff.

PART 11. CASE MANAGEMENT

450:17-3-103. Case management services for consumers admitted to higher levels of care

- (a) Case managers shall maintain contact with existing CMHC consumers, and establish contact with newly referred persons who are receiving services in inpatient psychiatric settings, Community Based Crisis Stabilization Centers, (CBCSC), or 24-hour settings providing substance ~~abuse~~ abuse disorder treatment.
- (b) Each CMHC shall assign at least one (1) staff member who is responsible for linkage between psychiatric inpatient units, CBSCs, and/or the substance ~~abuse~~ abuse disorder treatment facility and the CMHC. Linkage shall include, but not limited to, the following activities, pursuant to appropriately signed releases and adherence to applicable privacy provisions:
 - (1) Regular visits or communication with the psychiatric inpatient unit, CBCSC, and/or substance ~~abuse~~ abuse disorder treatment facility to monitor progress of those consumers hospitalized and/or in facility-based substance ~~abuse~~ abuse disorder treatment from the CMHC's service area.
 - (2) Provide knowledge and communication to other CMHC staff regarding psychiatric inpatient unit admission, CBCSC and/or substance ~~abuse~~ abuse disorder treatment facility and discharge procedures.
- (c) Case managers from the CMHC to which the consumer will be discharged shall assist the consumer and psychiatric inpatient unit, CBCSC, and/or substance ~~abuse~~ abuse disorder treatment facility with discharge planning for consumers returning to the community.
- (d) Individuals discharging from an inpatient psychiatric unit setting, CBCSC, and/or substance ~~abuse~~ abuse disorder treatment facility shall be offered case management and other supportive services. This shall occur as soon as possible, but shall be offered no later than one (1) week post-discharge.
- (e) Compliance with 450:17-3-103 shall be determined by a review of the following: clinical records; staff interviews; information from ODMHSAS operated psychiatric inpatient unit; CBCSC facilities, substance ~~abuse~~ abuse disorder treatment facilities; meetings minutes (CMHC or state-operated psychiatric inpatient unit); and a review of a minimum of ten (10) clinical records of consumers who received services at an inpatient unit, CBSS, and/or 24-hour setting providing substance ~~abuse~~ abuse disorder treatment within the past twelve (12) months.

SUBCHAPTER 5. OPTIONAL SERVICES

PART 11. COMMUNITY LIVING PROGRAMS

450:17-5-56. Community living programs

- (a) Community living programs shall be co-occurring disorders capable and include at least one of the following two types of supportive housing options for persons not in crisis who need assistance with obtaining and maintaining an independent living situation:
 - (1) Transitional housing; or

- (2) Permanent Supported housing;
- (b) A community living program shall have written policies and procedures specifying how, and by whom, the following services shall be performed:
 - (1) Medical treatment for residents on both emergency and routine bases;
 - (2) Mental health and substance ~~abuse~~ abuse disorder services on both emergency and routine bases;
 - (3) Daily living, social and occupational evaluation and progress planning;
 - (4) Daily living and social skills training;
 - (5) Occupational and vocational training;
 - (6) Assistance to residents in locating appropriate alternative living arrangements as clinically indicated or requested by resident or as part of program completion or graduation;
 - (7) A mechanism for orientation and education of new residents, which shall include, at least:
 - (A) Emergency procedures including fire, health and safety procedures;
 - (B) Resident rights and responsibilities; and
 - (C) Program expectations and rules; and
 - (8) Assistance to residents in accessing community resources including but not limited to rental assistance and other benefits.
- (c) There shall be documentation indicating that each resident has received orientation and education on emergency procedures, resident rights and responsibilities, and program expectations and rules.
- (d) To ensure a safe and sanitary environment for residents, the following shall apply for all CMHC owned and/or managed housing facilities:
 - (1) The apartment or house and furnishings shall be in good repair, and free of unpleasant odors, and insect and rodent infestations.
 - (2) The apartment or house shall contain safe heating and air conditioning systems, which are in proper working conditions. Each apartment or house shall have an annual fire and safety inspection by the State or local Fire Marshal's office.
 - (3) Apartments or houses shall be inspected by CMHC staff on a regular basis as specified in agency Policy and Procedures to ensure that fire, health or safety hazards do not exist.
 - (4) The program shall develop and maintain emergency policy and procedures which shall include but are not limited to:
 - (A) Fire response and evaluations;
 - (B) Response to other disasters;
 - (C) Relocation if housing unit(s) become unlivable; and
 - (D) Personal accident or illness.
- (e) Compliance with 450:17-5-56 shall be determined by on-site observation; interviews with residents, program staff, and other appropriate CMHC staff; and a review of facility documentation including a review of the CMHC written policy and procedures and resident records.

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PART 25. CERTIFIED COMMUNITY BEHAVIORAL HEALTH CLINICS

450:17-5-173. Staffing; Treatment team

(a) The treatment team includes the consumer, the family/caregiver of child consumers, the adult consumer's family to the extent the consumer does not object, and any other person the consumer chooses. Each facility shall maintain a core staff comprised of employed and, as needed, contracted staff, as appropriate to the needs of consumers as stated in the consumer's individual service plan and shall, at a minimum, include the following positions:

- (1) Licensed Psychiatric Consultant;
- (2) Licensed Nurse Care Manager (RN or LPN);
- (3) Consulting Primary Care Physician, Advance Practice Registered Nurse, or Physician Assistant;
- (4) Licensed Behavioral Health Professional or Licensure Candidate;
- (5) Certified Behavioral Health Case Manager I or II;
- (6) Certified Peer Support Specialist; ~~and~~
- (7) Family Support Provider for child consumers-;
- (8) Behavioral Health Aide for child consumers; and
- (9) Wellness Coach.

(b) Compliance with this Section shall be determined by a review of personnel files and privileging documents.

450:17-5-174. Staff Training

(a) In addition to the requirements found in 450:17-21-3, in-service presentations shall be conducted upon hire/contracting and each calendar year thereafter for all CCBHC employees on the following topics:

- (1) Person/Family-centered, recovery oriented, evidence-based and trauma-informed care;
- (2) Primary care/behavioral health integration;
- (3) Risk assessment, suicide prevention and suicide response; ~~and~~
- (4) Roles of families and peers-; and
- (5) Crisis response and management.

(b) The facility shall assess the skills and competence of each individual furnishing services and, as necessary, provide in-service training and education programs. The facility will have written policies and procedures describing its method(s) of assessing competency and maintains a written accounting of the in-service training provided during the previous 12 months.

(c) Individuals providing staff training must be qualified as evidenced by their education, training and experience.

(d) The training curriculum for (a) must be approved by the ODMHSAS commissioner or designee in writing prior to conducting of any training pursuant to this provision.

~~(d)~~ Compliance with this Section shall be determined by a review of policies and procedures and personnel records.

450:17-5-176. Availability and accessibility of services

(a) The ~~BHH~~CCBHC must have policies and procedures to describe how outreach and engagement activities will occur to assist consumers and families to access benefits and formal or

informal services to address behavioral health conditions and needs.

(b) Facility records will identify which staff members are responsible for specific elements of outreach and engagement.

(c) To the extent possible, the facility should make reasonable efforts to provide transportation or transportation vouchers for consumers to access services provided or arranged for by the facility.

(d) To the extent allowed by state law, facility will make services available via telemedicine in order to ensure consumers have access to all required services.

(e) The facility will ensure that no individuals are denied services, including but not limited to crisis management services, because of an individual's inability to pay and that any fees or payments required by the clinic for such services will be reduced or waived to enable the facility to fulfill this assurance. The Facility will have a published sliding fee discount schedule(s) that includes all services offered.

(f) The facility will ensure no individual is denied behavioral healthcare services because of place of residence or homelessness or lack of a permanent address. Facility will have protocols addressing the needs of consumers who do not live within the facility's service area. At a minimum, facility is responsible for providing crisis response, evaluation, and stabilization services regardless of the consumer's place of residence and shall have policies and procedures for addressing the management of the consumer's ongoing treatment needs.

(g) Compliance with this Section shall be determined by a review of policies, consumer records and facility fee schedule.

450:17-5-178. Initial screening, assessment and comprehensive evaluation

(a) The facility will directly provide screening, assessment and diagnosis, including risk assessment, for behavioral health conditions. The facility must determine the extent to which each consumer's needs and preferences can be adequately addressed within the array of required services.

(b) For new consumers requesting or being referred for behavioral health services, an integrated screening approach in accordance with OAC 450:17-3-21 will be used to determine the consumer's acuity of needs. The facility shall use standardized and validated screening and assessment tools, and where appropriate, brief motivational interviewing techniques.

(1) If the screening identifies an emergency/crisis need, the facility will take appropriate action immediately, including any necessary subsequent outpatient follow-up.

(2) If the screening identifies an urgent need, clinical services are provided and the initial evaluation completed within one business day of the time the request is made. An urgent need is one that if not addressed immediately could result in the person becoming a danger to self or others, or could cause a health risk.

(3) If screening identifies unsafe substance use including problematic alcohol or other substance use, the facility will conduct a brief intervention and the consumer is provided or referred for and successfully linked with a full assessment and treatment, if applicable.

- (4) If the screening identifies routine needs, services will be provided and the initial evaluation completed within 10 business days.
- (c) A Licensed Behavioral Health Professional (LBHP) or Licensure Candidate, acting within his/her scope of practice requirements, must complete an initial assessment in accordance with the standard in OAC 450:17-3-21 for consumers who have not been assessed by the facility within the past 6 months.
- ~~(d) The initial assessment must include at a minimum, the following:~~
- ~~(1) The admitting diagnosis as well as other diagnoses;~~
 - ~~(2) The source of referral;~~
 - ~~(3) The reason for admission as well as stated by the client or other individuals who are significantly involved;~~
 - ~~(4) Identification of the consumer's immediate clinical care needs related to the diagnosis for mental and substance use disorders;~~
 - ~~(5) An assessment of whether the consumer is a risk to self or to others, including suicide risk factors;~~
 - ~~(6) An assessment of whether the consumer has other concerns for their safety;~~
 - ~~(7) A screening of need for medical care (with referral and follow up as required);~~
 - ~~(8) A list of current prescriptions and over the counter medications as well as other substances the client may be taking; and~~
 - ~~(9) A determination of whether the person presently is or ever has been a member of the US Armed Services.~~
- (ed) For consumers presenting with emergency or urgent needs, the initial assessment may be conducted by telemedicine but an in-person assessment is preferred. If the initial assessment is ~~conducted~~conducted via telemedicine, once the emergency is resolved, the consumer must be seen in person at the next subsequent encounter and the initial assessment reviewed.
- ~~(e) Prior to assigning a consumer to a CCBHC intensive level of care,~~ A comprehensive evaluation must be completed by the interdisciplinary team performing within each team member's scope of practice consistent with each consumer's immediate needs and include a written narrative in each of the following areas:
- (1) Psychiatric and substance ~~abuse~~use history, mental status, and a current DSM diagnosis;
 - (2) Medical, dental, and other health needs;
 - (3) Education and/or employment;
 - (4) Social development and functioning;
 - (5) Activities of daily living; and
 - (6) Family structure and relationships.
- (g) The facility must ensure access to the comprehensive evaluation within 60 calendar days of the initial request for services. This requirement does not preclude the provision of treatment during the 60 day period.
- (h) The comprehensive ~~assessment~~evaluation must be updated as needed but no less than every six (6) months.
- (i) Compliance with this Section will be determined by on-site observation, review of organizational documents, program descriptions, outcome monitoring and other performance improvement activity reports, and clinical records.

450:17-5-183. Care coordination

- (a) Based on a person and family-centered ~~plan of care~~care plan and as appropriate, the facility will coordinate care for the consumer across the spectrum of health services, including access to physical health (both acute and chronic) and behavioral health care, as well as social services, housing, educational systems, and employment opportunities as necessary to facilitate wellness and recovery of the whole person.
- (b) The facility must have procedures and agreements in place to facilitate referral for services needed beyond the scope of the facility. At a minimum, the facility will have agreements establishing care coordination expectations with Federally Qualified Health Centers (FQHCs) and, as applicable, Rural Health Centers (RHCs) to provide healthcare services for consumers who are not already served by a primary healthcare provider.
- (c) The facility must have procedures and agreements in place establishing care coordination expectations with community or regional services, supports and providers including but not limited to:
- (1) Schools;
 - (2) OKDHS child welfare;
 - (3) Juvenile and criminal justice agencies;
 - (4) Department of Veterans Affairs' medical center, independent clinic, drop-in center, or other facility of the Department; and
 - (5) Indian Health Service regional treatment centers.
- (d) The facility will develop contracts or memoranda of understandings (MOUs) with regional hospital(s), Emergency Departments, Psychiatric Residential Treatment Facilities (PRTF), ambulatory and medical ~~detox~~withdrawal management facilities or other system(s) to ensure a formalized structure for transitional care planning, to include communication of inpatient admissions and discharges of BHH participants.
- (1) Transitional care will be provided by the facility for consumers who have been hospitalized or placed in other non-community settings, such as psychiatric residential treatment facilities. The facility will make and document reasonable attempts to contact all consumers who are discharged from these settings within 24 hours of discharge.
 - (2) The facility will collaborate with all parties involved including the discharging/admitting facility, primary care physician, and community providers to ensure a smooth discharge and transition into the community and prevent subsequent re-admission(s).
 - (3) Transitional care is not limited to institutional transitions, but applies to all transitions that will occur throughout the development of the enrollee and includes transition from and to school-based services and pediatric services to adult services.
 - (4) The facility will document transitional care provided in the clinical records.
- (e) Care coordination activities will be carried out in keeping with the consumer's preferences and needs for care, to the extent possible and in accordance with the consumer's expressed preferences, with the consumer's family/caregiver and other supports identified by the consumer. The facility will work with the consumer in developing a crisis plan with

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each consumer, such as a Psychiatric Advanced Directive or Wellness Recovery Action Plan.

(f) Referral documents and releases of information shall comply with applicable privacy and consumer consent requirements.

(g) Compliance with this Section will be determined by on-site observation, review of organizational documents, contracts, MOUs, and clinical records.

450:17-5-184. Crisis services

(a) The Facility shall make crisis management services available through clearly defined arrangements, for behavioral health emergencies during hours when the facility is closed. The Facility will also provide crisis management services that are available and accessible 24 hours a day and delivered within three hours from the time services are requested.

(b) Facility will make available, either directly or through a qualified DCO, the following co-occurring capable services:

- (1) 24 hour mobile crisis teams;
- (2) Emergency crisis intervention services; and
- (3) Crisis stabilization.

(c) Crisis services must include suicide crisis response and services capable of addressing crises related to substance ~~abuse~~ use disorder and intoxication, including ambulatory and medical ~~detoxification~~ withdrawal management.

(d) Facility will have an established protocol specifying the role of law enforcement during the provision of crisis services.

(e) Compliance with this Section shall be determined by facility policies and clinical records.

450:17-5-190. Electronic health records and data sharing

(a) The facility shall ~~have~~ utilize a functioning electronic health record (EHR) system that meets Meaningful Use standards, as defined in the Medicare and Medicaid Incentive Programs, or have a facility approved written plan with timeframes to obtain one.

(b) The facility shall document a plan to work with health information organizations to share referrals, continuity of care documents, lab results, and other health information and develop partnerships that maximize the use of Health Information Technology (HIT) across all treating providers.

(c) It is the facility's responsibility to arrange for access to any consumer data from a participating DCO as legally permissible upon creation of the relationship with the DCO and to ensure adequate consent as appropriate and that releases of information are obtained for each affected consumer.

(d) Compliance with (a) will be determined by review of documentation that certifies the electronic health record meets Meaningful Use standards or documentation of a plan to obtain one with implementation timeline.

(e) Compliance with (b) will be determined by on-site observation, review of policy, MOUs, clinical records, information available through an approved information system documenting that facility's consumers' records have been accessed and shared through a Health Information Exchange (HIE), and

consultation with the ODMHSAS Decision Support Services and ODMHSAS Information Services Division.

450:17-5-191. Consumer (Patient Care) Registries and Population Health Management

(a) The facility must implement clinical decision support mechanisms, ~~including but not limited to point of care reminders,~~ following nationally published evidence-based guidelines for:

- (1) A mental health or substance use disorder;
- (2) A chronic medical condition;
- (3) An acute condition;
- (4) A condition related to unhealthy behaviors; and
- (5) Well child or adult care.

(b) Facility must have descriptions of programs in place to demonstrate how it encourages healthier lifestyles for consumers, including increased physical activity, better nutrition, avoidance of behavioral risks, and wider use of preventive care.

(c) The facility shall electronically submit data to a health home information management system, subject to prior approval by the Director of ODMHSAS Provider Certification, which will act as a consumer registry, care management device and outcomes measurement tool.

(d) The facility shall utilize information provided through the approved information system for the purpose of enrollment and discharge tracking, compliance, quality assurance, and outcome monitoring.

(e) Compliance will be determined by on-site observation, review of information available through an approved information system, and consultation with the ODMHSAS Decision Support Services and ODMHSAS Information Services Division.

SUBCHAPTER 7. FACILITY CLINICAL RECORDS

450:17-7-5. Clinical record content, screening, ~~intake~~ and assessment

(a) All facilities shall complete a face-to-face screening with each individual to determine appropriateness of admission.

(b) The CMHC shall document the face-to-face screening between the potential consumer and the CMHC including how the consumer was assisted to identify goals, how the consumer received integrated screening to identify both immediate and ongoing needs and how the consumer was assisted to determine appropriateness of admission, and/or to access other appropriate services.

(c) Upon determination of appropriate admission, consumer demographic information shall be collected.

(d) All programs shall complete a psychological-social assessment which gathers sufficient information to assist the consumer in developing an individualized service plan.

(e) The CMHC shall have policy and procedures that stipulate content required for items (c) and (d).

(f) An ~~intake~~ assessment update, to include date, identifying information, source of information, present needs, present

life situation, current level of functioning, and what consumer wants in terms of service, is acceptable only on re-admissions within one (1) year of previous admission.

(g) Compliance with 450:450:17-7-5 shall be determined by a review of the following: psychological-social assessment instruments; consumer records; case management assessments; interviews with staff and consumers; policies and procedures and other facility documentation.

450:17-7-9. Medication record

(a) A medication record shall be maintained on all consumers who receive medications or prescriptions through the outpatient clinic services and shall be a concise and accurate record of the medications the consumer is receiving or prescribed.

(b) The consumer record shall contain a medication record with the following information on all medications ordered or prescribed by physician staff:

- (1) Name of medication,
- (2) Dosage,
- (3) Frequency of administration or prescribed change, and
- (4) Staff member who administered or dispensed each dose, and prescribing physician; and

(c) A record of pertinent information regarding adverse reactions to drugs, drug allergies, or sensitivities during ~~intake~~ screening and assessment, updated when required by virtue of new information, and kept in a highly visible location in or on the record.

(d) Compliance with 450:17-7-9 shall be determined by a review of medication records and clinical records.

SUBCHAPTER 15. PERFORMANCE IMPROVEMENT AND QUALITY MANAGEMENT

450:17-15-1.1. Performance improvement program

(a) The CMHC shall have an ongoing performance improvement program designed to objectively and systematically monitor, evaluate and improve the quality of consumer care.

(b) The Performance improvement program shall also address the fiscal management of the organization.

(c) The facility shall have an annual written plan for performance improvement activities. The plan shall include but not be limited to:

- (1) Outcomes management specific to each program component which minimally measures:
 - (A) efficiency;
 - (B) effectiveness; and
 - (C) consumer satisfaction.
- (2) A quarterly quality consumer record review to evaluate and ensure, among others:
 - (A) the quality of services delivered;
 - (B) the appropriateness of services;
 - (C) patterns of service utilization;

(D) consumers are provided an orientation to services, and actively involved in making informed choices regarding the services they receive;

(E) assessments are thorough, timely and complete;

(F) treatment goals and objectives are based on, at a minimum,

- (i) assessment findings, and
- (ii) consumer input;

(G) services provided are related to the treatment plan goals and objectives;

(H) services are documented as prescribed by policy; and

(I) the service plan is reviewed and updated as prescribed by policy.

(3) Clinical privileging;

(4) Review of critical and unusual incidents and consumer grievances and complaints; and

(5) Improvement in the following:

(A) co-occurring capability, including the utilization of self-assessment tools as determined or recommended by ODMHSAS;

(B) provision of trauma informed services;

(C) provision of culturally competent services; and

(D) provision of consumer driven services; and

(6) Activities to improve access and retention within the treatment program, including an annual "walk through" of the ~~intake~~ and admission process.

(d) The CMHC will identify a performance improvement officer.

(e) The CMHC shall monitor the implementation of the performance improvement plan on an ongoing basis and makes adjustments as needed.

(f) Performance improvement findings shall be communicated and made available to, among others:

- (1) the governing authority;
- (2) facility staff;
- (3) consumers;
- (4) stakeholders; and
- (5) ODMHSAS, as requested.

(g) Compliance with 450:17-15-1.1 shall be determined by a review of the written program evaluation plan; written program evaluations (annual and or special or interim; program goals and objectives; and other supporting documentation provided).

450:17-15-5. Critical incident reporting

(a) The facility shall have written policies and procedures requiring documentation and reporting of critical incidents and analysis of the contributors to the incident, with attention to issues that may reflect opportunities for system level or program level improvement.

(b) The documentation for critical incidents shall minimally include:

- (1) the facility, name and signature of the person(s) reporting the incident;
- (2) the name(s) of the consumer(s), staff member(s) or property involved;

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- (3) the time, date and physical location of the critical incident;
 - (4) the time and date the incident was reported and name of the staff person within the facility to whom it was reported;
 - (5) a description of the incident;
 - (6) resolution or action taken, date action taken, and signature of appropriate staff; and
 - (7) severity of each injury, if applicable. Severity shall be indicated as follows:
 - (A) No off-site medical care required or first aid care administered on-site;
 - (B) Medical care by a physician or nurse or follow-up attention required; or
 - (C) Hospitalization or immediate off-site medical attention was required;
- (c) Critical incidents shall be reported to ODMHSAS with specific timeframes, as follows:
- (1) Critical incidents requiring medical care by a physician or nurse or follow-up attention and incidents requiring hospitalization or immediate off-site medical attention shall be delivered via fax or mail to ODMHSAS Provider Certification within twenty-four (24) hours of the incident being documented.
 - (2) Critical incidents involving allegations constituting a sentinel event or consumer abuse shall be reported to ODMHSAS immediately via telephone or fax, but not more than twenty-four (24) hours of the incident. If reported by telephone, the report shall be followed with a written report within twenty-four (24) hours.
 - (3) Sentinel events shall have a root cause analysis completed no later than 30 days after the event occurred with a copy of the completed report sent to ODMHSAS.
- (d) Compliance with 450:17-15-5 shall be determined by a review of facility policy and procedures; critical incident reports at the facility and those submitted to ODMHSAS, performance improvement program documents and reports, and staff interviews.

SUBCHAPTER 23. FACILITY ENVIRONMENT

450:17-23-1. Facility environment

- (a) The CMHC shall obtain an annual fire and safety inspection from the State Fire Marshall or local authorities which documents approval for continued occupancy.
- (b) CMHC staff shall know the exact location, contents and use of first aid supply kits and fire fighting equipment. First aid supplies and fire fighting equipment shall be maintained in appropriately designated areas within the facility. Fire alarm systems shall have visual signals suitable for the deaf and hearing-impaired.
- (c) There shall be posted written plans and diagrams noting emergency evacuation routes in case of fire, and shelter locations in case of severe weather.
- (d) Facility grounds shall be maintained in a manner to provide a safe environment for consumers, personnel, and visitors.

- (e) The director of the CMHC or designee shall appointment of a safety officer.
- (f) The facility shall have an emergency preparedness program designed to provide for the effective utilization of available resources so that consumer care can be continued during a disaster. The emergency preparedness program is evaluated annually and is updated as needed.
- (g) Policies for the use and control of personal electrical equipment shall be developed and implemented.
- (h) There shall be an emergency power system to provide lighting throughout the facility.
- (i) The CMHC director shall ensure there is a written plan to cope with internal and external disasters. External disasters include, but are not limited to, tornados, explosions, and chemical spills.
- (j) Compliance with 450:17-23-1 shall be determined by visual observation; posted evacuation plans; a review of the CMHC's annual fire and safety inspection report; and a review of policy, procedures and other supporting documentation provided.

450:17-23-3. Tobacco-free campus

- (a) The CMHC shall provide a tobacco-free campus for its employees, consumers and visitors. Possession and use of any tobacco product is prohibited on the grounds of the CMHC by employees, consumers, volunteers and visitors.
- (b) Facility will visibly post signs on the property notifying consumers, employees and visitors that the visible possession and use of tobacco products is prohibited.
- (c) CMHC employees shall not share tobacco or tobacco replacement products with consumers.
- (d) The CMHC shall offer assistance to employees who are tobacco users while he or she is employed by the CMHC. The assistance shall include, but is not limited to, the provision of information on the health impact of continued tobacco use; the integrated assessment of consumer's tobacco use into standard practice; referrals to tobacco cessation programs such as the Oklahoma Tobacco Helpline; the provision of or access to FDA-approved prescription and/or non-prescription medications for the treatment of nicotine dependence when available; the delivery of evidence-based behavioral interventions for tobacco use cessation by counselors and other clinicians; and provision of appropriate follow-up to facilitate cessation intervention and prevent relapse.
- (e) The CMHC shall always inquire of the consumers' tobacco use status and be prepared to offer treatment upon request of the consumer.
- (f) Compliance with this Section shall be determined by visual observation; posted signs; consumer and staff interviews; and a review of the CMHC's policy, procedures and other supporting documentation provided.

[OAR Docket #17-578; filed 7-6-17]

TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES CHAPTER 18. STANDARDS AND CRITERIA FOR SUBSTANCE RELATED AND ADDICTIVE DISORDER TREATMENT SERVICES

[OAR Docket #17-579]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 1. General Provisions 450:18-1-2 [AMENDED] Subchapter 5. Organizational and Facility Management 450:18-5-3.3 [NEW] Subchapter 7. Facility Clinical Records Part 1. Record System 450:18-7-2 [AMENDED] Part 3. Screening, Intake, and Assessment 450:18-7-21 [AMENDED] 450:18-7-22 [AMENDED] Part 7. Case Management 450:18-7-63 [AMENDED] Part 9. Service Planning 450:18-7-84 [AMENDED] Part 13. Discharge Planning 450:18-7-123 [AMENDED] Part 15. Other Case Record Materials 450:18-7-144 [AMENDED] Subchapter 13. Substance Use Disorder Treatment Services Part 1. Levels of Care 450:18-13-1 [AMENDED] Part 7. Medically Supervised Detoxification/withdrawal Management 450:18-13-61 [AMENDED] 450:18-13-62 [AMENDED] 450:18-13-63 [AMENDED] Part 9. Non-Medical Detoxification/withdrawal Management 450:18-13-81 [AMENDED] 450:18-13-82 [AMENDED] 450:18-13-83 [AMENDED]

AUTHORITY:

Oklahoma Department of Mental Health and Substance Abuse Services Board; 43A O.S. §§ 2-101, 3-306, 3-306.1 and 3-315; 74 O.S. §§85.9G.

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n/a

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n/a

GIST/ANALYSIS:

In accordance with the Administrative Procedures Act the proposed rule revisions to Chapter 18 are part of the Department's review of Title 450. The proposed rules are intended to update terminology and definitions as well as

create new standards requiring facilities certified by ODMHSAS to implement tobacco free workplaces and clarify screening requirements for admission.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF OCTOBER 1, 2017:

SUBCHAPTER 1. GENERAL PROVISIONS

450:18-1-2. Definitions

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

"Acute intoxication" or "withdrawal potential" means one dimension to be considered in consumer placement, continued stay, and discharge and is an evaluation of the consumer's withdrawal patterns and current level of intoxication and potential for withdrawal complications as it impacts level of care decision making.

"Admission" means the acceptance of a consumer by a treatment program to receive services at that program.

"Admission criteria" means those criteria which shall be met for admission of a consumer for services.

"Adult" means any individual eighteen (18) years of age or older.

"ASAM" means the American Society of Addiction Medicine.

"ASAM levels of care" means the different options for treatment as described in the current edition of the ASAM criteria that vary according to the intensity of the services offered. Each treatment option is a level of care.

"ASAM criteria" or means the most current edition of the American Society of Addiction Medicine's published criteria for admission to treatment, continued services, and discharge.

"Assessment" means those procedures by which a program provides an on-going evaluation process with the consumer as outlined in applicable rules throughout OAC 450 to collect pertinent information needed as prescribed in applicable rules and statutes to determine courses of actions or services to be provided on behalf of the consumer. Assessment may be synonymous with the term evaluation.

"Behavioral health services" means a wide range of diagnostic, therapeutic, and rehabilitative services used in the treatment of mental illness, substance use disorders, and co-occurring disorders.

"Biomedical condition and complications" means one dimension to be considered in placement, continued stay, and discharge and is an evaluation of the consumer's current physical condition and history of medical and physical functioning as it impacts level of care decision making.

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"Biopsychosocial assessment" means face-to-face interviews conducted by a qualified service provider designed to elicit historical and current information regarding the behaviors, experiences, and support systems of a consumer, and identify the consumer's strengths, needs, abilities, and preferences for the purpose of guiding the consumer's recovery plan.

"Case management services" means planned referral, linkage, monitoring, support, and advocacy provided in partnership with a consumer to assist that consumer with self-sufficiency and community tenure and take place in the individual's home, in the community, or in the facility, in accordance with a service plan developed with and approved by the consumer and qualified staff.

"Certified Gambling Addiction Treatment" or **"CGAT"** means programs certified by ODMHSAS to provide treatment to individuals diagnosed with a gambling disorder.

"Child" or **"Children"** means any individuals under eighteen (18) years of age.

"Client" See "Consumer."

"Clinical supervision" means an organized process by which knowledgeable and skilled supervisors systematically and routinely provide ongoing and in-depth review of direct service providers' performance which leads to professional growth, clinical skills development, and increased self-awareness.

"Community-based Structured Crisis Center" or **"CBSCC"** means a program of non-hospital emergency services for mental health and substance use disorder crisis stabilization as authorized by 43A O.S. §3-317 including, but not limited to, observation, evaluation, emergency treatment, and referral, when necessary, for inpatient psychiatric or substance use disorder treatment services. This service is limited to CMHCs who are certified by the Department of Mental Health and Substance Abuse Services or facilities operated by the Department of Mental of Substance Abuse Services.

"Community education, consultation, and outreach" means services designed to reach the facility's target population, to promote available services, and to give information on substance-related and addictive disorders, domestic violence, sexual assault, and other related issues to the general public, the target population, or to other agencies serving the target population. These services include presentations to human services agencies, community organizations, and individuals, other than individuals in treatment, and staff. These services may take the form of lecture presentations, films or other visual displays, and discussions in which factual information is disseminated. These presentations may be made by staff or trained volunteers.

"Community mental health center" or **"CMHC"** means a facility offering a comprehensive array of community-based mental health services including, but not limited to, inpatient treatment, outpatient treatment, partial hospitalization, emergency care, consultation and education, and certain services at the option of the center including, but not limited to, prescreening, rehabilitation services, pre-care and aftercare, training programs, and research and evaluation.

"Consultation" means the act of providing information or technical assistance to a particular group or individual seeking resolution of specific problems. A documented process of interaction between staff members or between facility staff and unrelated individuals, groups, or agencies for the purpose of problem solving or enhancing their capacities to manage consumers or facilities.

"Consumer" means an individual, adult, adolescent, or child, who has applied for, is receiving or has received evaluation or treatment services from a facility operated or certified by ODMHSAS or with which ODMHSAS contracts and includes all persons referred to in OAC Title 450 as client(s) or patient(s) or resident(s) or a combination thereof.

"Consumer record" means the collection of written information about a consumer's evaluation or treatment that includes the ~~intake~~ admission data, evaluation, treatment or service plan, description of treatment or services provided, continuing care plan, and discharge information on an individual consumer.

"Continuing care" means providing a specific period of structured therapeutic involvement designed to enhance, facilitate, and promote transition from a current level of services to support ongoing recovery.

"Contract" means a document adopted by the governing authority of a treatment facility and any other organization, facility, or individual, which specifies services, personnel, or space to be provided by the program, as well as the monies to be expended in exchange.

"Co-occurring disorder" (COD) means any combination of mental health symptoms and substance use disorder symptoms or diagnoses that affect a consumer and are typically determined by the current Diagnostic and Statistical Manual of Mental Disorders.

"Co-occurring disorder capability" means the organized capacity within any type of program to routinely screen, identify, assess, and provide properly matched interventions to consumer's with co-occurring disorders.

"Co-occurring disorder enhanced" means that the program (or subunit of the program) provides a specialized service designed for individuals with co-occurring disorders, usually with a higher level of available service capacity or intensity for the co-occurring substance use disorder than would be the case in a comparable co-occurring disorder capable program.

"Correctional institution" means any penal or correctional facility, jail, reformatory, detention center, work farm, halfway house, or residential community program operated by, or under contract to, the United States, a state, a territory, a political subdivision of a state or territory, or an Indian tribe, for the confinement or rehabilitation of persons charged with or convicted of a criminal offense, or other persons held in lawful custody. Other persons held in lawful custody include juvenile offenders adjudicated delinquent, aliens detained awaiting deportation, persons committed to mental institutions through the criminal justice system, witnesses, or others awaiting charges or trial. Programs which are providing treatment services within a correctional facility may be exempt from certain services described in this chapter which cannot be provided due to circumstance.

"Crisis Diversion" means an unanticipated, unscheduled situation requiring supportive assistance, face-to-face or telephone, to resolve immediate problems before they become overwhelming and severely impair the individual's ability to function or maintain in the community.

"Crisis intervention" means actions taken and services provided to address emergency psychological, physiological, and safety aspects of alcohol, drug-related, and mental health crises.

"Critical incident" means an occurrence or set of events inconsistent with the routine operations of a facility, service setting, or otherwise routine care of a consumer. Critical incidents specifically include, but are not necessarily limited to the following: adverse drug events; self-destructive behavior; deaths and injuries to consumers, staff, and visitor; medication errors; residential consumers that have absent without leave (AWOL); neglect or abuse of a consumer; fire; unauthorized disclosure of information; damage to or theft of property belonging to consumers or the facility; other unexpected occurrences; or events potentially subject to litigation. A critical incident may involve multiple individuals or results.

"Cultural competency" means the ability to recognize, respect, and address the unique needs, worth, thoughts, communications, actions, customs, beliefs, and values that reflect an individual's racial, ethnic, religious, sexual orientation, and/or social group.

"Day school" means the provision of therapeutic and accredited academic services on a regularly scheduled basis.

"Department" or **"ODMHSAS"** means the Oklahoma Department of Mental Health and Substance Abuse Services.

"Detoxification" means the process of eliminating the toxic effects of drugs and alcohol from the body. Supervised detoxification methods include social detoxification and medical monitoring or medical management and are intended to avoid withdrawal complications.

"DHS" or **"OKDHS"** means the Oklahoma Department of Human Services.

"Diagnosis" means the determination of a disorder as defined by current DSM criteria and in accordance with commonly accepted professional practice standards.

"Dietitian" or **"Dietician"** means an individual trained and licensed in the development, monitoring, and maintenance of food and nutrition in accordance with the Oklahoma State Board of Medical Licensure and Supervision.

"Discharge criteria" means individualized measures by which a program and the consumer determine readiness for discharge or transition from services being provided by that facility. These may reference general guidelines as specified in facility policies or procedures and/or in published guidelines including, but not limited to, the current ASAM criteria for individuals with substance use disorders, but should be individualized for each consumer and articulated in terms of consumer behaviors, resolutions of specific problems, and attainment of goals developed in partnership with the participant and the provider.

"Discharge planning" means the process, begun at admission, of determining a consumer's continued need for

treatment services and of developing a plan to address ongoing consumer post-treatment and recovery needs. Discharge planning may or may not include a document identified as a discharge plan.

"Discharge summary" means a clinical document in the treatment record summarizing the consumer's progress during treatment, with goals reached, continuing needs, and other pertinent information including documentation of linkage to aftercare.

"DOC" or **"ODOC"** means the Oklahoma Department of Corrections.

"Documentation" means the provision of written, dated, and authenticated evidence to substantiate compliance with standards, e.g., minutes of meetings, memoranda, schedules, notices, logs, records, policies, procedures, and announcements.

"DSM" means the most current edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association.

"Education" means the dissemination of relevant information specifically focused on increasing the awareness of the community and the receptivity and sensitivity of the community concerning mental health, substance-related and addictive disorders, or other related problems and services related to the specific focus of treatment.

"Educational group" means groups in which information is provided to consumers or consumers in a teaching or instructional format and typically related to the current focus of treatment, designated to positively impact a consumer's recovery. Topics should be gender and age specific and should include, but not be limited to, information regarding their diagnosis or identified problems on their treatment plan. This service may involve teaching skills in communication, self-care, and social skills to promote recovery. Paraprofessionals and/or professionals in fields related to the education topic may facilitate education groups.

"Efficiency" means a program's measure of cost-benefit or cost effectiveness through a comparison to some alternative method.

"Emergency services" means a twenty-four (24) hour capability for assessment, intervention, and resolution of a consumer's crisis or emergency provided in response to unanticipated, unscheduled emergencies requiring prompt intervention to resolve immediate, overwhelming problems that severely impair the individual's ability to function or remain in the community and may include placement of the individual in a protective environment, detoxification/withdrawal management, individual and group consultation, and medical assessment.

"Emotional, behavioral or cognitive conditions and complications" means one dimension to be considered in consumer placement, continued stay, and discharge and is an evaluation of the consumer's historical and current emotional, behavioral, or cognitive status including the presence and severity of any diagnosed mental illnesses, as well as, the level of anxiety, depression, impulsivity, guilt, and behavior that accompanies or follows these emotional states and historical information, as it impacts on level of care decision making.

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"Evaluation" See "Assessment."

"Evidence based practice" means programs or practices that are supported by research methodology and have produced consistently positive patterns of results when replicated within the intent of the published guidance.

"Executive director" means the person hired by the governing authority to direct all the activities of the organization; may be used synonymously with administrative director, administrator, chief executive officer, and director.

"Face-To-Face" for the purposes of the delivery of behavioral health care, means a face-to-face physical contact and in-person encounter between the health care provider and the consumer, including the initial visit. The use of telemedicine shall be considered a face-to-face encounter.

"Facilities" or **"facility"** means entities as described in Title 43A O.S. § 1-103(7), community mental health centers, residential mental health facilities, community-based structured crisis centers, certified services for the alcohol and drug dependent, programs of assertive community treatment, eating disorder treatment, gambling disorder treatment, and narcotic treatment programs.

"Family" means the parents, brothers, sisters, other relatives, foster parents, guardians, and others who perform the roles and functions of family members in the lives of consumers.

"Follow-up" means the organized method of systematically determining the status of consumers after they have been discharged to determine post-treatment outcomes and utilization of post-treatment referrals.

"Gambling disorder treatment services" means treatment activities for consumers by a gambling treatment professional that include, but are not limited to, the following:

- (A) Assessment and diagnostic impression, ongoing;
- (B) Treatment planning and revision, as necessary;
- (C) Individual, group and family therapy;
- (D) Case management;
- (E) Psychosocial rehabilitation; and
- (E) Discharge planning.

"Gambling treatment professional" means an individual holding a valid NCGC I or II certification or has documented completion of at least thirty hours of ODMHSAS recognized core problem gambling training requirements and documented completion of ten hours of problem gambling specific continuing education every twelve months; and is either a Licensed Behavioral Health Professional or Licensure Candidate.

"Gambling related disorders/problems" means persistent and recurrent problematic gambling behavior leading to clinically significant impairment or distress, as defined by the most recent edition of the DSM.

"Goals" means broad general statements of purpose or intent that indicates the general effect the facility or service is intended to have.

"Governing authority" means the individual or group of people who serve as the treatment facility's board of directors and who are ultimately responsible for the treatment facility's activities and finances.

"Guardian" means an individual who has been given the legal authority for managing the affairs of another individual.

"Halfway house" means low intensity substance use disorder treatment in a supportive living environment to facilitate the individual's reintegration into the community, most often following completion of primary treatment. Corresponding ASAM Treatment Level: Level III.1, Clinically managed Low Intensity Residential Services.

"Halfway house for persons with children" means a halfway house that includes services for the recovering person's children who will reside with him or her in the house. Corresponding ASAM Treatment Level: Level III.1, Clinically managed Low Intensity Residential Services.

"Infant" means any child from birth up to 3 years of age.

"Initial contact" means a person's first contact with the facility, e.g., a request for information or service by telephone or in person.

"Inpatient services" means the process of providing care to persons who require twenty-four (24) hour supervision in a hospital or other suitably equipped medical setting as a result of acute or chronic medical or psychiatric illnesses and professional staff providing medical care according to a treatment plan based on documentation of need.

~~**"Intake"** means the overall process by which information is collected to determine the needs of the consumer.~~

"Intervention" means a process or technique intended to facilitate behavior change.

"Length of stay" means the number of days or number of sessions attended by consumers in the course of treatment.

"Licensed Behavioral Health Professional" or **"LBHP"** means:

- (A) Allopathic or Osteopathic Physicians with a current license and board certification in psychiatry or board eligible in the state in which services are provided, or a current resident in psychiatry;
- (B) Practitioners with a license to practice in the state in which services are provided by one of the following licensing boards:
 - (i) Psychology;
 - (ii) Social Work (clinical specialty only);
 - (iii) Professional Counselor;
 - (iv) Marriage and Family Therapist;
 - (v) Behavioral Practitioner; or
 - (vi) Alcohol and Drug Counselor.

(C) Advanced Practice Nurse (certified in a psychiatric mental health specialty), licensed as a registered nurse with a current certification of recognition from the board of nursing in the state in which services are provided.

(D) A Physician Assistant who is licensed in good standing in the state and has received specific training for and is experienced in performing mental health therapeutic, diagnostic, or counseling functions.

"Licensed physician" means an individual with an M.D. or D.O. degree who is licensed in the State of Oklahoma to practice medicine.

"**Licensed practical nurse**" means an individual who is a graduate of an approved school of nursing and is licensed in the State of Oklahoma to provide practical nursing services.

"**Licensure**" means the process by which an agency of government grants permission to persons or health facilities meeting qualifications to engage in a given occupation or business or use a particular title.

"**Licensure Candidate**" means practitioners actively and regularly receiving board approved supervision, and extended supervision by a fully licensed clinician if board's supervision requirement is met but the individual is not yet licensed, to become licensed by one of the following licensing boards:

- (A) Psychology;
- (B) Social Work (clinical specialty only);
- (C) Professional Counselor;
- (D) Marriage and Family Therapist;
- (E) Behavioral Practitioner; or
- (F) Alcohol and Drug Counselor.

"**Life skills**" means abilities and techniques necessary to function independently in society.

"**Medical care**" means those diagnostic and treatment services which, under the laws of the jurisdiction in which the facility is located, can only be provided or supervised by a licensed physician.

"**Medical ~~detoxification~~ withdrawal management**" means diagnostic and treatment services performed by licensed facilities for acute alcohol or drug intoxication, delirium tremens, and physical and neurological complications resulting from acute intoxication. ~~Medical detoxification withdrawal management~~ includes the services of a physician and attendant medical personnel including nurses, interns, and emergency room personnel, the administration of a medical examination and a medical history, the use of an emergency room and emergency medical equipment if warranted, a general diet of three meals each day, the administration of appropriate laboratory tests, and supervision by properly trained personnel until the person is no longer medically incapacitated by the effects of alcohol or drugs. [43 A O.S. § 3-403(5)] It is an organized service delivered by medical and nursing professionals that provides for twenty-four (24)-hour medically directed evaluation and withdrawal management in an acute care inpatient setting. Services are delivered under a defined set of physician-approved policies and physician-managed procedures or medical protocols. Corresponding ASAM ~~Treatment Service~~ Level: Level ~~IV-D4-WM~~, Medically Managed Intensive Inpatient ~~Detoxification Withdrawal Management~~.

"**Medical services**" means the administration of medical procedures by a physician, registered nurse, nurse practitioner, physician's assistant, or dentist and in accordance with a documented treatment plan and medical supervision available to provide the consumer with the service necessitated by the prevalent problem identified and includes physical examinations, ~~detoxification withdrawal management~~ from alcohol or drugs, methadone maintenance, dental services, or pharmacy services, etc.

"**Medically supervised ~~detoxification~~ withdrawal management**" means ~~detoxification withdrawal management~~ outside of a medical setting, directed by a physician who has

attendant medical personnel including nurses for intoxicated consumers, and consumer's withdrawing from alcohol and other drugs, presenting with no apparent medical or neurological symptoms as a result of their use of substances that would require hospitalization as determined by an examining physician. Corresponding ASAM ~~Treatment Service~~ Level: Level ~~III-7-D3.7-WM~~, Medically Monitored Inpatient ~~Detoxification Withdrawal Management~~. ~~Detoxification Withdrawal management~~ is intended to stabilize and prepare consumers in accessing treatment.

"**Medication**" means any prescription or over-the-counter drug that is taken orally, injected, inserted, applied topically, or otherwise administered by staff or self-administered by the consumer for the appropriate treatment or prevention of medical or psychiatric issues.

"**Medication error**" means an error in prescribing, dispensing, or administration of medication, regardless if the error reached the consumer, e.g., omission of prescribed drugs, giving drugs not prescribed, prescribing inappropriate drugs, prescribing or administering incorrect dosages, incorrectly filling or labeling prescriptions, or incorrectly transcribing medication orders.

"**Medication-self administration**" means the consumers administer their own medication to themselves, or their children, with staff observation.

"**Minutes**" means a record of business introduced, transactions and reports made, conclusions reached, and recommendations made during a meeting.

"**NCGC**" means Nationally Certified Gambling Counselor, offered at levels I or II through the National Council on Problem Gambling.

"**Neglect**" means:

- (A) the failure of staff to provide adequate food, clothing, shelter, medical care or supervision which includes, but is not limited to, lack of appropriate supervision that results in harm to a consumer;
- (B) the failure of staff to provide special care made necessary by the physical or mental condition of the consumer;
- (C) the knowing failure of staff to provide protection for a consumer who is unable to protect his or her own interest; or
- (D) staff knowingly causing or permitting harm or threatened harm through action or inaction that has resulted or may result in physical or mental injury.

"**Non-medical ~~detoxification~~ withdrawal management**" means ~~detoxification withdrawal management~~ services for intoxicated consumers and consumers withdrawing from alcohol or other drugs presenting with no apparent medical or neurological symptoms as a result of their use of substances. Corresponding ASAM ~~PPC Treatment Service~~ Level: Level ~~III-2-D3.2-WM~~, Clinically managed Residential ~~Detoxification Withdrawal Management~~. ~~Detoxification Withdrawal management~~ is intended to stabilize and prepare consumers in accessing treatment.

"**Objectives**" means a specific statement of planned accomplishments or results that are specific, measurable, attainable, realistic, and time-limited.

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"ODMHSAS" means the Oklahoma Department of Mental Health and Substance Abuse Services.

"Oklahoma Administrative Code" or **"OAC"** means the publication authorized by 75 O.S. § 256 known as The Oklahoma Administrative Code or, prior to its publication, the compilation of codified rules authorized by 75 O.S. § 256(A)(1)(a) and maintained in the Office of Administrative Rules.

"OSDH" means the Oklahoma State Department of Health.

"Outpatient services" means an organized, nonresidential treatment service in regularly scheduled sessions intended for individuals not requiring a more intensive level of care or those who require continuing services following more intensive treatment regimens. For substance use disorder treatment services, the corresponding ASAM Treatment Level is Level I, Outpatient Treatment.

"Outreach" means the process of reaching into a community systematically for the purposes of identifying persons in need of services, alerting persons and their families to the availability of services, locating needed services, and enabling persons to enter into and accept the service delivery system.

"Paraprofessional" means a person who does not have an academic degree related to the scope of treatment or support services being provided, but performs prescribed functions under the general supervision of that discipline.

"Performance Improvement" or **"PI"** means an approach to the continuous study and improvement of the processes of providing health care services to meet the needs of consumers and others. Synonyms, and near synonyms, include continuous quality improvement, continuous improvement, organization-wide quality improvement, and total quality management.

"Personnel record" means a chart or file containing the employment history and actions relevant to individual employee or volunteer activities within an organization and may contain application, evaluation, salary data, job description, citations, credentials, etc.

"PICIS" is a comprehensive management information system based on national standards for mental health and substance abuse databases. It is a repository of diverse data elements that provide information about organizational concepts, staffing patterns, consumer profiles, program or treatment focus, and many other topics of interest to clinicians, administrators, and consumers. It includes unique identifiers for agencies, staff, and consumers that provide the ability to monitor the course of consumer services throughout the statewide ODMHSAS network. PICIS collects data from hospitals, community mental health centers, substance abuse agencies, community residential mental health facilities, prevention programs, and centers for the homeless which are operated or funded in part by ODMHSAS.

"Play therapy" means a form of action therapy that uses, but is not limited to, sand play, fairy tales, art and puppetry to encourage communication in children who have inadequate or immature verbalization skills or who verbalize excessively due to defensiveness.

"Policy" means statements of facility intent, strategy, principle, or rules in the provision of services; a course of action leading to the effective and ethical provision of services.

"Prevention" means the assessment, development, and implementation of strategies designed to prevent the adverse effects of mental illness, substance use disorders, addiction, and trauma.

"Procedures" means the written methods by which policies are implemented.

"Process" means information about what a program is implementing and the extent to which the program is being implemented as planned.

"Program" means a structured set of activities designed and structured to achieve specific objectives relative to the needs of the consumers or patients.

"Program effectiveness outcome" means a written plan and operational methods of determining the effectiveness of services provided that objectively measures facility resources, activities, and consumer outcomes.

"Progress notes" means a chronological written description of services provided to a consumer, resident, client, or patient that documents, utilizing acceptable documentation practices, the consumer's response related to the intervention plan or services provided.

"Psychiatrist" means a licensed physician who specializes in the assessment and treatment of individuals having psychiatric disorders and who is fully licensed to practice medicine in the state in which he or she practices and is certified in psychiatry by the American Board of Psychiatry and Neurology or has equivalent training or experience.

"Psychological-Social evaluations" are in-person interviews conducted by professionally trained personnel designed to elicit historical and current information regarding the behavior and experiences of an individual and are designed to provide sufficient information for problem formulation and intervention.

"Psychotherapy" or **"Therapy"** means a goal directed process using generally accepted clinical approaches provided face-to-face by a qualified service provider with consumers in individual, group, or family settings to promote positive, emotional, or behavioral change.

"Readiness to change" means one dimension to be considered in consumer placement, continued stay, and transition and is an evaluation of the consumer's current emotional and cognitive awareness of the need to change, coupled with a commitment to change.

"Recovery" means an ongoing process of discovery and/or rediscovery that must be self-defined, individualized, and may contain some, if not all, of the fundamental components of recovery as outlined by the Substance Abuse and Mental Health Services Administration (SAMHSA).

"Recovery/living environment" means one dimension to be considered in consumer placement, continued stay, and discharge and is an evaluation of the consumer's current recovery environment, current relationships, degree of support for recovery, current housing, employment situation, availability of alternatives, and historical information as it impacts on level of care decision making.

"Registered nurse" means an individual who is a graduate of an approved school of nursing and is licensed in the State of Oklahoma to practice as a registered nurse.

"Rehabilitation services" means face-to-face individual or group services provided by qualified staff to develop skills necessary to perform activities of daily living and successful integration into community life.

"Relapse" means the process which may result in the return to the use of substances after a period of abstinence.

"Relapse potential, continued use, or continued problem potential" means one dimension to be considered in consumer placement, continued stay, and discharge and is an evaluation of the consumer's attitudes, knowledge, and coping skills, as well as the likelihood that the consumer will relapse from a previously achieved and maintained abstinence and/or stable and healthy mental health function. If an individual has not yet achieved abstinence and/or stable and healthy mental health function, this dimension assesses the likelihood that the individual will continue to use alcohol or other drugs and/or continue to have mental health problems.

"Residential treatment-substance abuse" means treatment for a consumer in a live-in setting which provides a regimen consisting of twenty-four (24) treatment hours per week. This level of care should correspond with the ASAM ~~Treatment~~Service Level: Level ~~III-53.5~~, Clinically managed High-Intensity Residential Services.

"Residential treatment for persons with children-substance abuse" means a residential treatment facility that includes services for the recovering person's children who will reside with him or her in the residential facility. Corresponding ASAM ~~PPC—Treatment~~Service Level (Parent Only): Level ~~III-53.5~~ Clinically Managed High-Intensity Residential Services.

"Safety officer" means the individual responsible for ensuring the safety policies and procedures are maintained and enforced within the facility.

"Screening" means the process to determine whether the person seeking assistance needs further comprehensive assessment.

"Sentinel event" is a type of critical incident that is an unexpected occurrence involving the death or serious physical or psychological injury to a consumer or risk thereof. Serious injury specifically includes loss of limb or function. The phrase "or risk thereof" includes a variation in approved processes which could carry a significant chance of a serious adverse outcome to a consumer. These events signal the need for immediate investigation and response. Sentinel events include, but are not limited to suicide, homicide, criminal activity, assault and other forms of violence, including domestic violence or sexual assault, and adverse drug events resulting in serious injury or death.

"Service plan" or "Treatment plan" means the document used during the process by which a qualified service provider and the consumer together and jointly identify and rank problems, establish agreed-upon immediate short-term and long-term goals, and decide on the treatment process and resources to be utilized.

"Service Provider" means a person who is allowed to provide treatment services within the regulation and scope of their certification level or license.

"Significant others" means those individuals who are, or have been, significantly involved in the life of the consumer.

"Socialization" means all activities, which encourage interaction and the development of communication, interpersonal, social, and recreational skills and can include consumer education.

"Staff privileging" means an organized method for treatment facilities to authorize an individual permission to provide specific care and treatment services to consumers within well-defined limits, based on the evaluation of the individual's license, education, certification, training, experience, competence, judgment, and other credentials.

"Substance-related and addictive disorders" means a substance-related disorder involving problems related to the use of ten distinct classes of drugs: alcohol; caffeine; cannabis; hallucinogens; inhalants; opioids; sedatives, hypnotics and anxiolytics; stimulants; tobacco; and other (unknown) substances. Substance-related disorders fall into one of two categories, substance use disorders and substance induced disorders. A substance use disorder is a cluster of cognitive, behavioral and physiological symptoms indicating the consumer continues using the substance(s) despite significant substance-related problems. A substance-induced disorder is a reversible substance-specific syndrome due to the recent ingestion of a substance. Addictive disorders involve repetitive clusters of behaviors that activate reward systems similar to those activated by drugs and create behavioral symptoms comparable to those produced by substance use disorders such as compulsive gambling.

"Substance use disorder treatment services" means the coordination of treatment activities for consumers by service provider that includes, but is not limited to, the following:

- (A) ~~Intake including screening~~Screening, diagnostic impression, and assessment.
- (B) Treatment planning and revision, as necessary.
- (C) Continuing care review to assure continuing stay and discharge criteria are met.
- (D) Case management services.
- (E) Reports and record keeping of consumer related data.
- (F) Consultation that facilitates necessary communication in regard to consumers.
- (G) Discharge planning that assists consumers in developing continuing care plans and facilitates transition into post-treatment recovery.
- (H) Group and individual therapy.
- (I) Education, as necessary.

"Substance-use disorders" means alcohol or drug dependence or psychoactive substance use disorder as defined by current DSM criteria or by other standardized and widely accepted criteria.

"Substance withdrawal" means a state of being in which a group of symptoms of variable clustering and degree of severity occur on cessation or reduction of use of a psychoactive substance that has been taken repeatedly, usually for a

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prolonged period and/or in high doses. The syndrome may be accompanied by signs of physiological disturbance. Onset and course of the withdrawal state are time-limited and are related to the type of substance and the dose being used immediately before abstinence.

"**Supportive services**" refers to assistance with the development of problem-solving and decision making skills to maintain or achieve optimal functioning within the community and can include consumer education.

"**Therapeutic hour(s)**" means the amount of time in which the consumer is engaged with a service provider identifying, addressing, and/or resolving issues that are related to the consumer's treatment plan.

"**Tobacco**" means any nicotine delivery product or device that is not approved by the U.S. Food and Drug Administration (FDA) for the purpose of nicotine dependence treatment, including, but not limited to cigarettes, cigars, snuff, chewing tobacco, electronic cigarettes and vaping devices.

"**Trauma informed capability**" means the capacity for a facility and all its programs to recognize and respond accordingly to the presence of the effects of past and current traumatic experiences in the lives of its consumers.

"**Treatment**" means the broad range of emergency, inpatient, intermediate and outpatient services and care including diagnostic evaluation, medical, psychiatric, psychological and social service care, vocational rehabilitation, and career counseling. [43A O.S. § 3-403(11)].

"**Treatment hours - residential**" means the structured hours in which a consumer is involved in receiving professional services to assist in achieving recovery.

"**Treatment session-outpatient**" means each face-to-face contact with a consumer in a therapeutic setting whether individually or in a group.

"**Volunteer**" means any person who is not on the program's payroll, but provides services and fulfills a defined role within the program and includes interns and practicum students.

"**Walk through**" means an exercise in which staff members of a facility walk through the program's treatment processes as a consumer. The goal is to view the agency processes from the consumer's perspective for the purpose of removing barriers and enhancing treatment.

"**Wellness**" means the condition of good physical, mental, and emotional health, especially when maintained by an appropriate diet, exercise, and other lifestyle modifications.

"**Withdrawal Management**" means the process of eliminating the toxic effects of substances from the body. Withdrawal management methods include social detoxification and medical monitoring or medical management and are intended to avoid withdrawal complications.

SUBCHAPTER 5. ORGANIZATIONAL AND FACILITY MANAGEMENT

450:18-5-3.3. Tobacco-free campus

(a) The facility shall provide a tobacco-free campus for its employees, consumers and visitors. Possession and use of any

tobacco product is prohibited on the grounds of the facility by employees, consumers, volunteers and visitors.

(b) Facility will visibly post signs on the property notifying consumers, employees and visitors that the visible possession and use of tobacco products is prohibited.

(c) Facility employees shall not share tobacco or tobacco replacement products with consumers.

(d) The facility shall offer assistance to employees who are tobacco users while he or she is employed by the facility. The assistance shall include, but is not limited to, the provision of information on the health impact of continued tobacco use; the integrated assessment of consumer's tobacco use into standard practice; referrals to tobacco cessation programs such as the Oklahoma Tobacco Helpline; the provision of or access to FDA-approved prescription and/or non-prescription medications for the treatment of nicotine dependence when available; the delivery of evidence-based behavioral interventions for tobacco use cessation by counselors and other clinicians; and provision of appropriate follow-up to facilitate cessation intervention and prevent relapse.

(e) The facility shall always inquire of the consumers' tobacco use status and be prepared to offer treatment upon request of the consumer.

(f) Compliance with this Section shall be determined by visual observation; posted signs; consumer and staff interviews; and a review of the facility's policy, procedures and other supporting documentation provided.

SUBCHAPTER 7. FACILITY CLINICAL RECORDS

PART 1. RECORD SYSTEM

450:18-7-2. Consumer records, basic requirements

(a) Consumer records shall be developed and maintained to ensure that all appropriate individuals have access to relevant clinical and other information regarding the consumer. The consumer record shall communicate information in a manner that is organized, clear, complete, current, and legible. Consumer records shall contain, if applicable, the following:

(1) Entries in consumer records shall be legible, signed with first name or initial and last name of the person making the entry;

(2) The consumer shall be identified by name on each page of the consumer record and each screen of an electronic record;

(3) A signed consent for treatment shall be obtained before any person can be admitted into treatment at a facility, unless the admission was on an involuntary basis;

(4) A signed consent for follow-up, referral and payment for subsequent services shall be obtained before any contact after discharge can be made;

(5) An ~~intake and~~ admission assessment;

(6) A biopsychsocial assessment. Those facilities providing Medically Supervised ~~Detoxification~~ Withdrawal

Management or Non-Medical ~~Detoxification~~Withdrawal Management are exempt from this requirement;

(7) Service plans. Those facilities providing Medically Supervised ~~Detoxification~~Withdrawal Management or Non-Medical ~~Detoxification~~Withdrawal Management are exempt from 450:18-7-81 and 450:18-7-83;

- (8) Progress notes;
- (9) A continuing care plan;
- (10) Consultation reports;
- (11) Psychological or psychometric testing;
- (12) Records and reports from other entities;
- (13) Medication records; and
- (14) A discharge summary.

(b) Compliance with 450:18-7-2 may be determined by a review of policies and procedures, treatment records, performance improvement guidelines, interviews with staff, and other facility documentation.

PART 3. SCREENING, INTAKE, AND ASSESSMENT

450:18-7-21. Clinical record content, screening, ~~intake,~~ and assessment

(a) All facilities shall complete a face-to-face screening with each individual to determine appropriateness of further assessment.

(b) The facility shall maintain written screening policies and procedures that, at a minimum include: (1) how the screening is to be conducted; (2) that the screening conducted is an integrated screening to identify both immediate and ongoing needs, which includes screening for whether the consumer is a risk to self or others, including suicide risk factors; and (3) how the consumer is assisted with admission for services, and/or with accessing other appropriate services.

(c) All facilities shall assess each consumer for appropriateness of admission to the treatment program. Each presenting consumer for substance use disorder treatment shall be assessed, according to ASAM criteria, which includes a list of symptoms for all six dimensions and each level of care, to determine a clinically appropriate placement in the least restrictive level of care. For facilities offering gambling disorder treatment services, each presenting consumer for gambling disorder treatment shall be assessed using the Southern Oaks Gambling Screen (SOGS). Facilities must ensure that a consumer's refusal of a particular service does not preclude the consumer from accessing other needed mental health or substance-related or addictive disorder treatment services. Should the service provider determine the consumer's needs cannot be met within the facility, clinical assessments and referrals for the consumer shall be documented.

(d) Any consumer seeking admission to inpatient or residential services, including medically-supervised ~~detoxification~~withdrawal management and non-medical ~~detoxification~~withdrawal management while under the influence or undergoing withdrawal of alcohol or drugs, shall be assessed prior to admission for medical needs. The written criteria to

be used for medical needs assessment of persons under the influence or undergoing withdrawal of alcohol or drugs, shall be approved by the facility's consulting physician.

(e) Upon determination of appropriate admission, consumer assessment demographic information shall contain, but not be limited to, the following:

- (1) Date of initial contact requesting services;
- (2) Date of the ~~intake~~screening and/or assessment;
- (3) Consumer's name;
- (4) Gender;
- (5) Birthdate;
- (6) Home address;
- (7) Telephone number;
- (8) Referral source;
- (9) Reason for referral;
- (10) Significant other to be notified in case of emergency; and
- (11) PICIS ~~intake~~-data core content, if the facility reports on PICIS.

(f) Compliance with 450:18-7-21 may be determined by a review of the following:

- (1) Policies and procedures;
- (2) Intake protocols;
- (3) ~~Intake~~-assessment instruments;
- (4) Treatment records;
- (5) Interviews with staff and consumers; and
- (6) Other facility documentation.

450:18-7-22. ~~Intake~~Screening and assessment, process requirements

(a) Written policies and procedures governing the ~~in-~~takescreening and assessment process shall specify the following:

- (1) The information to be obtained on all applicants or referrals for admission;
- (2) The procedures for accepting referrals from outside agencies or organizations;
- (3) The records to be kept on all applicants;
- (4) Any prospective consumer data to be recorded during the ~~intake~~admission process; and
- (5) The procedures to be followed when an applicant or a referral is found ineligible for admission.

(b) Facilities shall have written policies and procedures for the purpose of admitting and assessing persons with special needs.

(c) Compliance with 450:18-7-22 may be determined by a review of the following:

- (1) Policies and procedures;
- (2) ~~Intake~~Admission protocols;
- (3) ~~Intake~~Screening and assessment instruments;
- (4) Treatment records;
- (5) Interviews with staff and consumers; and
- (6) Other facility documentation.

PART 7. CASE MANAGEMENT

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450:18-7-63. Case management services for consumers admitted to higher levels of care

(a) Case managers from the outpatient facilities to which the consumer will be discharged shall assist the consumer and ~~detox/residential/halfway house/withdrawal management/residential/halfway house~~ facility, psychiatric inpatient unit, and/or CBSCC, with discharge planning for consumer returning to the community, pursuant to appropriately signed releases and adherence to applicable privacy provisions:

(b) Consumers discharging from a ~~detox/residential/halfway house/withdrawal management/residential/halfway house~~ facility shall be offered case management and other supportive services. This shall occur as soon as possible, but shall be offered no later than one (1) week post-discharge.

(c) Compliance with 450:18-7-63 shall be determined by a review of the clinical records; staff interviews; and information from ODMHSAS ~~detox/residential/halfway house/withdrawal management/residential/halfway house~~ facilities, operated psychiatric inpatient unit, and CBSCC facilities.

PART 9. SERVICE PLANNING

450:18-7-84. Service plans, medically supervised ~~detoxification/withdrawal management~~

(a) Medically supervised ~~detoxification/withdrawal management~~ facilities shall complete medical service plans to address the medical stabilization treatment and service needs of each consumer within three (3) hours of admission. When necessary, medically supervised ~~detoxification/withdrawal management~~ service plans may be initiated by a licensed physician or licensed registered nursing staff.

(b) Compliance with 450:18-7-84 may be determined by a review of the following:

- (1) Policies and procedures;
- (2) Treatment protocols;
- (3) Clinical services manuals;
- (4) Service plan forms;
- (5) Consumer records;
- (6) Interviews with staff and consumers; and
- (7) Other facility documentation.

PART 13. DISCHARGE PLANNING

450:18-7-123. Discharge Summary~~summary~~

(a) A completed discharge summary shall be entered in each consumer's record within fifteen (15) days of the consumer completing or discontinuing services.

(b) The discharge summary shall include, but not be limited to, the following:

- (1) Identified needs at ~~intake/admission~~;
- (2) Initial condition and condition of consumer at discharge;
- (3) Summary of current medications, when appropriate;

(4) Treatment and services provided, and a summary of treatment outcomes;

(5) The signature of the staff member completing the summary and the date.

(c) Compliance with 450:18-7-123 may be determined by a review of the following:

- (1) Policies and procedures;
- (2) Continuing care plans;
- (3) Discharge assessments;
- (4) Discharge summaries;
- (5) Progress notes;
- (6) Consumer records;
- (7) Interviews with staff and consumers; and
- (8) Other facility documentation.

PART 15. OTHER CASE RECORD MATERIALS

450:18-7-144. Medication record

(a) A medication record shall be maintained on all consumers who receive medications or prescriptions through facility services and shall be a concise and accurate record of the medications the consumer is receiving or prescribed.

(b) The consumer record shall contain a medication record with the following information on all medications that are self-administered, administered, dispensed, or prescribed by licensed medical staff:

- (1) Type of medication;
- (2) Dosage;
- (3) Frequency of administration or prescribed change;
- (4) Route of administration; and
- (5) Staff member who administered, dispensed, or monitored self-administration of each dose, prescribing licensed medical staff when applicable, and consumer's signature when self-administered.

(c) A record of pertinent information regarding adverse reactions to drugs, drug allergies, or sensitivities during ~~intake/admission~~, updated when required by virtue of new information, and kept in a highly visible location in or on the record.

(d) Compliance with 450:18-7-144 may be determined by a review of policies and procedures, consumer records, progress notes, interviews with staff, and other facility documentation.

SUBCHAPTER 13. SUBSTANCE USE DISORDER TREATMENT SERVICES

PART 1. LEVELS OF CARE

450:18-13-1. Levels of Care and optional programs

Facilities shall document the provision of one or more of the following levels of care and/or optional programs in policies and procedures. All facilities shall include the requirements found in Subchapter 7, Facility Clinical Records.

- (1) Outpatient services;

- (2) Medically supervised ~~detoxification~~withdrawal management;
- (3) Non-medical ~~detoxification~~withdrawal management;
- (4) Residential treatment for adults;
- (5) Residential treatment for persons with dependent children;
- (6) Residential treatment for adults with co-occurring disorders;
- (7) Residential treatment for adolescents;
- (8) Halfway house services;
- (9) Halfway house services for persons with dependent children;
- (10) Halfway house services for adolescents; and

**PART 7. MEDICALLY SUPERVISED
~~DETOXIFICATION~~WITHDRAWAL
MANAGEMENT**

**450:18-13-61. Medically-supervised
~~detoxification~~withdrawal management**

- (a) Medically supervised ~~detoxification~~withdrawal management shall be provided outside a medical facility, but under the direction of a licensed physician and a licensed registered nurse supervisor, for consumers who are withdrawing or are intoxicated from alcohol or other drugs. Presenting consumers shall be assessed as currently experiencing no apparent medical or neurological symptoms as a result of their substance use that would require hospitalization.
- (b) The facility shall maintain written programmatic descriptions and operational methods addressing the following:
 - (1) Environment: The facility shall provide for beds, food service, monitoring/documenting vital signs, food, and liquids. The facility shall provide a safe, welcoming, and culturally/age appropriate environment.
 - (2) Support system:
 - (A) A licensed physician providing supervision of ~~detoxification~~withdrawal management shall be on site or on call twenty-four (24) hours per day, seven (7) days per week;
 - (B) The facility shall maintain a written plan for emergency procedures which shall be approved by a licensed physician; and
 - (C) The facility shall have supplies, as designated in the written emergency procedures, which shall be accessible to the staff.
 - (3) Staff:
 - (A) Staff members shall be knowledgeable about the physical signs of withdrawal, the taking of vital signs, the implication of those vital signs, and emergency procedures.
 - (B) Oklahoma licensed nurses shall provide twenty-four (24) hour monitoring, and statutorily approved personnel shall administer medications in accordance with physician's orders;

(C) Staff shall be knowledgeable regarding facility-required education, evidenced based practices, training, and policies; and

(D) The facility shall document in personnel records all education, training, and experience stated in (A), (B), and (C) above prior to staff providing direct care services.

(E) The facility shall have staff members on site twenty-four (24) hours per day, seven (7) days per week.

(4) Treatment services:

(A) Daily (twenty-four [24] hours a day, seven [7] days a week) substance use disorder ~~detoxification~~withdrawal management treatment services shall be provided which shall include, but are not limited to, oral intake of fluids, three (3) meals a day, taking of vital signs (temperature, pulse, respiration rate, blood pressure), documentation of fluid and food intake a minimum of one (1) time every six (6) hours or more often as indicated by the consumer's condition.

(B) Medications are to be prescribed if needed during ~~detoxification~~withdrawal management. The medications are to include those needed for physical health issues and mental impairment if acquired during the ~~detoxing~~withdrawal process.

(5) Assessment:

(A) An individualized case management plan shall be developed for each consumer prior to discharge;

(B) A medical assessment for appropriateness of placement shall be completed and documented by a licensed physician during the admission process to the program.

(c) Compliance with 450:18-13-61 may be determined by a review of the following:

- (1) Licenses;
- (2) Policies and procedures;
- (3) Treatment protocols;
- (4) Personnel records, documentation of professional licensure, certification or licensure as an alcohol and drug counselor, documentation of professional work experience, and ongoing in-service trainings;
- (5) Treatment records;
- (6) Interviews with staff; and
- (7) Other supporting facility documentation.

**450:18-13-62. Medically-supervised
~~detoxification~~withdrawal management,
admission criteria**

(a) Admission to medically-supervised ~~detoxification~~withdrawal management shall be determined according to 450:18-7-21. These criteria shall be a part of the program's written policies and procedures.

(b) Compliance with 450:18-13-62 may be determined by a review of the following:

- (1) Policies and procedures;
- (2) Admission assessment instruments;
- (3) Admissions protocols;
- (4) Treatment records;

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- (5) Progress notes;
- (6) Interviews with staff and consumers;
- (7) Publicly posted information; and
- (8) Other supporting facility documentation.

450:18-13-63. Medically-supervised ~~detoxification~~ withdrawal management, discharge criteria

(a) Programmatic discharge from medically-supervised ~~detoxification~~ withdrawal management shall be determined according to 450:18-7-121. These criteria shall be a part of the program's written policies and procedures.

(b) Compliance with 450:18-13-63 may be determined by a review of the following:

- (1) Discharge policies and procedures;
- (2) Discharge protocols;
- (3) Discharge and continuing care documentation;
- (4) Treatment records;
- (5) Discharge summaries;
- (6) Interviews with staff and consumers; and
- (7) Other facility documentation.

PART 9. NON-MEDICAL DETOXIFICATION WITHDRAWAL MANAGEMENT

450:18-13-81. Non-medical ~~detoxification~~ withdrawal management

(a) Non-medical ~~detoxification~~ withdrawal management shall be provided in a non-medical setting, with trained para-professionals, for intoxicated consumers and consumers withdrawing from alcohol and other drugs, who present with no apparent medical or neurological symptoms as a result of their substance ~~abuse~~ use disorder.

(b) The facility shall maintain written programmatic descriptions and policy and procedures addressing the following:

(1) Environment: The facility shall provide beds, food service, and monitor/document vital signs, and food and liquids intake. The facility shall provide a safe, welcoming, and culturally/age appropriate environment.

(2) Support system:

(A) A licensed physician shall be on call twenty-four (24) hours per day, seven (7) days per week;

(B) The facility shall have a written plan for emergency procedures approved by a licensed physician; and

(C) Supplies, as designated by the written emergency procedures, shall be available and accessible to the staff;

(3) Staff:

(A) The service provider assigned shall be knowledgeable about the physical signs of withdrawal, the taking of vital signs, the implication of those vital signs, and emergency procedures. Service providers shall be trained and competent to implement physician-approved protocols for consumer observation

and supervision, determination of appropriate level of care, and facilitation of the consumer's transition to continuing care;

(B) The staff shall be knowledgeable regarding facility-required education, evidenced based practices, training, and policies; and

(C) The facility shall document in personnel records all education, training, and experience stated in (A) and (B) above prior to staff providing direct care services.

(D) The facility shall have staff members on site twenty-four (24) hours per day, seven (7) days per week.

(4) Treatment services: Daily (twenty-four [24] hours a day, seven [7] days a week) substance use disorder ~~detoxification~~ withdrawal management treatment services shall be provided, to include oral intake of fluids, three (3) meals a day, and the taking of vital signs (temperature, pulse, respiration rate, blood pressure), and fluid and food intake a minimum of one (1) time every six (6) hours or more often as indicated by the consumer's condition.

(5) Assessment:

(A) The consumer shall have an addiction-focused history, obtained as part of the initial assessment and reviewed with a physician during the admission process if physician-developed protocols indicate concern; and

(B) An individualized case management plan shall be developed prior to discharge to the appropriate level of care.

(c) Compliance with 450:18-13-81 may be determined by a review of the following:

- (1) Licenses;
- (2) Policies and procedures;
- (3) Treatment protocols;
- (4) Physician-approved ~~detoxification~~ withdrawal management procedures;
- (5) Personnel records, documentation of professional licensure or certification, documentation of professional work experience, and ongoing in-service trainings;
- (6) Treatment records; and
- (7) Interviews with staff.

450:18-13-82. Non-medical ~~detoxification~~ withdrawal management, admission criteria

(a) Admission to non-medical ~~detoxification~~ withdrawal management shall be determined according to 450:18-7-21. These criteria shall be a part of the program's written policy and procedures.

(b) Compliance with 450:18-13-82 may be determined by a review of the following:

- (1) Policies and procedures;
- (2) Admission assessment instruments;
- (3) Medical evaluations;
- (4) Admission protocols;
- (5) Treatment records;
- (6) Interviews with staff and consumers; and

- (7) Publicly posted information and other facility documentation.

450:18-13-83. Non-medical detoxification withdrawal management, discharge criteria

- (a) Programmatic discharge from non-medical ~~detoxification withdrawal~~ management shall be determined according to 450:18-7-121. These criteria shall be a part of the program's written policy and procedures.
- (b) Compliance with 450:18-13-83 may be determined by a review of the following:
 - (1) Policies and procedures;
 - (2) Discharge evaluation assessment instruments;
 - (3) Medical evaluations;
 - (4) Consumer records and discharge summaries;
 - (5) Continuing care plans;
 - (6) Interviews with staff and consumers; and
 - (7) Other facility documentation.

[OAR Docket #17-579; filed 7-6-17]

**TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES
CHAPTER 21. CERTIFICATION OF ALCOHOL AND DRUG SUBSTANCE ABUSE COURSES (ADSAC) ORGANIZATIONS AND FACILITATORS**

[OAR Docket #17-580]

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RULES:

Subchapter 1. Certification of Alcohol and Drug Substance Abuse Courses (ADSAC), Organizations and Instructors
450:21-1-6 [AMENDED]

AUTHORITY:

Oklahoma Department of Mental Health and Substance Abuse Services Board; 43A O.S. §§ 2-101, 3-451 through 3-453.1; 47 O.S. §§ 6-212.2, 11-902 and 761(D); 22 O.S. §§ 991a and 991c.

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In accordance with the Administrative Procedures Act the proposed rule revisions to Chapter 21 are part of the Department's review of Title 450. The proposed rules are intended to update certification application requirements.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF OCTOBER 1, 2017:

SUBCHAPTER 1. CERTIFICATION OF ALCOHOL AND DRUG SUBSTANCE ABUSE COURSES (ADSAC), ORGANIZATIONS AND INSTRUCTORS

450:21-1-6. Applications

- (a) Applications for certification of institutions, organizations or facilitators to conduct ADSAC courses shall be made to ODMHSAS in writing on a form and in a manner prescribed by the Commissioner of ODMHSAS or designee.
- (b) ODMHSAS shall give each institution, organization and facilitator candidate requesting certification to conduct ADSAC courses the following:
 - (1) A copy of §§ 3-451 through 3-453 of Title 43A of the Oklahoma Statutes;
 - (2) A copy of these standards and criteria; and
 - (3) The appropriate application(s).
- (c) An institution or organization applying for certification to conduct ADSAC shall provide to ODMHSAS for consideration:
 - (1) Completed application;
 - (2) Film approval form(s) for the ten (10) and twenty-four (24) hour ADSAC;
 - (3) Instructional materials for the ten (10) and twenty-four (24) hour ADSAC;
 - (4) Written verification the applicant is a nonprofit educational institution of higher learning appropriately accredited pursuant to state law, a governmental entity or a nonprofit corporation. If a non-profit corporation, verification shall be a copy of the U.S. Internal Revenue Service Documents granting the corporation 501(c)(3) status;
 - (5) Completed certification applications and resumes of proposed facilitators;
 - (6) The physical address (street, building name and suite [if applicable], city and zip code) and description of all sites at which the ADSAC course(s) will be conducted; and
 - (7) Letters of support from at least two (2) of the following individuals who serve in the community in which each proposed site, including satellites, is located:
 - (A) District or Associate District Judge;
 - (B) County Sheriff;

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- (C) Municipal Judge;
 - (D) District or Assistant District Attorney; or
 - (E) Chief of Police.
- (d) If the applicant is a non-profit corporation, the applicant shall submit evidence it was constituted, and is operated, to provide substance abuse, mental health or educational services as its primary services and that the corporation is operated from a professional administrative office, which is open and operated during normal business hours.
- (e) Requests from a certified ADSAC provider for additional or replacement course sites shall be submitted to the ODMHSAS and shall meet all requirements for initial applications, except the institution or organization need not submit items previously submitted that are currently applicable to the new site(s) and expressly stated as such in the application for new course site(s).
- (f) Renewal of certification of ADSAC institutions or organizations shall be contingent upon submission of renewal application and programmatic history of compliance with Oklahoma Administrative Code, Title 450. The application for renewal shall include all items required for initial certification, as well as any unpaid fees required by 450:21-1-5(g). Applications with outstanding unpaid fees will not be processed until a resolution is reached regarding payment of outstanding fees.
- (g) An applicant for initial certification as a facilitator to conduct ADSAC courses shall provide to ODMHSAS for consideration:
- (1) A letter of recommendation from an administrator of a certified institution or organization;
 - (2) A current resume, which shall include:
 - (A) Educational background including an official college transcript from an accredited college or university; and
 - (B) Employment history covering the previous ten (10) years to include name, complete address and telephone number of employer(s).
 - (3) A completed application.
 - (4) A one hundred dollar (\$100.00) application fee for initial certification; and
 - (5) Upon initial application, a completed Oklahoma State Bureau of Investigation background check or a similar background check from any other state(s) of residence for the past five (5) years;
 - (6) Provide a current, recognizable, color, photographic image, in good condition, no smaller than two (2) inch by two (2) inches of the applicant every six (6) years, upon the anniversary of every second recertification beginning with any qualifying recertifications occurring on or after July 1, 2008; and
 - (7) A new OSBI background check must be submitted every six (6) years, upon the anniversary of every second recertification beginning with any qualifying recertifications occurring on or after July 1, 2008. The results of the OSBI background check must be submitted with the recertification application and any conviction may result

in denial of certification. This will be required of all individuals who have been certified as ADSAC facilitators for six (6) years or more, recertifying after July, 1, 2008.

- (h) ODMHSAS shall consider each applicant for certification in accordance with these rules. The Commissioner of ODMHSAS or designee shall notify each applicant in writing of an approval or denial of certification. Certification shall be effective for three (3) years commencing with the date of issue.
- (i) Faxes will not be accepted as permanent copies for an applicant's record.
- (j) Applications are good for one (1) year from acceptance. Training requirements must be completed within nine (9) months of application. All other requirements must be completed within the initial twelve (12) month period or a new application must be submitted.
- (k) Completed applications must be received by ODMHSAS twenty (20) days prior to the new facilitator training event.
- (l) A facilitator whose certification has been expired for less than twelve (12) months must make application for an initial certification as set forth in 450:21-1-10, with the exception of attending the initial ADSAC facilitator training, and successful completion of the training exam.
- (m) A facilitator whose certification has been expired for more than twelve (12) months must make application for an initial certification as set forth in 450:21-1-10, including attending the initial ADSAC facilitator training, and successful completion of the training exam.
- (n) Each facilitator shall notify ODMHSAS of any change of application information related to his or her email address, phone number, work or home address at least fifteen (15) days in advance of the change. In case of an emergency, the facilitator may notify ODMHSAS of any change up to thirty (30) days after a change has occurred.

[OAR Docket #17-580; filed 7-6-17]

TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES

CHAPTER 22. CERTIFICATION OF ALCOHOL AND DRUG ASSESSMENT AND EVALUATIONS RELATED TO DRIVER'S LICENSE REVOCATION

[OAR Docket #17-581]

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RULES:

450:22-1-12 [AMENDED]

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CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF OCTOBER 1, 2017:

450:22-1-12. Assessor applicants

(a) An applicant for certification as an assessor shall submit proof of the following:

- (1) Proof of current licensure as an LBHP or certification as an alcohol and drug counselor acting within scope of licensure/certification or proof of current status as a Licensure Candidate under the onsite supervision of a certified ADSAC assessor; and
- (2) Proof of having at least two (2) years documented full-time clinical experience in drug/alcohol treatment counseling; and
- (3) Proof of successful completion of a one (1) day ASAM training within two (2) years of the submission of the application; and
- (4) A recognizable, current, photographic image of the applicant no smaller than two (2) inch by two (2) inch;
- (5) A current OSBI background check or a similar background check from another state of residence for the past five (5) years; and
- (6) A copy of the applicant's resume documenting all education and employment for the previous ten (10) years to include names, addresses and phone numbers for all employers; and
- (7) Fees.

(b) Applications for certification as an assessor shall be made in writing to ODMHSAS on a form in a manner prescribed by the Commissioner or designee.

(c) Completed applications must be received by ODMHSAS twenty (20) days prior to the training event. Before being certified, the applicant shall:

- (1) Observe one (1) assessment with written permission of the participant prior to completing new assessor training;
- (2) Complete the ODMHSAS new assessor training; and
- (3) Complete and pass the ODMHSAS assessment skills competency examination. A minimum score to pass the exam shall be eighty (80) percent:
 - (A) the exam shall require the applicant to correctly identify the major aspects of the Driver Risk Inventory-revised (DRI-II), and the Defendant Questionnaire (DQ);
 - (B) the exam shall require the applicant to correctly identify the major components of motivational interviewing; and
 - (C) the exam shall require the applicant to correctly identify rules from this chapter.
- (4) Conduct two (2) assessments, after completing the new assessor training under the supervision of a certified ADSAC assessor, with written permission of the participant; and
 - (A) Submit a copy of one written court report completed by the applicant on each assessment;
 - (B) The observing assessor shall submit an evaluation of the applicant's skill level on a form and in a manner prescribed by the ODMHSAS Commissioner or designee.
- (d) ODMHSAS may require explanation of negative references prior to issuance of certification.
- (e) Faxes will not be accepted as part of a permanent record.
- (f) Applications are good for one (1) year from acceptance. All requirements must be completed within the initial nine (9) month period or a new application must be submitted.
- (g) Any prior sanctions by ODMHSAS of an individual may be cause for denial of an assessor application.
- (h) An assessor applying for renewal shall submit the following for ODMHSAS review:
 - (1) Complete ODMHSAS renewal application form;
 - (2) Submit documentation of receiving ten (10) continuing education hours in each twelve (12) month period beginning with the date of original certification. Acceptable continuing education hours shall include the following subject areas with four (4) hours coming from area (A), four (4) hours coming from area (B) and two (2) hours coming from area (C):
 - (A) the application and use of the following:
 - (i) ASAM;
 - (ii) DRI;
 - (iii) DQ;
 - (iv) NEEDS; and
 - (v) TAAD;
 - (B) evidence based interview techniques,
 - (C) general substance abuse, and
 - (D) if a mandatory training is required by ODMHSAS the hours may come from area (c) above.
 - (E) training hours shall not include ADSAC course facilitation; and

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- (3) A new recognizable, current, photographic image of the applicant every six years no smaller than two (2) inch by two (2) inch, with any qualifying recertifications occurring on or after July 1, 2008;
- (4) Provide ODMHSAS a new OSBI background check for the applicant every six years, with any qualifying recertifications occurring on or after July 1, 2008; ~~and~~
- (5) The fifty dollar (\$50) application renewal fee for certification; ~~and~~
- (6) Any unpaid fees required by 450:22-1-15(7)(A). Renewal applications with outstanding unpaid fees will not be processed until a resolution is reached regarding payment of outstanding fees.
- (i) Certification shall be valid for thirty six (36) months.
- (j) Failure to timely renew the certification shall result in expiration of certification and forfeiture of the rights and privileges granted by the certification.
- (1) A person whose certification has expired for less than twelve (12) months must make application for an initial certification as set forth in 450:22-1-12 with the exception of attending the initial ADSAC assessor training or having to pass the training exam.
- (2) A person whose certification has expired for twelve (12) months or more must make application for an initial certification as set forth in 450:22-1-12.
- (k) Each assessor shall notify ODMHSAS of any change of application information related to his or her email address, phone number, work or home address at least fifteen (15) days in advance of the change. In case of an emergency, the assessor may notify ODMHSAS of any change up to thirty (30) days after a change has occurred.
- (l) All renewals of certification are due on the third anniversary of certification.

[OAR Docket #17-581; filed 7-6-17]

TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES

CHAPTER 24. STANDARDS AND CRITERIA FOR COMPREHENSIVE COMMUNITY ADDICTION RECOVERY CENTERS

[OAR Docket #17-582]

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- Subchapter 1. General Provisions
450:24-1-2 [AMENDED]
Subchapter 3. Required Services
Part 1. CCARC Required Core Services
450:24-3-2 [AMENDED]
Part 3. Screening, Intake, Assessment and Referral
450:24-3-21 [AMENDED]
450:24-3-22 [AMENDED]
Part 5. Emergency Services
450:24-3-41 [AMENDED]
Part 7. Ambulatory ~~Detoxification/Withdrawal Management~~ Services
450:24-3-61 [AMENDED]

- 450:24-3-62 [AMENDED]
450:24-3-63 [AMENDED]
450:24-3-64 [AMENDED]
450:24-3-65 [AMENDED]
Part 13. Medication Clinic Services
450:24-3-121 [AMENDED]
Part 15. Case Management
450:24-3-143 [AMENDED]
Subchapter 5. Optional Services
Part 2. Medically-Supervised and Non-Medical ~~Detoxification/Withdrawal Management~~ [AMENDED]
450:24-5-11 [AMENDED]
450:24-5-13 [AMENDED]
Subchapter 7. Facility Clinical Records
450:24-7-5 [AMENDED]
450:24-7-8 [AMENDED]
Subchapter 21. Facility Environment
450:24-21-1.1 [NEW]

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In accordance with the Administrative Procedures Act the proposed rule revisions to Chapter 24 are part of the Department's review of Title 450. The proposed rules are intended to update terminology and definitions as well as create new standards requiring facilities certified by ODMHSAS to implement tobacco free workplaces.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF OCTOBER 1, 2017:

SUBCHAPTER 1. GENERAL PROVISIONS

450:24-1-2. Definitions

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

"Ambulatory ~~Detoxification~~Withdrawal Management without extended on-site monitoring" means ~~detoxification~~withdrawal management within an outpatient setting, directed by a physician and has attendant medical personnel including nurses for intoxicated consumers, and consumers withdrawing from alcohol and other drugs, presenting with no apparent medical or neurological symptoms as a result of their use of substances require ambulatory ~~detoxification~~withdrawal management as determined by an examining physician. This corresponds to ASAM ~~Treatment~~Service Level: Level ~~I-D1-WM~~ Ambulatory ~~detoxification~~withdrawal management without extended on-site monitoring.

"ASAM criteria" or **"ASAM"** means the most current edition of the American Society of Addiction Medicine's published criteria for admission to treatment, continued services, and discharge.

"Case management services" means planned referral, linkage, monitoring and support, and advocacy provided in partnership with a consumer to assist that consumer with self sufficiency and community tenure and take place in the individual's home, in the community, or in the facility, in accordance with a service plan developed with and approved by the consumer and qualified staff.

"Clinical privileging" means an organized method for treatment facilities to authorize an individual permission to provide specific care and treatment services to consumers within well-defined limits, based on the evaluation of the individual's license, education, training, experience, competence, judgment, and other credentials.

"Comprehensive Community Addiction Recovery Center" or **"CCARC"** means a facility offering a comprehensive array of community-based substance use disorder treatment services, including but not limited to, outpatient services, intensive outpatient services, ambulatory ~~detoxification~~withdrawal management services, emergency care, consultation and education; and , certain services at the option of the center, including but not limited to, prescreening, rehabilitative services, aftercare, training programs, research and evaluation.

"Community-based Structured Crisis Center" or **"CBSCC"** means a program of non-hospital emergency services for mental health and substance use disorder crisis stabilization as authorized by 43A O.S. §3-317, including, but not limited to, observation, evaluation, emergency treatment and referral, when necessary, for inpatient psychiatric or substance use disorder treatment services. This service is limited to CCARC's who are certified by the Department of Mental Health and Substance Abuse Services or facilities operated by the Department of Mental Health and Substance Abuse Services.

"Consumer" means an individual, adult, adolescent, or child, who has applied for, is receiving or has received evaluation or treatment services from a facility operated or certified by ODMHSAS or with which ODMHSAS contracts and includes all persons referred to in OAC Title 450 as client(s) or patient(s) or resident(s) or a combination thereof.

"Consumer advocacy" includes all activities on behalf of the consumer to assist with or facilitate resolution of problems in the acquisition of resources or services needed by the consumer

"Co-occurring disorder" (COD) means any combination of mental health symptoms and substance use disorder symptoms or diagnoses that affect a consumer and are typically determined by the current Diagnostic and Statistical Manual of Mental Disorders.

"Co-occurring disorder capability" means the organized capacity within any type of program to routinely screen, identify, assess, and provide properly matched interventions to consumers with co-occurring disorders.

"Co-occurring disorder enhanced" means that the program (or subunit of the program) provides a specialized service designed for individuals with co-occurring disorders, usually with a higher level of available service capacity or intensity for the co-occurring substance use disorder than would be the case in a comparable co-occurring disorder capable program.

"Crisis Diversion" means an unanticipated, unscheduled situation requiring supportive assistance, face-to-face or telephone, to resolve immediate problems before they become overwhelming and severely impair the individual's ability to function or maintain in the community.

"Crisis Intervention" means actions taken, and services provided to address emergency psychological, physiological, and safety aspects of alcohol, drug-related, and mental health crises.

"Crisis stabilization" means emergency, psychiatric, and substance use disorder treatment services for the resolution of crisis situations and may include placement of an individual in a protective environment, basic supportive care, and medical assessment, and, if needed, referral to an ODMHSAS certified facility having nursing and medical support available.

"Critical incident" means an occurrence or set of events inconsistent with the routine operation of a facility, service setting, or otherwise routine care of a consumer. Critical incidents specifically include but are not necessarily limited to the following: adverse drug events; self-destructive behavior; deaths and injuries to consumers, staff and visitors; medication errors; residential consumers that are absent without leave (AWOL); neglect or abuse of a consumer; fire; unauthorized disclosure of information; damage to or theft of property belonging to consumers or the facility; other unexpected occurrences; or events potentially subject to litigation. A critical incident may involve multiple individuals or results.

"Cultural competency" means the ability to recognize, respect, and address the unique needs, worth, thoughts, communications, actions, customs, beliefs and values that reflect an individual's racial, ethnic, religious, sexual orientation, and/or social group.

"Emergency examination" means the examination of a person who appears to be a mentally ill person, an alcohol-dependent person, or drug-dependent person and a person requiring treatment, and whose condition is such that it appears that emergency detention may be warranted by a licensed mental health professional to determine if emergency detention of the person is warranted.

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"Face-To-Face" for the purposes of the delivery of behavioral health care, means a face-to-face physical contact and in-person encounter between the health care provider and the consumer, including the initial visit. The use of telemedicine shall be considered a face-to-face encounter.

"Gambling disorder treatment services" means treatment activities for consumers by a gambling treatment professional that include, but are not limited to, the following:

- (A) Assessment and diagnostic impression, ongoing;
- (B) Treatment planning and revision, as necessary;
- (C) Individual, group and family therapy;
- (D) Case management;
- (E) Psychosocial rehabilitation; and
- (F) Discharge planning.

"Gambling treatment professional" means an individual holding a valid NCGC I or II certification, or has documented completion of at least thirty hours of ODMHSAS recognized core problem gambling training requirements and documented completion of ten hours of problem gambling specific continuing education every twelve months; and is either a Licensed Behavioral Health Professional or Licensure Candidate.

"Gambling related disorders/problems" means persistent and recurrent problematic gambling behavior leading to clinically significant impairment or distress, as defined by the most recent edition of the DSM.

"Independent living skills, assistance in development of" means all activities directed at assisting individuals in the development of skills necessary to live and function within the community, e.g., cooking, budgeting, meal planning, housecleaning, problem-solving, communication and vocational skills.

"Intensive outpatient services" means an organized, non-residential outpatient treatment services with scheduled sessions that provide a range of nine (9) to fifteen (15) treatment hours per week for adults or six (6) to twelve (12) treatment hours per week for children. Intensive outpatient services may offer evening outpatient services several nights per week or be incorporated into an inpatient or residential treatment program in which the consumer participates in daytime treatment services but goes home at night. This corresponds to ASAM patient Placement Criteria Treatment Level: Level II.1 Intensive outpatient.

"Levels of care" means the different options for treatment as described in the current edition of the ASAM criteria that vary according to the services offered. Each treatment option is a level of care.

"Licensed Behavioral Health Professional" or **"LBHP"** means:

- (A) allopathic or osteopathic physicians with a current license and board certification in psychiatry or board eligible in the state in which services are provided, or a current resident in psychiatry;
- (B) practitioners with a license to practice in the state in which services are provided by one of the following licensing boards:
 - (i) Psychology;

- (ii) Social Work (clinical specialty only);
- (iii) Professional Counselor;
- (iv) Marriage and Family Therapist;
- (v) Behavioral Practitioner; or
- (vi) Alcohol and Drug Counselor;

(C) advanced practice nurse (certified in a psychiatric mental health specialty), licensed as a registered nurse with a current certification of recognition from the board of nursing in the state in which services are provided; or

(D) a physician assistant who is licensed in good standing in the state and has received specific training for and is experienced in performing mental health therapeutic, diagnostic, or therapy functions.

"Licensed mental health professional" or **"LMHP"** as defined in Title 43A §1-103(11).

"Licensure Candidate" means practitioners actively and regularly receiving board approved supervision, and extended supervision by a fully licensed clinician if board's supervision requirement is met but the individual is not yet licensed, to become licensed by one of the following licensing boards:

- (A) Psychology;
- (B) Social Work (clinical specialty only);
- (C) Professional Counselor;
- (D) Marriage and Family Therapist;
- (E) Behavioral Practitioner; or
- (F) Alcohol and Drug Counselor.

"Linkage" refers to the communication and coordination with other service providers to assure timely appropriate referrals between the CCARC and other providers.

"Medication error" means an error in prescribing, dispensing or administration of medication, regardless if the error reached the consumer, e.g., omission of prescribed drugs, giving drugs not prescribed, prescribing inappropriate drugs, prescribing or administering incorrect dosages, incorrectly filling or labeling prescriptions, incorrectly transcribing medication orders.

"ODMHSAS" means the Oklahoma Department of Mental Health and Substance Abuse Services.

"Oklahoma Administrative Code" or **"OAC"** means the publication authorized by 75 O.S. § 256 known as The Oklahoma Administrative Code or, prior to its publication, the compilation of codified rules authorized by 75 O.S. § 256(A) (1) (a) and maintained in the Office of Administrative Rules.

"Outpatient services" means an organized, non-residential treatment service in regularly scheduled session intended for individuals not requiring a more intensive level of care or those who require continuing services following more intensive treatment regimens. This corresponds to ASAM criteria Treatment Level I, Outpatient Treatment. Services can address early intervention needs and increase in frequency and intensity up to 9 treatment hours per week.

"Peer Recovery Support Specialist" or **"PRSS"** means an individual who meets the qualifications and is certified as a PRSS pursuant to OAC 450:53.

"Performance Improvement" or **"PI"** means an approach to the continuous study and improvement of the processes of providing health care services to meet the needs of

consumers and others. Synonyms, and near synonyms include continuous quality improvement, continuous improvement, organization-wide quality improvement and total quality management.

"Progress notes" mean a chronological written description of services provided to a consumer, resident, client, or patient that documents, utilizing acceptable documentation practices, the consumer's response related to the intervention plan or services provided.

"Psychological-Social evaluations" are in-person interviews conducted by professionally trained personnel designed to elicit historical and current information regarding the behavior and experiences of an individual, and are designed to provide sufficient information for problem formulation and intervention.

"Psychotherapy" or **"Therapy"** means a goal directed process using generally accepted clinical approaches provided face-to-face by a qualified service provider with consumers in individual, group or family settings to promote positive emotional or behavioral change.

"Rehabilitation Services" means face-to-face individual or group services provided by qualified staff to develop skill necessary to perform activities of daily living and successful integration into community life.

"Screening" means the process to determine whether the person seeking assistance needs further comprehensive assessment.

"Sentinel event" is a type of critical incident that is an unexpected occurrence involving the death or serious physical or psychological injury to a consumer, or risk thereof. Serious injury specifically includes loss of limb or function. The phrase "or risk thereof" includes a variation in approved processes which could carry a significant chance of a serious adverse outcome to a consumer. These events signal the need for immediate investigation and response. Sentinel events include, but are not limited to: suicide, homicide, criminal activity, assault and other forms of violence, including domestic violence or sexual assault, and adverse drug events resulting in serious injury or death.

"Service area" means a geographic area established by the Department of Mental Health and Substance Abuse Services for support of mental health and substance use disorder treatment services [43A O.S. §3-302(1)].

"Service plan" or **"Treatment plan"** means the document used during the process by which a qualified service provider and the consumer together and jointly identify and rank problems, establish agreed-upon immediate short-term and long-term goals, and decide on the treatment process and resources to be utilized.

"Substance withdrawal" means a state of being in which a group of symptoms of variable clustering and degree of severity occur on cessation or reduction of use of a psychoactive substance that has been taken repeatedly, usually for a prolonged period and/or in high doses. The syndrome may be accompanied by signs of physiological disturbance. Onset and course of the withdrawal state are time-limited and are related to the type of substance and the dose being used immediately before abstinence.

"Supportive services" refers to assistance with the development of problem-solving and decision-making skills to maintain or achieve optimal functioning within the community and can include consumer education.

"Tobacco" means any nicotine delivery product or device that is not approved by the U.S. Food and Drug Administration (FDA) for the purpose of nicotine dependence treatment, including, but not limited to cigarettes, cigars, snuff, chewing tobacco, electronic cigarettes and vaping devices.

"Trauma informed capability" means the capacity for a facility and all its programs to recognize and respond accordingly to the presence of the effects of past and current traumatic experiences in the lives of its consumers.

"Vocational assessment services" means a process utilized to determine the individual's functional work-related abilities and vocational preferences for the purpose of the identification of the skills and environmental supports needed by the individual in order to function more independently in an employment setting, and to determine the nature and intensity of services which may be necessary to obtain and retain employment.

"Vocational placement services" means a process of developing or creating an appropriate employment situation matched to the functional abilities and choices of the individual for the purpose of vocational placement. Services may include, but are not limited to, the identification of employment positions, conducting job analysis, matching individuals to specific jobs, and the provision of advocacy with potential employers based on the choice of the individual served.

"Vocational preparation services" means services that focus on development of general work behavior for the purpose of vocational preparation such as the utilization of individual or group work-related activities to assist individuals in understanding the meaning, value and demands of work; to modify or develop positive work attitudes, personal characteristics and work behaviors; to develop functional capacities; and to obtain optimum levels of vocational development.

"Volunteer" means any person who is not on the program's payroll, but provides services and fulfills a defined role within the program and includes interns and practicum students.

"Walk through" means an exercise in which staff members of a facility walk through the program's treatment processes as a consumer. The goal is to view the agency processes from the consumer's perspective for the purpose of removing barriers and enhancing treatment.

"Wellness" means the condition of good physical, mental and emotional health, especially when maintained by an appropriate diet, exercise, and other lifestyle

SUBCHAPTER 3. REQUIRED SERVICES

PART 1. CCARC REQUIRED CORE SERVICES

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450:24-3-2. Core community addiction recovery services

- (a) All services required pursuant to the rule in OAC 450:24 shall provide in accordance with criteria established by the most current edition of the ASAM criteria as applicable to that specific service.
- (b) Each CCARC shall provide the following services:
- (1) Screening ~~intake~~ and referral services;
 - (2) Emergency services;
 - (3) Outpatient services based on ASAM criteria;
 - (4) Intensive Outpatient services based on the ASAM criteria
 - (5) Case management services;
 - (6) Rehabilitation services;
 - (7) Medication clinic services;
 - (8) Facilitation to medical ~~detoxification~~withdrawal management services based on the ASAM criteria;
 - (9) Facilitation to residential substance use disorder treatment based on the ASAM criteria;
 - (10) Service to homeless individuals;
 - (11) Peer Recovery Support Services, and
 - (12) Wellness Activities and Support.
 - (13) Ambulatory ~~Detoxification~~withdrawal management (Adults only) based on ASAM criteria.
- (c) Compliance with 450:24-3-2 shall be determined by a review of the following:
- (1) On-site observation;
 - (2) Staff interviews;
 - (3) Written materials;
 - (4) Program policies;
 - (5) Program Evaluations;
 - (6) Data reporting; and
 - (7) Clinical records.

PART 3. SCREENING, ~~INTAKE~~, ASSESSMENT AND REFERRAL

450:24-3-21. Integrated screening, ~~intake~~, and assessment services

- (a) CCARC policy and procedure shall require that a screening of each consumer's service needs is completed in a timely manner. An integrated screening should be welcoming, trauma-informed, and culturally appropriate, include screening of whether the consumer is a risk to self or others, including suicide risk factors, as well as maximize recognition of the prevalence of co-occurring disorders among those who present for services at a Community Comprehensive Addiction Recovery Center.
- (b) Upon determination of appropriate admission, ~~consumer intake~~, and assessment information shall include, but not be limited to, the following:
- (1) Behavioral, including substance use, abuse, and dependence;
 - (2) Emotional, including issues related to past or current trauma;
 - (3) Physical;
 - (4) Social and recreational; and

- (5) Vocational.

(c) The consumer and family as appropriate shall be an active participant(s) in the screening, ~~intake~~ and assessment process.

(d) The CCARC shall have policy and procedures specific to each program service which dictate timeframes by when assessments must be completed and documented. In the event the consumer is not admitted and as a result the assessment is not included in the clinical record, the policy shall specify how screening and assessment information is maintained and stored.

(e) Compliance with 450:24-3-21 shall be determined by a review of clinical records, and policy and procedures.

450:24-3-22. Screening, ~~intake~~ and assessment services, access or referral to needed services

- (a) Written policy and procedures governing the screening, ~~intake~~ and assessment services shall specify the following:
- (1) The information to be obtained on all applicants or referrals for admission;
 - (2) The procedures for accepting referrals from outside agencies or organizations;
 - (3) The procedure to be followed when an applicant or referral is found to be ineligible for admission;
 - (4) Methods of collection of information from family members, significant others or other social service agencies;
 - (5) Methods for obtaining a physical examination or continued medical care where indicated;
 - (6) Referral to other resources when the consumer has treatment or other service needs the facility cannot meet;
 - (7) Emphasis on welcoming all consumers and conveying a recovery oriented hopeful message; and
 - (8) No barriers to entry based solely on the presence of historic, current or recent mental health symptoms.
- (b) Compliance with 450:24-3-22 shall be determined by a review of the facility's written policy and procedures.

PART 5. EMERGENCY SERVICES

450:24-3-41. Emergency services

(a) CCARCs shall provide, on a twenty-four (24) hour basis, accessible co-occurring disorder capable services for substance use disorder related emergencies.

(b) This service shall include the following:

- (1) 24-hour assessment and evaluation, including crisis intervention, characterized by welcoming engagement of all individuals and families;
- (2) Availability of referral to 24-hour medical ~~detoxification~~withdrawal management, residential treatment, and half-way house services;
- (3) Availability of assessment and evaluation in external settings unless immediate safety is a concern. This shall include but not be limited to schools, jails, and hospitals;

- (4) Referral services, which shall include actively working with local sheriffs and courts regarding the appropriate referral process and appropriate court orders (43A O.S. §§ 5-201 through 5-407);
 - (5) CCARC's serving multiple counties shall provide or arrange for on-site assessment of persons taken into protective custody [43A O.S. § 5-206 et seq.] for substance use disorder related emergencies in each county;
 - (6) The CCARC's emergency telephone response time shall be less than fifteen (15) minutes from initial contact, unless there are extenuating circumstances;
 - (7) Face-to-face strength based assessment, unless there are extenuating circumstances, addressing substance use disorder and/or co-occurring issues which include a description of the client's strengths in managing substance use disorder issues and disorders during a recent period of stability prior to the crisis;
 - (8) Intervention and resolution; and
 - (9) No arbitrary barriers to access an evaluation based on active mental health symptoms or designated substance levels.
- (c) Compliance with 450:24-3-41 shall be determined by a review of policy and procedures, and clinical records.

**PART 7. AMBULATORY
DETOXIFICATION WITHDRAWAL
MANAGEMENT SERVICES**

450:24-3-61. Ambulatory ~~detoxification withdrawal~~ management services without extended on-site monitoring services

Ambulatory ~~detoxification withdrawal~~ management shall be provided outside a medical facility in an outpatient setting, but under the direction of a licensed physician for consumers who are withdrawing or are intoxicated from alcohol or other drugs.

- (1) Presenting consumers shall be assessed as currently experiencing no apparent medical or neurological symptoms as a result of their substance use that would require a higher level of care using the ASAM criteria.
- (2) Treatment services: Services shall occur daily (seven [7] days a week during hours of operation). Substance use disorder ambulatory ~~detoxification withdrawal~~ management treatment services shall be provided which shall include, but are not limited to, oral intake of fluids, food if indicated, taking of vital signs (temperature, pulse, respiration rate, blood pressure), documentation of fluid and food intake a minimum of one (1) time per visit or more often as indicated by the consumer's condition.

450:24-3-62. Ambulatory ~~detoxification withdrawal~~ management services without extended on-site monitoring staffing

- (a) A licensed physician providing supervision of ~~detoxification withdrawal~~ management shall be on site or on call during hours of operation;

- (b) Staff members shall be knowledgeable about the physical signs of withdrawal, the taking of vital signs, the implication of those vital signs, and emergency procedures.
- (c) Oklahoma licensed nurses (RN's and LPN's as appropriate) shall provide on-site monitoring, and statutorily approved personnel shall administer medications in accordance with physician's orders;
- (d) Staff shall be knowledgeable regarding facility-required education, evidenced based practices, training and policies; and
- (e) The facility shall document in personnel records all education, training and experience stated in (b), (c) and (d) above prior to staff providing direct care services.

450:24-3-63. Ambulatory ~~detoxification withdrawal~~ management services without extended on-site monitoring assessment/placement

- (a) A medical assessment for appropriateness of placement shall be completed and documented by a licensed physician during the admission process to the program.
- (b) An individualized case management plan shall be developed for each consumer prior to discharge;
- (c) Compliance with 450:24-6-0 may be determined by a review of the following:
 - (1) Licenses;
 - (2) Policy and procedures;
 - (3) Treatment protocols;
 - (4) Personnel records, documentation of professional licensure, certification or licensure as an alcohol and drug counselor, documentation of professional work experience, ongoing in-service training(s);
 - (5) Treatment records;
 - (6) Interviews with staff; and
 - (7) Other supporting facility documentation.

450:24-3-64. Ambulatory ~~detoxification withdrawal~~ management without extended on-site monitoring environment

- (a) The facility shall provide for monitoring/documenting vital signs, food, and liquids. (b)The facility shall provide a safe, welcoming, trauma-informed, and culturally/age appropriate environment.
- (c) The facility shall maintain a written plan for emergency medical procedures, which shall be approved by a licensed physician; and
- (d) The facility shall have supplies, as designated in the written emergency procedures, which shall be accessible to the staff.
- (e) The facility shall maintain written programmatic descriptions and operational methods for (a), (c) and (d).
- (f) Compliance with 450:24-6-0 may be determined by a review of the following:
 - (1) Policy and procedures;
 - (2) Treatment protocols;
 - (3) Treatment records;
 - (4) Interviews with staff; and
 - (5) Other supporting facility documentation.

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450:24-3-65. Ambulatory ~~detoxification/withdrawal management~~ without extended on-site monitoring, substance use disorder, co-occurring

- (a) Facilities shall provide co-occurring disorder capable intensive ambulatory ~~detoxification/withdrawal management~~ without extended on-site monitoring treatment services.
- (b) These services shall include the provision of or referral for Human Immunodeficiency Virus (HIV), Sexually Transmitted Diseases (STD), and Acquired Immunodeficiency Syndrome (AIDS) education, training, and counseling services for drug dependent persons (43A O.S. §3-425.1), and every facility shall:
 - (1) Provide or refer for educational sessions regarding HIV/STD/AIDS to consumers and the significant other(s) of the consumer; and
 - (2) Provide or refer all drug dependent persons, and their identified significant other (s), for HIV/STD/AIDS testing and counseling;
 - (3) Provide documentation of services described in (1) and (2) above, including refusal of these services; and
 - (4) Maintain all test results in the confidential manner prescribed by applicable state or federal statutes or regulations.
- (c) Compliance with 450:24-6-0 shall be determined by a review of the following: written policy and procedures; consumer records; and other supporting facility records and documentation.

PART 13. MEDICATION CLINIC SERVICES

450:24-3-121. Medication clinic services

- (a) CCARCs shall offer comprehensive medication clinic services to consumers in need of this service,
- (b) Medication clinic services shall include an assessment of each individual's condition and needs; and an assessment of the effectiveness of those services.
- (c) Medication clinic services shall be co-occurring capable and shall utilize accepted practice guidelines for psychopharmacologic management of co-occurring and/or substance ~~abuse~~ use disorders.
- (d) Medication clinical services shall include but not be limited to:
 - (1) Prescribing or administering medication, including evaluation and assessment of the medication services provided.
 - (2) Medication orders and administration:
 - (A) Only licensed staff physicians, medical residents or consultant physicians shall write medication orders and prescriptions.
 - (B) A list of those physicians authorized to prescribe medications shall be maintained and regularly updated.
 - (C) A list of licensed staff members authorized to administer medications shall be maintained and regularly updated.

- (3) Physician's assistants and nurse practitioners may write medication orders, or prescriptions consistent with state and federal law.
- (e) Compliance with 450:24-3-121 shall be determined by on-site observation and a review of the following: clinical records, written policy and procedures, and roster of licensed, credentialed staff.

PART 15. CASE MANAGEMENT

450:24-3-143. Case management services for consumers admitted to higher levels of care

- (a) Case managers shall maintain contact with existing CCARC consumers, and establish contact with newly referred persons who are receiving services in residential treatment settings, Community Based Crisis Stabilization Centers, (CBCSC), or 24-hour settings providing substance use disorder ~~detoxification/withdrawal management~~ treatment.
- (b) Each CCARC shall assign at least one (1) staff member who is responsible for linkage between CBCSCs, ~~detoxification/withdrawal management~~ center and/or the residential substance use disorder treatment facility and the CCARC. Linkage shall include, but not limited to, the following activities, pursuant to appropriately signed releases and adherence to applicable privacy provisions:
 - (1) Regular visits or communication with the CBCSC, ~~detoxification/withdrawal management~~ setting, and/or residential substance use disorder treatment facility to monitor progress of those consumers in a CBCSC, ~~detoxification/withdrawal management~~ setting and/or in facility-based substance use disorder treatment from the CCARC's service area.
 - (2) Provide knowledge and communication to other CCARC staff regarding CBCSC, ~~detoxification/withdrawal management~~ setting, and/or residential substance use disorder treatment facility and discharge procedures.
- (c) Case managers from the CCARC to which the consumer will be discharged shall assist the consumer and unit, CBCSC, and/or substance use disorder treatment facility with discharge planning for consumers returning to the community.
- (d) Individuals discharging from an inpatient setting, CBCSC, and/or substance use disorder treatment facility shall be offered case management and other supportive services. This shall occur as soon as possible, but shall be offered no later than one (1) week post-discharge.
- (e) Compliance with 450:24-3-143 shall be determined by a review of the following: clinical records; staff interviews; information from ODMHSAS operated psychiatric inpatient unit; CBCSC facilities, substance use disorder treatment facilities; meetings minutes (CCARC or state-operated psychiatric inpatient unit); and a review of a minimum of ten (10) clinical records of consumers who received services at an inpatient unit, CBSS, and/or 450-hour setting providing substance use disorder treatment within the past twelve (12) months.

SUBCHAPTER 5. OPTIONAL SERVICES

PART 2. MEDICALLY-SUPERVISED AND NON-MEDICAL DETOXIFICATION WITHDRAWAL MANAGEMENT

450:24-5-11. Medically-supervised detoxification withdrawal management

If provided, Medically-supervised ~~detoxification withdrawal management~~ shall be provided pursuant to OAC 450:18-13-61 through 18-13-63.

450:24-5-13. Non-medical detoxification withdrawal management

If provided, non-medical ~~detoxification withdrawal management~~ shall be provided pursuant to OAC 450:18-13-81 through 18-13-83.

SUBCHAPTER 7. FACILITY CLINICAL RECORDS

450:24-7-5. Clinical record content, screening, intake and assessment

- (a) All facilities shall complete a face-to face screening with each individual to determine appropriateness of admission.
- (b) The CCARC shall document the face-to-face screening between the potential consumer and the CCARC including how the consumer was welcomed and engaged, how the consumer was assisted to identify goals and experience hope, how the consumer received integrated screening to identify both immediate and ongoing needs and how the consumer was assisted to determine appropriateness of admission, and/or to access other appropriate services.
- (c) Upon determination of appropriate admission, consumer demographic information shall be collected.
- (d) All programs shall complete a behavioral health assessment which gathers sufficient information to assist the consumer in developing an individualized service plan.
- (e) The CCARC shall have policy and procedures that stipulate content required for items (c) and (d) above as well as dictate timeframes by when ~~intake~~the assessment must be completed for each program service to which a client is admitted.
- (f) An ~~intake~~assessment update, to include date, identifying information, source of information, present needs, present life situation, current level of functioning, and what consumer wants in terms of service, is acceptable only on re-admissions within one (1) year of previous admission.
- (g) Compliance with 450:450:24-7-5 shall be determined by a review of the following: psychological-social assessment instruments; consumer records; case management assessments; interviews with staff and consumers; policies and procedures and other facility documentation.

450:24-7-8. Medication record

- (a) A medication record shall be maintained on all consumers who receive medications or prescriptions through facility services and shall be a concise and accurate record of the medications the consumer is receiving or prescribed.
- (b) The consumer record shall contain a medication record with the following information on all medications ordered or prescribed by licensed medical staff:
 - (1) Name of medication,
 - (2) Dosage,
 - (3) Frequency of administration or prescribed change, and
 - (4) Staff member who administered or dispensed each dose, and prescribing physician; and
- (c) A record of pertinent information regarding adverse reactions to drugs, drug allergies, or sensitivities during ~~intake~~the admission process, updated when required by virtue of new information, and kept in a highly visible location in or on the record.
- (d) Compliance with 450:24-7-8 shall be determined by a review of medication records and clinical records.

SUBCHAPTER 21. FACILITY ENVIRONMENT

450:24-21-1.1. Tobacco-free campus

- (a) The facility shall provide a tobacco-free campus for its employees, consumers and visitors. Possession and use of any tobacco product is prohibited on the grounds of the facility by employees, consumers, volunteers and visitors.
- (b) Facility will visibly post signs on the property notifying consumers, employees and visitors that the visible possession and use of tobacco products is prohibited.
- (c) Facility employees shall not share tobacco or tobacco replacement products with consumers.
- (d) The facility shall offer assistance to employees who are tobacco users while he or she is employed by the facility. The assistance shall include, but is not limited to, the provision of information on the health impact of continued tobacco use; the integrated assessment of consumer's tobacco use into standard practice; referrals to tobacco cessation programs such as the Oklahoma Tobacco Helpline; the provision of or access to FDA-approved prescription and/or non-prescription medications for the treatment of nicotine dependence when available; the delivery of evidence-based behavioral interventions for tobacco use cessation by counselors and other clinicians; and provision of appropriate follow-up to facilitate cessation intervention and prevent relapse.
- (e) The facility shall always inquire of the consumers' tobacco use status and be prepared to offer treatment upon request of the consumer.
- (f) Compliance with this Section shall be determined by visual observation; posted signs; consumer and staff interviews; and a review of the facility's policy, procedures and other supporting documentation provided.

[OAR Docket #17-582; filed 7-6-17]

Permanent Final Adoptions

TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES CHAPTER 27. STANDARDS AND CRITERIA FOR MENTAL ILLNESS SERVICE PROGRAMS

[OAR Docket #17-583]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 1. General Provisions
450:27-1-2 [AMENDED]
Subchapter 3. Organization Structure and Administrative Operations
Part 1. Services and Facility Organization
450:27-3-1 [AMENDED]
450:27-3-5 [NEW]
Subchapter 7. Clinical Services
Part 1. Required Services
450:27-7-1 [AMENDED]
450:27-7-2 [AMENDED]
450:27-7-3 [AMENDED]
450:27-7-4 [AMENDED]

AUTHORITY:
Oklahoma Department of Mental Health and Substance Abuse Services Board; 43A O.S. §§ 3-423A.

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APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 13, 2017

FINAL ADOPTION:
June 13, 2017

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SUPERSEDED EMERGENCY ACTIONS:
n/a

INCORPORATIONS BY REFERENCE:
n/a

GIST/ANALYSIS:
In accordance with the Administrative Procedures Act the proposed rule revisions to Chapter 27 are part of the Department's review of Title 450. The proposed rules are intended to update terminology and definitions as well as create new standards requiring facilities certified by ODMHSAS to implement tobacco free workplaces.

CONTACT PERSON:
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF OCTOBER 1, 2017:

SUBCHAPTER 1. GENERAL PROVISIONS

450:27-1-2. Definitions

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

"**Abuse**" means the causing or permitting of harm or threatened harm to the health, safety, or welfare of a consumer by a staff responsible for the consumer's health, safety, or welfare, including but not limited to: non-accidental physical injury or mental anguish; sexual abuse; sexual exploitation; use of mechanical restraints without proper authority; the intentional use of excessive or unauthorized force aimed at hurting or injuring the resident; or deprivation of food, clothing, shelter, or healthcare by a staff responsible for providing these services to a consumer.

"**Advanced Practice Registered Nurse or (APRN)**" means a registered nurse in good standing with the Oklahoma Board of Nursing, and has acquired knowledge and clinical skills through the completion of a formal program of study approved by the Oklahoma Board of Nursing Registration and has obtained professional certification through the appropriate National Board recognized by the Oklahoma Board of Nursing. Advanced Practice Registered Nurse services are limited to the scope of their practice as defined in 59 Okla. Stat. § 567.3a and corresponding rules and regulations at OAC 485:10-5-1 through 10-16-9.

"**Behavioral Health Home or BHH**" means a specifically organized entity that functions within a currently ODMHSAS certified mental health treatment program organization to promote enhanced integration and coordination of primary, acute, behavioral health, and long-term services and supports for persons across the lifespan with chronic illness. BHHs ensure comprehensive team-based health care, meeting physical, mental health, and substance use disorder care needs. Health care is delivered utilizing a whole-person, patient-centered, coordinated care model for adults with serious mental illness (SMI) and children with serious emotional disturbance (SED). Care coordination is provided for all aspects of the individual's life and for transitions of care the individual may experience.

"**Case management services**" means planned referral, linkage, monitoring and support, and advocacy provided in partnership with a consumer to assist that consumer with self sufficiency and community tenure and take place in the individual's home, in the community, or in the facility, in accordance with a service plan developed with and approved by the consumer and qualified staff.

"**Children's Health Home Specialist**" means an individual within the children's Behavioral Health Home interdisciplinary team that will provide support, coaching and activities that promote good physical and mental health to individuals, families and groups. The focus of the Children's Health Home Specialist will include nutrition, healthy living habits, exercise, and preventing and/or managing chronic health conditions. Children's Health Home Specialists must be credentialed by ODMHSAS as a Behavioral Health Aide or higher and complete training in Well Power or credentialed as a Wellness Coach through ODMHSAS.

"**Clinical privileging**" means an organized method for treatment facilities to authorize an individual permission to

provide specific care and treatment services to consumers within well-defined limits, based on the evaluation of the individual's license, education, training, experience, competence, judgment, and other credentials.

"Community-based Structured Crisis Center" or **"CBSCC"** means a program of non-hospital emergency services for mental health and substance abuse crisis stabilization as authorized by 43A O.S. §3-317, including, but not limited to, observation, evaluation, emergency treatment and referral, when necessary, for inpatient psychiatric or substance abuse services. This service is limited to CMHC's and Comprehensive Community Addiction Recovery Centers (CCARCs) who are certified by the Department of Mental Health and Substance Abuse Services or facilities operated by the Department of Mental Health and Substance Abuse Services.

"Community mental health center" or **"CMHC"** means a facility offering a comprehensive array of community-based mental health services, including but not limited to, inpatient treatment, outpatient treatment, partial hospitalization, emergency care, consultation and education; and, certain services at the option of the center, including, but not limited to, prescreening, rehabilitation services, pre-care and aftercare, training programs, and research and evaluation.

"Consumer" means an individual, adult, adolescent, or child, who has applied for, is receiving or has received evaluation or treatment services from a facility operated or certified by ODMHSAS or with which ODMHSAS contracts and includes all persons referred to in OAC Title 450 as client(s) or patient(s) or resident(s) or a combination thereof.

"Consumer advocacy" includes all activities on behalf of the consumer to assist with or facilitate resolution of problems in the acquisition of resources or services needed by the consumer.

"Co-occurring disorder" (COD) means any combination of mental health symptoms and substance abuse symptoms or diagnoses that affect a consumer and are typically determined by the current Diagnostic and Statistical Manual of Mental Disorders.

"Co-occurring disorder capability" means the organized capacity within any type of program to routinely screen, identify, assess, and provide properly matched interventions to consumers with co-occurring disorders.

"Co-occurring disorder enhanced" means that the program (or subunit of the program) provides a specialized service designed for individuals with co-occurring disorders, usually with a higher level of available service capacity or intensity for the co-occurring substance use disorder than would be the case in a comparable co-occurring disorder capable program.

"Crisis Diversion" means an unanticipated, unscheduled situation requiring supportive assistance, face-to-face or telephone, to resolve immediate problems before they become overwhelming and severely impair the individual's ability to function or maintain in the community.

"Crisis Intervention" means actions taken, and services provided to address emergency psychological, physiological, and safety aspects of alcohol, drug-related, and mental health crises.

"Crisis stabilization" means emergency, psychiatric, and substance abuse services for the resolution of crisis situations and may include placement of an individual in a protective environment, basic supportive care, and medical assessment, and, if needed, referral to an ODMHSAS certified facility having nursing and medical support available.

"Critical incident" or **"Incident"** means an occurrence or set of events inconsistent with the routine operation of a facility, service setting, or otherwise routine care of a consumer. Critical incidents specifically include but are not necessarily limited to the following: adverse drug events; self-destructive behavior; deaths and injuries to consumers, staff and visitors; medication errors; residential consumers that are missing or considered in to have eloped; neglect or abuse of a consumer; fire; unauthorized disclosure of information; damage to or theft of property belonging to consumers or the facility; other unexpected occurrences; or events potentially subject to litigation. An incident may involve multiple individuals or results.

"Cultural competency" means the ability to recognize, respect, and address the unique needs, worth, thoughts, communications, actions, customs, beliefs and values that reflect an individual's racial, ethnic, religious, sexual orientation, and/or social group.

"DSM" means the most current edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association.

"Emergency detention" means the detention of a person who appears to be a person requiring treatment in a facility approved by the Commissioner of Mental Health and Substance Abuse Services as appropriate for such detention after the completion of an emergency examination, either in person or via telemedicine, and a determination that emergency detention is warranted as defined in Title 43A O.S. Section 5-206.

"Emergency examination" means the examination of a person who appears to be a mentally ill person, an alcohol-dependent person, or drug-dependent person and a person requiring treatment, and whose condition is such that it appears that emergency detention may be warranted by a licensed mental health professional to determine if emergency detention of the person is warranted.

"Evidence based practice" means programs or practices that are supported by research methodology and have produced consistently positive patterns of results when replicated within the intent of the published guidance.

"Face-To-Face" for the purposes of the delivery of behavioral health care, means a face-to-face physical contact and in-person encounter between the health care provider and the consumer, including the initial visit. The use of telemedicine shall be considered a face-to-face encounter.

"Facilities or Facility" means entities as described in Title 43A O.S. § 1-103(7), community mental health centers, residential mental health facilities, community based structured crisis centers, certified services for the alcohol and drug dependent, programs of assertive community treatment, eating disorder treatment, gambling addiction treatment, and narcotic treatment programs.

"Hospital liaison" means an individual within the Behavioral Health Home interdisciplinary team that works closely

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with hospital staff to assess the suitability of transition plans for consumers enrolled in a Behavioral Health Home. Hospital Liaisons will also work with other long term, residential facilities to plan for coordination of care during and after the consumer's residential stay. Hospital liaisons must be certified by ODMHSAS as a Behavioral Health Case Manager I or II and complete trainings as required by ODMHSAS.

"Licensed Behavioral Health Professional" or **"LBHP"** means:

(A) allopathic or osteopathic physicians with a current license and board certification in psychiatry or board eligible in the state in which services are provided, or a current resident in psychiatry;

(B) practitioners with a license to practice in the state in which services are provided by one of the following licensing boards:

- (i) Psychology;
- (ii) Social Work (clinical specialty only);
- (iii) Professional Counselor;
- (iv) Marriage and Family Therapist;
- (v) Behavioral Practitioner; or
- (vi) Alcohol and Drug Counselor;

(C) advanced practice nurse (certified in a psychiatric mental health specialty), licensed as a registered nurse with a current certification of recognition from the board of nursing in the state in which services are provided; or

(D) a physician assistant who is licensed in good standing in the state and has received specific training for and is experienced in performing mental health therapeutic, diagnostic, or therapy functions.

"Licensed mental health professional" or **"LMHP"** as defined in Title 43A §1-103(11).

"Licensure candidate" means practitioners actively and regularly receiving board approved supervision, and extended supervision by a fully licensed clinician if board's supervision requirement is met but the individual is not yet licensed, to become licensed by one of the following licensing boards:

- (A) Psychology;
- (B) Social Work (clinical specialty only);
- (C) Professional Counselor;
- (D) Marriage and Family Therapist;
- (E) Behavioral Practitioner; or
- (F) Alcohol and Drug Counselor.

"Linkage" refers to the communication and coordination with other service providers to assure timely appropriate referrals between the CMHC and other providers.

"Medically necessary" means health care services or supplies needed to prevent, diagnose or treat an illness, injury, condition, disease or its symptoms and that meet accepted standards of medicine.

"Medication error" means an error in prescribing, dispensing or administration of medication, regardless if the error reached the consumer, e.g., omission of prescribed drugs, giving drugs not prescribed, prescribing inappropriate drugs, prescribing or administering incorrect dosages, incorrectly filling or labeling prescriptions, incorrectly transcribing medication orders.

"Nurse Care manager" means a Licensed Practical Nurse (LPN) or a Registered Nurse (RN).

"ODMHSAS" means the Oklahoma Department of Mental Health and Substance Abuse Services.

"Oklahoma Administrative Code" or **"OAC"** means the publication authorized by 75 O.S. § 256 known as The Oklahoma Administrative Code or, prior to its publication, the compilation of codified rules authorized by 75 O.S. § 256(A) (1) (a) and maintained in the Office of Administrative Rules.

"Performance Improvement" or **"PI"** means an approach to the continuous study and improvement of the processes of providing health care services to meet the needs of consumers and others. Synonyms, and near synonyms include continuous quality improvement, continuous improvement, organization-wide quality improvement and total quality management.

"Primary Care Practitioner (PCP)" means a licensed physician, Advanced Practice Registered Nurse (APRN), or Physician Assistant (PA) licensed in the State of Oklahoma.

"Program of Assertive Community Treatment" or **"PACT"** is a clinical program that provides continuous treatment, rehabilitation, and support services to persons with mental illness in settings that are natural to the consumer.

"Progress notes" mean a chronological written description of services provided to a consumer, resident, client, or patient that documents, utilizing acceptable documentation practices, the consumer's response related to the intervention plan or services provided.

"Psychological-Social evaluations" are in-person interviews conducted by professionally trained personnel designed to elicit historical and current information regarding the behavior and experiences of an individual, and are designed to provide sufficient information for problem formulation and intervention.

"Psychotherapy" or **"Therapy"** means a goal directed process using generally accepted clinical approaches provided face-to-face by a qualified service provider with consumers in individual, group or family settings to promote positive emotional or behavioral change.

"Recovery Support Specialist" or **"RSS"** means an individual who has completed the ODMHSAS RSS training and has passed the ODMHSAS RSS exam.

"Rehabilitation Services" means face-to-face individual or group services provided by qualified staff to develop skill necessary to perform activities of daily living and successful integration into community life.

"Resident" means a person residing in a community living program certified by ODMHSAS.

"Residential treatment" means a structured, 24-hour supervised treatment program for individuals who are mentally ill with a minimum of twenty-one (21) hours of therapeutic services provided per week with the emphasis on stabilization and rehabilitation for transfer to a less restrictive environment. Stay in the program is time limited.

"Restraint" refers to manual, mechanical, and chemical methods that are intended to restrict the movement or normal functioning of a portion of an individual's body.

"Risk Assessment" means a clinical function that aims to determine the nature and severity of the mental health problem, determine which service response would best meet the needs of the consumer, and how urgently the response is required.

"Screening" means the process to determine whether the person seeking assistance needs further comprehensive assessment.

"Sentinel event" is a type of incident that is an unexpected occurrence involving the death or serious physical or psychological injury to a consumer, or risk thereof. Serious injury specifically includes loss of limb or function. The phrase "or risk thereof" includes a variation in approved processes which could carry a significant chance of a serious adverse outcome to a consumer. These events signal the need for immediate investigation and response. Sentinel events include, but are not limited to: suicide, homicide, criminal activity, assault and other forms of violence, including domestic violence or sexual assault, and adverse drug events resulting in serious injury or death.

"Service Intensity" means the frequency and quantity of services needed, the extent to which multiple providers or agencies are involved, and the level of care coordination required.

"Service plan" or **"Treatment plan"** means the document used during the process by which a qualified service provider and the consumer together and jointly identify and rank problems, establish agreed-upon immediate short-term and long-term goals, and decide on the treatment process and resources to be utilized.

"Socialization" means all activities, which encourage interaction and the development of communication, interpersonal, social and recreational skills and can include consumer education.

"SoonerCare" means Oklahoma's Medicaid program.

"Supportive services" refers to assistance with the development of problem-solving and decision-making skills to maintain or achieve optimal functioning within the community and can include consumer education.

"Systems of Care values" means a philosophy, which embraces a family-driven, child-centered model of care that integrates and coordinates the efforts of different agencies and providers to individualize care in the least restrictive setting that is clinically appropriate.

"Tobacco" means any nicotine delivery product or device that is not approved by the U.S. Food and Drug Administration (FDA) for the purpose of nicotine dependence treatment, including, but not limited to cigarettes, cigars, snuff, chewing tobacco, electronic cigarettes and vaping devices.

"Trauma informed capability" means the capacity for a facility and all its programs to recognize and respond accordingly to the presence of the effects of past and current traumatic experiences in the lives of its consumers.

"Volunteer" means any person who is not on the program's payroll, but provides services and fulfills a defined role within the program and includes interns and practicum students.

"Wellness" means the condition of good physical, mental and emotional health, especially when maintained by an appropriate diet, exercise, and other lifestyle modifications.

"Wellness Coach" means an individual who is actively working on personal wellness and who is designated to collaborate with others to identify their personal strengths and goals within the eight dimensions of wellness (spiritual, occupational, intellectual, social, physical, environmental, financial, and emotional).

(A) In order to qualify to be a Wellness Coach, individuals shall:

- (i) Have a behavioral health related associates degree or two years of experience in the field and/or have an active certification and/or license within the behavioral health field (e.g. PRSS, Case Management, LBHP, LPN, etc.); and
- (ii) Complete the ODMHSAS Wellness Coach Training Program and pass the examination with a score of 80% or better.

(B) Wellness Coach roles and responsibilities include:

- (i) Role model wellness behaviors and actively work on personal wellness goals;
- (ii) Apply principles and processes of coaching when collaborating with others;
- (iii) Facilitate wellness groups;
- (iv) Conduct motivational interventions;
- (v) Practice motivational interviewing techniques;
- (vi) Provide referrals to community resources for nutrition education, weight management, Oklahoma Tobacco Helpline, and other wellness-related services and resources;
- (vii) Create partnerships within local community to enhance consumer access to resources that support wellness goals;
- (viii) Raise awareness of wellness initiatives through educational in-service and community training;
- (ix) Elevate the importance of wellness initiatives within the organization;
- (x) Promote a culture of wellness within the organization for both consumers and staff;
- (xi) Respect the scope of practice and do not practice outside of it, referring people to appropriate professionals and paraprofessionals as needed.

"Wraparound approach" means a team-based planning and implementation process to improve the lives of children with complex needs and their families by developing individualized plans of care. The key characteristics of the process are that the plan is developed by a family centered team, is individualized based on the strengths and culture of the child and their family, and is driven by needs rather than services.

SUBCHAPTER 3. ORGANIZATION STRUCTURE AND ADMINISTRATIVE OPERATIONS

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PART 1. SERVICES AND FACILITY ORGANIZATION

450:27-3-1. Required Core Services

(a) Facilities providing mental illness treatment services shall document how the program is organized to provide a group of services herein designated as core services. Required services include:

- (1) Screening ~~intake, assessment~~ and referral services;
- (2) Emergency services; and,
- (3) Outpatient therapy services.

(b) Other services may be offered and, if offered, will be in compliance with OAC 450, as applicable, including but not limited to those services referenced in 450:27-721 Additional Mental Health Treatment Services.

(c) Compliance with 450:27-3-1 (a) and (b) shall be determined by a review of written service descriptions; facility policies; and, other materials as applicable.

450:27-3-5. Tobacco-free campus

(a) The facility shall provide a tobacco-free campus for its employees, consumers and visitors. Possession and use of any tobacco product is prohibited on the grounds of the facility by employees, consumers, volunteers and visitors.

(b) Facility will visibly post signs on the property notifying consumers, employees and visitors that the visible possession and use of tobacco products is prohibited.

(c) Facility employees shall not share tobacco or tobacco replacement products with consumers.

(d) The facility shall offer assistance to employees who are tobacco users while he or she is employed by the facility. The assistance shall include, but is not limited to, the provision of information on the health impact of continued tobacco use; the integrated assessment of consumer's tobacco use into standard practice; referrals to tobacco cessation programs such as the Oklahoma Tobacco Helpline; the provision of or access to FDA-approved prescription and/or non-prescription medications for the treatment of nicotine dependence when available; the delivery of evidence-based behavioral interventions for tobacco use cessation by counselors and other clinicians; and provision of appropriate follow-up to facilitate cessation intervention and prevent relapse.

(e) The facility shall always inquire of the consumers' tobacco use status and be prepared to offer treatment upon request of the consumer.

(f) Compliance with this Section shall be determined by visual observation; posted signs; consumer and staff interviews; and a review of the facility's policy, procedures and other supporting documentation provided.

SUBCHAPTER 7. CLINICAL SERVICES

PART 1. REQUIRED SERVICES

450:27-7-1. Core behavioral health services

(a) Each facility shall minimally provide the following services:

- (1) Screening ~~intake, assessment~~ and referral services;
- (2) Emergency services; and
- (3) Outpatient therapy services.

(b) Compliance with 450:27-7-1 shall be determined observation and review of clinical records that document the provision of services the above listed services.

450:27-7-2. Screening services

(a) Facility policy and procedure shall require that a screening of each potential consumer's service needs be completed in a timely manner and specify timeframes within which screenings will be initiated and completed.

(b) Policy should ensure the availability of a basic screening for those who present regardless of funding source.

(c) Policy should describe practices to be followed to ensure screenings are culturally appropriate, include screening of whether the consumer is a risk to self or others, including suicide risk factors, as well as maximize recognition of the prevalence of co-occurring mental health and substance use disorders.

(d) Policies should also indicate how referrals and linkages are facilitated on behalf of those determined ineligible for facility services as identified in the screening process in accordance with OAC 450:27-7-4.

(e) Procedures should reference how crises are managed as those emerge in the screening process.

(f) Facility policy should specify the minimal information to be collected and methods by which that is obtained for clinically appropriate and responsive screenings.

(g) The consumer, family as appropriate, and others as appropriate and approved by the consumer shall be an active participant(s) in the screening process.

(h) Compliance with 450:27-7-2 shall be determined by a review of clinical records, and policy and procedures.

450:27-7-3. ~~Intake and assessment~~ Assessment services

(a) Facility policies shall describe, upon determination of appropriate admission to the facility service(s), the procedures by which ~~intake and assessment~~ and admission occur.

(b) Information shall include, but not be limited to, the following:

- (1) Behavioral, including substance use, abuse, and dependence;
- (2) Emotional, including issues related to past or current trauma;
- (3) Physical/medical including medications;
- (4) Social and recreational; and
- (5) Vocational/military.

(c) The facility shall have policy and procedures specific to each program service which dictate timeframes by when assessments must be completed and documented.

- (d) The policy shall specify how screening and assessment information is maintained and stored in the event the consumer is not admitted for program services,
- (e) The consumer, family as appropriate, and others as appropriate and approved by the consumer shall be an active participant(s) ~~intake~~ admission and assessment process.
- (f) Compliance with 450:27-7-3 shall be determined by a review of clinical records, and policy and procedures.

450:27-7-4. Screening, ~~intake~~ and assessment services, access or referral to needed services

- (a) Facility policies and procedures governing the screening, ~~intake~~ and assessment services shall specify the following:
 - (1) The information to be obtained on all applicants for referrals, in lieu of admissions;
 - (2) The procedure to be followed when an applicant or referral is found to be ineligible for admission;
 - (3) The procedures for accepting referrals from outside agencies or organizations;
 - (4) Methods of collection of information from family members, significant others or other social service agencies;
 - (5) Methods for obtaining a physical examination or continued medical care where indicated; and,
 - (6) Referral to other resources when the consumer has treatment or other service needs the facility cannot meet.
- (b) Compliance with 450:27-7-4 shall be determined by a review of clinical records, and policy and procedures.

[OAR Docket #17-583; filed 7-6-17]

**TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES
CHAPTER 50. STANDARDS AND CRITERIA FOR CERTIFIED BEHAVIORAL HEALTH CASE MANAGERS**

[OAR Docket #17-584]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 3. Behavioral Health Case Manager Certification Application 450:50-3-5 [AMENDED]

AUTHORITY:

Oklahoma Department of Mental Health and Substance Abuse Services Board; 43A O.S. §§ 3-318.

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SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

In accordance with the Administrative Procedures Act the proposed rule revisions to Chapter 50 are part of the Department's review of Title 450. The proposed rules are intended to update requirements regarding the fitness of applicants for Behavioral Health Case Manager certification.

CONTACT PERSON:

Taylor Rains-Sims, Senior Director, Policy & Provider Regulation, Oklahoma Department of Mental Health and Substance Abuse Services, 2000 N. Classen Blvd, Suite E600, Oklahoma City, Oklahoma 73106, (405) 248-9345.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF OCTOBER 1, 2017:

SUBCHAPTER 3. BEHAVIORAL HEALTH CASE MANAGER CERTIFICATION APPLICATION

450:50-3-5. Fitness of applicants

- (a) The purpose of this section is to establish the fitness of the applicant as one of the criteria for approval of certification as a Certified Behavioral Health Case Manager and to set forth the criteria by which the Commissioner will determine the fitness of the applicants.
- (b) The substantiation of any of the following items related to the applicant may be, as the Commissioner or designee determines the basis for the denial of or delay of certification of the applicant:
 - (1) Lack of necessary skills and abilities to provide adequate services;
 - (2) Misrepresentation on the application or other materials submitted to the Department; ~~or~~
 - (3) Any convictions for violent offenses or moral turpitude;
 - (4) Any felony convictions; or
 - (35) A violation of the rules of professional conduct set forth in this Chapter.
- (c) The Department shall obtain document(s) necessary to determine the fitness of an applicant.
- (d) The Department may require explanation of negative references prior to issuance of certification.

[OAR Docket #17-584; filed 7-6-17]

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TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES CHAPTER 55. STANDARDS AND CRITERIA FOR PROGRAMS OF ASSERTIVE COMMUNITY TREATMENT

[OAR Docket #17-585]

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Subchapter 1. General Provisions
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Subchapter 3. Program Description and Pact Services
450:55-3-2 [AMENDED]
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Subchapter 5. Pact Clinical Documentation
450:55-5-4 [AMENDED]
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n/a

INCORPORATIONS BY REFERENCE:
n/a

GIST/ANALYSIS:
In accordance with the Administrative Procedures Act the proposed rule revisions to Chapter 55 are part of the Department's review of Title 450. The proposed rules are intended to revise client admission and transition criteria and requirements.

CONTACT PERSON:
Traylor Rains-Sims, Senior Director, Policy & Provider Regulation, Oklahoma Department of Mental Health and Substance Abuse Services, 2000 N. Classen Blvd, Suite E600, Oklahoma City, Oklahoma 73106, (405) 248-9345.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF OCTOBER 1, 2017:

SUBCHAPTER 1. GENERAL PROVISIONS

450:55-1-2. Definitions

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

"Advanced Practice Nurse" or **"APN"** means an individual who is a licensed registered nurse with current certification of recognition to practice as an Advanced Practice Nurse issued by the Oklahoma Board of Nursing.

"Behavioral Health Home or BHH" means a specifically organized entity that functions within a currently ODMHSAS certified mental health treatment program organization to promote enhanced integration and coordination of primary, acute, behavioral health, and long-term services and supports for persons across the lifespan with chronic illness. BHHs ensure comprehensive team-based health care, meeting physical, mental health, and substance use disorder care needs. Health care is delivered utilizing a whole-person, patient-centered, coordinated care model for adults with serious mental illness (SMI). Care coordination is provided for all aspects of the individual's life and for transitions of care the individual may experience.

"Certified behavioral health case manager" means any person who is certified by the Department of Mental Health and Substance Abuse Services to offer behavioral health case management services as one of the three (3) classifications of case manager within the confines of a mental health facility or drug or alcohol treatment facility that is operated by the Department or contracts with the State to provide behavioral health services.

"Community-based Structured Crisis Center" or **"CBSCC"** means a program of non-hospital emergency services for mental health and substance abuse crisis stabilization including, but not limited to, observation, evaluation, emergency treatment and referral, when necessary, for inpatient psychiatric or substance abuse services. This service is limited to CMHC's who are certified by the Department of Mental Health and Substance Abuse Services or facilities operated by the Department of Mental Health and Substance Abuse Services.

"Clinical privileging" means an organized method for treatment facilities to authorize an individual permission to provide specific care and treatment services to consumers within well-defined limits, based on the evaluation of the individual's license, education, training, experience, competence, judgment and other credentials.

"Consumer" means an individual who has applied for, is receiving, or has received services from a facility operated or certified by ODMHSAS or with which ODMHSAS contracts and includes all persons referred to in OAC Title 450 as client(s) or patient(s) or resident(s) or a combination thereof.

"Co-occurring disorder" means any combination of mental health and substance abuse symptoms or diagnoses in a client.

"Co-occurring disorder capability" means the organized capacity within any type of program to routinely screen, identify, assess, and provide properly matched interventions to individuals with co-occurring disorders.

"Credentialed Recovery Support Specialist" is a member of the PACT team who is working as a Recovery Support Specialist and has completed the ODMHSAS approved training and testing.

"Crisis intervention" means an immediately available service to meet the psychological, physiological and environmental needs of individuals who are experiencing a mental health or substance abuse crisis.

"Crisis stabilization" means emergency psychiatric and substance abuse services for the resolution of crisis situations and may include placement of an individual in a protective environment, basic supportive care, and medical assessment and, if needed, referral to an ODMHSAS certified facility having nursing and medical support available.

"Critical incident" means an occurrence or set of events inconsistent with the routine operation of the facility, or the routine care of a consumer. Critical incidents specifically include but are not necessarily limited to the following: adverse drug events; self-destructive behavior; deaths and injuries to consumers, staff and visitors; medication errors; consumers that are absent without leave (AWOL); neglect or abuse of a consumer; fire; unauthorized disclosure of information; damage to or theft of property belonging to a consumers or the facility; other unexpected occurrences; or events potentially subject to litigation. A critical incident may involve multiple individuals or results.

"Cultural competency" means the ability to recognize, respect, and address the unique needs, worth, thoughts, communications, actions, customs, beliefs and values that reflect an individual's racial, ethnic, religious, sexual orientation, and/or social group.

"DSM" means the current Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association.

"FTE" means an employee, or more than one, who work(s) the time equivalent to the number of hours per week, month or year of one (1) employee working full-time.

"Governing Agency" means the facility or specific community based behavioral health provider under which the PACT program is operated.

"Historical time line" means a method by which a specialized form is used to gather, organize and evaluate historical information about significant events in a consumer's life, experience with mental illness, and treatment history.

"Hospital liaison" means an individual within the Behavioral Health Home interdisciplinary team that works closely with hospital staff to assess the suitability of transition plans for consumers enrolled in a Behavioral Health Home. Hospital Liaisons will also work with other long term, residential facilities to plan for coordination of care during and after the consumer's residential stay. Hospital liaisons must be certified by ODMHSAS as a Behavioral Health Case Manager I or II and complete trainings as required by ODMHSAS.

"Individual Treatment Team" or **"ITT"** means the primary case manager and a minimum of two other clinical staff on the PACT team who are responsible to keep the consumer's treatment coordinated, monitor their services, coordinate staff

activities and provide information and feedback to the whole team.

"Licensed Behavioral Health Professional" or **"LBHP"** means: 1) Allopathic or Osteopathic Physicians with a current license and board certification in psychiatry or board eligible in the state in which services are provided, or a current resident in psychiatry. 2) Practitioners with a license to practice in the state in which services are provided by one of the following licensing boards: (A) Psychology; (B) Social Work (clinical specialty only); (C) Professional counselor; (D) Marriage and Family Therapist; (E) Behavioral Practitioner; or (F) Alcohol and Drug Counselor. 3) Advanced Practice Nurse (certified in a psychiatric mental health specialty), licensed as a registered nurse with a current certification of recognition from the board of nursing in the state in which services are provided. 4) A Physician Assistant who is licensed in good standing in the state and has received specific training for and is experienced in performing mental health therapeutic, diagnostic, or counseling functions.

"Licensed mental health professional" or **"LMHP"** as defined in Title 43A §1-103 (11).

"Licensure candidate" means practitioners actively and regularly receiving board approved supervision, and extended supervision by a fully licensed clinician if board's supervision requirement is met but the individual is not yet licensed, to become licensed by one of the following licensing boards:

- (A) Psychology;
- (B) Social Work (clinical specialty only);
- (C) Professional Counselor;
- (D) Marriage and Family Therapist;
- (E) Behavioral Practitioner; or
- (F) Alcohol and Drug Counselor.

"Linkage services" means the communication and coordination with other service providers pursuant to a valid release that assure timely appropriate referrals between the PACT program and other providers.

"Longitudinal Face Sheet" means a process that is used to track a PACT consumer's specific demographic, personal contact, treatment history and other relevant information from the time of admission until discharge.

"Licensed Practical Nurse" or **"LPN"** means an individual who is currently licensed by the Oklahoma Board of Nursing to provide a directed scope of nursing practice.

"Medically necessary" means health care services or supplies needed to prevent, diagnose or treat an illness, injury, condition, disease or its symptoms and that meet accepted standards of medicine.

"Nurse Care manager" means a Licensed Practical Nurse (LPN) or a Registered Nurse (RN).

"ODMHSAS" means the Oklahoma Department of Mental Health and Substance Abuse Services.

"Oklahoma Administrative Code" or **"OAC"** means the publication authorized by 75 O.S. § 256 known as The Oklahoma Administrative Code, or, prior to its publication, the compilation of codified rules authorized by 75 O.S. § 256(A) (1) (a) and maintained in the Office of Administrative Rules.

"Performance Improvement" or **"PI"** means an approach to the continuous study and improvement of the

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processes of providing health care services to meet the needs of consumers and others. Synonyms, and near synonyms include continuous performance improvement, continuous improvement, organization-wide performance improvement and total quality management.

"Persons with special needs" means any person with a condition which is considered a disability or impairment under the "American with Disabilities Act of 1990" including, but not limited to the deaf and hearing impaired, visually impaired, physically disabled, developmentally disabled, persons with disabling illness, persons with mental illness. See "Americans with Disabilities Handbook," published by U.S. Equal Employment Opportunity Commission and U.S. Department of Justice.

"PICIS" is a comprehensive management information system based on national standards for mental health and substance abuse databases. It is a repository of diverse data elements that provide information about organizational concepts, staffing patterns, consumer profiles, program or treatment focus, and many other topics of interest to clinicians, administrators and consumers. It includes unique identifiers for agencies, staff and consumers that provide the ability to monitor the course of consumer services throughout the statewide DMHSAS network. PICIS collects data from hospitals, community mental health centers, substance abuse agencies, domestic violence service providers, residential care facilities, prevention programs, and centers for the homeless which are operated or funded in part by DMHSAS.

"Primary Care Practitioner (PCP)" means a licensed physician, Advanced Practice Registered Nurse (APRN), or Physician Assistant (PA) licensed in the State of Oklahoma.

"Primary Case Manager" is a certified behavioral health case manager assigned by the team leader to coordinate and monitor activities of the ITT, has primary responsibility to write the treatment plan and make revisions to the treatment plan and weekly schedules.

"Program Assistant" is a member of the PACT team providing duties supportive of the Team and may include organizing, coordinating, and monitoring non-clinical operations of the PACT, providing receptionist activities and coordinating communication between the team and consumers.

"Program of Assertive Community Treatment" or "PACT" means a clinical program that provides continuous treatment, rehabilitation and support services to persons with mental illness in settings that are natural to the consumer.

"Progress notes" mean a chronological description of services provided to a consumer, the consumer's progress, or lack of, and documentation of the consumer's response related to the intervention plan.

"Recovery Support Specialist" is a member of the PACT team who is or has been a recipient of mental health services for a serious mental illness and is willing to use and share his or her personal, practical experience, knowledge, and first-hand insight to benefit the team and consumers.

"Risk Assessment" means a clinical function that aims to determine the nature and severity of the mental health problem, determine which service response would best meet the needs of the consumer, and how urgently the response is required.

"Service Intensity" means the frequency and quantity of services needed, the extent to which multiple providers or agencies are involved, and the level of care coordination required.

"SoonerCare" means Oklahoma's Medicaid program.

"Team Leader" is the clinical and administrative supervisor of the PACT team who also functions as a practicing clinician. The team leader is responsible for monitoring each consumer's clinical status and response to treatment as well as supervising all staff and their duties as specified by their job descriptions.

"Trauma informed" means the capacity for a facility and all its programs to recognize and respond accordingly to the presence of the effects of past and current traumatic experiences in the lives of its consumers.

"Urgent Recovery Clinic" means a facility certified by ODMHSAS pursuant to OAC 450:23 that offers services aimed at the assessment and immediate stabilization of acute symptoms of mental illness, alcohol and drug abuse, and emotional distress. URCs offer triage crisis response, crisis intervention, crisis assessment, crisis intervention plan development, and linkage and referral to other services.

"Wellness Coach" means an individual who is actively working on personal wellness and who is designated to collaborate with others to identify their personal strengths and goals within the eight dimensions of wellness (spiritual, occupational, intellectual, social, physical, environmental, financial, and emotional).

(A) In order to qualify to be a Wellness Coach, individuals shall:

- (i) Have a behavioral health related associates degree or two years of experience in the field and/or have an active certification and/or license within the behavioral health field (e.g. PRSS, Case Management, LBHP, LPN, etc.); and
- (ii) Complete the ODMHSAS Wellness Coach Training Program and pass the examination with a score of 80% or better.

(B) Wellness Coach roles and responsibilities include:

- (i) Role model wellness behaviors and actively work on personal wellness goals;
- (ii) Apply principles and processes of coaching when collaborating with others;
- (iii) Facilitate wellness groups;
- (iv) Conduct motivational interventions;
- (v) Practice motivational interviewing techniques;
- (vi) Provide referrals to community resources for nutrition education, weight management, Oklahoma Tobacco Helpline, and other wellness-related services and resources;
- (vii) Create partnerships within local community to enhance consumer access to resources that support wellness goals;
- (viii) Raise awareness of wellness initiatives through educational in-service and community training;

- (ix) Elevate the importance of wellness initiatives within the organization;
- (x) Promote a culture of wellness within the organization for both consumers and staff;
- (xi) Respect the scope of practice and do not practice outside of it, referring people to appropriate professionals and paraprofessionals as needed.

SUBCHAPTER 3. PROGRAM DESCRIPTION AND PACT SERVICES

450:55-3-2. Admission criteria

(a) The PACT program shall maintain written admission policies and procedures that, at a minimum include the following:

- (1) ~~Priority~~ First priority shall be given to people designated by the ODMHSAS as needing PACT services. The remaining priority shall be given to people with a primary diagnosis of schizophrenia or other psychotic disorders, such as schizoaffective disorder or bipolar disorder with psychotic features as defined by the current DSM. Individuals without a psychotic disorder shall be evaluated and admitted based on the consumer's need.
- (2) At least four psychiatric hospitalizations in the past 24 months or cumulative lengths of stays totaling over 30 days in the past 24 months which can include admissions to Community-Based Structured Crisis Care; or frequent psychiatric ER, Urgent Recovery Clinic (URC), and/or CBSCC encounters, or incarcerated and receiving mental health care and with at least three (3) of the following:
 - (A) Persistent or recurrent severe affective, psychotic or suicidal symptoms;
 - (B) Coexisting substance abuse disorder greater than six (6) months;
 - (C) High risk of or criminal justice involvement in the past 12 months which may include frequent contact with law enforcement personnel, incarcerations, parole or probation;
 - (D) Homeless, imminent risk of being homeless or residing in substandard or unsafe housing;
 - (E) Residing in supported housing but clinically assessed to be able to live in a more independent living situation if intensive services are provided; or requiring supported housing if more intensive services are not available;
 - (F) Inability to participate in traditional office-based services or evidence that they require a more assertive and frequent non-office based services to meet their clinical needs;
 - (G) Inability to consistently perform the range of practical daily living tasks required for basic adult functioning in the community.
- (3) Individuals with a sole primary diagnosis of substance abuse, brain injury, or Axis II disorders are not appropriate for PACT.
- (4) Individuals with a history of violent behaviors may or may not be considered for admission.

(b) Compliance with 450:55-3-2 shall be determined by on-site observation and a review of the following: clinical records, PICIS information and the PACT policy and procedures.

450:55-3-3. Total case load and admission rate

(a) The PACT program shall maintain written policies and procedures that at a minimum assure compliance with the following:

- (1) A staff-to-consumer ratio of no more than ten (10) consumers for each staff person. The psychiatrist and program assistant are not included in determining the staff-to-consumer ratio;
- (2) A gradual build-up of, on average, no more than 5 consumers admitted per month into the program, or no more than 3 consumers admitted per month for PACT teams with 8 or less FTE, excluding psychiatrist and program assistant; and
- (3) A limit of no more than 120 consumers on a PACT team case load at one time.

(b) Compliance with 450:55-3-3 shall be determined by on-site observation and a review of the following: clinical records, ~~ICIS~~ PICIS information and the PACT policy and procedures.

450:55-3-6. Service intensity

(a) The PACT team is the primary provider of services and has the responsibility to meet the consumer's multiple treatment, rehabilitation and supportive needs with minimal referrals to external agencies or programs within the governing agency for services.

(b) The PACT team shall have the capacity to provide multiple contacts per week to consumers experiencing severe symptoms or significant problems in daily living.

(c) The PACT team shall minimally provide an average of three contacts per week for consumers.

(d) Each team shall provide at least 75 percent of service contacts in the community, in non-office or non-facility based settings.

(e) For consumers whose service needs fall below an average of three contacts per week, a review to determine the need for transition out of PACT and continue in the Health Home or other outpatient services should be conducted no less than every six (6) months.

~~(ef)~~ The PACT team shall provide ongoing contact when permitted by consumers who are hospitalized for drug and alcohol, physical, or psychiatric reasons. To ensure continuity of care the PACT team shall:

- (1) Assist in the admission process if at all possible;
- (2) Have contact with the consumer and inpatient treatment providers within 48 hours of knowing of the inpatient admission to provide information, assessment, assist with the consumer's needs and begin discharge planning;
- (3) Maintain a minimum of weekly face-to-face contact with the consumer and treatment team staff. If face-to-face contact is not possible, telephone contact is acceptable;

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(4) Transition the consumer from the inpatient setting into the community; and

(5) Maintain at least three (3) face-to-face contacts per week for two weeks, or as often as clinically indicated, for consumers who are discharged from an inpatient facility.

The team shall document any failed attempts.

(fg) Telephone answering devices will not be used as a primary method to receive phone calls. PACT clients shall have phone access to the PACT office Monday through Friday, 8:00 a.m. to 5:00 p.m. The program assistant or other PACT staff shall be available to personally answer all incoming phone calls.

(gh) Compliance with 450:55-3-6 shall be determined by on-site observation; and a review of the following: clinical records; PICIS information; and the PACT policy and procedures.

SUBCHAPTER 5. PACT CLINICAL DOCUMENTATION

450:55-5-4. Initial assessment and treatment plan

(a) The initial assessment data shall be collected and evaluated by PACT team leader or appropriate staff designated by the team leader. Such assessments shall be based upon all available information, including self-reports, reports of family members and other significant parties, and written summaries from other agencies, including police, courts, and outpatient and inpatient facilities, where applicable, culminating in a comprehensive initial assessment. Consumer assessment information for admitted consumers shall be completed on the day of admission to the PACT.

(b) The initial assessment shall contain, but not be limited to, the following identification data:

- (1) Consumer's name;
- (2) Date of admission to PACT;
- (3) Social Security number;
- (4) Presenting problem/client self-assessment of problem;
- (5) Reason for treatment;
- (6) Availability of social supports and resources;
- (7) History of psychiatric illness and previous services;
- (8) Developmental and social history;
- (9) Current functioning;
- (10) Admitting diagnosis (~~Axis I-V~~);
- (11) Justification for Admission; and,
- (12) Primary case manager (Certified Behavioral health Case Manager) and individual treatment team (ITT).

(c) The initial treatment plan is completed on the day of admission and guides team services until the comprehensive assessment and comprehensive treatment plan is completed. Interventions from the initial treatment plan should be reported on the consumer weekly schedule card. The initial treatment plan shall contain, but not be limited to, the following identification data:

- (1) Consumer's name;
- (2) Date;
- (3) Short term goals;

(4) Problems to be addressed;

(5) Objectives;

(6) Consumer or guardian participation;

(7) Consumer's signatures; and,

(8) Team leader's signature.

(d) Compliance with 450:55-5-4 shall be determined by a review of the following: intake assessment instruments and other intake documents of the PACT program, clinical records and other agency documentation of admission materials or requirements.

450:55-5-8. Discharge

(a) Documentation of consumer discharge shall be completed within 15 days of discharge and shall include all of the following elements:

- (1) The reasons for discharge;
- (2) The consumer's status and condition at discharge;
- (3) A written final evaluation summary of the consumer's progress toward each of the treatment plan goals;
- (4) ~~If applicable, a plan developed in conjunction with the consumer for treatment step-down/transition services within the facility's Health Home or referral to a different Health Home after discharge and for follow-up;~~
- (5) Referral and transfer, preferably to another PACT team if available or to other mental health services; and
- (6) The signature of the PACT consumer, if available or an explanation regarding the absence of the consumer's signature, and the team leader.

(b) Compliance with 450:55-5-8 shall be determined by review of the clinical records.

[OAR Docket #17-585; filed 7-6-17]

TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES

CHAPTER 65. STANDARDS AND CRITERIA FOR GAMBLING TREATMENT PROGRAMS

[OAR Docket #17-586]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 1. General Provisions
450:65-1-2 [AMENDED]
Subchapter 3. Gambling Treatment Services and Documentation
450:65-3-3 [AMENDED]
450:65-3-7 [AMENDED]
450:65-3-10 [AMENDED]
450:65-3-13 [NEW]
Subchapter 7. Organizational and Facility Management
450:65-7-4.1 [NEW]
450:65-7-8 [AMENDED]
450:65-7-11 [NEW]

AUTHORITY:
Oklahoma Department of Mental Health and Substance Abuse Services Board; 43A O.S. §§ 2-108 and 2-109.
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n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

In accordance with the Administrative Procedures Act the proposed rule revisions to Chapter 65 are part of the Department's review of Title 450. The proposed rules are intended to update terminology and definitions as well as create new standards requiring facilities certified by ODMHSAS to implement tobacco free workplaces and to provide annual in-service training to staff. Revisions also create standards which would allow programs certified under this Chapter to provide Peer Recovery Support Services

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF OCTOBER 1, 2017:

SUBCHAPTER 1. GENERAL PROVISIONS

450:65-1-2. Definitions

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

"Admission" means the acceptance of a consumer by a treatment program.

"Admission criteria" means those criteria which shall be met for admission of a consumer to gambling treatment.

"Assessment" means those procedures by which a gambling treatment program provides an on-going evaluation process with the consumer to collect his or her historical information, and identify strengths, needs, abilities, and preferences in order to determine a plan for recovery.

"Case management" means actions such as planned linkage, advocacy and referral assistance provided in partnership with a consumer to support that consumer in self sufficiency and community tenure and may occur in the consumer's home, in the community, or in the facility.

"Certified Gambling Addiction Treatment" or **"CGAT"** means programs certified by ODMHSAS to provide treatment to individuals diagnosed with a problem gambling disorder.

"Clinical supervision" means an organized process by which knowledgeable and skilled supervisors systematically and routinely provide ongoing and in-depth review of direct service providers' performance which leads to professional growth, clinical skills development and increased self-awareness.

"Community education, consultation and outreach" means services designed to reach the facility's target population, to promote available services, and to give information on problem gambling and other related issues to the general public, the target population or to other agencies serving the target population. These services include presentations to human services agencies, community organizations and individuals, other than individuals in treatment, and staff. These services may take the form of lecture presentations, films or other visual displays, and discussions in which factual information is disseminated. These presentations may be made by staff or trained volunteers.

"Consumer" means an individual, adult or adolescent, who is receiving evaluation or treatment services from a facility operated or certified by ODMHSAS or with which ODMHSAS contracts and includes all persons referred to in OAC Title 450 Chapters 16, 17, 18, 19, 23, and 65 as client(s) or patient(s) or resident(s) or a combination thereof.

"Consumer record" means the collection of written information about a consumer's evaluation or treatment that includes the ~~intake~~ admission data, evaluation, treatment or service plan, description of treatment or services provided, continuing care plan, and discharge information on an individual consumer.

"Continuing care" means providing a specific period of structured therapeutic involvement designed to enhance, facilitate and promote transition from primary treatment services to ongoing recovery.

"Contact" means any encounter with a consumer who is inquiring about or seeking services.

"Contract" means a document adopted by the governing authority of an approved treatment facility and any other organization, facility, or individual, which specifies services, personnel, or space to be provided by the program as well as the monies to be expended in exchange.

"Crisis intervention" means an immediately available service to meet the psychological, physiological and safety aspects of mental health, problem gambling, and substance abuse related crisis. These unscheduled face-to-face interventions are in response to emergencies to resolve acute emotional and physical dysfunction, secure appropriate placement in the least restrictive setting, provide crisis resolution, and stabilize functioning.

"Critical incident" means an occurrence or set of events inconsistent with the routine operation of a treatment facility, or the routine care of a consumer. Critical incidents specifically include but are not necessarily limited to the following: adverse drug events; self-destructive behavior; deaths and injuries to consumers, staff and visitors; medication errors; residential consumers that are absent without leave (AWOL); neglect or abuse of a consumer; fire; unauthorized disclosure of information; damage to or theft of property belonging to a

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consumer or a treatment facility; other unexpected occurrences or events potentially subject to litigation. A critical incident may involve multiple individuals or results.

"Cultural competency" means the ability to recognize, respect, and address the unique needs, worth, thoughts, communication, actions, customs, beliefs and values that reflect an individual's racial, ethnic, religious, sexual orientation, and/or social group.

"Department" or **"ODMHSAS"** means the Oklahoma Department of Mental Health and Substance Abuse Services.

"Diagnosis" means the determination of a disorder as defined by current DSM criteria.

"Discharge criteria" means general guidelines to inform the judgment of the gambling treatment professional which shall be considered in the order for the consumer to be appropriately discharged from a treatment program.

"Discharge planning" means the process, begun at admission, of determining a consumer's continued need for treatment services and of developing a plan to address ongoing consumer post-treatment and recovery needs.

"Discharge summary" means a clinical document in the gambling treatment record summarizing the consumer's progress during treatment, with goals reached, continuing needs, and other pertinent information including documentation of linkage to community services.

"Documentation" means the provision of written, dated, and authenticated evidence to substantiate compliance with CGAT standards, e.g., minutes of meetings, memoranda, schedules, notices, logs, treatment records, policies, procedures, and announcements.

"DSM" means the most current edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association.

"Education" means the dissemination of relevant information specifically focused on increasing the awareness of the community and the receptivity and sensitivity of the community concerning gambling issues and services. A systematic presentation of selected information to impart knowledge or instructions, to increase understanding of specific issues or programs, and to examine attitudes or behaviors which may stimulate social action or community support of the program and the consumers.

"Educational group" means groups in which information focuses on topics that impact a consumer's recovery from problem and pathological gambling. Topics should be gender and age specific and should include, but not be limited to, information regarding their diagnosis or identified problems on their treatment plan. This service may involve teaching skills in communication, relapse prevention, self-care, and social skills to promote recovery. Paraprofessionals and/or professionals in fields related to the education topic may facilitate educational groups.

"Family" means the parents, brothers, sisters, other relatives, foster parents, guardians, and others who perform the roles and functions of family members in the lives of consumers.

"Follow-up" means the organized method of systematically determining the status of consumers after they have

been discharged to determine post-treatment outcomes and utilization of post-treatment referrals.

"Gambling treatment services" means treatment activities for consumers by a gambling treatment professional that include, but are not limited to, the following:

- (A) Assessment and diagnostic impression, ongoing;
- (B) Treatment planning and revision, as necessary;
- (C) Individual, group and family therapy;
- (D) Case management;
- (E) Discharge planning.

"Gambling treatment professional" means an individual holding a valid NCGC I or II certification or has documented completion of at least thirty hours of ODMHSAS recognized core problem gambling training requirements and documented completion of ten hours of problem gambling specific continuing education every twelve months; and is either a Licensed Behavioral Health Professional or Licensure Candidate.

"Gambling related disorders/problems" means gambling related issues or problems which impact the normal functioning of an individual.

"Goals" means broad general statements of purpose or intent that indicate the general effect the facility or service is intended to have.

"Governing authority" means the individual or group of people who serve as the treatment facility's board of directors and who are ultimately responsible for the treatment facility's activities and finances.

"Group counseling" means a method of using various commonly accepted treatment approaches provided face-to-face by a treatment professional with two (2) or more consumers that does not consist of solely related individuals, to promote positive emotional or behavioral change. Services rendered in this setting should be guided by the consumer's treatment goals and objectives, and does not include social or daily skill development as described in educational group counseling.

"Individual therapy" means a method of using various evidence based/commonly accepted treatment approaches provided face-to-face by a gambling treatment professional with one consumer to promote positive emotional or behavioral change.

~~**"Intake"** means the overall process by which information is collected to determine the needs of the consumer.~~

"Intervention" means a process or technique intended to facilitate behavior change.

"Levels of care" means the different options for treatment that vary according to the intensity of the services offered. Each treatment option is a level of care.

"Licensed Alcohol/Drug Abuse Counselor" or **"LADC"** means an individual licensed to provide substance abuse counseling pursuant to Title 59 O.S., Chapter 43B, Licensed Alcohol and Drug Counselors Act.

"Licensed mental health professional" or **"LMHP"** as defined in Title 43A §1-1-3(11).

"Linkage" refers to the communication and coordination with consumers and other service providers to assure timely

and appropriate referrals between the CGAT program and other providers.

"Mental health services" means a wide range of diagnostic, therapeutic, and rehabilitative services used in the treatment of problem and pathological gambling, and other mental disorders including substance abuse.

"NCGC" means Nationally Certified Gambling Counselor, offered at levels I or II through the National Council on Problem Gambling.

"Neglect" means a failure to provide adequate personal care or maintenance, or access to medical care that results or may result in physical or mental injury to a consumer.

"Objectives" means a specific statement of planned accomplishments or results that are specific, measurable, attainable, realistic, and time-limited.

"ODMHSAS" means the Oklahoma Department of Mental Health and Substance Abuse Services.

"Oklahoma Administrative Code" or "OAC" means the publication authorized by 75 O.S. § 256 known as The Oklahoma Administrative Code, or, prior to its publication, the compilation of codified rules authorized by 75 O.S. § 256(A)(1) (a) and maintained in the Office of Administrative Rules.

"OSDH" means the Oklahoma State Department of Health.

"Outpatient services" means an organized, nonresidential treatment service in regularly scheduled sessions intended for individuals not requiring a more intensive level of care or those who require continuing services following more intensive treatment regimens.

"Paraprofessional" means a person who does not have an academic degree related to the scope of treatment or support services being provided but performs prescribed functions under the general supervision of that discipline.

"Pathological gambling diagnosis" means a persistent and recurrent maladaptive gambling behavior that disrupts personal, family, or vocational pursuits, as defined by the most recent edition of the DSM.

"Peer Recovery Support Specialist" or "PRSS" means an individual who meets the qualifications and is certified as a PRSS pursuant to OAC 450:53.

"Performance improvement" means an approach to the continuous study and improvement of the processes of providing health care services to meet the needs of consumers and others.

"Personnel record" means a chart or file containing the employment history and actions relevant to individual employee activities within an organization and may contain application, evaluation, salary data, job description, citations, credentials and training information.

"PICIS" is a comprehensive management information system based on national standards for mental health and substance abuse databases. It is a repository of diverse data elements that provide information about organizational concepts, staffing patterns, consumer profiles, program or treatment focus, and many other topics of interest to clinicians, administrators and consumers. It includes unique identifiers for agencies, staff and consumers that provide the ability to monitor the course of consumer services throughout the

statewide ODMHSAS network. PICIS collects data from hospitals, community mental health centers, substance abuse agencies, domestic violence service providers, residential care facilities, prevention programs, and centers for the homeless which are operated or funded in part by ODMHSAS.

"Policy" means statements of facility intent, strategy, principle, or rules in the provision of services; a course of action leading to the effective and ethical provision of gambling treatment services.

"Procedures" means the methods by which policies are implemented.

"Problem Gambling" means a persistent and recurrent maladaptive gambling behavior that disrupts personal, family, or vocational pursuits as defined by the most recent edition of the DSM.

"Program" means a structured set of treatment activities designed to achieve specific objectives relative to the needs of consumers served by the facility.

"Program effectiveness-outcome" means a written plan and operational methods of determining the effectiveness of services provided that objectively measures facility resources, activities and consumer outcomes.

"Progress notes" mean a complete chronological written description of services provided to a consumer and includes the consumer's response and is written by the individual or clinical team delivering the gambling treatment services.

"Recovery" means an ongoing process of discovery and/or rediscovery that must be self-defined, individualized and may contain some, if not all, of the fundamental components of recovery as outlined by the Substance Abuse and Mental Health Services Administration (SAMHSA).

"Safety Officer" means the individual responsible for ensuring the safety policies and procedures are maintained and enforced within the facility.

"Screening" means the process to determine whether the person seeking assistance needs further assessment for problem or pathological gambling.

"Sentinel event" is a type of critical incident that is an unexpected occurrence involving the death or serious physical or psychological injury to a consumer, or risk thereof. Serious injury specifically includes loss of limb or function. The phrase "or risk thereof" includes a variation in approved processes which could carry a significant chance of a serious adverse outcome to a consumer. These events signal the need for immediate investigation and response. Sentinel events include, but are not limited to: suicide, homicide, criminal activity, assault and other forms of violence, including domestic violence or sexual assault, and adverse drug events resulting in serious injury or death.

"Significant others" means those individuals who are, or have been, significantly involved in the life of the consumer.

"Staff privileging" means an organized method for CGAT facilities to authorize an individual permission to provide specific care and treatment services to consumers within well-defined limits, based on the evaluation of the individual's license, education, certification, training, experience, competence, judgment, and other credentials.

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"Tobacco" means any nicotine delivery product or device that is not approved by the U.S. Food and Drug Administration (FDA) for the purpose of nicotine dependence treatment, including, but not limited to cigarettes, cigars, snuff, chewing tobacco, electronic cigarettes and vaping devices.

"Treatment planning" means the process by which a gambling treatment professional and the consumer together and jointly identify and rank problems, establish agreed-upon immediate short-term and long-term goals, and decide on the treatment process and resources to be utilized.

"Treatment session-outpatient" means each face-to-face contact with a consumer in a therapeutic setting whether individually or in a group.

"Update" means a dated and signed review of a report, plan or document with or without revision.

"Volunteer" means any person providing direct consumer rehabilitative services and who is not on the facility payroll, but fulfills a defined role within the approved treatment facility. This includes, but is not limited to, court ordered community services, practicum students, interns, and ministers; it excludes professionals and entities with which the facility has a written affiliation.

"Walk through" means an exercise in which staff members of a facility walk through the CGAT program's treatment processes as a consumer. The goal is to view the agency processes from the consumer's perspective for the purpose of removing barriers and enhancing treatment.

SUBCHAPTER 3. GAMBLING TREATMENT SERVICES AND DOCUMENTATION

450:65-3-3. Assessment and diagnostic services

(a) CGAT providers' policies and procedures shall require that an assessment of each consumer's service needs is completed within four (4) sessions of initiation of services.

(b) CGAT policy and procedure shall require that a screening of each consumer's service needs is completed in a timely manner. An integrated screening should be welcoming and culturally appropriate and include a screening of whether the consumer is a risk to self or others, including suicide risk factors.

~~(bc)~~ The following information shall be collected by the CGAT provider and recorded in each consumer's assessment, to be completed prior to implementation of the treatment plan. This shall include, but not be limited to, an assessment of the following areas and needs:

- (1) Behavioral, including substance use, abuse and dependence as well as other addictive disorders;
- (2) Emotional, including issues related to past or current trauma;
- (3) Physical;
- (4) Social and recreational; and
- (5) Vocational.

~~(ed)~~ The consumer and family member(s), when appropriate, shall be an active participant(s) in the ~~intake~~ screening and assessment process.

~~(de)~~ Assessments shall be on-going and performed by staff meeting the requirements for gambling treatment professionals.

~~(ef)~~ Compliance with 450:65-3-1, 450:65-3-2, and 450:65-3-3 may be determined by a review of the following:

- (1) Policy and procedures;
- (2) Consumer records;
- (3) Interviews with staff and consumers;
- (4) Other facility documentation.

450:65-3-7. Discharge Planning

(a) Discharge planning is the process of determining a consumer's continued need for treatment services and developing a plan to address the ongoing consumer's recovery needs.

(b) The Discharge Summary documents in the treatment record the consumer's identified needs at ~~intake~~ admission, initial condition and condition of the consumer at discharge, summary of current medications, when appropriate, treatment and services provided, progress during treatment, goals reached, continuing needs, and other pertinent information including documentation of linkage to aftercare. The Discharge Summary, signed by the staff member completing the summary and dated, is identified as such in the treatment record and shall be entered in each consumer's record within fifteen (15) days of the consumer's discharge.

(c) Compliance with 450:65-3-7 may be determined by a review of the following:

- (1) Progress notes
- (2) Discharge summaries;
- (3) Consumer records;
- (4) Interviews with staff and consumers; and
- (5) Other facility documentation.

450:65-3-10. Consumer records, basic requirement

(a) CGAT consumer records shall be developed and maintained to ensure that all appropriate individuals have access to relevant clinical and other information regarding the consumer. The consumer record shall communicate information in a manner that is organized, clear, complete, current, and legible. All consumer records shall contain the following:

- (1) Entries in consumer records shall be legible, signed with first name or initial, last name, and dated by the person making the entry;
- (2) The consumer shall be identified by name and unique identifier on each sheet in the consumer record, on both sides of each page if both sides are used;
- (3) A signed consent for treatment shall be obtained before any person can be admitted into treatment at a facility, unless the admission was on an involuntary basis;
- (4) A signed consent for follow-up shall be obtained before any contact after discharge can be made;
- (5) An ~~intake and admission~~ assessment;
- (6) Documentation of screening to determine the priority of needs to be addressed through case management services;
- (7) Treatment plans;

- (8) Progress notes documenting the following:
 - (A) date, start and stop time for each timed treatment session;
 - (B) signature and credentials of the staff person providing the service;
 - (C) specific problem(s), goals and objectives addressed;
 - (D) interventions used to address problem(s), goals and objectives;
 - (E) progress made toward goals and objectives, or lack of;
 - (F) consumer response to the session or intervention;
 - (G) any new problem(s), goals and objectives identified during the session; and
 - (H) consumer's name and unique identifier.
- (9) A continuing care plan;
- (10) Consultation reports;
- (11) Psychological or psychometric testing;
- (12) Records and reports from other entities; and
- (13) A discharge summary.
- (b) In the event the consumer is not admitted and no case record is developed, a policy shall specify how screening and assessment information is maintained and stored.
- (c) Compliance may be determined by a review of the following:
 - (1) Consumer records;
 - (2) Policy and procedures; and
 - (3) Other facility documentation.

450:65-3-13. Peer recovery support services

- (a) Peer recovery support services are an optional service within certified Gambling Treatment Programs. If provided, the facility shall have written policies specific to peer recovery support services.
- (b) Peer recovery support services shall be provided in accordance with OAC 450: 53 and other provisions stipulated in OAC 450 and state statute and shall:
 - (1) Be based on an individualized, recovery-focused service philosophy that allows individuals the opportunity to learn to manage their own recovery and advocacy process;
 - (2) Recognize the unique value of services being provided by persons with lived experience who are able to demonstrate their own hopefulness and recovery;
 - (3) Enhance the development of natural supports, coping skills, and other skills necessary to function as independently as possible in the community, including, but not limited to assisting re-entry into the community after a hospitalization or other institutional settings.
- (c) Peer Recovery Support Services shall be provided only by staff certified as a Peer Recovery Support Specialist (PRSS) in accordance with OAC 450:53.
- (d) The facility shall retain records to verify compliance with training and certification requirements of each provider of this service.

- (e) Facilities offering these services shall have provisions in place for direct supervision and other supports for staff providing this service.
- (f) Compliance with this Section shall be determined by a review of the following: clinical records, policy and procedures, and facility personnel records.

SUBCHAPTER 7. ORGANIZATIONAL AND FACILITY MANAGEMENT

450:65-7-4.1. Tobacco-free campus

- (a) The facility shall provide a tobacco-free campus for its employees, consumers and visitors. Possession and use of any tobacco product is prohibited on the grounds of the facility by employees, consumers, volunteers and visitors.
- (b) Facility will visibly post signs on the property notifying consumers, employees and visitors that the visible possession and use of tobacco products is prohibited.
- (c) Facility employees shall not share tobacco or tobacco replacement products with consumers.
- (d) The Facility shall offer assistance to employees who are tobacco users while he or she is employed by the Facility. The assistance shall include, but is not limited to, the provision of information on the health impact of continued tobacco use; the integrated assessment of consumer's tobacco use into standard practice; referrals to tobacco cessation programs such as the Oklahoma Tobacco Helpline; the provision of or access to FDA-approved prescription and/or non-prescription medications for the treatment of nicotine dependence when available; the delivery of evidence-based behavioral interventions for tobacco use cessation by counselors and other clinicians; and provision of appropriate follow-up to facilitate cessation intervention and prevent relapse.
- (e) The facility shall always inquire of the consumers' tobacco use status and be prepared to offer treatment upon request of the consumer.
- (f) Compliance with this Section shall be determined by visual observation; posted signs; consumer and staff interviews; and a review of the facility's policy, procedures and other supporting documentation provided.

450:65-7-8. Performance improvement program

- (a) The facility shall have an ongoing performance improvement program designed to objectively and systematically monitor, evaluate and improve the quality of consumer care in which the following is addressed:
 - (1) Fiscal management of the facility;
 - (2) Identity of a performance improvement officer; and
 - (3) Cultural competency.
- (b) The facility shall document performance improvement activities. These activities shall include, but not be limited to:
 - (1) Outcomes management specific to each program;
 - (2) A quarterly quality record review to evaluate the quality of service delivery as evidenced by the consumer's record;
 - (3) Staff Privileging;

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- (4) Review of critical and unusual incidents and consumer grievances and complaints;
 - (5) Review of policy related to cultural competence; and
 - (6) Activities to improve access and retention within the treatment program. The activities shall include an annual "walk through" of the ~~intake and~~ admission process. Steps of the "walk through" include, but are not limited to:
 - (A) Select two staff from the facility, including one member of management, to play the roles of "consumer" and "family member";
 - (B) Notify all staff prior to doing the "walk-through" exercise;
 - (C) Complete the ~~intake and~~ admission process as defined by facility policy as a typical consumer and family member would experience;
 - (D) At each step, ask the staff what changes (other than hiring new staff) would make it better for the consumer and what changes would make it better for the staff. Write all ideas of the staff and participant(s) in the exercise;
 - (E) Documentation of the annual "walk through" process includes, but is not limited to:
 - (i) The observations and feelings of participants in this exercise;
 - (ii) A list of the process barriers and the improvements that could be made to address these barriers;
 - (iii) Address the needs from both the consumer and staff perspectives; and
 - (iv) Identification of an area(s) for change and a description for implementing the change(s).
- (c) The facility shall monitor the implementation of the performance improvement plan on an annual basis and shall make adjustments as needed.
- (d) Performance improvement findings shall be communicated and made available to, among others:
- (1) the governing authority,
 - (2) facility staff,
 - (3) consumers,
 - (4) stakeholders, and
 - (5) ODMHSAS, as requested.
- (e) Compliance with 450:65-7-8 may be determined by a review of:
- (1) policy and procedures;
 - (2) performance improvement program documents and reports;
 - (3) staff interviews; and
 - (4) any other relevant documentation of the facility.

450:65-7-11. Annually required in-service training for all employees

- (a) In-service presentations shall be conducted each calendar year and are required upon hire and annually thereafter for all employees on the following topics:
- (1) Fire and safety;
 - (2) AIDS and HIV precautions and infection control;

- (3) Consumer's rights and the constraints of the Mental Health Patient's Bill of Rights;
 - (4) Confidentiality;
 - (5) Oklahoma Child Abuse Reporting and Prevention Act, 10 O.S. §§ 7101-7115; and
 - (6) Facility policy and procedures;
 - (7) Cultural Competence (including military culture if active duty or veterans are being served);
 - (8) Co-occurring disorder competency and treatment principles;
 - (9) Trauma informed; and
 - (10) Age and developmentally appropriate trainings, where applicable.
- (b) All clinical staff shall have non-physical intervention training in techniques and philosophies addressing appropriate non-violent interventions for potentially physical interpersonal conflicts, staff attitudes which promote dignity and enhanced self-esteem, keys to effective communication skills, verbal and non-verbal interaction and non-violent intervention within three (3) months of being hired with annual updates thereafter.
- (c) The local facility Executive Director shall designate which positions and employees, including temporary employees, will be required to successfully complete physical intervention training. An employee shall not provide direct care services to consumers until completing this training.
- (d) The training curriculum for 450:65-7-10 (b) must be approved by the ODMHSAS commissioner or designee in writing prior to conducting of any training pursuant to this provision.
- (e) Compliance with this Section shall be determined by a review of in-service training records; personnel records; and other supporting written information provided.

[OAR Docket #17-586; filed 7-6-17]

TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES CHAPTER 70. STANDARDS AND CRITERIA FOR OPIOID TREATMENT PROGRAMS

[OAR Docket #17-587]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions
450:70-1-1 [AMENDED]
450:70-1-2 [AMENDED]
450:70-1-4 [AMENDED]
Subchapter 2. Facility Infrastructure Requirements
450:70-2-3 [NEW]
Subchapter 3. Facility Record System
Part 3. Intake and Admission Assessment
450:70-3-5 [AMENDED]
450:70-3-5.1 [AMENDED]
450:70-3-5.2 [AMENDED]
450:70-3-5.3 [AMENDED]
450:70-3-5.4 [AMENDED]
450:70-3-5.5 [AMENDED]
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- 450:70-3-5.16 [AMENDED]
- 450:70-3-5.17 [AMENDED]
- 450:70-3-6 [AMENDED]
- Part 5. Biopsychosocial Assessment
- 450:70-3-7 [AMENDED]
- Part 7. Service Planning
- 450:70-3-8 [AMENDED]
- Part 11. Discharge
- 450:70-3-10 [AMENDED]
- Subchapter 4. Services Support and Enhancement
- Part 1. Staff Support
- 450:70-4-4.1 [AMENDED]
- 450:70-4-4.3 [AMENDED]
- Part 3. Organizational and Facility Management
- 450:70-4-5 [AMENDED]
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- 450:70-4-8.1 [AMENDED]
- 450:70-4-8.3. [AMENDED]
- Subchapter 6. Substance Abuse Use Disorder Treatment Services
- Part 2. Levels of ~~Treatment~~ Services
- 450:70-6-4 [AMENDED]
- 450:70-6-5 [AMENDED]
- 450:70-6-5.1 [AMENDED]
- 450:70-6-5.2 [AMENDED]
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- 450:70-6-9 [AMENDED]
- 450:70-6-10 [AMENDED]
- 450:70-6-11 [AMENDED]
- Part 3. Phases of ~~Treatment~~ Services
- 450:70-6-15 [AMENDED]
- 450:70-6-15.1 [AMENDED]
- 450:70-6-15.2 [AMENDED]
- 450:70-6-15.3 [AMENDED]
- 450:70-6-15.4 [AMENDED]
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- 450:70-6-17.1 [AMENDED]
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- Part 4. Peer Recovery Support Services [NEW]
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In accordance with the Administrative Procedures Act the proposed rule revisions to Chapter 70 are part of the Department's review of Title 450. The proposed rules are intended to update terminology and definitions as well as create new standards requiring facilities certified by ODMHSAS to implement tobacco free campuses. Proposed revisions also create standards which would allow programs certified under this Chapter to provide Peer Recovery Support Services.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF OCTOBER 1, 2017:

SUBCHAPTER 1. GENERAL PROVISIONS

450:70-1-1. Purpose

This chapter ~~is to set~~ sets forth rules regulating program requirements, activities, and services, ~~which are not specific to levels of care and sets forth~~ the standards and criteria used in the certification of facilities and organizations providing medication assisted opioid treatment programs. The rules regarding the certification process, including, but not limited to, the application process, fees, and administrative sanctions are found in OAC 450:1, Subchapters 5 and 9.

450:70-1-2. Definitions

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

"**Accreditation**" means the process of review and acceptance by a nationally recognized accreditation body.

"**Accreditation body**" means a body that has been approved by SAMHSA to accredit opioid treatment programs using opioid agonist ~~or~~ and partial agonist treatment medications.

"**Administer**" The direct application of a prescription drug by ingestion or any other means to the body of a patient by a licensed practitioner, or the patient at the direction of, or in the presence of, a practitioner.

"**Administrative withdrawal**" means a patient's medically supervised withdrawal involving the ~~gradual~~ tapering of dose of medication over time, coinciding with the patient's usually involuntary discharge from medication assisted treatment. Administrative withdrawal typically results from non-payment

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of fees, violent or disruptive behavior, incarceration or other confinement.

"Approved narcotic drug" means a drug approved by the United States Food and Drug Administration for maintenance and/or ~~detoxification managed withdrawal~~ of a person physiologically dependent upon opioid drugs.

"American Society of Addiction Medicine Patient Placement Criteria" or **"ASAM-PPC Criteria"** means the most recent clinical guide published by the American Society of Addiction Medicine to be used in matching patients to appropriate levels of care, service intensity and modality.

"Ambulatory Withdrawal Management without extended on-site monitoring" means managed withdrawal within an outpatient setting, directed by a physician with attendant medical personnel including nurses for intoxicated consumers, and consumers withdrawing from alcohol and other drugs, presenting with no apparent medical or neurological symptoms as a result of their use of substances require ambulatory withdrawal management as determined by an examining physician. This corresponds to ASAM Treatment Level: Level 1-WM Ambulatory withdrawal management without extended on-site monitoring.

"Biopsychosocial assessment" means in-person interviews conducted by a service provider designed to elicit historical and current information regarding the behavior and experiences of a patient, and are designed to provide sufficient information for problem formulation, intervention planning, case management needs, and formulation of appropriate substance ~~abuse use disorder~~ related treatment and service planning.

"Buprenorphine" means a partial agonist, Schedule III ~~narcotic drug~~ approved for use in opioid dependence treatment.

"CARF" means the Commission on the Accreditation of Rehabilitation Facilities.

"Central registry" A ~~document or~~ database to which an OTP shall report patient identifying information about individuals who are applying for or undergoing medically supervised withdrawal or maintenance treatment on an approved opioid agonist or partial agonist to a central record system approved by the Commissioner or designee.

"Certification" means the process by which ODMHSAS or SAMHSA determine that an OTP is qualified to provide opioid treatment under applicable State and Federal standards.

"Chain of custody" means the process of protecting items so that movement, possession and location are secure and documented and there is no possibility for altering or otherwise tampering with the item.

"Chronic pain disorder" means an ongoing condition or disorder consisting of chronic anxiety, depression, anger and changed lifestyle, all with a variable but significant level of genuine neurologically based pain. The pain becomes the main focus of the patient's attention, and results in significant distress and dysfunction.

"Clinical Opioid Withdrawal Scale" or **"COWS"** means a well validated, standardized assessment instrument for evaluating the severity of a patient's withdrawal through the identification of objective and subjective symptoms and the severity of these symptoms.

"Clinical supervision" means an organized process by which knowledgeable and skilled supervisors systematically and routinely provide ongoing and in-depth review, evaluation critique and instruction of direct service providers' performance.

"COA" means the Commission on Accreditation.

"Comprehensive maintenance treatment" is:

(A) Dispensing or administering an approved opioid agonist or partial agonist medication at stable dosage levels for a period in excess of 21 days to a patient with a significant opioid use disorder ~~for opioid dependence~~, and

(B) Providing medical, clinical and educational services to the patient with a significant opioid use disorder ~~dependence~~.

"Continuing care plan" means a written plan of recommendations and specific referrals for implementation of ~~continuing care~~ ongoing services, including medications, shall be prepared for each patient meeting the ASAM ~~Patient Placement Criteria~~ dimensional continued service criteria. Continuing care plans shall be developed with the knowledge and cooperation of the patient. This continuing care plan may be included in the ~~discharge transition~~ summary. The patient's response to the continuing care plan shall be noted in the plan, or a note shall be made that the patient was not available and why. In the event of the death of a patient, a summary statement including this information shall be documented in the record.

"Co-occurring disorder" or **"COD"** means any combination of mental health and substance use disorder symptoms or diagnoses, as determined by the current Diagnostic and Statistical Manual of Mental Disorders, that affect a patient.

"Courtesy Dosing" means the act of dosing a methadone or buprenorphine patient from another clinic on a short term basis due to emergency or ~~other~~ extra ordinary circumstance.

"Critical incident" means an occurrence or set of events inconsistent with the routine operation of an approved treatment facility, or the routine care of a patient. Critical incidents specifically include but are not necessarily limited to the following: adverse drug events; self-destructive behavior; deaths and injuries (including automobile accidents) to the patient, patient family, staff and visitors; medication errors; neglect or abuse of a patient; fire; unauthorized disclosure of information; damage to or theft of property belonging to a patient or an approved treatment facility; other unexpected occurrences; or events potentially subject to litigation. A critical incident may involve multiple individuals or results.

"Cultural competency" means the ability to recognize, respect, and address the unique needs, worth, thoughts, communications, actions, customs, beliefs and values that reflect an individual's racial, ethnic, religious, sexual orientation, and/or social group.

"DEA" means Drug Enforcement Administration.

"Discharge planning" ~~means the process, beginning at admission of determining a consumer's continued need for treatment services and developing a plan to address ongoing consumer recovery needs.~~

"Diskette" means a compressed wafer form of methadone intended to be dissolved in water for consumption. For the purposes of this chapter methadone diskettes will not be considered to be the same as tablet methadone. Diskettes shall be dissolved in liquid prior to being dispensed, or dissolved in liquid by the patient in full and clear view of OTP staff before the patient may leave the clinic with the dose.

"Dispense" means preparing, packaging, compounding and labeling for delivery, a prescription drug in the course of professional practice to an ultimate user by the lawful order of a physician.

"Diversion" means the unauthorized or illegal transfer of an opioid agonist or partial agonist treatment medication.

"Diversion control plan" or "DCP" means documented procedures to reduce the possibility that controlled substances are used for any purpose other than legitimate use.

"Drug dispensing area" means the specified and secured location established by the OTP for dispensing opioid agonist or partial agonist drugs to the patients. The area shall be secure, meet all appropriate standards and be the only location within the facility where drugs are dispensed.

"Drug test" means the assessment of an individual to determine the presence or absence of illicit or non-prescribed drugs or alcohol or to confirm maintenance levels of treatment medication(s), by a methodology approved by the OTP medical director based on informed medical judgment and conforming to State and Federal law. This may include blood testing, oral-fluid and urine testing.

"Exception request process" means a process recording the justification of the need to make a change in treatment protocol for an opioid patient and submitted to SAMHSA using form SMA-168.

"FDA" Federal Food and Drug Administration.

"Federal opioid treatment standards" means the established standards of SAMHSA, CSAT and the DEA that are used to determine whether an OTP is qualified to engage in medication assisted opioid treatment.

"HIPAA" means Health Insurance Portability and Accountability Act

"Holiday" means those days recognized by the State of Oklahoma as holidays.

"Individualized service planning" means the ongoing process by which a clinician and the patient identify and rank problems, establish agreed upon goals, and decide on the treatment process and resources to be utilized.

~~**"Interim maintenance treatment"** means maintenance treatment provided in conjunction with appropriate medical services while a patient is awaiting transfer to a program that provides comprehensive maintenance treatment.~~

"JC" or "TJC" means the Joint Commission.

"Liquid methadone" means a liquid concentrate of methadone meant to be mixed with water for ingestion.

"Lock box" means a container with a combination lock or key lock entry system for securing take home medications. The box must have the ability to lock ~~and should be secure~~ securely enough to thwart access by children.

"Long-term care facilities" means a facility or institution that is licensed, certified or otherwise qualified as a

nursing home or long term care facility by the state in which methadone or buprenorphine treatment services are rendered. This term includes skilled, intermediate, and custodial care facilities which operate within the terms of licensure.

~~**"Long-term detoxification withdrawal management treatment"** means detoxification treatment managed with- drawal for a period of more than 30 days but not in excess of less than 180 days.~~

"Medical director" means a physician, licensed to practice medicine in Oklahoma, who assumes responsibility for the administration of all medical services performed by an OTP, either by performing them directly or by delegating specific responsibility to authorized program physicians and healthcare professionals functioning under the medical director's direct supervision, unless otherwise indicated in this chapter. This includes ensuring the program is in compliance with all federal, state, and local laws and regulations regarding the medical treatment of dependence on an opioid drug.

~~**"Medical withdrawal"** means a condition created by administering an opioid agonist or partial agonist treatment medication in decreasing doses to an individual patient to alleviate adverse physical or psychological effects of withdrawal from the continuous or sustained use of an opioid drug and as a method of bringing the individual patient to a drug-free state.~~

"Medication unit" means a satellite facility established as part of, but geographically separate from, an OTP from which appropriately licensed practitioners dispense or administer an opioid agonist or partial agonist treatment medication or collect samples for drug testing or analysis. No medical or clinical interventions related to OTP treatment can be conducted at this site.

"Non-oral methadone" means an injectable form of methadone not allowed for use by an OTP.

"Nurse practitioner" means a registered nurse who is prepared through advanced education and clinical training, to provide a wide range of health care services.

"ODMHSAS" means the Oklahoma Department of Mental Health and Substance Abuse Services.

"Oklahoma Administrative Code" or "OAC" means the publication authorized by 75 O.S. § 256 known as The Oklahoma Administrative Code, or, prior to its publication, the compilation of codified rules authorized by 75 O.S. § 256(A) (1) (a) and maintained in the Office of Administrative Rules.

"OBND" or "OBND" means the Oklahoma Bureau of Narcotics and Dangerous Drug Control.

"Oklahoma state-issued identification card" means a photo identification card issued by the Oklahoma Department of Motor Vehicles for use in identification.

"Opiate drug" means any of a class of drugs also called narcotics derived from the opium poppy or containing opium and with analgesic or sedative effects that can form sustain or enhance addiction and physical dependency.

"Opioid agonist" means a drug that has an affinity for and stimulates physiologic activity at cell receptors in the central nervous system normally stimulated by opioids. Methadone is an opioid agonist.

"Opioid agonist or partial agonist treatment medication" means a prescription medication, such as methadone,

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buprenorphine or other substance scheduled as a narcotic under the Federal Controlled Substances Act (21 U.S.C. Section 811) that is approved by the U.S. Food and Drug Administration for use in the treatment of significant opioid use disorders ~~opiate addiction~~ or physical dependence.

"Opioid antagonist" means a drug that binds to cell receptors in the central nervous system that normally are bound by opioid psychoactive substances and that blocks the activity of opioids at these receptors without producing the physiologic activity produced by opioid agonists. Naltrexone is an opioid antagonist.

"Opioid dependence" means a cluster of ~~cognitive, behavioral, and physiological symptoms in which an individual continues use of opioids despite significant opioid-induced problems.~~ Opioid dependence is characterized by repeated self-administration resulting in opioid tolerance, withdrawal symptoms, and compulsive drug-taking. ~~Dependence may occur with or without the physiological symptoms of tolerance and withdrawal.~~

"Opioid drug" means any of a class of drugs also called narcotics, having a dependence-forming or dependence-sustaining liability similar to morphine. Originally a term for synthetic narcotics only, but for the purposes of this chapter and unless otherwise specified, currently used to describe both opium based and synthetic narcotics. These drugs have analgesic or sedative effects.

"Opioid partial agonist" means a drug that binds to, but incompletely activates, opiate receptors in the central nervous system, producing effects similar to those of an opioid agonist but, at increasing doses, does not produce as great an agonist effect as do increased doses of an agonist. Buprenorphine is a partial opioid agonist.

"Opioid treatment" means the dispensing of opioid agonist or partial agonist treatment medication, along with a comprehensive range of medical and rehabilitative services, when clinically necessary, to an individual to alleviate the adverse medical, psychological, or physical effects incident to a significant opioid use disorder ~~dependence~~. This term encompasses ~~detoxification withdrawal management treatment, short-term detoxification withdrawal management treatment, long-term detoxification withdrawal management treatment, maintenance treatment services or comprehensive maintenance treatment services, interim maintenance treatment services and treatment services provided in medication units, long term care facilities or hospitals.~~

"Opioid Treatment Program (OTP)" An organization which has been certified by ODMHSAS to provide opioid treatment whose certification has not been suspended, revoked, or surrendered to the department, referred to in statute as an ~~Opioid Substitution~~ Treatment Program.

"Opioid Use Disorder" means a cluster of cognitive, behavioral and physiological symptoms indicating the individual continues using opioids despite significant opioid-related problems. Opioid dependence is characterized by repeated self-administration resulting in opioid tolerance, withdrawal symptoms, and compulsive drug-taking. Dependence may occur with or without the physiological symptoms of tolerance and withdrawal.

"Pain management" means the successful management of chronic pain or a chronic pain disorder.

"Patient record" or **"medical record"** means the collection of written information about a patient's evaluation or treatment service that includes the intake data, evaluation, service plan, description of services provided, medications as prescribed, continuing care plan, and ~~discharge transition~~ information on an individual patient.

"Parenteral" means injected, infused or implanted, used to describe drug administration other than oral or anal.

"Peak test" see Peak and Trough.

"Peak and trough test" means a therapeutic monitoring of serum methadone levels to determine the most appropriate dosing strategy for the individual patient, requiring at least two blood samples be drawn. The initial sample taken immediately prior to the daily dose and twenty four hours after the previous day's dose allowing the lowest level or "trough" to be identified. The second sample taken four hours after dosing allows the highest level or "peak" to be identified.

"Peer Recovery Support Specialist" or "PRSS" means an individual who meets the qualifications and is certified as a PRSS pursuant to OAC 450:53.

"Physician assistant" means a licensed or certified mid-level medical practitioner who works under the supervision of a licensed physician (MD) or osteopathic physician (DO).

"Program physician" A licensed physician who provides medical ~~treatment~~ services and counsel to the patients of an OTP while under the supervision of the medical director.

"Program sponsor" A person named in the application for an OTP permit who is responsible for the operation of the OTP and who assumes responsibility for all its employees, including any practitioners, staff, or other persons providing medical, rehabilitative, or counseling services at the program or any of its medication units. The program sponsor need not be a licensed physician but shall employ a licensed physician for the position of medical director.

"SAMHSA" means the Substance Abuse and Mental Health Services Administration.

"Sentinel event" means a type of critical incident that is an unexpected occurrence involving the death or serious injury to a consumer, or risk thereof. Serious injury specifically includes loss of limb or function. The phrase "or risk thereof" includes a variation in approved processes which could carry a significant chance of a serious adverse outcome to a consumer. These events signal the need for an immediate investigation and response. Sentinel events include, but are not limited to: suicide, homicide, criminal activity, assault and other forms of violence, including domestic violence or sexual assault, and adverse drug events (including medication overdoses by patients and associates of patients) resulting in serious injury or death.

"Service Provider" means a person who is allowed to provide services for those with substance use disorders within the regulation and scope of their certification level or license.

"Short-term ~~detoxification treatment withdrawal management services~~" ~~means detoxification treatment managed withdrawal~~ for a period not in excess of 30 days.

"State Opioid Treatment Authority" or "SOTA" is the agency designated by the Governor or other appropriate official designated by the Governor to exercise the responsibility and authority within the State or Territory for governing the treatment of opioid use disorders and dependence with an opioid drug. For Oklahoma it is the Oklahoma Department of Mental Health and Substance Abuse Services.

"STD" means sexually transmitted disease.

"Street outreach" means methods of direct intervention/prevention with high risk populations for HIV, HCV, tuberculosis and other infectious and communicable diseases.

"Tablet methadone" means methadone in a tablet form intended to be taken orally. For the purposes of this chapter diskettes will not be considered to be tablet methadone. Tablet methadone is not allowed for use by an OTP.

"Take-home privilege or take home medication" means one or more doses of an opioid agonist or partial agonist treatment medication dispensed to a patient for use off the premises.

"Therapeutic hour(s)" means the amount of time in which the patient was engaged with a service provider in identifying, addressing, and/or resolving those issues that have been identified in that patient's treatment service plan.

"Tobacco" means any nicotine delivery product or device that is not approved by the U.S. Food and Drug Administration (FDA) for the purpose of nicotine dependence treatment, including, but not limited to cigarettes, cigars, snuff, chewing tobacco, electronic cigarettes and vaping devices.

"Transient consumer" means a methadone or buprenorphine patient from another geographic location requiring "courtesy dosing".

"Transition planning" means the process, beginning at admission of determining a consumer's continued need for treatment services and developing a plan to address ongoing consumer recovery needs.

"Trough test" see Peak and Trough.

"Urine analysis (UA)" means a urine sample taken to determine if metabolites are present indicating the use of drugs.

"Withdrawal treatment" means either administrative withdrawal, or medical titration and withdrawal from any drug or medication until the patient has achieved a drug free state.

450:70-1-4. Applicability

(a) This chapter is applicable to all certified substance use disorder treatment facilities and organizations providing medication assisted opioid treatment, opioid ~~withdrawal detoxification~~—or opioid maintenance using methadone or buprenorphine including but not limited to counseling, rehabilitation services and substance ~~abuse~~ use disorder treatment services including methadone and buprenorphine maintenance ~~treatment services~~, short term ~~detoxification treatment withdrawal management~~, long term ~~detoxification treatment withdrawal management~~ or interim maintenance ~~treatment services~~ which are statutorily required to be certified and approved by the ODMHSAS, the Alcohol and Drug Abuse Prevention, Training and Rehabilitation Authority [43A O.S. § 3-601,(c)].

(b) Any conviction for a violation of any rule in this Part which has been promulgated pursuant to the provisions of 43A O.S. § 3-601 shall be a felony [43A O.S. § 3-601(B)].

SUBCHAPTER 2. FACILITY INFRASTRUCTURE REQUIREMENTS

450:70-2-3. Tobacco-free campus

(a) The facility shall provide a tobacco-free campus for its employees, consumers and visitors. Possession and use of any tobacco product is prohibited on the grounds of the facility by employees, consumers, volunteers and visitors.

(b) Facility will visibly post signs on the property notifying consumers, employees and visitors that the visible possession and use of tobacco products is prohibited.

(c) Facility employees shall not share tobacco or tobacco replacement products with consumers.

(d) The facility shall offer assistance to employees who are tobacco users while he or she is employed by the facility. The assistance shall include, but is not limited to, the provision of information on the health impact of continued tobacco use; the integrated assessment of consumer's tobacco use into standard practice; referrals to tobacco cessation programs such as the Oklahoma Tobacco Helpline; the provision of or access to FDA-approved prescription and/or non-prescription medications for the treatment of nicotine dependence when available; the delivery of evidence-based behavioral interventions for tobacco use cessation by counselors and other clinicians; and provision of appropriate follow-up to facilitate cessation intervention and prevent relapse.

(e) The facility shall always inquire of the consumers' tobacco use status and be prepared to offer treatment upon request of the consumer.

(f) Compliance with this Section shall be determined by visual observation; posted signs; consumer and staff interviews; and a review of the facility's policy, procedures and other supporting documentation provided.

SUBCHAPTER 3. FACILITY RECORD SYSTEM

PART 3. INTAKE AND ADMISSION ASSESSMENT

450:70-3-5. Intake assessment ~~Assessment and record content - Medical~~

(a) All OTPs shall assess each individual for appropriateness for admission, ensuring the individual is placed in the least restrictive level of care.

(b) Each OTP shall ensure that patients are admitted to treatment by a program physician, who determines that such treatment is appropriate for the specific patient by applying current and established DSM diagnostic and ASAM ~~placement~~ criteria.

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(c) The OTP shall have written policy and procedure stating the program shall require each patient to undergo a complete, fully documented history and physical examination by the medical director, a program physician or physician with a valid Oklahoma license before admission to the medication assisted opioid treatment program. For the purposes of this chapter, a Physician Assistant or Nurse Practitioner, with appropriate Oklahoma license/certification and working under the direction and supervision of the OTP medical director may perform services allowed by Oklahoma certification or licensure such as those listed here, unless otherwise specified. A full medical examination, including the results of serology and other tests, must be completed within fourteen (14) days following admission.

(d) Compliance with 450:70-3-5 may be determined by:

- (1) A review of policies and procedures,
- (2) Treatment records, and
- (3) Other facility documentation.

450:70-3-5.1. ~~Intake assessment~~Assessment and record content - History

(a) Patients who have had a complete history and physical including laboratory tests within the past three months may be admitted to the OTP without a new medical examination and laboratory tests, unless the program physician requests it. The admitting program shall obtain copies of these results within fifteen (15) days of admission. If records are not obtained within fifteen (15) days, the program shall conduct a complete history and physical.

(b) The OTP shall have written policy and procedure stating any drugs approved for use in treating a significant opioid use disorder dependency—when used by an OTP for persons with a history of physiologic dependence, shall only be used in treating persons with a history of symptoms of opioid use disorder dependency—as stated in Title 43A, Section 3-601 A. 1. and as verified by the medical director or a program physician through medical examination; or persons with a history of dependence as stated in Title 43A, Section 3-601 A. 1. and written documentation from an agency at which another type of substance use disorder treatment was attempted or accomplished. Such documentation shall be received prior to admission to the program and/or induction of any drug uses as a part of an opioid treatment regimen. When buprenorphine is used to provide medication assisted treatment in this setting, a one year history of opioid use disorder or dependence shall be required.

(c) The OTP shall have written policy and procedure stating that if clinically appropriate, the program physician may waive the requirement as stated in Title 43A, Section 3-601 A. 1. for:

- (1) A patient within six (6) months of release from a correctional institution;
- (2) A patient with a pregnancy verified by the program physician; or
- (3) A patient having previously received medication-assisted recovery services for an opioid-substitution treatment use disorder and within two (2) years of discharge from an OTP.

(d) Compliance with 450:70-3-5.1 may be determined by:

- (1) A review of policies and procedures,
- (2) Treatment records, and
- (3) Other facility documentation.

450:70-3-5.2. ~~Intake assessment~~Assessment and record content - Symptoms

(a) Any patient seeking admission while under the influence, or undergoing withdrawal of alcohol or drugs other than opioids shall be assessed prior to admission for medical needs. The written criteria to be used for medical needs assessment shall be approved by the OTP medical director and meet state and federal requirements regarding standards of care.

(b) Using a standardized and accepted instrument (such as the COWS Scale) no patient shall be admitted to medication assisted opioid treatment recovery services unless symptoms of opioid dependency listed below are present with at least two symptoms coming from numbers one (1) through seven (7);

- (1) Elevated resting pulse rate;
- (2) Increased sweating;
- (3) Tremors;
- (4) Variation in pupil size;
- (5) Increased yawning;
- (6) Runny nose and/or tearing;
- (7) Presence of "gooseflesh";
- (8) Increased restlessness;
- (9) Bone and/or joint pain;
- (10) Increased anxiety or irritability; or
- (11) Gastrointestinal distress.

(c) Compliance with 450:70-3-5.2 may be determined by:

- (1) A review of policies and procedures,
- (2) Treatment records, and
- (3) Other facility documentation.

450:70-3-5.3. ~~Intake assessment~~Assessment and record content - Dispensed and prescribed pharmaceuticals

(a) The OTP shall have written policy and procedure stating the patient record shall contain adequate documentation of any prescription drug, including methadone or buprenorphine, that a patient may be taking, including the name of the drug, the prescription number, the dose, the reason for prescribing, the name of the prescribing doctor, the pharmacy's name and telephone number, the date it was prescribed, and the length of time the patient is to be taking the drug. A release of information to the prescribing physician either by mail, facsimile or other acceptable electronic means allowing the medical director to coordinate treatment and discuss medications.

(b) Compliance with 450:70-3-5.3 may be determined by:

- (1) A review of policies and procedures,
- (2) Treatment records, and
- (3) Other facility documentation.

450:70-3-5.4. ~~Intake assessment~~Assessment and record content - Level of care

(a) The OTP shall have written policy and procedure stating that patients with two (2) or more unsuccessful detoxification managed withdrawal episodes within a twelve (12) month

period must be assessed by the medical director or a program physician for identification of need for other forms of treatment. An OTP shall not admit a patient for more than two (2) ~~detoxification treatment withdrawal management~~ episodes in one (1) year.

(b) Compliance with these standards and criteria may be determined by a review of the following:

- (1) Policy and Procedures,
- (2) Review of all facility records, and
- (3) Investigations, site visits, treatment protocols, patient records, clinical service manuals and certification reviews.

450:70-3-5.5. Intake assessment ~~Assessment~~ and record content - Care of minors

~~(a) The OTP shall have written policy and procedure stating any person under the age of eighteen (18) years of age requesting maintenance treatment shall have written documentation of an unsuccessful attempt at short term detoxification or drug free treatment within a twelve (12) month period to be considered eligible for maintenance treatment.~~

~~(b) Such documentation shall be received prior to admission to the program or the induction of any drug used as a part of an opioid treatment program regimen.~~

~~(c) No person under eighteen (18) years of age may be admitted to maintenance treatment unless a parent, legal guardian or otherwise legally responsible adult designated by the relevant state authority consents in writing to such treatment.~~

~~(d) Compliance with 450:70-3-5.5 may be determined by:~~

- (1) A review of policies and procedures,
- (2) treatment records, and
- (3) Other facility documentation.

450:70-3-5.6. Intake assessment ~~Assessment~~ and record content - Central registry

(a) The OTP shall have written policy and procedure outlining the requirement for the reporting of persons receiving medication assisted opioid treatment to the ODMHSAS. This report to the Central Registry shall be made in a form requested by the Commissioner or designee and within twenty-four (24) hours of admission, change of medical status or discharge of any patient.

(b) Compliance with 450:70-3-5.6 may be determined by:

- (1) A review of policies and procedures,
- (2) Treatment records, and
- (3) Other facility documentation.

450:70-3-5.7. Intake assessment ~~Assessment~~ and record content - ~~Intake content~~ Consent and admission information

(a) The OTP shall have written policy and procedure stating the admission requirements for opioid treatment programs.

(b) All applicants for medication assisted opioid treatment shall sign a written consent for opioid treatment in the primary language of the applicant.

(c) The patient ~~intake admission~~ information shall contain, but not be limited to, the following:

- (1) Date of initial contact requesting services;
 - (2) Identification information, including Patient's name, home address, and telephone number;
 - (3) Referral source;
 - (4) Mental status examination and findings;
 - (5) History and physical information;
 - (6) Family to be notified in case of emergency; and
- (d) Compliance with 450:70-3-5.7 may be determined by:
- (1) A review of policies and procedures,
 - (2) Treatment records, and
 - (3) Other facility documentation.

450:70-3-5.8. Intake assessment ~~Assessment~~ and record content - ASAM

(a) The OTP shall document and assess all patients for appropriateness of admission taking into account the patient's needs as identified by, but not limited to:

- (1) Acute intoxication and withdrawal potential;
- (2) Biomedical conditions and complications;
- (3) Emotional and behavioral conditions and complications;
- (4) Readiness to change;
- (5) Relapse potential; and
- (6) Recovery environment.

(b) Compliance with 450:70-3-5.8 may be determined by:

- (1) A review of policies and procedures,
- (2) Treatment records, and
- (3) Other facility documentation.

450:70-3-5.9. Intake assessment ~~Assessment~~ and record content - Supportive service array

(a) The OTP shall have a written policy and procedure that shall be made available to all patients, outlining rehabilitation services. Minimum services include:

- (1) Individual counseling until the patient is fully stabilized and as indicated in this chapter;
- (2) Group and family counseling for spouses, parents, or significant others and as indicated in this chapter;
- (3) Vocational or educational counseling and referral and as indicated in this chapter; and
- (4) Referral for additional services as outlined by the individualized treatment plan.

(b) Compliance with 450:70-3-5.9 may be determined by:

- (1) A review of policies and procedures,
- (2) Treatment records, and
- (3) Other facility documentation.

450:70-3-5.10. Intake assessment ~~Assessment~~ and record content - Service notification

(a) The OTP shall have written policy and procedure requiring the patient to be informed of all services that are available through the agency; and of all policies and procedures that may impact the patient's treatment.

(b) There shall be written verification such notification was made, signed by the patient.

(c) The OTP shall have written policy and procedure requiring the patient be informed of the following upon admission:

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- (1) The progression of opioid dependence and the patient's assessed stage of opioid ~~dependence~~ use disorder;
 - (2) The goal and benefits of medication assisted opioid ~~treatment~~ recovery services;
 - (3) The signs and symptoms of overdose and when to seek emergency assistance;
 - (4) The characteristics of opioid agonist and partial agonist treatment medication, including common side-effects and potential interaction effects with non-opioid agonist treatment medications and/or illicit drugs;
 - (5) The requirement for staff members to report suspected or alleged abuse or neglect of a child or an incapacitated or vulnerable adult;
 - (6) The requirement for staff members to comply with the confidentiality requirements of 42 CFR Part 2 and 45 CFR parts 160 and 164;
 - (7) Drug screening and urinalysis procedures;
 - (8) Take-home medication requirements;
 - (9) Testing and treatment available for HIV, HCV, tuberculosis and other communicable diseases;
 - (10) The process for a patient to file a grievance with the agency for any reason, including involuntary discharge, and to have the client's grievance handled in a fair and timely manner; and
 - (11) The process for a patient to file a grievance with the ODMHSAS Patient Advocate office agency for any reason, including involuntary discharge.
- (d) Compliance with 450:70-3-5.10 may be determined by:
- (1) A review of policies and procedures,
 - (2) Treatment records, and
 - (3) Other facility documentation.

450:70-3-5.11. ~~Intake assessment~~ Assessment and record content - Chronic pain

- (a) The OTP shall have written policy and procedure requiring the OTP to see that an individual who requires administration of opioid agonist treatment and partial agonist medication only for relief of chronic pain is:
- (1) Identified during the physical examination or assessment;
 - (2) Not admitted for opioid agonist or partial agonist medication treatment; and
 - (3) Referred to appropriate medical services.
- (b) Compliance with 450:70-3-5.11 may be determined by:
- (1) A review of policies and procedures,
 - (2) Treatment records, and
 - (3) Other facility documentation.

450:70-3-5.12. ~~Intake assessment~~ Assessment and record content - Co-occurring disorder

- (a) The OTP shall have written policy and procedure requiring the facility to ensure that, if, during the assessment or physical examination, a determination is made that a patient may have a mental disorder, the patient is referred for assessment and treatment of the mental disorder.
- (b) All required consents, for communication and collaboration with the patient's behavioral health professional to monitor

and evaluate interactions between the client's opioid agonist or partial agonist treatment medication and any medications used to treat the patient's mental disorder are required to be completed and in the chart.

- (c) Compliance with 450:70-3-5.12 may be determined by:
- (1) A review of policies and procedures,
 - (2) Treatment records, and
 - (3) Other facility documentation.

450:70-3-5.13. ~~Intake assessment~~ Assessment and record content - Medical

- (a) The OTP shall have written policy and procedure requiring the OTP to ensure that, if, during the assessment or physical examination, a determination is made that a patient may have a medical condition requiring intervention, the patient is referred for assessment and treatment of the medical condition.
- (b) The OTP will have all required consents, for communication and collaboration with the patient's health professional to monitor and evaluate interactions between the patient's opioid agonist or partial agonist treatment medication and medications used to treat the patient's medical condition.
- (c) Compliance with 450:70-3-5.13 may be determined by:
- (1) A review of policies and procedures,
 - (2) Treatment records, and
 - (3) Other facility documentation.

450:70-3-5.14. ~~Intake assessment~~ Assessment and record content - Medical service refusal

- (a) The OTP shall have written policy and procedure allowing the medical director to refuse the admission and/or medication assisted opioid ~~treatment~~ recovery services to any patient if, in the reasonable clinical judgment of the medical director, the person would not benefit from such treatment. Prior to such a decision, appropriate staff should be consulted and the reason(s) for the decision must be documented by the medical director.
- (b) Compliance with 450:70-3-5.14 may be determined by:
- (1) A review of policies and procedures,
 - (2) Treatment records, and
 - (3) Other facility documentation.

450:70-3-5.15. ~~Intake assessment~~ Assessment and record content - Identification

- (a) The OTP shall have written policy and procedure requiring the patient must present a valid form of photo identification which can include:
- (1) A valid, State authorized driver's license from the State of residence,
 - (2) A valid federally authorized form of identification card, or
 - (3) A valid Tribal ID card with photograph from a federally recognized tribe.
- (b) Photocopies shall be obtained upon admission and the copy must be maintained in the patient's record. The program shall document in the patient's file attempts to induce the patient to obtain state identification.
- (c) Compliance with 450:70-3-5.15 may be determined by:

- (1) A review of policies and procedures,
- (2) Treatment records, and
- (3) Other facility documentation.

450:70-3-5.16. ~~Intake assessment~~Assessment and record content - Initial dosing

- (a) OTPs shall develop and maintain written policies and procedures that are adequate to ensure that the following dosage form and initial dosing requirements are met:
- (1) Methadone shall be administered or dispensed only in oral and liquid form and shall be formulated in such a way as to reduce its potential for parenteral abuse. Diskettes shall be dissolved in liquid prior to being dispensed, or dissolved in liquid.
 - (2) For each new patient enrolled in a program, the initial dose of methadone shall not exceed thirty (30) milligrams and the total dose for the first day shall not exceed forty (40) milligrams, unless the program physician documents in the patient's record that forty (40) milligrams did not suppress opiate abstinence symptoms.
 - (3) Any increase above forty (40) milligrams shall be based on the physician's medical judgment and documented in the chart.
 - (4) Buprenorphine may be administered in tablet or sublingual form.
 - (5) Initial and later treatment dosing shall be determined by the medical director and according to best medical practice.
- (b) Compliance with 450:70-3-5.16 may be determined by:
- (1) A review of policies and procedures,
 - (2) Treatment records, and
 - (3) Other facility documentation.

450:70-3-5.17. ~~Intake assessment~~Assessment and record content - Patient service refusal

- (a) The OTP ~~shall~~ shall ensure that a patient's refusal of a particular service does not preclude the patient from accessing other needed mental health or substance ~~abuse~~ use disorder treatment services. Should the service provider determine the patient's needs cannot be met within the facility, clinical documentation of assessments and referrals for the patient shall contain, at a minimum:
- (1) Date of initial contact requesting services;
 - (2) Identification information, including Patient's name, home address and telephone number;
 - (3) Referral source;
 - (4) Mental status examination and results;
 - (5) History and physical;
 - (6) Family to be notified in case of emergency;
 - (7) A continuing care plan;
 - (8) What agency was contacted; and
 - (9) Where and why the individual was referred.
- (b) Compliance with 450:70-3-5.16 may be determined by:
- (1) A review of policies and procedures,
 - (2) Treatment records, and
 - (3) Other facility documentation.

450:70-3-6. ~~Intake and assessment, process~~ Assessment - Process requirements

- (a) Written policies and procedures governing the intake and assessment process shall specify the following:
- (1) The information to be obtained on all applicants or referrals for admission;
 - (2) The procedures for accepting referrals from outside agencies or organizations;
 - (3) The records to be kept on all applicants;
 - (4) Any prospective patient data to be recorded during the intake process;
 - (5) The procedures to be followed when an applicant or a referral is found ineligible for admission; and
 - (6) The procedures and policies for the purpose of admitting and assessing persons with special needs or disabilities.
- (b) Compliance with 450:70-3-5.16 may be determined by:
- (1) A review of policies and procedures,
 - (2) Treatment records, and
 - (3) Other facility documentation.

PART 5. BIOPSYCHSOCIAL ASSESSMENT

450:70-3-7. Biopsychsocial assessment

- (a) All OTPs shall complete a biopsychsocial assessment which gathers sufficient information to assist the patient in developing an individualized ~~treatment~~ service plan. The OTP may utilize the current edition of the Addiction Severity Index (ASI) or develop a biopsychsocial assessment which contains, but not be limited to, the following:
- (1) Identification of the patient's strengths, needs, abilities, and preferences;
 - (2) Presenting problem and history of the presenting problem;
 - (3) Previous treatment history, including medication-assisted opioid substitution-recovery therapy:
 - (A) Mental health,
 - (B) Substance ~~abuse~~ disorder, and
 - (4) Health history and current biomedical conditions and complications;
 - (5) Alcohol and drug use history;
 - (6) History of trauma;
 - (7) Family and social history, including family history of alcohol and drug use;
 - (8) Educational attainment, difficulties, and history;
 - (9) Cultural and religious orientation;
 - (10) Vocational, occupational and military history;
 - (11) Sexual history, including HIV, AIDS and STD at-risk behaviors;
 - (12) Marital or significant other relationship history;
 - (13) Recreational and leisure history;
 - (14) Legal history;
 - (15) Present living arrangement;
 - (16) Economic resources;
 - (17) Level of functioning;
 - (18) Current support system;

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- (19) Current medications, including the name of prescribing physician, name of medication, strength and dosage, and length of time the consumer has been on the medication;
 - (20) Patient's expectations in terms of service; and
 - (21) Assessment summary or diagnosis, and signature of the assessor and date of the assessment.
- (b) The assessment shall be completed as soon as possible after admission and no later than the third (3) counseling visit.
- (c) In the event of a consumer re-admission after one (1) year of the last biopsychosocial assessment, a new biopsychosocial assessment shall be completed. If readmission occurs within one (1) year after the last biopsychosocial assessment, an update shall be completed.
- (d) Compliance with 450:70-3-7 may be determined by:
- (1) A review of policies and procedures,
 - (2) Treatment records, and
 - (3) Other facility documentation.

PART 7. SERVICE PLANNING

450:70-3-8. Individualized service planning

- (a) Upon completion of the admission evaluation, an individualized service plan shall be developed. The individualized service plan shall include, but not be limited to:
- (1) Presenting problems or diagnosis;
 - (2) Strengths, needs, abilities, and preferences of the patient;
 - (3) Goals for treatment with specific, measurable, attainable, realistic and time-limited;
 - (4) Type and frequency of services to be provided;
 - (5) Dated signature of primary service provider;
 - (6) Description of patient's involvement in, and responses to, the service plan, and his or her signature and date;
 - (7) Individualized discharge criteria or maintenance;
 - (8) Projected length of ~~treatment~~ service;
 - (9) Measurable long and short term treatment goals;
 - (10) Primary and supportive services to be utilized with the patient;
 - (11) Type and frequency of therapeutic activities in which patient will participate;
 - (12) Documentation of the patient's participation in the development of the plan; and
 - (13) Staff who will be responsible for the patient's treatment.
- (b) The service plan shall be based on the patient's presenting problems or diagnosis, intake assessment, biopsychosocial assessment, and expectations of their recovery.
- (c) Frequency of services shall be determined by mutual agreement between the facility treatment team and the patient.
- (d) Service plans shall be completed by the fourth (4) counseling visit after admission.
- (e) The service plan review should occur according to the time frame required by the agency but, no less often than every six (6) months; and further, is required by any of the following situations:

- (1) Change in goals and objectives based upon patient's documented progress, or identification of any new problem;
 - (2) Change in primary counselor assignment;
 - (3) Change in frequency and types of services provided;
 - (4) Critical incident reports;
 - (5) Sentinel events; or
 - (6) Phase change.
- (f) Each patient accepted for treatment shall be assessed initially and periodically by qualified personnel to determine the most appropriate combination of services and treatment. The service plan also must identify the frequency and intensity of services to be provided.
- (g) The plan must be reviewed and updated to reflect that patient's personal history, current needs for medical, social, and psychological services, and current needs for education, vocational rehabilitation, and employment services.
- (h) The OTP will provide adequate and appropriate counseling to each patient as clinically necessary. This counseling shall be provided by a program counselor, qualified by education, training, or experience to assess the psychological and sociological background of patients, to contribute to the appropriate service plan for the patient and to monitor patient progress.
- (i) Compliance with 450:70-3-8 may be determined by:
- (1) A review of policies and procedures,
 - (2) Treatment records, and
 - (3) Other facility documentation.

PART 11. DISCHARGE

450:70-3-10. Discharge assessment

- (a) All consumers shall be assessed for biopsychosocial appropriateness of discharge from each level of care using ASAM PPC criteria that includes a list of symptoms for all six dimensions and each of the levels of care, to determine a clinically appropriate placement in the least restrictive level of care. This organized process involves a professional determination for appropriate placement to a specific level of care based on the consumer's severity of symptoms and current situations.
- (1) Acute intoxication and/or withdrawal potential;
 - (2) Biomedical conditions and complications;
 - (3) Emotional, behavioral or cognitive conditions and complications;
 - (4) Readiness to change;
 - (5) Relapse, continued use or continued problem potential; and
 - (6) Recovery/living environment.
- (b) Compliance with 450:70-3-10 may be determined by:
- (1) A review of policies and procedures, and
 - (2) Discharge assessments in patient records.

SUBCHAPTER 4. SERVICES SUPPORT AND ENHANCEMENT

PART 1. STAFF SUPPORT

450:70-4-4.1. Staffing - Transportation, dispensing and responsibility

(a) The OTP shall have written policy and procedure to ensure that only appropriately trained and licensed medical personnel shall be allowed access to, transportation of, dispensing of, administration of, or responsibility for approved opioid agonist or partial agonist medications.

(1) Access to medication deliveries to an OTP shall be received, secured and inventoried by program personnel specifically designated for this task.

(2) Acceptance of delivery of scheduled drugs must be made only by a licensed practitioner employed at the OTP or other authorized individuals designated in writing who must sign for all scheduled drugs. Staff who are currently or previously experience a significant opioid use disorder~~dependent on opioids~~ are not allowed to perform this function.

(3) The OTP shall have one staff member to have primary responsibility for receiving, securing and inventorying medications.

(4) The OTP also shall identify additional program personnel who have authority to receive, store and inventory the medication at times when the individual designated to have primary responsibility is not available.

(5) The OTP shall maintain a written list of all designated personnel who have been authorized to receive, store and inventory the medication. This list shall be updated whenever a change in designated personnel occurs.

(b) Transportation of opioid medications by OTP staff shall also:

(1) Be limited to OTP patients in residential treatment, hospital, long term care or jail, and

(2) Always done with an appropriate chain of custody form, such as the one available through the Division of Pharmacologic Therapies within SAMHSA.

(c) Compliance with 450:70-4-4.1 may be determined by:

(1) A review of policies and procedures,

(2) Personnel records,

(3) Privileging documents,

(4) Training records,

(5) Interviews with staff, and

(6) Other facility documentation.

450:70-4-4.3. Staffing - Training

(a) The OTP shall have written policy and procedure requiring each person engaged in the medication assisted ~~treatment recovery services for a significant~~ of opioid use disorder dependence to have sufficient education, training, and/or experience to enable that person to perform the assigned duties and functions. This includes specific training in opioid related treatment service options. All physicians, nurses, and other licensed professional care providers, including counselors, must comply with the credentialing requirements of their respective professions. Hiring preference ~~may should~~ be given

to staff with substance use disorder and/or opioid use disorder treatment specific licenses and certifications.

(1) All direct service and medical staff shall receive training relevant to service delivery in a medication assisted opioid treatment setting. There shall be—seven (7) clock hours of such training during each year.

(2) All direct service staff shall receive initial training and ongoing training updates for all personnel employed by the treatment facility covers at a minimum:

(A) Rights of the patients served;

(B) Person and family centered services;

(C) The prevention of violence in the workplace;

(D) Confidentiality requirements;

(E) Cultural competency; and

(F) Expectations regarding professional conduct.

(3) All physicians working in an OTP should have, or be in the process of obtaining, specialty certification and/or licensure related to medication assisted opioid and/or substance use disorder treatment.

(b) Compliance with 450:70-4-4.3 may be determined by:

(1) A review of policies and procedures,

(2) Credentialing and privileging documents,

(3) Training records,

(4) Interviews with staff, and

(5) Other facility documentation.

PART 3. ORGANIZATIONAL AND FACILITY MANAGEMENT

450:70-4-5. Service support and enhancement

(a) Each OTP shall have written policies and procedures describing operational methods, administration and organization adequate to ensure quality patient care, ability to operate in accordance with all approved accreditation elements and to meet the requirements of all pertinent Federal, State and local laws and regulations. In addition an OTP will operate in accordance with all approved accreditation elements; including the OBNDD, DEA and SAMHSA.

(b) OTPs will produce evidence of a current and valid certification from SAMHSA to be considered qualified to dispense opioid drugs in the treatment of significant opioid use disorders and dependence. Prior to beginning the delivery of medication-assisted opioid ~~treatment~~ recovery services, an OTP must apply for and receive a permit for temporary operations from ODMHSAS.

(c) An OTP must produce evidence that the program has been determined under the Controlled Substances Act to be qualified and registered to dispense opioid agonist treatment medications to individuals for treatment of significant opioid use disorders and opioid dependence.

(d) In order to retain ODMHSAS certification an OTP shall produce within twelve (12) months of opening, a current, valid accreditation by an accreditation body or other entity designated by SAMHSA such as CARF, JC, or COA including a written description of the current accreditation status of the OTP and must comply with any additional conditions for certification established by SAMHSA.

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- (e) Compliance with 450:70-4-5 may be determined by:
 - (1) A review of policies and procedures,
 - (2) Current certifications, accreditations, registrations, and licenses, and
 - (3) Other facility documentation.

450:70-4-5.1. Organizational - Staffing

(a) An OTP shall have an accurate and current description of organizational structure including;

- (1) The names and contact information of all persons responsible for the OTP.
- (2) The current addresses of the OTP and of each additional facility, medication unit or additional site under the control of the OTP providing opioid agonist treatment services, and
- (3) The sources of any funding other than patient fees for the OTP including the name and address of any governmental entity that provides such funding.

(b) Each OTP shall formally designate a program sponsor and medical director.

(1) The program sponsor shall agree in writing on behalf of the OTP to adhere to all requirements set forth in this chapter and any regulations regarding the use of opioid agonist or partial agonist treatment medications in the treatment of significant opioid use disorders-dependence which may be promulgated in the future.

(2) The medical director shall agree in writing to assume responsibility for administration of all medical services performed by the OTP. In addition, the medical director shall be responsible for ensuring that the OTP is in compliance with all applicable Federal, State, and local laws and regulations.

(c) Compliance with 450:70-4-5.1 may be determined by:

- (1) A review of policies and procedures, and
- (2) Other facility documentation.

450:70-4-6. New program approval

(a) Determination of the need for new services shall be at the sole discretion of ODMHSAS as the designated state authority responsible for medication assisted opioid-~~treatment~~ recovery services through information provided by the proposed new agency including:

- (1) Copies of all planned promotional materials, advertisements, and marketing strategies to publicize the proposed program;
- (2) Policies and procedures that will be used to identify if a patient is enrolled in another clinic;
- (3) The source and adequacy of financial assets necessary to operate the program;
- (4) If applicable, the compliance history of the applicant, including any issues reported to ODMHSAS by SAMHSA, DEA or any other regulatory agency;
- (5) Adequate planning and organizational structure demonstrated by full and complete answers submitted to all questions in the application materials;

(6) A written statement that the applicant has read, understood and agreed to follow all federal and state regulations concerning operation of an OTP signed by the program sponsor and the medical director;

(7) Document the need for new services in the area as demonstrated by providing ODMHSAS with waiting lists, numbers of opioid related emergency room visits, opioid related arrest data, and federal drug use forecasting data;

(8) Demonstrate general community acceptance by providing ODMHSAS with copies of letters of support from local authorities and local residents living near the site; and

(9) Produce written documentation that ODMHSAS has received and accepted all the requirements listed above.

(b) Compliance with 450:70-4-7 may be determined by:

- (1) A review of policies and procedures,
- (2) On-site verification of hours posted,
- (3) Interviews with staff, and
- (4) Other facility documentation.

450:70-4-7. Operations - Hours

(a) The OTP shall have policy and procedure to define operations for a minimum of forty (40) hours per week, (excluding holidays and emergency closure) in outpatient settings and twenty-four (24) hours per day in inpatient and residential program settings.

(b) The OTP shall have written policy and procedure for medication dispensing available at least six (6) days per week in outpatient settings; and seven (7) days per week in inpatient and residential settings with approval from SAMHSA.

(c) The facility shall be publicly accessible and accommodate office space, individual and group counseling space, secure record storage, protect consumer—confidentiality, and provide a safe, warm, welcoming, culturally and age appropriate environment.

(d) Hours of operation shall be during regularly scheduled times in which services are accessible to consumers and the general public, including those employed between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday. To accomplish this, the OTP shall have written policy and procedure providing at least two (2) hours per day either prior to 9:00 a.m. or after 5:00 p.m. for dispensing medication and counseling services.

(e) For facilities that do not provide twenty-four (24) hour services, the facility's hours of operation shall be conspicuously displayed on the outside of the building. For facilities in multi-office buildings, the hours shall be posted either on the building directory or the facility's office door.

(f) Clinical services shall be organized with scheduled treatment sessions that accommodate employed and parenting patients' schedules, and offer treatment services during the day, evening, or weekends.

(g) Compliance with 450:70-4-7 may be determined by:

- (1) A review of policies and procedures,
- (2) Personnel records,
- (3) On-site verification,
- (4) Interviews with staff, and

- (5) Other facility documentation.

450:70-4-7.3. Operations - Dosing considerations

- (a) The OTP shall have written policy and procedure stating that methadone shall be dispensed orally and in liquid form only. Non-oral forms and tablet form methadone are prohibited from use. Tablet and sublingual forms of buprenorphine are allowed.
- (b) Each OTP shall develop written policies and procedures giving preference to the use of liquid and diskette forms of methadone. Diskettes shall be dissolved in liquid prior to being dispensed, or dissolved in liquid by the patient in full and clear view of OTP staff.
- (c) OTPs shall have written policies and procedures adequate to ensure that each opioid agonist and partial agonist treatment medication used by the program is administered and dispensed in accordance with its approved product labeling.
- (d) Written policy and procedure shall reflect that dosing and administration decisions shall be made by a program physician familiar with the most up-to-date product labeling. These procedures must ensure that any significant deviations from the approved labeling, including deviations with regard to dose, frequency, or the conditions of use described in the approved labeling, are specifically documented in the patient's record.
- (e) The OTP shall have written policy and procedure stating the OTP shall use only those opioid agonist treatment medications that are approved by the Food and Drug Administration for use in the treatment of significant opioid use disorders and opioid dependence.
- (f) The OTP shall be fully compliant with the protocol of any investigational use of a drug and other conditions set forth in the application may administer a drug that has been authorized under an investigational new drug application through all applicable Federal law for investigational use in the treatment of opioid addiction, significant opioid use disorders and opioid dependence.

- (g) Compliance with 450:70-4-7.3 may be determined by:

- (1) A review of policies and procedures,
- (2) Treatment records,
- (3) Interviews with staff, and
- (4) Other facility documentation.

450:70-4-8.1. Drug testing - ~~Detox~~ Withdrawal Management

- (a) For patients in short-term ~~detoxification treatment~~ withdrawal management, the OTP shall perform at least one initial drug test.
- (b) For patients receiving long-term ~~detoxification treatment~~ withdrawal management, the OTP shall perform initial and monthly random tests on each patient as indicated in 450:70-4-8(a).
- (c) If the patient has more than one positive urine drug screen in any twelve (12) month period then upon the second positive UA the facility will initiate at least one (1) of the following two (2) items;
 - (1) Reduce the patient in Phase, or

- (2) Initiate an individualized written relapse prevention plan consisting of;
 - (A) The patient continuing to receive medication assisted opioid ~~treatment~~ recovery services as long as such treatment is medically necessary, acceptable to the patient and administrative withdrawal is not indicated,
 - (B) Address and identify other behavioral issues consistent with relapse in the patient's service plan,
 - (C) Review the patient's ~~treatment~~ service plan and adjust, if necessary, at the first signs of the client's relapse or impending relapse, and
 - (D) Ensure the client's family members are provided opportunities to be involved in the client's treatment.

- (d) Compliance with 450:70-4-8.1 may be determined by:

- (1) A review of policies and procedures,
- (2) Treatment records,
- (3) Interviews with staff, and
- (4) Other facility documentation.

450:70-4-8.3. Unsupervised take-home doses

- (a) The OTP shall have written policy and procedure stating that unsupervised take home use shall be determined by the medical director. In determining which patients may be permitted unsupervised use, the medical director shall consider the following criteria in determining whether a patient is responsible in handling opioid drugs for unsupervised use. The same criteria shall be considered when receiving a patient from a transferring program verifying the amount of time the patient has spent satisfactorily adhering to the criteria found below. This information will be used to determine if the patient shall be allowed to continue the same frequency of clinic attendance permitted at the former program immediately before transferring to the new program. Criteria include but are not limited to:
 - (1) Absence of recent unapproved use of drugs (opioid or non-narcotic), including alcohol;
 - (2) Regular clinic attendance;
 - (3) Absence of serious behavioral problems at the clinic;
 - (4) Absence of known recent criminal activity, e.g., drug dealing;
 - (5) Stability of the patient's home environment and social relationships;
 - (6) Length of time in comprehensive maintenance treatment;
 - (7) Assurance that take-home medication can be safely stored within the patient's home;
 - (8) Whether the rehabilitative benefit the patient derived from decreasing the frequency of clinic attendance outweighs the potential risks of diversion; and
 - (9) The patients current phase in treatment.
- (b) The OTP shall have written policy and procedure stating approval for unsupervised use and the basis for such determinations consistent with all criteria shall document such determinations in the patient's medical record.
- (c) Compliance with 450:70-4-8.3 may be determined by:
 - (1) A review of policies and procedures,

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- (2) Treatment records,
- (3) Interviews with staff,
- (4) Incident reports, and
- (5) Other facility documentation.

SUBCHAPTER 6. SUBSTANCE ~~ABUSE~~ DISORDER TREATMENT SERVICES

PART 2. LEVELS OF TREATMENT SERVICES

450:70-6-4. Levels of Care

(a) OTPs shall document the provision of the following levels of care in policy and procedure, with the exception of medication units, unless that level of service is provided. All facilities shall include the requirements found in Facility Record System. All OTPs certified by ODMHSAS providing any of the following levels of care shall also provide short and long term withdrawal treatment services.

(b) Compliance with 70-6-4 may be determined by a review of the following:

- (1) Policy and Procedures,
- (2) Review of treatment records, and
- (3) Any other supporting facility documentation.

450:70-6-5. Withdrawal ~~Management~~ recovery services

(a) Any OTP providing medication assisted ~~treatment~~ recovery services shall provide ~~withdrawal treatment including both short and long term withdrawal management treatment~~ as defined in 450:70-6-7 and 450:70-6-8.

(b) The OTP shall have written policy and procedure defining the protocols developed, implemented, and complied with for withdrawal management ~~treatment~~. Protocols shall:

- (1) Promote successful withdrawal management ~~treatment~~;
- (2) Require that dose reduction occur at a rate well tolerated by the patient;
- (3) Require that a variety of ancillary services, such as mutual support groups, be available to the patient through the agency or through referral;
- (4) Require that the amount of counseling available to the patient be increased prior to discharge; and
- (5) Require that a patient be re-admitted to the agency or referred to another agency at the first indication of relapse unless it is an administrative withdrawal process.
- (6) There is no minimum time in treatment requirement for patients receiving buprenorphine when granting take-home privileges.

(c) Compliance with 450:70-6-5 may be determined by:

- (1) A review of policies and procedures,
- (2) Treatment records,
- (3) Interviews with staff, and
- (4) Other facility documentation.

450:70-6-5.1. Withdrawal ~~management~~ management - Maintenance to withdrawal management ~~treatment~~

(a) The OTP shall have written policy and procedure stating patients involved in maintenance management ~~treatment~~ will enter withdrawal treatment:

(1) Only when initiated as administrative withdrawal or when requested by the patient and approved by the OTP medical director; and

(2) When planned and supervised by the medical director or a program physician.

(b) The OTP shall have written policy and procedure stating that before a patient begins managed withdrawal ~~treatment~~, the patient must be:

(1) Informed by the agency medical director, a program physician or a staff member that:

(A) The patient has the right to leave opioid treatment at any time,

(B) The risks of managed withdrawal ~~treatment~~, and

(C) Signs and symptoms of relapse.

(2) The patient will receive a schedule for medical withdrawal management ~~treatment~~ developed by the medical director or a program physician with input from the patient.

(c) Compliance with 70-6-5.1 may be determined by a review of the following:

- (1) Policy and Procedures,
- (2) Review of treatment records, and
- (3) Any other supporting facility documentation.

450:70-6-5.2. Withdrawal ~~management~~ management - Reentering maintenance treatment

(a) The OTP shall have written policy and procedure stating that if a patient who is receiving managed withdrawal ~~treatment~~ for reasons other than administrative withdrawal, appears to a staff member to relapse, the patient is permitted to reenter maintenance treatment services, if otherwise eligible;

(b) The OTP shall have written policy and procedure stating that if a patient who has completed managed withdrawal ~~treatment~~ services within the past thirty (30) days appears to a staff member to relapse, the patient may be re-admitted to treatment without physical examination or assessment unless requested by the medical director.

(c) The OTP shall ensure there shall be periodic consideration given to withdrawing from continued opioid treatment services, when appropriate to the patient's progress and goals.

(1) Consideration for withdrawal from continued medication assisted opioid ~~treatment~~ recovery services shall be discussed at least once annually with the patient.

(2) Such consideration and decisions shall be determined by the patient, medical director, and the program staff as part of an individualized treatment planning process and treatment progress.

(d) Compliance with 70-5-2 may be determined by a review of the following:

- (1) Policy and Procedures,
- (2) Review of treatment records, and

- (3) Any other supporting facility documentation.

450:70-6-6. Administrative withdrawal

(a) The OTP shall have written policy and procedure stating an infraction of program rules by a patient may result in administrative medical withdrawal from methadone or buprenorphine and termination from treatment services. All patients will be notified of this policy. The program shall develop specific program requirements to address noncompliance with program rules resulting in termination. The violation or noncompliance with rules shall be limited to;

- (1) Threats of violence or actual bodily harm to staff or another patient, including abusive language or behavior;
- (2) Disruptive behavior, loitering;
- (3) Diversion of methadone, selling, distributing, using, or otherwise "dealing" in any illicit drug or chemical, including positive urine tests for non-prescribed medications and drugs;
- (4) Continued unexcused absences from counseling and other support services;
- (5) Involvement in criminal activities;
- (6) Any other serious rule violations; and
- (7) Non-payment of fees.

(b) The OTP shall ensure administrative medical withdrawal shall be scheduled in such a way as to minimize the psychological and physical effects of such withdrawal.

- (1) Administrative medical withdrawal shall be completed in a manner appropriate to the client's level of medication and the circumstances justifying such action;
- (2) Programs may facilitate a transfer to another program or referral to a medical facility in lieu of administrative medical withdrawal; and
- (3) Administrative withdrawal resulting from non-payment of fees cannot be accomplished in less than fifteen (15) days.

(c) The OTP shall have written policy and procedure stating a patient experiencing administrative withdrawal shall be referred or transferred to an agency that is capable of, or more suitable for, meeting the patient's needs. The referral or transfer is documented in the patient record and the following information is documented in the patient record:

- (1) The reason that the patient sought medical withdrawal or was placed on administrative withdrawal; and
- (2) The information and assistance provided to the patient in managed withdrawal treatment, medical withdrawal or administrative withdrawal.

(d) Compliance with 450:70-6-6 may be determined by:

- (1) A review of policies and procedures,
- (3) Treatment records,
- (4) Critical incident reports,
- (5) Interviews with staff, and
- (6) Other facility documentation.

450:70-6-7. Short term managed withdrawal ~~(detoxification)~~

(a) The OTP shall have written policy and procedure regarding short term managed withdrawal ~~(detoxification)~~ treatment services.

(b) There shall be written policy stating a patient may be admitted to short-term managed withdrawal ~~(detoxification)~~ regardless of age. Patients under the age of eighteen (18) may be admitted with written parent or guardian approval.

(c) The program physician shall document in the patient record the reason for admitting the patient to short-term managed withdrawal ~~(detoxification)~~.

(d) Take-home medication is not allowed during short-term managed withdrawal ~~(detoxification)~~.

(e) A history of one year or more opioid dependence and an attempt at another form of treatment is not required for admission to short-term managed withdrawal ~~(detoxification)~~.

(f) No test or analysis is required except for the initial drug screening test, and a tuberculin skin test.

(g) The initial treatment plan and periodic treatment plan evaluation required for comprehensive maintenance patients are required for short-term managed withdrawal ~~(detoxification)~~ patients.

(h) A primary counselor must be assigned by the program to monitor a patient's progress toward the goal of short-term withdrawal management ~~(detoxification)~~ and possible drug-free treatment referral.

(i) Methadone is required to be administered daily by the OTP in reducing doses to reach a drug-free state over a period not to exceed thirty (30) days. Buprenorphine shall be administered as determined by the OTP medical director.

(j) All other requirements of comprehensive maintenance treatment apply.

(k) Compliance with 450:70-6-7 may be determined by:

- (1) A review of policies and procedures,
- (2) Treatment records,
- (3) Interviews with staff, and
- (4) Other facility documentation.

450:70-6-8. Long term managed withdrawal ~~(detoxification)~~

(a) There shall be written policy stating a patient may be admitted to long-term managed withdrawal ~~detoxification~~ regardless of age. Patients under the age of eighteen (18) with written parent or guardian approval.

(b) Methadone is required to be administered daily in reducing doses to reach a drug-free state over a period not to exceed one hundred and eighty (180) days. Buprenorphine shall be administered as determined by the OTP medical director.

(c) The patient is required to be under observation while ingesting the drug at least six (6) days a week. This is not required for buprenorphine.

(d) Initial and random monthly drug screening tests must be performed on each patient.

(e) Initial service plans and monthly service plan reviews are required.

(f) All other requirements of comprehensive maintenance treatment apply.

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(g) A history of one year of opioid dependence and an attempt at another form of treatment is not required for admission to long-term withdrawal management (~~detoxification~~).

(h) Compliance with 450:70-6-8 may be determined by:

- (1) A review of policies and procedures,
- (2) Treatment records,
- (3) Interviews with staff, and
- (4) Other facility documentation.

450:70-6-9. Interim maintenance treatment services

(a) The OTP shall have documentation before providing interim maintenance treatment services indicating the written approval of both SAMHSA and ODMHSAS.

(b) The OTP shall have written policy and procedure stating the program sponsor may place an individual who is eligible for admission to comprehensive maintenance ~~treatment services~~ in interim maintenance ~~treatment services~~ if the individual cannot be placed in comprehensive maintenance treatment services within a reasonable geographic distance and within fourteen (14) days of application for admission to comprehensive maintenance treatment services.

(c) The OTP shall identify the maximum length of stay in interim opioid ~~treatment services~~ is one hundred and twenty (120) days.

(d) The OTP shall provide an initial and a minimum of two (2) additional drug screens shall be taken from interim patients during the one hundred and twenty (120) days of interim ~~treatment services~~.

(e) The OTP shall have written policies and procedures outlining all criteria for transfer from interim maintenance to comprehensive maintenance ~~treatment services~~.

(f) The OTP shall have policy and procedure ensuring interim maintenance ~~treatment services~~ shall be provided in a manner consistent with all applicable Federal and State laws and regulations.

(g) The interim maintenance ~~treatment services~~ program shall meet and/or possess all applicable Federal and State certifications, licensures, laws and regulations.

(h) The OTP shall have written policy and procedure stating all rules and requirements for comprehensive maintenance ~~treatment services~~ apply to interim maintenance ~~treatment services~~ with the exception of:

- (1) Opioid agonist ~~treatment~~ medication is required to be administered daily and under observation. Unsupervised or take home dosing is not allowed.
- (2) A primary counselor does not need to be assigned.
- (3) Interim maintenance ~~treatment~~ is limited to two (2) one hundred and twenty (120) day episodes in any twelve (12) month period.
- (4) Educational, rehabilitative and counseling services are not required.
- (5) An initial treatment plan and periodic updates are not required.

(i) Compliance with 450:70-6-9 may be determined by:

- (1) A review of policies and procedures,
- (2) Treatment records,
- (3) Interviews with staff, and
- (4) Other facility documentation.

450:70-6-10. Medication units, long term care facilities and hospitals

(a) Before providing medication assisted opioid ~~treatment recovery~~ services through a medication unit, long term care facility or hospital, the program must receive the written approval of both SAMHSA and ODMHSAS and certified by ODMHSAS.

(b) Certification as an OTP will not be required for the maintenance or ~~detoxification treatment managed withdrawal~~ of a patient who is admitted to a hospital or long term care facility for the treatment for medical conditions other than opioid addiction and who requires maintenance or withdrawal management ~~detoxification treatment~~ during the stay in the hospital or long term care facility.

(c) Medication units, long term care facilities and hospitals shall be in compliance with the following:

(1) Currently licensed by the DEA; and approved by SAMHSA.

(2) Written policy and procedure stating the medical director shall make all recommendations for medication dosages according to best medical practice guidelines and all applicable rules contained in this chapter.

(3) Written policy and procedure stating all female consumers shall have a pregnancy test on admission and at least annually thereafter, unless otherwise indicated.

(4) Written policy and procedure to address the provision of all services in compliance with Federal Drug Administration Guidelines for opioid treatment programs in accordance with 42 CFR, Part 8.

(d) Compliance with 450:70-6-10 may be determined by:

- (1) A review of policies and procedures,
- (2) Certifications and licenses, and
- (3) Other facility documentation.

450:70-6-11. Programs using opioid antagonist or long acting opioid agonist

(a) The OTP shall have written policy and procedure stating a certified substance abuse facility providing a program using an experimental opioid blockade or a long acting agonist or partial agonist in the treatment of an opioid use disorder ~~substance abuse~~ shall have documentation of approval by the Federal Drug Administration; and comply with all other federal and state statutes and regulations governing such programs.

(b) The OTP shall have written policy and procedure stating the program shall provide at least two (2) hours of services per day before 8:00 A.M. or after 5:00 P.M. for dispensing and counseling.

(c) The OTP shall have written policy and procedure stating that unless otherwise indicated all relevant sections of this chapter apply.

(d) Compliance with 70-6-11 may be determined by:

- (1) A review of facility policy and procedures, and
- (2) Documentation of FDA approval.
- (3) Other facility documentation.

PART 3. PHASES OF TREATMENT SERVICES

450:70-6-15. Treatment Service

- (a) Each OTP shall use opioid agonists or partial agonists in conjunction with other treatment modalities such as, but not limited to, individual, family and group therapy; vocational training and placement; and other modalities enhancing positive life style changes in the consumer.
- (b) Compliance with 450:70-6-15 may be determined by:
 - (1) A review of policies and procedures,
 - (2) Treatment records, and
 - (3) Other facility documentation.

450:70-6-15.1. Treatment Service - Dosing

- (a) The OTP shall have written policy and procedure stating the medical director shall ensure the patient's daily medication dosage shall conform with all State and Federal guidelines, best medical practice and this chapter.
- (b) Compliance with 450:70-6-15.1 may be determined by:
 - (1) A review of policies and procedures,
 - (2) Treatment records, and
 - (3) Other facility documentation.

450:70-6-15.2. Treatment Service - Medical Director visits

- (a) The OTP shall have written policy and procedure stating each patient accepted for treatment as a patient at an OTP shall be assessed no less than annually by the medical director or an appropriately trained program physician as part of a process to determine the most appropriate combination of services and treatment.
- (b) Compliance with 450:70-6-15.2 may be determined by:
 - (1) A review of policies and procedures,
 - (2) Treatment records, and
 - (3) Other facility documentation.

450:70-6-15.3. Treatment Service - Clinical services

- (a) The OTP shall have written policy and procedure stating the OTP shall provide adequate medical, counseling, vocational, educational, and other assessment and treatment services. These services must be available at the primary facility, except where the program sponsor has entered into a formal, documented agreement with a private or public agency, organization, practitioner, or institution to provide these services to patients enrolled in the OTP. The program sponsor, in any event, must be able to document that these services are fully and reasonably available to all patients.
- (b) Services shall be designed to provide a variety of professional diagnostic and primary medication assisted opioid treatment services for patients, and their families and significant others, whose emotional and physical status allows them to function in their usual environment.
- (c) The OTP shall have written policy and procedure stating there will be referral to adequate and reasonably accessible community resources, vocational rehabilitation, education, and employment services for patients who either request such services or who have been determined through the assessment process to be in need of such services.

- (d) The OTP shall have written policy and procedure stating patients accepted for opioid treatment shall attend prescribed counseling as mandated in the individualized service plan and this chapter.
- (e) Time in treatment shall not be a requirement for patients receiving buprenorphine when granting take-home privileges.
- (f) Compliance with 450:70-6-15.3 may be determined by:
 - (1) A review of policies and procedures,
 - (2) Treatment records, and
 - (3) Other facility documentation.

450:70-6-15.4. Treatment Service - Termination

- (a) The OTP shall have written policy and procedure stating if a patient misses appointments for two weeks or more without notifying the clinic, the episode of care is considered terminated and is to be so noted in the patient's record. An exception determination would be in circumstances where the patient can provide documented proof of exceptional circumstances. The documentation must be maintained in the patient's record. If the patient does return for care and is accepted into the program, the patient is considered a new patient and is to be so noted in the patient's record.
- (b) Compliance with 450:70-6-15.4 may be determined by:
 - (1) A review of policies and procedures,
 - (2) Treatment records, and
 - (3) Other facility documentation.

450:70-6-17. Treatment Service phases - Take home doses

- (a) The OTP shall have written policy and procedure describing practices in accordance with the principle that take-home doses of methadone and buprenorphine are a privilege given only to those individuals who will benefit from them and who have demonstrated responsibility in taking methadone or buprenorphine as prescribed including:
 - (1) The requirement of time in treatment as outlined elsewhere in this rule shall be considered as a minimum reference point after which a patient may be considered for take-home privileges.
 - (2) Programs must educate the patient regarding safe transportation and storage of methadone as well as emergency procedures in case of accidental ingestion.
 - (3) Before take-home privileges are allowed, the patient must have a lock box for transportation of methadone and home storage.
 - (4) The program shall address the responsibilities of patients granted take-home medications. The policies shall include methods of assuring patient's appropriate use and storage of medication.
 - (5) The program shall address the disposal of take-home bottles for methadone to include:
 - (A) Requiring take-home bottles to be returned to the OTP and to require labels to be intact and the consequences for not returning bottles described.
 - (B) Allowing patient disposal of take-home bottles to include procedures to insure the ability of the OTP

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to check for diversion by requiring patients to submit used take-home bottles in "call backs".

- (6) Regardless of time in treatment, the medical director, using reasonable judgment, may deny or rescind the take-home medication privileges of a patient.
 - (7) All take-home privileges shall be made according to the rules of this section regarding the patients' current phase of treatment.
- (b) Compliance with 450:70-6-17 may be determined by:
- (1) A review of policies and procedures,
 - (2) Treatment records, and
 - (3) Other facility documentation.

450:70-6-17.1. ~~Treatment~~Service phases - Take home doses, exceptions

(a) The OTP shall have written policy and procedure stating the medical director may, based on reasonable judgment, grant emergency take-home doses of methadone based on emergency circumstances related to medical, criminal justice, family or employment. The circumstances and basis for the action must be documented in the patient record and should address the concerns outlined in this section.

- (1) Take-home doses of methadone for in-state emergencies is limited to a maximum of three (3) doses and out-of-state is limited to a maximum of six (6) doses.
 - (2) The medical director may, based on reasonable judgment, grant vacation take-home doses of methadone for up to two (2) weeks per calendar year. The circumstances and basis for the action must be documented in the patient record and should address the concerns outlined in this section.
 - (3) All exceptions with take-home medication must be authorized through the exception request process.
 - (4) All take-home dosing considerations for patients receiving buprenorphine shall be at the discretion of the medical director and consistent with best medical practice.
- (b) Compliance with 450:70-6-17.1 may be determined by:
- (1) A review of policies and procedures,
 - (2) Treatment records, and
 - (3) Other facility documentation.

450:70-6-17.2. ~~Treatment~~Service phases - General

(a) The OTP shall have written policy and procedure describing structured phases of treatment and rehabilitation to support patient progress and to establish requirements regarding patient attendance and service participation. The requirements listed below for each phase indicate minimum requirements and the frequency and extent of treatment and rehabilitation services may be increased, based on individual patient need and unless otherwise indicated in this chapter.

- (1) Advancement in phase and/or increased take-home privilege shall not occur without significant compliance with all current treatment plan goals.
- (2) Advancement in phase and/or increased take-home privilege shall not occur if there are consistent or consecutive positive urine drug screens.

(3) Reduction in phase and/or decreased take-home privilege shall occur if there are consistent or consecutive positive urine drug screens and/or substantial non-compliance with the individualized service plan.

(4) For patients to be eligible for Phase IV or above they must be;

- (A) be employed full time,
- (B) be a full time student (at least twelve (12) semester hours),
- (C) be retired, or
- (D) have proof of disability.

(5) Prior to the patient advancing in Phase and/or receiving take-home medication, the patient shall demonstrate a level of stability as evidenced by:

- (A) Absence of alcohol and other drug abuse,
- (B) Regularity of program attendance,
- (C) Absence of significant behavior problems,
- (D) Absence of recent criminal activities, and
- (E) employment, actively seeking employment or attending school if not retired, disabled, functioning as a homemaker, or otherwise producing evidence of economic stability.

(b) Compliance with 450:70-6-17.2 may be determined by:

- (1) A review of policies and procedures,
- (2) Treatment records, and
- (3) Other facility documentation.

450:70-6-17.3. ~~Treatment~~Service phases - Phase I

(a) Phase I consists of a minimum ninety (90)-day period in which the patient attends the program for observation of medication assisted opioid treatment daily or at least six (6) days a week. Phase I take-home dosage privileges are limited to a single dose each week including take home dosages required due to regularly scheduled clinic closures. All approved holidays allow an additional take-home dosage. The patient shall ingest all other doses under appropriate supervision at the clinic.

- (1) During Phase I, the patient shall participate in a minimum of four (4) sessions of counseling per month with at least one (1) session being individual counseling and/or case management.
- (2) During Phase I, the service plan shall be reviewed and updated a minimum of once monthly.

(b) Compliance with 450:70-6-17.3 may be determined by:

- (1) A review of policies and procedures,
- (2) Treatment records, and
- (3) Other facility documentation.

450:70-6-17.4. ~~Treatment~~Service phases - Phase II

(a) Phase II is designated for patients who have been admitted more than ninety (90) days, and who have successfully met all Phase I criteria.

- (1) During Phase II, the program may issue no more than two (2) take-home doses of methadone at a time including take-home dosages required due to regular and/or holiday scheduled clinic closures. With the exception of any take-home doses, the patient shall ingest all other doses under appropriate supervision at the clinic.

- (2) The patient shall participate in at least two (2) counseling sessions per month during the first ninety (90) days of Phase II, with at least one (1) of the sessions being individual counseling and/or case management.
- (3) After the initial ninety (90) days in Phase II, the patient shall participate in at least one (1) session of individual counseling per month.
- (4) The service plan shall be reviewed and updated at least once every three (3) months during Phase II.
- (b) Compliance with 450:70-6-17.4 may be determined by:
 - (1) A review of policies and procedures,
 - (2) Treatment records, and
 - (3) Other facility documentation.

450:70-6-17.5. Treatment/Service phases - Phase III

- (a) Phase III is designated for patients who have been admitted more than six (6) months and who have successfully completed Phase II criteria.
 - (1) During Phase III, the program may issue no more than four (4) take-home doses of methadone plus closed and holiday days.
 - (2) The patient shall participate in at least one (1) session of individual counseling and/or case management per month during Phase III.
 - (3) The service plan shall be reviewed and updated at least every six (6) months during Phase III or more frequently if circumstances warrant.
- (b) Compliance with 450:70-6-17.5 may be determined by:
 - (1) A review of policies and procedures,
 - (2) Treatment records, and
 - (3) Other facility documentation.

450:70-6-17.6. Treatment/Service phases - Phase IV

- (a) Phase IV is designated for patients who have been admitted more than nine (9) months and who have successfully met progressive Phase III criteria.
 - (1) During Phase IV, the program may issue one (1) week take-home doses plus closed and holiday days.
 - (2) The patient shall participate in at least one (1) session of individual counseling and/or case management per month during this phase.
 - (3) The service plan shall be reviewed and updated at least every six (6) months during this phase.
- (b) Compliance with 450:70-6-17.6 may be determined by:
 - (1) A review of policies and procedures,
 - (2) Treatment records, and
 - (3) Other facility documentation.

450:70-6-17.7. Treatment/Service phases - Phase V

- (a) Phase V is designated for patients who have been admitted for more than one (1) year.
 - (1) During Phase V, the program may issue two (2) weeks maximum take-home doses.
 - (2) The patient shall participate in at least one (1) session of individual counseling or case management per month during this phase.

- (3) The service plan shall be reviewed and updated at least every six (6) months during this phase.
- (b) Compliance with 450:70-6-17.7 may be determined by:
 - (1) A review of policies and procedures,
 - (2) Treatment records, and
 - (3) Other facility documentation.

450:70-6-17.8. Treatment/Service phases - Phase VI

- (a) Patients who meet criteria for Phase VI, and who have been admitted to treatment for a minimum of one (1) year, and who are receiving thirty (30) days of take-home doses on July 1, 2007 shall be allowed to continue to be eligible to receive thirty (30) days of take-home doses of methadone after July 1, 2007.
 - (1) If this patient is reduced in phase, the privilege of thirty (30) days take-home medication shall be withdrawn.
 - (2) Once lost, the privilege to receive thirty (30) days of take-home medication shall not be available again.
 - (3) If patient with the privilege to receive thirty (30) days of take-home medication changes clinics, it shall be the decision of the receiving clinic to either continue or ignore the continuation of the thirty (30) take-home medication privilege.
- (b) Phase VI is designated for patients who voluntarily seek medically supervised withdrawal and abstinence from all drugs, including methadone as prescribed. A patient may enter this phase at any time in the treatment and rehabilitation process.
 - (1) During Phase VI, the medical director determines take-home doses based on stability.
 - (2) During Phase VI, the counselor determines the frequency of counseling sessions with input from the patient. At the onset of Phase VI, the patient may require an increased level of counseling and other support services.
 - (3) The counselor and patient develop a continuing care plan prior to the successful completion of treatment.
- (c) The OTP shall have written policy and procedure stating these guidelines when a patient is transferring to another clinic or level of care.
 - (1) The admitting program shall obtain from the patient an authorization for disclosure of confidential information, for the purpose of obtaining accurate and current information concerning the patient's treatment at the former program.
 - (2) The medical director or program physician shall not allow the patient to attend the clinic less frequently than the most recent schedule allowed at the former program unless:
 - (A) Copies of the patient's records are obtained to sufficiently document the patient's satisfactory adherence to all relevant federal and state regulations for the required time in treatment; and
 - (B) the physician has completed an evaluation of the patient.
 - (3) At a minimum, staff from the admitting program shall document in the patient record and staff from the

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transferring program must provide the following information before the initial dose of methadone or buprenorphine is administered to a transfer patient:

- (A) The last date and amount of opioid treatment medication drug administered or dispensed at the former program;
 - (B) The length of time in continuous treatment;
 - (C) The most recent record of clinic attendance;
 - (D) The name, address, and telephone number of the program contacted;
 - (E) The date and time of the contact; and
 - (F) The name of the program employee furnishing the information.
- (d) Compliance with 450:70-6-17.8 may be determined by:
- (1) A review of policies and procedures,
 - (2) Treatment records, and
 - (3) Other facility documentation.

PART 4. PEER RECOVERY SUPPORT SERVICES

450:70-6-18. Peer recovery support services

(a) Peer recovery support services are an optional service within certified Opioid Treatment Programs. If provided, the facility shall have written policies specific to peer recovery support services.

(b) Peer recovery support services shall be provided in accordance with OAC 450: 53 and other provisions stipulated in OAC 450 and state statute and shall:

(1) Be based on an individualized, recovery-focused service philosophy that allows individuals the opportunity to learn to manage their own recovery and advocacy process;

(2) Recognize the unique value of services being provided by persons with lived experience who are able to demonstrate their own hopefulness and recovery;

(3) Enhance the development of natural supports, coping skills, and other skills necessary to function as independently as possible in the community, including, but not limited to assisting re-entry into the community after a hospitalization or other institutional settings.

(c) Peer Recovery Support Services shall be provided only by staff certified as a Peer Recovery Support Specialist (PRSS) in accordance with OAC 450:53.

(d) The facility shall retain records to verify compliance with training and certification requirements of each provider of this service.

(e) Facilities offering these services shall have provisions in place for direct supervision and other supports for staff providing this service.

(f) Compliance with this Section shall be determined by a review of the following: clinical records, policy and procedures, and facility personnel records.

[OAR Docket #17-587; filed 7-6-17]

TITLE 490. OKLAHOMA STATE BOARD OF EXAMINERS FOR LONG TERM CARE ADMINISTRATORS CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #17-475]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions

490:1-1-2. Definitions [AMENDED]

Subchapter 5. Investigative Procedures

490:1-5-2. Receipt of referrals, ~~and~~ reports ~~and~~ notifications [AMENDED]

Subchapter 7. Fees and Deposits

490:1-7-1. Fees and deposits [AMENDED]

490:1-7-2. Schedule of fees [AMENDED]

Subchapter 9. Continuing education

490:1-9-1. General provisions for continuing education programs [AMENDED]

490:1-9-2. Criteria for continuing education programs [AMENDED]

490:1-9-4. Continuing education requirements [AMENDED]

490:1-9-5. Auditing of continuing education hours [AMENDED]

AUTHORITY:

Oklahoma State Board of Examiners for Long Term Care Administrators; 63 O.S., §§ 330.51 et seq.

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The purpose of the rule changes is to update the requirements for long term care administrators in Oklahoma. The proposed changes: add, delete and clarify definitions used in this Chapter; add/delete language in order to clarify how the Board addresses survey results when notified by the Health Department of substandard quality of care; clarifies how payments are to be made without changing any fee structures; adds clarifying language where needed as a matter of housekeeping of the rules; clarifies due to a statute change that fees for state exams are applicable only when the agency administers the exam; allow presenters to be given credit for continuing education and for administrators who present in our administrators university to also be awarded continuing education; clarifies language regarding the auditing of continuing education.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 1. GENERAL PROVISIONS

490:1-1-2. Definitions

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

"Accredited college or university" means a college or university that is domiciled within the United States and that is accredited by: the North Central Association of Colleges and Schools, The Higher Learning Commission; the Southern Association of Colleges and Schools, Commission on Colleges; the Western Association of Schools and Colleges, Accrediting Commission for Senior Colleges and Universities; the New England Association of Schools and Colleges, Commission on Institutions of Higher Education; the Middle States Association of Colleges and Schools, Middle States Commission on Higher Education; or the Northwest Commission on Colleges and Universities.

"Administrator-In-Training" or "AIT" means: an individual serving a Board-approved internship within the facility type for which he is seeking licensure/certification under the supervision of a preceptor 'certified' by the Board. Individuals serving an AIT internship may also be referred to herein as 'intern/trainee'.

"Administrator" means any individual duly licensed or certified by the Board regardless of the role or function he performs.

"Adult Day Care (ADC) Administrator" means a long term care administrator (or director) duly licensed by the Board to serve in this capacity in an Adult Day Care Center. The scope of practice of an individual licensed as an Adult Day Care Administrator is limited to a licensed Adult Day Care Center.

"Adult Day Care (ADC) Center" shall have the same meaning as such term is defined in the Adult Day Care Act, Title 63 O.S. Section 1-870 et seq.

"Adverse action" means revocation or suspension of a license, reprimand, censure or probation; any other loss of or restriction placed upon the license, including, but not limited to, the right to apply for, or renew a license; voluntary surrender in lieu of discipline, non-renewal (excluding nonrenewal due to non-payment of fees, or retirement); administrative fines and any other negative action or finding by the Board.

"Assistant Administrator" as used herein means an individual who has been 'certified' by the Board as having met the minimum qualifications established by the Board to be able to

serve as a full-time, Assistant Administrator in a licensed long term care nursing facility, and who acts under the direction, supervision and license of a licensed administrator who is the "Administrator-of-Record" at two-or-more licensed facilities which are located within a 50-mile radius of each other and wherein the total occupied bed count does not exceed 120 beds.

"Assisted Living Center" shall have the same meaning as such term is defined in the Continuum of Care and Assisted Living Act, Title 63 O.S. Section 1-890.1 et seq. Also known as an Assisted Living Facility (ALF).

"Board" means the Oklahoma State Board of Examiners for Long Term Care Administrators (OSBELTCA) or its staff.

"Certification" contextually, prior to the effective date of these rules, means the authorization granting a person the privilege of serving as a long term care administrator and continues until licensed in accordance with these rules or until October 1, 2012, whichever occurs first. The exception is the certified assistant administrator (CAA) which this Board continues to certify. Certification after the effective date of these rules pertains to the completion of training at an approved institution of higher learning or other body conducting such training (except Administrator University for Nursing Home Administrators and Board conducted training for Adult Day Care administrators). The institution or body certifies that the individual has been properly and completely trained and is prepared, as a prerequisite, for the state standards exam and/or NAB RC/AL exam. Certification of training is a step in the licensure process for RC and RC/AL licensure.

"Continuum of Care Facility" shall have the same meaning as such term is defined in the Continuum of Care and Assisted Living Act, Title 63 O.S. Section 1-890.1 et seq.

"Degree equivalency evaluation" means an equivalency evaluation of a degree that was earned from a college or university not domiciled in the United States against a degree earned from an 'accredited college or university' (see definition earlier herein) that is performed by one of the following:

- (A) Educational Credential Evaluators (ECE)
- (B) Educational Records Evaluation Service (ERES)
- (C) International Education Research Foundation Credentials Evaluation Service (IERFCES)
- (D) World Education Services (WES)

"Formal Complaint" means a formal allegation by the Board that probable cause exists that an individual licensed as a long term care administrator has violated applicable statutes and/or rules. These allegations are written in a legal document filed with the Board by its prosecuting attorney.

"Intermediate Care Facility for the Mentally Retarded (ICF/MR)" means a facility whose primary purpose is to provide health and rehabilitative services for persons with mental retardation or a related condition, and otherwise meets the Conditions Of Participation (COPs) found at 42 CFR §483.400 et seq. ICF/MR is synonymous with the term ICF/IID (intermediate care facility for individuals with an intellectual disability).

"Intermediate Care Facility for the Mentally Retarded, 16 Beds and Less (ICF/MR-16)" means a facility with sixteen (16) or fewer licensed resident beds that serves

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persons with mental retardation or with related conditions and that otherwise meets the Conditions Of Participation (COPs) found at 42 CFR §483.400 et seq.

"Lapsed License" or **"Expired License"** means a license that is no longer valid because the licensee failed to ~~timely~~ renew his/her license by the renewal deadline, causing the license to lapse or expire.

"License" means the written authorization of the Board granting a person the privilege of serving as a long term care administrator for a specific period of time, and further, a legal instrument obligating that person to adhere to the rules, regulations and statutes that govern the license.

"Licensing Year" shall mean the specific period of time a license/certification issued by the Board is valid. For purposes of these Rules, the term "licensing year" shall have the same meaning as "calendar year", the time period beginning at 12:01 a.m., January 1, and ending as of 12:00 midnight, the same December 31. ~~A long term care administrator's license/certification is valid for one year.~~

"Long Term Care" primarily for the purposes of this board, as used herein, includes care given at facilities where a licensed long term care administrator is required such as a nursing facility, assisted living facility, residential care facility or an adult day care center. It does not encompass temporary care situations such as a swing bed hospital.

"National Association of Long Term Care Administrator Boards" ("NAB") is composed of state boards or agencies responsible for licensing long term care administrators. The basic objective of the NAB is to assist these boards and agencies in carrying out their statutory and regulatory responsibilities in the licensure, re-licensure and regulation of long term care administrators. One of NAB's functions is the development and administration of the national long term care administrator or Nursing Home Administrator (NHA) examination, as well as the Residential Care/Assisted Living (RC/AL) examination.

"NAB Domains of Practice" refers to the tasks performed by a long term care administrator and the knowledge, skills and abilities identified by NAB as necessary to perform those tasks in its professional practice analysis. The NAB Domains of Practice can be found on the National Association of Long Term Care Administrator Boards (NAB) website at www.nabweb.org.

"Notification by OSDH" refers to the OSDH (Oklahoma State Department of Health) notifying the Board of survey results of a nursing facility that include a substandard quality of care citation. A notification may become a referral.

"Nursing Home, Nursing Facility, Long Term Care Facility, Specialized Home, and Specialized Facility" shall have the same meanings as the term "Nursing Facility" as such term is defined in the Nursing Home Care Act, Title 63 O.S. Section 1-1901 et seq. and/or as defined at 42CFR §483.1 et seq.

"Nursing Home Administrator (NHA)" means a long term care administrator duly licensed by the Board to serve in this capacity in a nursing facility, nursing home, skilled nursing facility or any similarly worded facility type. Their scope of practice includes ICF/MR, RCF, ALF and Adult Day

Care Centers and the term is synonymous with nursing facility administrator.

"Preceptor" means an individual qualified by training and experience, who is currently licensed as a long term care administrator in Oklahoma, is 'certified' by the Board as a qualified preceptor and is charged with coordinating the training of an AIT intern/trainee who is enrolled in a Board- approved Administrator-in-Training (AIT) internship program.

"Probation" is a condition(s) imposed for a specified period of time at the initial issuance of a license or contained in an order resulting from a complaint against the administrator.

"Provisional license" means the temporary authority to serve as a long term care administrator as granted by the Board to an individual of good character who meets appropriate conditions and requirements prescribed by the Board.

"RC/AL Administrator" means a long term care administrator duly licensed by the Board to serve in this capacity in either an RCF or ALF. The scope of practice of an individual licensed as an RC/AL administrator is limited to either a licensed Residential Care Facility (RCF) or a licensed Assisted Living Facility (ALF).

"Referral" or "Report" means an issue or concern regarding a long term care administrator that has been reduced to writing and is forwarded to the Board for a determination as to whether a violation of the Board's Rules has occurred. Such referral or report may be made by an individual or agency.

"Residential Care (RC) Administrator" means a long term care administrator duly licensed by the Board to serve in this capacity in only an RCF. The scope of practice of an individual licensed as a Residential Care Administrator is limited to a licensed Residential Care Facility (RCF).

~~**"Referral or Report"** means an issue or concern regarding a long term care administrator that has been reduced to writing and is forwarded to the Board for a determination as to whether a violation of the Board's Rules has occurred. Such referral or report may be made by an individual or agency.~~

"Residential Care Home" or "Residential Care Facility (RCF)" shall have the same meaning as such term is defined in the Residential Care Act, Title 63 O.S. Section 1-819 et seq.

"Revocation" or "Revoked License" is a sanction imposed upon a license/certificate by the Board that results in a complete loss of license/certificate and all privileges attendant thereto and requires holder to surrender his license/certificate, the annual license/certification renewal card and all other license or certificate-related documents to the Board.

"Specialized facility" shall have the same meaning as such term is defined in the Nursing Home Care Act, Title 63 O.S. Section 1-1901 et seq.

"Suspension" or "Suspended License" is a sanction imposed upon a license/certificate by the Board. The licensee retains his license/certificate and his annual renewal card and therefore must renew the license, yet he shall not function in the capacity as a long term care administrator until the Board determines that conditions responsible for the suspension no longer exist, any or all other restoration requirements imposed by the Board have been met, and the Board has restored his status.

SUBCHAPTER 5. INVESTIGATIVE PROCEDURES

490:1-5-2. Receipt of referrals, and reports and notifications

- (a) Any person or any person on behalf of a recognized legal entity may file a written referral or report with the Board by submitting the same via U.S. Mail, via electronic mail, via the Board's web-based electronic report form or by delivering the same in person to the Board's office.
- (b) Anonymous referrals or reports shall not be accepted.
- (c) A report shall be generated by the Board or Board staff when information obtained from the media, law enforcement, any regulatory agency, or any other source indicates a violation may have occurred.
- (d) The Board shall reduce to writing a verbal report received by phone or in person.
- (e) If the individual making the report is a facility resident, the resident's personal or legal representative, or a current employee of the facility, the Board shall keep the individual's identity confidential.
- (f) 'Paper' referrals or reports received by Board staff shall be received with a 'date stamp' as to the date the same were received in the Board's office, or, as applicable, by the electronic 'date stamp' created when the electronic version of the referral or report was either created/sent or electronically received by Board staff.
- (g) When the Board receives notification of survey results by the Oklahoma State Department of Health (OSDH) that involve substandard quality of care; OR otherwise obtains information about events or incidents that may implicate an administrator as possibly having violated any of the Board's rules, such as through any form of news media, this information shall be reviewed by a person appointed by the Board, and shall determine whether the information should be referred to the Probable Cause Committee.

SUBCHAPTER 7. FEES AND DEPOSITS

490:1-7-1. Fees and deposits

- (a) All fees, fines and costs collected by the Board under the provisions of 63 O.S. Sections 330.51 et seq. shall be deposited with the State Treasurer within twenty-four (24) hours of receipt, in a fund to be known as the Oklahoma State Board of Examiners for Long Term Care Administrators Revolving Fund. This fund may be used for the purposes of the Board as provided in the Statutes.
- (b) Fees, fines and costs received by the Board for any purpose described herein, all of which shall be payable to the Board online via credit or debit card payment, shall become the exclusive property of the Board and shall not be refunded in whole or in part for any reason or purpose without Board the Executive Director's approval. The Board does not accept checks or cash payments.

(c) The following fees as listed within 490:1-7-2, are due and payable to the Board, in full, immediately upon assessment by the Board:

- (1) ~~Returned Check Fees~~ or Fees for Non-Sufficient Funds (NSF) related to Electronic Funds Transfers;
- (2) Late Fees; and/or
- (3) Late Fees for Failure to Provide Current Contact information.

(d) Unless otherwise agreed to in writing by the Board, all other fees charged by the Board are due and payable to the Board, in full, on-or- before the date the Board or Board staff is to take action on the item wherein a fee is specified.

(e) Failure to timely pay Administrative fees assessed by the Board may subject the individual to additional Board sanction(s), including license suspension or revocation.

490:1-7-2. Schedule of fees

- (a) Initial Long Term Care Administrator License - \$200.00
- (b) Annual Renewals
 - (1) NHA License - \$200.00;
 - (2) Certified Assistant - \$75.00;
 - (3) RC/AL License - \$175.00;
 - (4) RC License - \$100.00;
 - (5) ADC License - \$100.00;
- (c) Late Fee - \$100.00 for each calendar week, or portion thereof, a licensee fails to timely meet the requirements of a deadline or due date established or agreed to, in writing, by the Board.
- (d) Pre-Licensing File Origination and Maintenance fee - \$100.00
- (e) Provisional License (per application) - \$200.00
- (f) Name Change on "Certificate of License" (per request) - \$25.00 (documentation of a legal name change shall be required, such as a marriage certificate or other legal document)
- (g) Endorsement Licensure Questionnaire (per request) - \$50.00
- (h) Replacement "Certificate of License" (due to loss or damage) - \$25.00
- (i) State Standards Review (per person) - \$100.00
- (j) State Standards Examination Packet - \$50.00
- (k) State Standards Examination - \$100.00 per examinee (when administered by OSBELTCA)
- (l) State Standards Examination, unscheduled examination - \$500.00 per examinee (when administered by OSBELTCA)
- (m) Board-Sponsored Educational Workshop (per day) - up to \$1,000 per attendee.
- (n) Photocopies (per page) - \$0.25
- (o) Rules and Regulations (paper copy), per page - \$0.25
- (p) Administrator-In-Training (AIT) Program: Internship Permit (per intern/trainee) - \$350.00
- (q) Continuing Education Program Approval Fee (per credit hour) - \$55.00
- (r) Mailing List on Plain Paper (per page) - \$0.25
- (s) Electronic Mailing List - \$10.00
- (t) Returned Check Fee or Fee related to Non- Sufficient Funds (NSF) to cover an Electronic Funds Transfer (EFT) - \$30.00

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- (u) Late Fee for Failure to Provide Current Contact and/or Employment Information - \$75.00
- (v) Fee for Administrator University - Not to exceed \$200.00 per day
- (w) Convenience Fee for Online Licensure Renewal - Determined by Intermediary
- (x) Review by Board in order to determine whether or not an individual applicant meets the minimum requirements to be able to serve as ~~an~~ a Certified Assistant Administrator - \$200.00
- (y) License Application processing fee - \$100.00 (valid for one year).
- (z) Temporary licensure fee - \$200.00 (wherein the Executive Director may issue a temporary license, upon request by the applicant and with all requirements being met, expiring at the next Board meeting date when the Board would issue a license, enabling one who is qualified to work while waiting for the next Board meeting).

SUBCHAPTER 9. CONTINUING EDUCATION

490:1-9-1. General provisions for continuing education programs

- (a) In order to receive Board recognition and continuing education credit, continuing education programs shall be submitted to the Board for approval prior to presentation as indicated under this Chapter.
- (b) All continuing education programs submitted to the Board for its evaluation and possible 'approval' for purposes of granting Oklahoma continuing education credit hours shall be submitted with a \$55.00 per credit hour, non-refundable fee. Approval will be granted only for specific programs for specific dates of presentation. The Board shall waive this fee for programs sponsored by ~~other~~ State or federal agencies. Recurring presentations also require Board approval, but may be considered and approved by the Board based upon a report of program changes from the previously-approved program.
- (c) The Board may withdraw approval for continuing education credit should subsequent information come to its attention that program content differed from that approved.
- (d) Sponsors shall be responsible for obtaining satisfactory documentation of attendance and submission of the attendance records to the Board.
- (e) All programs approved by the National Continuing Education Review Service (NCERS), National Association of Long Term Care Administrator Boards (NAB) that receive a NCERS/NAB approval number will be presumptively accepted by the Board for purposes of meeting Oklahoma's annual continuing education requirements.
- (f) The Board may approve, sponsor and/or conduct its own educational and training programs for continuing education credit if such programs meet the criteria established in this Chapter.
- (g) The Board reserves the right to monitor any and all approved programs.
- (h) Programs that deal specifically with internal affairs of an organization do not qualify for continuing education hours.

- (i) Programs from the Administrator University may qualify for continuing education hours if they meet the criteria outlined in this Chapter and have been so approved by the Board.
- (j) Sponsors, at their discretion, may award partial credit for attendees who they deem have been late, left early, or otherwise not ~~participating~~ participated in the full activities of the program. The Board approval for a program is for "up to" the number of hours approved and it is the responsibility of the sponsor to judiciously grant credit. This also allows the sponsor to award fewer hours in the event of ~~such~~ unplanned changes to ~~the~~ his program such as a scheduled speaker being unable to make ~~his~~ presentation. Failure to protect the integrity of the hours approved on the part of the sponsor could result in future denial of program approval by the Board.

490:1-9-2. Criteria for continuing education programs

- (a) In order for the Board to approve a program for continuing education hours, an application shall be completed by the sponsor and reviewed and approved by the Board.
- (b) Sponsors shall submit their application to the Board at least 30 days in advance of the program, provided however, should the Board fail to meet through lack of a quorum or other circumstance, the application will be reviewed at the next meeting of the Board and if approved, hours will be awarded retroactively.
- (c) The application shall contain documentation that certifies the following criteria are being met:
 - (1) The program shall relate to Long Term Care Administration and be designed to promote continued knowledge, skills and attitudes consistent with current standards in long term care administration.
 - (2) The program shall be designed to assist administrators to improve their professional competencies.
 - (3) The program shall be open and available to all long term care administrators in Oklahoma.
 - (4) The facility where the program will be conducted shall provide adequate space to accommodate potential attendees and have the ability to supply the needed equipment.
 - (5) The faculty/instructors must have experience in long term care supervision and administration, or have expertise in teaching and instructional methods suitable to the subject presented, or have suitable academic qualifications and experience for the subject presented.
 - (6) The learning objectives in the program must be reasonable and clearly stated in behavioral terms which define the expected outcomes for participants.
 - (7) The learning objectives must be consistent with the program content and the mechanism by which learning objectives are shared with participants must be identified.
 - (8) The teaching methods in the program must be clearly stated, must be appropriate to the subject matter, and must allow suitable time.
 - (9) Instructional aids and resource materials that will be utilized in the program must be described.
 - (10) Sponsors should be qualified in the subject matter presented. The Board, in its sole discretion, may approve

programs from an accredited educational institution, a professional association and/or trade association, a private educational group, or a state agency, or from another source if the program content is deemed to be of sufficient value to Oklahoma long term care administrators.

- (11) The registration fee for a program must be published clearly on promotional material.
- (12) Registration fees may be reviewed by the Board.
- (13) The sponsor must allow the Board to evaluate the program.
- (14) The sponsor must provide an evaluation form, approved by the Board, for each program participant's responses.
- (15) Within 15 days after the conclusion of the program, the sponsor must provide to the Board a list of participants and a summary of the evaluations for each program.
- (16) The application presented to the Board must state the method to be used in certifying attendance or on-line completion.
- (17) To receive full credit, attendees must attend the full program and/or log-in for on-line attendance for the full program. See also 490:1-9-1(j).
- (18) Partial credit of a minimum of two clock hours may be earned in a divisible program.
- (19) Instructional hours must be based upon clock hours (60 minutes = 1 clock hour).
- (20) The agenda must show registration, meal times (not included in credit hours), and a breakdown of the daily educational activities.
- (21) The maximum number of hours that can be approved or earned shall be seven clock hours per day.
- (22) The target group for programs shall be long term care administrators and other disciplines related to long term care.
- (23) Licensed administrators who are "presenters" of approved CE programs may receive credit one time annually for the clock hour value of the class(es) they present. If the material is presented multiple times, credit is only awarded once per licensure year for the same educational material.
- (24) Licensed administrators who present in Administrators University (AU) or other Board approved entry level training such as RC, RCAL or Adult Day Care initial licensure training, will receive CE credit one time annually for the clock hour value of the material they present.

490:1-9-4. Continuing education requirements

- (a) Each licensee shall be responsible for identifying his own continuing education needs, taking the initiative in seeking continuing professional education activities to meet those needs, and integrating new knowledge and skills into his duties.
- (b) Individuals who are newly licensed as a nursing home or ICF/MR administrators or certified as Assistant Administrators are required to successfully complete continuing education hours equivalent to a rate of two (2) hours per month, beginning with the month following the month his license/certificate is issued, for each month he holds the license/certificate during the current licensing year. For certified assistant administrators, this is a condition of employment.

(1) Individuals who are newly licensed as RC/AL administrators are required to successfully complete continuing education hours equivalent to a rate of one and one-half (1.5) hours per month, beginning with the month following the month their license is issued, for each month they hold the license during the current licensing year.

(2) Individuals who are newly licensed as RC only administrators are required to successfully complete continuing education hours equivalent to a rate of 1.3 hours per month, rounded up to the next half hour increment (e.g., 1.3 = 1.5; 2.6 = 3), beginning with the month following the month their license is issued, for each month they hold the license during the current licensing year.

(3) Individuals who are newly licensed as Adult Day Care administrators are required to successfully complete continuing education hours equivalent to a rate of one (1) hour per month, beginning with the month following the month their license is issued, for each month they hold the license during the current licensing year.

(c) Licensees holding a nursing home administrator license and Certified Assistant Administrators shall successfully complete twenty-four (24) clock hours of continuing education (commonly referred to as CEUs or continuing education units) during each licensing year. For Certified Assistant Administrators this shall be a condition of employment.

(1) RC/AL administrators shall successfully complete eighteen (18) clock hours of continuing education during each licensing year.

(2) Residential Care ~~only~~ administrators shall successfully complete sixteen (16) clock hours of continuing education during each licensing year.

(3) Licensed Adult Day Care Administrators ~~are required~~ shall successfully complete twelve (12) clock hours of continuing education during each licensing year.

(d) Licensees/certificate holders are responsible for maintaining their own continuing education records.

(e) Carry-over of continuing education hours earned in one licensing year that were in excess of the hours required for that year to a subsequent licensing year is not permitted.

(f) Licensed administrators who have attended and received credit for previously approved program content shall be denied credit for attending subsequent duplicate programs in the same calendar year.

(g) A licensee/certificate holder who cannot meet the continuing education requirement due to illness, emergency or hardship may petition the Board, in writing, requesting a waiver of the clock hour requirement. Any such waiver request must be received and acted- upon by the Board prior to the end of the licensing period in which the CE requirement will not be met. The waiver request shall explain why compliance is not possible, and include appropriate documentation. Waiver requests will be evaluated and acted upon by the Board on a case-by-case basis.

(h) In the event a licensee fails to provide the Board, upon request, with documentation that the continuing education requirements have been met, the licensee will be subject to sanction by the Board, which may include suspension or revocation of his license. This is ~~always~~ considered a reportable

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offense ~~even~~ on the first offense and will appear as a violation in the Registry and NPDB.

(i) A licensee whose license is suspended by the Board for disciplinary reasons is not exempt from the continuing education requirements, and must, therefore, successfully complete the required number of continuing education hours commensurate with his license/certificate type during any licensing year(s) in which his license is under suspension. Licensee shall, upon Board request, furnish documentation that the continuing education requirements have been met. Failure to provide such requested documentation shall subject licensee to sanction by the Board, including further suspension or revocation of his license.

(j) All CE hours earned for programs approved by the NCERS/NAB or approved by the Board may be utilized by a licensee for purposes of meeting the annual CE requirement in the licensing period in which the hours were earned.

490:1-9-5. Auditing of continuing education hours

(a) The Board may request continuing education information from sponsors for audit purposes only.

(b) The Board does not retain any record of continuing education hours completed by individual administrators except as it may otherwise obtain in its performance of the annual CE compliance audit.

(c) An annual audit of at least 5% of the total number of each type of administrator will be made to verify compliance with the annual CE requirement. This percentage may be increased at the Board's discretion. If a license is not renewed by the last day of the current licensing year, an audit to verify compliance with the annual CE requirement shall be conducted prior to reinstatement of the license.

(d) Failure of a licensee to provide verification of continuing education hours completed, if requested by the Board, shall result in disciplinary action against the licensee. The minimum penalty for a first time offense is \$50.00 per clock hour ~~short not completed~~ and completion of twice the number of clock hours ~~short not completed~~, due within 120 days. These clock hours cannot be applied to the current year's requirements. This is also a NPDB (National Practitioners Data Bank) reportable offense. For a second offense, the penalty will double. Any subsequent offenses shall be referred to the Board for determination of an appropriate penalty which may include suspension or revocation. The Administrator shall be informed in writing prior to the drafting of an order that they may also request a formal hearing before the Board in lieu of the "standard" penalty for either the first or second time offense, in which case a formal complaint shall be drafted and the Board shall have a full range of penalty options available to them, to include suspension and revocation. These automatic penalties for the first and second offense do not require Board approval; however, any variation from this "standard" will require Board approval. A formal complaint and appropriate order will still be drafted by the Board's attorney and the action taken shall be reported to the Board.

[OAR Docket #17-475; filed 6-21-17]

TITLE 490. OKLAHOMA STATE BOARD OF EXAMINERS FOR LONG TERM CARE ADMINISTRATORS CHAPTER 10. LONG TERM CARE ADMINISTRATORS

[OAR Docket #17-476]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. Licensing of Long Term Care Administrators

490:10-1-2.1. General requirements that must be met by each applicant [AMENDED]

490:10-1-3. Requirements for initial license for nursing/skilled nursing facility (includes ICF/MR ~~administrators~~ administrator (also known as nursing home ~~administrators~~ administrator) [AMENDED]

490:10-1-3.1. Requirements for initial licensure for residential care/assisted living (RC/AL) administrators [AMENDED]

490:10-1-3.3. Requirements for initial licensure for residential care (RC) administrators [AMENDED]

490:10-1-3.5. Requirements for initial licensure for adult day care (ADC) administrators [AMENDED]

490:10-1-4. Requirements for licensure by ~~interstate~~ endorsement for long term care administrators [AMENDED]

490:10-1-5. Requirements for a provisional license as a nursing home administrator or residential care/assisted living (RCAL) administrator

Subchapter 3. Application for Long Term Care Administrator Licensure

490:10-3-1. Application for initial licensure, licensure by ~~interstate~~ endorsement, or provisional license [AMENDED]

490:10-3-2. National examination [AMENDED]

490:10-3-3. State Standards examination [AMENDED]

490:10-3-4. Admission to the State Standards and National Examinations [AMENDED]

490:10-3-5. Application for licensure renewal [AMENDED]

Subchapter 5. Discipline

490:10-5-3. Disciplinary action [AMENDED]

Subchapter 7. Administrator University

490:10-7-3. General provisions [AMENDED]

Subchapter 8. Administrator-In-Training (AIT) Internship Program for Nursing Home Administrators

490:10-8-2. Application [AMENDED]

490:10-8-3. Training permit [AMENDED]

490:10-8-5. Preceptor qualifications [AMENDED]

490:10-8-8. Preceptor's final report [AMENDED]

490:10-8-13. AIT time on the job [AMENDED]

490:10-8-17. Supervision of AIT interns/trainees [AMENDED]

Subchapter 13. Standards for Administrators

490:10-13-1. Administrator Code of Ethics [AMENDED]

490:10-13-2. Administrator responsibilities [AMENDED]

490:10-13-3. Requirements for administrators who serve as the Administrator-of-Record of two (2) or more licensed long term care (nursing) facilities located within a fifty (50) mile radius of each other, wherein the total number of occupied beds does not exceed one-hundred-twenty (120) beds and wherein one-or-more individuals is/are employed in a Certified Assistant Administrator capacities [AMENDED]

AUTHORITY:

Oklahoma State Board of Examiners for Long Term Care Administrators; 63 O.S., §§ 330.51 et seq.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

January 26, 2017

COMMENT PERIOD:

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Approved by Governor's declaration on June 13, 2017

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September 11, 2017

SUPERSEDED EMERGENCY ACTIONS:

Superseded rules:

Subchapter 3. Application for Long Term Care Administrator Licensure 490:10-3-3 [AMENDED]

Gubernatorial approval:

December 22, 2016

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INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The primary purpose of the proposed rulemaking action is to continue to follow up on the statutory changes effected by Enrolled House Bill No. 2282 of the 2016 Regular Session. It also is a housekeeping exercise where we have clarified some of the language and cleaned up some grammar issues in the document. The proposed changes, updates and add definitions, and revises language to standardize our language with other relevant statute/rules changes and improves the clarity of the intent of the document.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 1. LICENSING OF LONG TERM CARE ADMINISTRATORS

490:10-1-2.1. General requirements that must be met by each applicant

- (a) Applicants shall not be less than twenty- one (21) years of age at the time the license is issued.
- (b) Each applicant shall be a United States citizen, or be a qualified alien under the Federal Immigration and Naturalization Act and lawfully residing in the United States.
- (c) Each applicant must establish to the satisfaction of the Board that the applicant is of reputable and responsible character.
- (d) Each applicant shall submit to a criminal background check. If the results of a criminal background check reveal that the applicant has been convicted of or pleaded guilty or *nolo contendere* to any felony or to any misdemeanor involving moral turpitude, the individual's application for licensure may be disapproved.
- (e) Each applicant shall report to the Board any adverse action taken by any licensing or certification entity in any jurisdiction. The Board shall examine the reasons for the action(s) and may consider this information in granting or denying a license. The applicant is required to report all jurisdictions where they've held a license and/or applied for licensure and

been denied. Licensure denial is an adverse action and is required to be reported to the NPDB.

(f) Each applicant shall be in compliance with State income tax requirements pursuant to 68 O.S., 238.1.

(g) Each applicant shall remit any and all required fees associated with obtaining a license, including any outstanding fees or fines.

(h) Each applicant Applicants must have a working ability in the English language sufficient to communicate, both orally and in writing, with residents, family members, employees, the general public, and representatives of State and federal agencies and to engage in the practice of long term care administration.

(i) Each applicant shall meet all other appropriate conditions and requirements as may be prescribed by the Board.

(j) When the Board denies an application for licensure, the Board will not reconsider such denial. A person cannot reapply for licensure until one year ~~after denial of the application has passed of the date of denial.~~

(k) The application shall be considered incomplete until all requirements have been met, to include any additional requirements prescribed by the Board for each license type. Board conducted training includes Administrator University and any initial qualification training such as the optional reviews for exams or Adult Day Care training. Approved initial qualification training conducted externally, such as training approved for RC or RCAL licensure, is not considered "Board conducted" and those applicants have to meet the prerequisites prior to testing or attending any "Review" courses the Board may offer.

(l) In accordance with the requirements detailed at 59 O.S. 4100.4(A), it shall be incumbent upon the applicant to bring any equivalent education, training and experience completed while in the Armed Forces to the attention of OSBELTCA staff during the application process. The staff shall accept and apply satisfactory evidence of this equivalent education, training and experience in a manner most favorable to the satisfying qualification requirements of the license and/or approval for license examination(s).

490:10-1-3. Requirements for initial licensure for nursing/skilled nursing facility (includes ICF/MR) ~~administrators~~ administrator (also known as nursing home ~~administrators~~ administrator)

(a) In addition to the general requirements found in this Chapter, each applicant for initial licensure shall meet the requirements in this Section.

(b) Each applicant shall provide, or shall cause to be provided, written evidence satisfactory to the Board of the following:

(1) "Official Proof" [see 490:10-3-1.1. (relating to evidence requirements)] of successful completion of a formal program or program(s) of study, wherein applicant received, at a minimum, a bachelor's degree:

(A) applicant received a bachelor's degree from a college or university accredited by one of the regional accreditation organizations recognized by the U.S.

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Department of Education and the Board if the applicant's degree is from a school domiciled in the United States; or

(B) if the applicant received his degree from a college or university domiciled outside the United States [and, as such, the college/university does not fall under the accreditation purview of any of the six (6) regional accreditation organizations recognized by the U.S. Department of Education and by the Board], applicant shall, at applicant's expense, cause a degree equivalency evaluation of his degree to be performed and the results sent directly to the Board. The Board shall assess the results of this degree equivalency evaluation and, at its sole discretion, determine if applicant's education and/or degree are equivalent, at a minimum, to a bachelor's degree earned from a regionally accredited college or university;

(2) Receipt of a passing score on the national "NAB" NHA examination conducted by the National Association of Long Term Care Administrator Boards (NAB).

(3) Receipt of a passing score on the Oklahoma State Standards examination within the twenty-four (24) months preceding the month in which the Board will be taking action to license the applicant, and if applicant is not licensed during this 24-month time period, applicant will have to pay all required fees and re-take the examination prior to any future licensing attempts;

(4) Successful completion of Administrator University within the twenty-four (24) months preceding the month in which the Board will be taking action to license the applicant, and if applicant is not licensed during this 24-month time period, applicant will have to pay all required fees and re-take Administrator University prior to any future licensing attempts (if the candidate has a degree in long term care administration from an institution accredited by NAB, the Administrator University may be waived);

(5) Successful completion of the Administrator-in-Training (AIT) program (or documentation of an equivalent internship as part of a degree in long term care from an institution accredited by NAB) within the twenty-four (24) months preceding the month in which the Board will be taking action to license the individual, and if applicant is not licensed during this 24-month time period, applicant will have to pay all required fees and complete another AIT program prior to any future licensing attempts; and

(6) Payment of the required fee(s).

(c) The Board, at its sole discretion, may waive the Administrator University requirement and/or the Administrator-in-Training requirement if the applicant was previously licensed in Oklahoma as a long term care administrator, was in good standing with the Board while applicant was previously licensed in Oklahoma, and has been active in long term care for at least two (2) of the last five (5) years.

(d) After the Board's staff has determined that all requirements for initial licensure have been met, an applicant may apply for a "temporary" license. The Executive Director may review and approve or disapprove issuance of a temporary

license after an application has been made and additional licensure fees paid. An approved temporary license shall expire at the next regularly scheduled meeting of the Board ~~meeting~~ when the application for licensure (no longer temporary) must be approved or disapproved by the Board.

490:10-1-3.1. Requirements for initial licensure for residential care/assisted living (RC/AL) administrators

(a) In addition to the general requirements found in this Chapter, each applicant for initial licensure as an RC/AL administrator shall meet the requirements in this Section. Administrators holding an RC/AL license may serve as an administrator ~~only~~ in either an RCF or ALF.

(b) Each applicant for initial licensure as an RC/AL administrator shall provide, or shall cause to be provided, written evidence satisfactory to the Board of receipt of a high school diploma (or GED) or a higher level of education. When the applicant is providing proof of education beyond high school or GED, the same level of "proof" detailed in paragraph 10-1-3(b) is required.

(c) Each applicant for initial licensure as a RC/AL administrator shall provide, or shall cause to be provided, written evidence satisfactory to the Board of the following:

(1) Current training certification, where "current" is defined as being completed within the twenty-four (24) months preceding the month in which the Board will be taking action to license the individual:

(A) through training from an institution of higher learning whose program has been approved by the Board; or

(B) receipt of a nationally recognized assisted living certificate of training and competency for assisted living administrators that has been reviewed and approved by the Board;

~~(C) All sources of certification previously approved through the Oklahoma State Department of Health requirements shall be presumptively approved by the Board until November 1, 2013 but shall thereafter be required to be reviewed and approved by the Board.~~ Sources of certification are required to be reviewed and approved by the Board. Approved training sources shall include an expiration date on their certification which shall be two years after the date of the completion of their training.

(2) Receipt of a passing score on the Oklahoma State Standards examination for RC/AL administrators within the twenty-four (24) months preceding the month in which the Board will be taking action to license the applicant, and if applicant is not licensed during this 24-month time period, applicant will have to pay all required fees and re-take the examination prior to any future licensing attempts;

(3) Receipt of a passing score on the national "NAB" RC/AL examination conducted by the National Association of Long Term Care Administrator Boards (NAB) and

(4) Payment of the required fee(s).

(5) Training certification required in (b)(1) above is a prerequisite to being able to take the State Standards examination; a passing score on the State Standards exam is a prerequisite to take the NAB RC/AL exam.

(d) The Board, in its sole discretion, may waive re-completion of the training requirement if the applicant was previously ~~certified or~~ licensed in Oklahoma as an RC/AL administrator, was in good standing with the Board while applicant was previously licensed in Oklahoma, and has been active in long term care for at least two (2) of the last five (5) years.

(e) After the Board's staff has determined that all requirements for initial licensure have been met, an applicant may apply for a "temporary" license. The Executive Director may review and approve or disapprove issuance of a temporary license after an application has been made and additional licensure fees paid. An approved temporary license shall expire at the next regularly scheduled meeting of the Board meeting when the application for licensure (no longer temporary) must be approved or disapproved by the Board.

490:10-1-3.3. Requirements for initial licensure for residential care (RC) administrators

(a) In addition to the general requirements found in this Chapter, each applicant for initial licensure as an RC administrator shall meet the requirements in this Section. Administrators holding an RC license may serve as an administrator ~~only~~ in an RCF and may not serve in any other facility type.

(b) Each applicant for initial licensure as an RC administrator shall provide, or shall cause to be provided, written evidence satisfactory to the Board of receipt of a high school diploma (or GED) or a higher level of education. When the applicant is providing proof of education beyond high school or GED, the same level of "proof" detailed in paragraph 10-1-3(b) is required.

(c) Each applicant for initial licensure as a RC administrator shall provide, or shall cause to be provided, written evidence satisfactory to the Board of the following:

- (1) Current training certification (completed within the twenty-four (24) months preceding the month in which the Board will be taking action to license the individual) through training from an institution of higher learning whose program has been approved by the Board;
- (2) Receipt of a passing score on the Oklahoma State Standards examination for RC administrators within the twenty-four (24) months preceding the month in which the Board will be taking action to license the applicant, and if applicant is not licensed during this 24-month time period, applicant will have to pay all required fees and re-take the examination prior to any future licensing attempts; ~~and~~
- (3) Payment of the required fee(s).
- (4) Training certification required in (b)(1) above is a prerequisite to being able to take the State Standards examination.

(d) The Board, in its sole discretion, may waive re-completion of the training requirement if the applicant was previously ~~certified or~~ licensed in Oklahoma as an RC administrator, was

in good standing with the Board while applicant was previously licensed in Oklahoma, and has been active in long term care for at least two (2) of the last five (5) years.

(e) After the Board's staff has determined that all requirements for initial licensure have been met, an applicant may apply for a "temporary" license. The Executive Director may review and approve or disapprove issuance of a temporary license after an application has been made and additional licensure fees paid. An approved temporary license shall expire at the next regularly scheduled meeting of the Board meeting when the application for licensure (no longer temporary) must be approved or disapproved by the Board.

490:10-1-3.5. Requirements for initial licensure for adult day care (ADC) administrators

(a) In addition to the general requirements found in this Chapter, each applicant for initial licensure as an ADC administrator shall meet the requirements in this Section.

(b) Each applicant for initial licensure as an ADC administrator shall provide, or shall cause to be provided, written evidence satisfactory to the Board of the following:

- (1) One of the following:
 - (A) A high school diploma (or GED) AND five (5) consecutive years supervisory experience (full-time or equivalent) in a long term care or geriatric setting; OR
 - (B) A Bachelor's degree AND one (1) year of supervisory experience, preferably in a social or health services setting; Each applicant for initial licensure as an ADC administrator under this provision shall provide, or shall cause to be provided, written evidence satisfactory to the Board of receipt of Bachelor's degree. The same level of "proof" detailed in paragraph 10-1-3(b) is required; OR
 - (C) An active Oklahoma Nursing license (either LPN or RN), in good standing, and two years of nursing experience.

(2) Successful completion of Board approved training for adult day care administrators (completed within the twenty-four (24) months preceding the month in which the Board will be taking action to license the individual);

(3) Receipt of a passing score on the Oklahoma State Standards examination for adult day care administrators within the twenty-four (24) months preceding the month in which the Board will be taking action to license the applicant, and if applicant is not licensed during this the twenty-four (24) month time period, applicant will have to pay all required fees and re-take the examination prior to any future licensing attempts; and

(4) Payment of the required fee(s).

(c) After the Board's staff has determined that all requirements for initial licensure have been met, an applicant may apply for a "temporary" license. The Executive Director may review and approve or disapprove issuance of a temporary license after an application has been made and additional licensure fees paid. An approved temporary license shall expire at the next Board meeting when the application for licensure

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(no longer temporary) must be approved or disapproved by the Board.

490:10-1-4. Requirements for licensure by interstate endorsement for long term care administrators

(a) In addition to the general requirements found in this Chapter, each applicant for licensure by interstate endorsement as a nursing home administrator shall meet the requirements of this Section.

(1) The Board permits licensure for candidates for Nursing Home Administrators from other jurisdictions who have met the following minimum requirements.

(A) Submission to the Board of "Official Proof" of successful completion of a formal program(s) of study and, at a minimum, receipt of a bachelors degree that meets the requirements set forth in 490:10-1-3;

(B) Submission to the Board of evidence of current licensure, in good standing, as a long term care/nursing home administrator, and submission of proof that applicant has:

(i) served full time as the administrator-of-record for the past two (2) consecutive years in a jurisdiction regulated by a licensing authority.; or

(ii) been active as a licensed nursing home administrator in a jurisdiction regulated by a licensing authority for at least two (2) of the past three (3) consecutive years;

(C) Submission to the Board of proof of initial licensure as a long term care/nursing home administrator, including active NAB NHA Exam scores, and proof that such license is in good standing with that licensing authority;

(D) Submission to the Board of full disclosure of any/all pending disciplinary actions or current investigations against applicant as well as any sanctions imposed against applicant's long term care/nursing home administrator license or against any professional license he presently holds or has ever held in any other State or jurisdiction, including, but not limited to: revocation; suspension; 'voluntary surrender'; other licensure restriction(s) that limited applicant's practice under such license; or the assessment of monetary penalties or fines or the assessment of additional CEUs by the licensing entity as a result of disciplinary proceedings. Loss of a professional license due to nonrenewal or failure to obtain the required number of annual CEU hours is excepted from the full and complete disclosure otherwise required herein;

(E) Documentation related to current or previous licensure shall be submitted directly to the Board by the state-appointed authority(ies) regulating the respective license(s); and

(F) Payment of the required fee(s).

(2) The Board, in its sole discretion, shall assess the magnitude of any disciplinary action taken by other licensing authorities in its determination of applicant's eligibility for an Oklahoma license.

(3) In accordance with provisions detailed in 59 O.S. 4100.5(B) and (C), the Board will expedite the approval process for endorsement applicants where the license requirements of the other state are substantially equivalent to Oklahoma requirements. All applicants ~~Applicants otherwise~~ determined eligible for Oklahoma licensure by ~~interstate~~ endorsement, the spouse of an active duty military member, a spouse subject to a military transfer or someone who left employment in another state to accompany the person's spouse to Oklahoma shall be required to sit for and receive a passing score on the Oklahoma State Standards examination and pay the required license fee before a license is granted by the Board through approval of the Executive Director. Only those applicants ~~for licensure by endorsement to whom this applies~~ with a record of any form of disciplinary action by another licensing authority or any other possible negative indicator shall be required to be approved by a vote of the Board. It shall be the sole responsibility of the applicant to notify staff if this expedited pathway to licensure per Title 59 provisions applies to them and to provide satisfactory evidence of the same. A Temporary License may be issued (fees shall not be waived) for those to whom this applies, at their request, upon a complete application and all qualifications being met except having passed the applicable State Standards Examination. The Temporary license shall expire after no more than sixty (60) days from the date of issuance and may only be issued one time per applicant.

(b) There is no licensure by endorsement allowance for licensure for the RC/AL license, the RC license or the Adult Day Care License. All out of state licensure applications for these licensure types shall be treated as initial licensures with the exception of individuals who previously passed the NAB RC/AL exam, shall not be required to re-take that exam, however these individuals must provide proof of having passed that exam to meet Oklahoma licensure requirements.

(c) In accordance with requirements detailed in 59 O.S. 4100.5(A), it shall be incumbent on the applicant to notify OSBELTCA Staff during the application process if the applicant is the spouse of a military service member on active duty in Oklahoma, or is claiming permanent residency in the state for six (6) months prior to active duty or during the period of active duty. Staff will expedite the process to the extent possible. Approval of the license will be in accordance with OAC 490:10-1-4(a)(4) above.

490:10-1-5. Requirements for a provisional license as a nursing home administrator or residential care/assisted living (RC/AL) administrator

(a) To fill a position of administrator that unexpectedly becomes vacant, the Board may grant one (1) provisional license for a single period not to exceed six (6) months. The Board

shall not grant another provisional license to fill a vacancy at the same facility for a period of one year after the date the provisional license is granted.

(b) In addition to the general requirements found in this Chapter each applicant for a provisional license shall meet the requirements of this Section.

(c) A provisional license may be granted to a person who does not meet all of the licensing requirements established by the Board, but who:

- (1) For a provisional nursing home administrator license, has successfully completed a formal program(s) of study and, at a minimum, received a bachelor's degree that meets the requirements set forth in 490:10-1-3(b)(1)(A) or (B).
- (2) Has obtained the services of a currently-licensed Oklahoma long term care administrator to act as an on-site consultant to the provisional licensee;
- (3) Has provided the Board with satisfactory evidence indicating he has at least two (2) years of experience in a long term care facility;
- (4) Has received a passing score on the current applicable Oklahoma State Standards examination; and
- (5) Has paid the required fee(s).

(d) A provisional license shall not be issued to a current AIT and/or AU student unless that student/AIT had previously passed the NAB NHA exam.

(e) The consultant administrator to a provisional licensee must have been employed as an administrator in a comparable long term care facility in Oklahoma for a minimum of the last two (2) years.

(f) The consultant administrator to a provisional licensee shall:

- (1) Provide direct supervision of the provisional licensee for at least eight (8) hours per week with no more than 10 calendar days lapsing between consultant visits to the provisional licensee's facility; and
- (2) Submit monthly evaluation reports on the provisional licensee to the Board no later than the tenth day of each month for the duration of the provisional license.

SUBCHAPTER 3. APPLICATION FOR LONG TERM CARE ADMINISTRATOR LICENSURE

490:10-3-1. Application for initial licensure, licensure by ~~interstate~~ endorsement, or provisional license

(a) Each applicant for licensure as a long term care administrator shall make a verified application on a form furnished by the Board stating the license type for which he is applying and remit a non-refundable application fee as prescribed by the Board at OAC 490:1-7-2.

(b) An application for initial license, for licensure by ~~interstate~~ endorsement or for a provisional license is valid for one year after the date of receipt by the Board.

(c) An applicant shall be deemed to have abandoned the application if he does not fulfill all requirements for licensure within one year from the date of application.

(d) An application for Administrators University (AU) ~~may~~shall be used as an application for initial licensure. However, if this application is over a year old when all requirements have been met, the Board ~~does require that this shall require that the application~~ be updated. Such an application shall be deemed abandoned if it has not been updated within the time restrictions for licensure.

(e) An application for licensure submitted subsequent to the abandonment of a former application shall be treated as a new application and the applicant must meet current requirements for licensure as a long term care administrator.

(f) Upon receipt of an application for licensure, the Board shall request that a criminal history background check be performed on the individual requesting licensure. If the results of a criminal background check reveal that the applicant has been convicted of or pleaded guilty or nolo contendere to any felony or to any misdemeanor involving moral turpitude, the individual's application for licensure may be disapproved and no further action will be taken on the application.

- (g) An application is complete when:
- (1) the application fee prescribed by the Board at OAC 490:1-7-2. has been remitted and deposited to the Board's credit with the State Treasurer (the date of payment of the application fee establishes the date of the application);
 - (2) all documentation required to be submitted along with or in support of the application has been received by the Board;
 - (3) the applicant has met all other requirements for an initial license, for licensure by ~~interstate~~endorsement, or for a provisional license or a certification, as applicable, and
 - (4) the results of the criminal background check have been received by the Board .

(h) Upon verification of compliance with all requirements, an applicant shall be eligible for consideration by the Board for purposes of licensure as a long term care administrator.

(i) ~~The fee is due and payable on notice of eligibility for licensure.~~ A license will not be issued until ~~said~~all fees are fee is paid in full ~~to the Board~~.

(j) The certificate of license shall be presented at the Board meeting when it is approved, if possible, or mailed to the applicant within seven (7) working days of Board's formal grant of license to the applicant. Applicants are encouraged to attend the Board meeting.

(k) A temporary license may also be applied for in accordance with the applicable provisions in paragraph 10-1-3(d), 10-1-3.1(e), 10-1-3.3(e), or 10-1-3.5(c) at the discretion of the applicant.

490:10-3-2. National examination

(a) An individual applying for an initial license must receive a passing score on the applicable exam, either the Nursing Home Administrator ("NHA") examination or the Residential Care/Assisted Living ("RC/AL") exam administered by the National Association of Long Term Care Administrator Board (NAB) (neither is applicable to Residential Care or Adult Day Care administrator applicants). The Board may waive this requirement if the applicant provides evidence that he has

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successfully passed the appropriate NAB examination at a previous time. The NAB's RC/AL (Residential Care/Assisted Living) exam does not meet the requirements for a nursing home administrator license.

~~(b) An individual applying for licensure by interstate endorsement shall not be required to sit for and receive a passing score on the NAB's NHA examination if the applicant provides evidence that he has successfully passed it at a previous time.~~

~~(b) An applicant for licensure by endorsement who has previously passed the required NAB examination will not be required to retake the examination if the applicant provides evidence of a passing score.~~

(c) An individual applying for a provisional license shall not be required to pass the applicable NAB examination to be provisionally licensed.

~~(d) An applicant who fails to pass the appropriate NAB examination may re take the examination four (4) additional times, after which (5 failures) he will have to petition the Board, on each subsequent occasion, to allow him to sit for the examination. The Board, after reviewing the merits of each such petition, will either allow or deny the petition, and if the decision is to deny the petition, may propose other remedies that may increase the potential for the individual to successfully pass this examination on a future attempt (i.e. continuing education, NAB examination study/refreshers course, etc.) prior to applicant re petitioning the Board to allow applicant to re take the examination.~~

~~(ed) Fees for all national examinations shall be in an amount prescribed by and are due and payable to the NAB or its authorized designee.~~

490:10-3-3. State Standards examination

(a) An individual applying for an initial license, licensure by ~~reciprocity endorsement~~, or a provisional license, must, prior to the issuance of the respective license, ~~sit for and~~ receive a passing score on the appropriate State Standards examination for the license for which he is applying. There shall be a separate examination for each type of license. First time applicants for initial licensure shall have received a passing score on the State Standards examination within the twenty-four (24)-months preceding the month in which the Board will be taking action to license the applicant, and if applicant is not licensed during this 24-month time period, applicant will have to pay all required fees and re-take the examination prior to any future licensing attempts. Applicants for licensure by ~~reciprocity/interstate~~ endorsement, applicants for a provisional license and applicants for initial licensure who have previously held an Oklahoma long term care administrator license must, prior to the issuance of the respective license, ~~sit for and~~ successfully pass the applicable current State Standards examination.

(1) Applicants for an initial license must take and pass the appropriate State Standards Examination prior to being eligible for an applicable NAB exam.

(2) Board staff are required to receive the testing results from the testing source to validate the passing scores of all examinations, to include the State Standards Examinations.

~~(b) The application must be complete and supporting documents required by the Board for licensure for an individual to sit for the State Standards examination must be completed and on file with the Board at least thirty (30) calendar days prior to entering training and/or prior to being approved to take the announced applicable examination examination(s) date.~~

~~(c) The Board will periodically schedule examinations and publish the dates and times in a timely manner on the website. Applicants are permitted to take the examination during these scheduled examinations or they may opt to take the examination at a testing facility where it is administered. At least ten (10) calendar days prior the scheduled examination, each applicant eligible to sit for the examination shall be notified of the time and place. State examinations taken in a testing facility shall be scheduled by the candidate when eligible and shall be administered through the same examination procedures as the NAB examinations are conducted, including but not limited to the use of electronic or online methods of examination.~~

~~(d) The Board shall determine as has determined the passing score for the all State Standards examinations to be Seventy-Five percent (75%) or greater, and shall apply such score this standard uniformly to all persons taking the examinations.~~

~~(e) The applicant must have received a passing score on the State Standards examination to be considered for licensure.~~

~~(f) An applicant who fails to pass a State Standards examination may re take the examination three (3) additional times (4 failures). An applicant who fails each of his first four (4) attempts to pass this examination will be required to petition and personally appear before the Board before he may apply to re take the examination. The Board, in its sole discretion, may require that the applicant undergo additional training or education before permitting the applicant to sit for the examination a 5th (or any subsequent) time. Should the Board permit an applicant to sit for the examination a 5th an additional time, and should applicant fail to pass the examination, applicant shall wait for a period of time of not less than one hundred eighty (180) calendar days before petitioning the Board to allow him to again sit for the examination. Applicant shall personally appear before the Board, and the Board, after its consideration of the merits of the petition, may allow applicant to re take the examination, may deny the application, or it may impose other remedies prior to further consideration of the petition.~~

~~(ge) Fees for the State Standards examination administered by the Board shall be in an amount prescribed by the Board at OAC 490:1-7-2. All examination fees must be paid prior to examination.~~

490:10-3-4. Admission to the State Standards and national examinations National Examinations

(a) Upon review of applicant qualifications by Board staff, applicants meeting Board requirements are notified of their eligibility to sit for the State Standards examination. Upon successful completion of Administrator University and a Board-approved AIT program, applicants for initial licensure as nursing home administrators become eligible to sit for the NAB's ("NHA") examination. In all cases, except Residential Care

and Adult Day Care where a NAB exam is not required, taking the appropriate NAB exam is the last step in the process and all other requirements must be met prior to being approved to sit for the national examination. Applicants must meet requirements to sit for a state examination. When a NAB examination is required, they must first pass the state exam.

(b) Applicants for licensure by ~~interstate~~ endorsement, for a provisional license and for a certification as an assistant administrator (nursing facility only) are eligible to sit for the State Standards examination on the next scheduled testing date, or pay the appropriate fee for an unscheduled testing date, or they may schedule the examination through a testing facility that administers the examination.

(c) ~~All applicants~~ Applicants shall be required to agree not to compromise or attempt to compromise the NAB or the Oklahoma State Standards examination by disclosing any information, questions, or answers on these examinations. ~~This agreement shall be documented on~~ Applicants shall complete a "Test Confidentiality and Attestation" form provided by the Board or an online equivalent ~~in the online application process. Prohibited activities which might compromise these examinations include, but are not limited to:~~

- (1) ~~reproducing or assisting another by any means to reproduce or attempt to reproduce any portion of the examination, by any means, including electronic transmission or memorization;~~
- (2) ~~having any person (whether paid or unpaid) take the examination on their behalf; engaging in face to face, written, or electronic discussions, including on blogs, listservs, chat rooms, email, or any social media application, concerning the content of the examination for personal, commercial, or other reasons; and~~
- (3) ~~selling, distributing, buying, receiving or having unauthorized possession of any portion of the examination, specifically any questions or answers.~~

(d) Failure to observe the confidentiality of a NAB Examination or an Oklahoma State Standards Examination may result in disciplinary action by the Board as outlined in OAC 490:10-5-3(a)(23).

490:10-3-5. Application for licensure renewal

- (a) Each applicant for a renewal of a license shall:
 - (1) File an application, on the form and in the manner as prescribed by the Board (online), prior to the expiration date of the current license.
 - (2) Submit evidence, upon request, satisfactory to the Board that the applicant has successfully completed the hours of continuing education as required for license renewal. During the renewal process, licensees certify that they have or will have accomplished the required continuing education requirements during the licensure year. The Board conducts random audits of this accomplishment each year per OAC 490:1-9-5(c).
 - (3) ~~Not have been reported to the Board~~ Be in compliance pursuant to 68 O.S. Section 238.1 ~~for non-compliance~~ with State income tax requirements. If a licensee whose license is on 'active' status is found to be in non-compliance with these State income tax requirements:

- (A) such license shall not be renewed; and
- (B) licensee shall not have recourse against the Board for non-renewal of his license.

(4) Submit to a criminal background check. Concurrent with the annual CE audits conducted per OAC 490:1-9-5(c), ~~At the time of annual license renewal,~~ the Board will randomly select not less than a five (5%) percent sample from all renewed licenses against which sample the Board will perform criminal background checks. If the results of a criminal background check reveal that a licensee has been convicted of or pleaded guilty or *nolo contendere* ~~to any felony or~~ to any misdemeanor involving moral turpitude or to any felony, the licensee will be subject to Board sanction(s), including license suspension or revocation.

(5) Remit the Annual License Renewal fee as prescribed by the Board at OAC 490:1-7-2 and ensure all outstanding fees and fines owed to the Board have been paid. If a licensee has outstanding fees or fines owed to the Board, licensee shall not be permitted to renew his license until the same have been paid in full to the Board, provided that such payment is made prior to the expiration of the current license. If such payment is not made prior to the expiration date of the current license, licensee no longer holds a valid license and licensee is considered to have abandoned his license and the practice of long term care administration, and the Board shall take action to formally vacate his license. If this occurs, and if he wishes to resume the practice of long term care administration, he must re-apply to the Board, fully satisfy any/all outstanding fees or fines owed to the Board, and meet current requirements for initial licensure as a long term care administrator.

(b) A suspended license is an 'active' license against which the Board has taken disciplinary action and suspended licensee's ability to engage in the practice of long term care administration. As such, a suspended license shall be subject to expiration and shall be renewed as provided in this Section. Renewal of a suspended license shall not entitle the licensee to engage in the practice of long term care administration until the suspension is removed by the Board and the privilege to practice long term care administration is restored by the Board.

(c) It is the personal responsibility of each licensee to renew his license prior to the expiration date of the current license and, further, to ensure that the information he provides for purposes of renewal is true and accurate.

(d) If the license is not renewed by the last day of the current licensing year, a late fee of \$100 per week shall be assessed wherein the first day equates to the first week (e.g., week 2 starts on the 8th day...) up until the first Board meeting of the year when all non-renewed licenses at that point shall be declared lapsed by the Board and those licensees shall be considered to have abandoned their licenses and do not hold a valid license as of 12:01 a.m. on the day after expiration and shall not hold a position or function in the capacity as a long term care administrator in Oklahoma.

(e) All lapsed licensees or certificate holders, following this declaration, (if he wishes to resume the practice of long

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term care administration) must re-apply to the Board and meet current requirements for initial licensure as a long term care administrator, provided that the individual petitioner can provide evidence to the Board that he complied with all lawful requirements for the retention or renewal of the license.

(f) All non-renewed licenses shall be presented to the Board at a meeting of the Board. The Board shall take formal action at that meeting to vacate all non-renewed licenses.

(g) Following this Board meeting, a listing of all licenses vacated by the Board shall be submitted to the Oklahoma State Department of Health, Long Term Care Services Division.

(h) An individual who practices after the expiration (~~lapse~~ lapsed or vacated) of his license is practicing without a license and is subject to disciplinary action and/or sanctions as determined by the Board.

(i) A license that is vacated with an open case is required to be reported to the National Practitioners Data Base (NPDB) and included in the Board's Complaint Registry.

(j) Title 59 O.S. 4100.6(A), (B), (C) and (D), notwithstanding any other statutes to the contrary, provides for the automatic extension of license or certification for active duty military service members. The licensee to whom this applies shall be required to notify OSBELTCA staff and provide satisfactory evidence they are active duty and the status of their license shall become "Military."

(1) The license must be in good standing at the time the status is changed.

(2) The licensee must keep the Board informed of address changes and any changes in their active duty status. Failure to keep the Board informed in a timely manner shall cause the status of the license to be vacated by an action of the Board.

(3) While the active duty member is deployed and circumstances with military duty prevent obtaining training, the license will be renewed annually by staff without the payment of renewal fees and without a continuing education requirement.

(4) The license or certificate issued/renewed pursuant to this paragraph may be continued as long as the licensee or certificate holder is a member of the Armed Forces of the United States on active duty and for a period of at least one (1) year after discharge from active duty.

SUBCHAPTER 5. DISCIPLINE

490:10-5-3. Disciplinary action

(a) This subchapter applies to all long term care administrators, certified assistant administrators (CAAs), and any person acting as administrator with a revoked, suspended, surrendered, lapsed or vacated license.

(b) The Board may take action against a licensed administrator or an unlicensed person acting as administrator, and may deny an initial application; deny an application for reinstatement; deny a licensure by endorsement application; deny a renewal application; suspend or revoke a long term care administrator license or certification, a provisional license,

a preceptor certification, an assistant administrator's certification, or an AIT internship training permit; warn; censure; reprimand; impose administrative fines and/or costs including attorney fees, ~~or impose~~ probation or use other remedies that may be considered to be less than suspension or revocation upon satisfactory evidence of any of the following:

(1) Obtaining or attempting to obtain a license or certificate by fraud, deceit, or misrepresentation.

(2) Conviction of or a plea of guilty or *nolo contendere* to any felony or to any misdemeanor involving moral turpitude.

(3) Use of legally-prescribed or illegal drugs (narcotics or other dangerous drugs) or alcohol or the dependence on legally-prescribed drugs or illegal drugs or alcohol, or gambling, if such use or dependence, or such gambling, or the behaviors related to or resulting from such use or dependence compromise the individual's ability or capacity to fulfill his duties or responsibilities in the long term care facility, or if the same constitute(s) a criminal offense.

(4) Commitment to a mental institution or judicial determination of incompetence.

(5) Gross negligence, or negligence that constitutes a danger to the health, welfare or safety of the residents or the public.

(6) Physical or verbal abuse of a resident or misappropriation of a resident's funds or property; failure to report an allegation of physical or verbal abuse of a resident or misappropriation of a resident's funds or property to appropriate state authorities as required by law.

(7) Fraudulent, deceptive or dishonest conduct in the management of a long term care facility, or other conduct unbecoming to a person licensed or subject to licensure under this law when, in the judgment of the Board, such conduct is detrimental to the best interest of the long term care field, the long term care administrator profession and/or the public.

(8) Except as otherwise permitted in this Chapter, concurrently serving or acting as the administrator of more than one nursing facility; or exceeding the conditions placed on administrators of ICFs/MR with 16 beds or less as stated in this Chapter; or otherwise serving as an administrator beyond the scope of their licensed authority.

(9) Failure to comply with State or federal requirements applicable to the facility.

(10) Failure to comply with rules and requirements for administrators established by the Board, including the Administrator Code of Ethics and Administrator Responsibilities adopted by the Board.

(11) Evidence that the administrator has paid, given, has caused to be paid or given or offered to pay or to give to any person a commission or other valuable consideration for the solicitation or procurement, either directly or indirectly, of long term care facility patronage.

(12) Intentional retaliation or discrimination against any resident or employee for contacting or providing information to any State official, licensing agency or regulatory agency.

- (13) Failure to provide verification of continuing education hours.
- (14) Sexual abuse, sexual harassment, or sexual exploitation of any resident, employee, trainee, volunteer, consultant, or visitor to the facility in which the licensee practices.
- (15) Falsification of any records relating to the operation of a long term care facility; falsification of records submitted to the Board or any other state or federal agency; falsification of a resident's records, or causing a resident's records to be falsified.
- (16) Use of the licensee's professional status, title, position, or relationship as a long term care facility administrator to coerce, improperly influence, or obtain money, property, or services from a resident, resident's family member, employee, visitor, or any person served by or doing business with the facility that employs the administrator.
- (17) Interfering with, refusing to participate in, or impeding any investigation, inspection, or disciplinary proceeding authorized by Statute.
- (18) Violation of any disciplinary order, consent agreement, term of suspension, condition, stipulation, or any other limitation imposed on the licensee by the Board.
- (19) Unlicensed practice, practice on a revoked, suspended, or lapsed license; or practice on a provisional license without the use of an on-site consultant or as a Certified Assistant Administrator without the oversight of an Administrator-of-Record.
- (20) Failure to pay fees or fines established or imposed by the Board.
- (21) Knowingly aiding, assisting, or advising a person to unlawfully practice as an administrator without a required license.
- (22) Failure to adequately supervise an assistant administrator and/or failure to assure that the assistant administrator complies with state and federal requirements applicable to the facility.
- (23) Conduct that violates the security of any licensure examination materials.
- (24) Coercion or harassment, or the attempt to coerce or harass, or the use of any other form of uninvited solicitation directed toward a resident of a long term care facility or toward a member of the resident's family or the resident's guardian for the purpose of attempting to persuade the resident to change long term care facilities.
- (25) Failure to notify the Board of a change of name, business or personal mailing address(es), or change of employment within fifteen (15) calendar days of the occurrence.
- (26) Coercion or harassment of, or the attempt to coerce or harass, a member of the Board, a Board employee or an authorized agent or representative of the Board as related to any matter or issue over which the Board has jurisdiction.
- (27) Exclusion by the Department of Health and Human Services Office of Inspector General from participation in any capacity in the Medicare, Medicaid, and all Federal

health care programs as defined in section 1128B(f) of the Social Security Act.

- (c) When the Board places a license in probationary status, it may require the licensee to have a "consultant" administrator during the probationary period. The consultant shall agree to the terms of the consultant role as defined in 490:10-1-5(c)(2), meet the qualifications in 490:10-1-5(e), and agree to the requirements of a consultant as listed at 490:10-1-5(f)(1) and (2).
- (d) The Board may stipulate requirements for reinstatement in disciplinary orders that are consistent with OAC 490:10-1-11 requirements for reinstatement from suspended status.

SUBCHAPTER 7. ADMINISTRATOR UNIVERSITY

490:10-7-3. General provisions

- (a) The Board is committed to providing learning opportunities to individuals interested in pursuing a career in long term care administration, and enhancing the development of licensed administrators. To further this objective, the Board has established an Administrator University (AU) for nursing home administrator applicants with curriculum designed specifically to ~~provide~~ educate individuals with knowledge and skills ~~necessary to be~~ that may assist them in becoming a successful nursing home and/or ICF/MR administrator. The Board will periodically review and approve or establish training for residential care/assisted living and adult day care administrators as deemed necessary.
- (b) Effective August 1, 2006, individuals applying to become nursing home administrators shall successfully complete Administrator University prior to being licensed.
- (c) Administrators who are already licensed in the State of Oklahoma as a nursing home administrator may enter Administrator University at their own expense for enhanced training if classroom space is available.
- (d) ~~At the Board's discretion~~ Upon mutual agreement of the Board and licensee, specific classes or the entire Administrator University curriculum may be imposed as a penalty for the violation of rules and/or standards established by the Board.
- (e) The Board may also designate certain days or classes within the curriculum as eligible for continuing education (CE) credit and may charge an appropriate fee (as a workshop) for administrators to attend on a space available basis.
- (fe) ~~A~~The application fee and Administrator University fee prescribed by the Board at OAC 490:1-7-2 shall be submitted with during the online application form process prior to admission to Administrator University.
- (gf) An applicant for licensure who successfully completes Administrator University (AU) will not have to repeat Administrator University if he is successfully licensed in Oklahoma as a long term care administrator within twenty-four (24) months after the completion of AU which is marked by the scheduled date of class for that particular class ~~month he first began attending AU classes.~~
- (hg) If applicant fails to become licensed/certified as an Oklahoma long term care administrator during this 24-month

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time frame, applicant will have to pay all applicable fees and repeat Administrator University prior to any future licensing/certification attempts.

SUBCHAPTER 8. ADMINISTRATOR IN TRAINING (AIT) INTERNSHIP PROGRAM FOR NURSING HOME ADMINISTRATORS

490:10-8-2. Application

(a) The applicant shall submit to the Board an application, which shall contain such information as name, education, employment history, information pertaining to moral character, any other information the Board requires, and an affidavit stating that the applicant, if granted a license, will obey the laws of the State and the rules of the Board, and will maintain the honor and dignity of the profession. The application for licensure and/or to attend AU meets this requirement.

(b) To satisfy the Board's requirement for evidence verifying educational degree(s) conferred or hours of post-secondary education completed, the applicant shall meet the requirements found at OAC 490:10-3-1.1.

(c) The applicant will be subjected to a criminal background check as described in this Chapter prior to beginning an AIT internship.

(d) A fee as prescribed by the Board at OAC 490:1-7-2 shall be submitted with the application.

(e) An applicant who successfully completes a Board-approved AIT internship will not have to repeat the internship if he is successfully licensed as a long term care administrator in Oklahoma within the twenty-four (24) months following the month in which he first began his internship, and if applicant fails to secure licensure within this -24month time frame, applicant will have to pay all applicable fees and serve a new AIT internship prior to any future licensing attempts.

490:10-8-3. Training permit

(a) In order for a training permit to be issued, the facility or facilities at which the AIT internship is to be served must be:

- (1) licensed by the Oklahoma State Department of Health as a long term care facility; and
- (2) in substantial compliance with the rules and regulations governing licensure and operation of long term care facilities.

(b) After approval of the proposed AIT internship, the Board shall issue an applicable AIT internship training permit to the applicant (the 'intern/trainee'), one that shall be valid for a maximum one-year time period beginning on the date the permit is issued.

(c) Should the intern/trainee not maintain acceptable standards and submit the required reports ~~or cause the same to be submitted~~, the Board shall place the intern/trainee on probation or may rescind the AIT internship training permit.

490:10-8-5. Preceptor qualifications

(a) A licensed administrator wishing to be certified as a preceptor for the AIT program ~~may apply to the Board on the form~~

~~and shall apply online and pay the required fees in the manner prescribed by the Board.~~

(b) To be certified as a preceptor, the applicant shall:

(1) exemplify the highest ethical and professional standards as an administrator for at least the preceding twenty-four (24) consecutive months;

(2) be licensed and be able to document employment as:

(A) an Oklahoma long term care administrator for at least twenty-four (24) months of the preceding sixty (60) months; OR

(B) an Oklahoma long term care administrator for at least twenty four (24) of the preceding sixty (60) months and supervising administrators in multiple locations wherein an AIT could be appropriately trained under his direct and/or indirect supervision, e.g., as a regional supervisor or operations officer with multiple homes; OR

(C) an Oklahoma long term care administrator for at least twenty- four (24 months of the preceding sixty (60) months currently serving as an assistant administrator in a Veterans Administration (ODVA) home (not the administrator of record);

(3) successfully complete preceptor training that meets the requirements established by the Board; and

(4) has not been the subject of any action by any Board or licensing authority which resulted in formal reprimand, suspension or revocation of license, ~~or in an administrative fine~~—within the preceding twenty-four (24) consecutive months;

(5) has not been the subject to any other action by any Board or licensing authority which resulted in a Board order prohibiting serving as a Preceptor.

(c) If the Board imposes a disqualifying sanction against an administrator, such administrator may not be eligible to be certified as a preceptor for twenty-four (24) months from the date of the sanction, as specified in the sanction's final or agreed order.

(d) Preceptors shall be certified for a period of thirty-six (36) months if active (who trained at least one trainee during the first twenty four (24) months of their preceptor-ship or twenty four (24) months if inactive). Preceptors may be re-certified at the discretion of the Board. There shall be an automatic extension of the certification period for any preceptor whose certification expires while overseeing an AIT intern/trainee, provided that the preceptor otherwise meets all other requirements for certification and those governing assignment of a preceptor to an AIT intern/trainee. The extension shall be granted to the end of the training period for the particular intern/trainee.

490:10-8-8. Preceptor's final report

(a) At the end of the approved AIT internship, the preceptor will submit a final report and an evaluation of the intern/trainee on the form(s) and in the manner as prescribed by the Board. The preceptor will sign the form(s). The form(s) will indicate whether or not the intern/trainee has satisfactorily completed the prescribed internship program.

(b) The reports will be filed in the intern/trainee's ~~file in the Board's office record~~ and will become a permanent part of the record in the individual's file.

(c) Preceptors for nursing home AIT candidates shall be awarded 3 CEUs per each 560 hour trainee completed or 4 CEUs per each 700 hour trainee completed (awarded in the year the training was completed) and may earn up to 12 CEUs in this manner per calendar year (credited for a maximum of 3 students in any one calendar year).

(d) CEU credit is awarded for the year the training was completed.

490:10-8-13. AIT time on the job

(a) The intern/trainee with a degree in a field related to any of the NAB defined domains of practice, OR with experience in long term care for 2 of the last 5 years shall serve a 560 hour internship, unless in the opinion of the Board or preceptor, the intern/trainee requires additional hours of training; or unless the hours required to complete the internship, are otherwise reduced by formal action of the Board. All others (with a degree not related to a NAB defined domain of practice or without experience in long term care for 2 of the last 5 years) shall serve a minimum of a 700 hour internship with the same exceptions noted wherein additional hours are required in the opinion of the Board or preceptor.

(b) An internship that has been discontinued due to a period of active duty military service of the intern/trainee shall be allowed to be completed within one (1) year after the intern/trainee has completed his military service obligation. If this time frame cannot be met by the intern/trainee, the previously-started internship shall be cancelled by the Board and he will have to reapply to the Board for a new internship and pay all applicable fees. If an internship has been discontinued due to active duty military service of the preceptor, the Board will work with the intern/trainee to secure another preceptor.

(c) An internship that has been discontinued for any purpose other than military service, and such discontinuance exceeds one year from the date of the beginning of the discontinuance, that internship will be cancelled by the Board, and the AIT intern/trainee shall be required to reapply to the Board for a new internship and pay all applicable fees.

(d) Only one discontinuance is allowed.

(e) 560 hour internships shall be completed in not less than fourteen (14) consecutive weeks nor more than twelve (12) consecutive months. 700 hour internships shall be completed in not less than seventeen and a half (17.5) consecutive weeks nor more than fifteen (15) consecutive months (where no more than 40 hours in any one week of the program is ever permitted).

(f) This section shall be subject to the requirements of any other provisions of law.

(g) The intern/trainee must complete the internship in a facility or facilities that is (are) ~~currently in substantial compliance with the rules and regulations governing long term care facilities in Oklahoma~~ licensed in Oklahoma for the level of care equivalent to the administrators license/certification being sought.

490:10-8-17. Supervision of AIT interns/trainees

A preceptor shall not concurrently supervise more than two (2) AIT interns/trainees unless otherwise approved by the Board.

SUBCHAPTER 13. STANDARDS FOR ADMINISTRATORS

490:10-13-1. Administrator Code of Ethics

(a) The Board is committed to ethical professional conduct and therefore adopts the following standards to establish and maintain a high degree of integrity and dignity in the profession and to protect the public against unprofessional conduct on the part of long term care administrators. All long term care administrators and AITs shall be encouraged to participate in their professional association, the American College of Health Care Administrators (ACHCA and often referred to as "the college") as a means of continually improving themselves as long term care professionals and another source for CEUs.

(b) The American College of Health Care Administrators Code of Ethics is adopted as follows:

(1) Preamble: The preservation of the highest standards of integrity and ethical principles is vital to the successful discharge of the professional responsibilities of all long-term health care administrators. This Code of Ethics has been promulgated by the American College of Health Care Administrators (ACHCA) in an effort to stress the fundamental rules considered essential to this basic purpose. It shall be the obligation of members to seek to avoid not only conduct specifically proscribed by the code, but also conduct that is inconsistent with its spirit and purpose. Failure to specify any particular responsibility or practice in this Code of Ethics should not be construed as denial of the existence of other responsibilities or practices. Recognizing that the ultimate responsibility for applying standards and ethics falls upon the individual, the ACHCA establishes the following Code of Ethics to make clear its expectation of the membership.

(2) Expectation I: Individuals shall hold paramount the welfare of persons for whom care is provided.

(A) Prescriptions: The Health Care Administrator shall:

(i) Strive to provide to all those entrusted to his or her care the highest quality of appropriate services possible in light of resources or other constraints.

(ii) Operate the facility consistent with laws, regulations, and standards of practice recognized in the field of health care administration.

(iii) Consistent with law and professional standards, protect the confidentiality of information regarding individual recipients of care.

(iv) Perform administrative duties with the personal integrity that will earn the confidence, trust, and respect of the general public.

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- (v) Take appropriate steps to avoid discrimination on the basis of race, color, religion, sex, pregnancy, sexual orientation, citizenship status, religion, age, national origin, age, physical or mental disability, past, present or future status in the U.S. uniformed services, genetics, handicap, marital status, ancestry, or any other characteristic protected under applicable law, factor that is illegally discriminatory or not related to bona fide requirements of quality care.
- (B) Proscription: The Health Care Administrator shall not: Disclose professional or personal information regarding recipients of service to unauthorized personnel unless required by law or to protect the public welfare.
- (3) Expectation II: Individuals shall maintain high standards of professional competence.
- (A) Prescriptions: The Health Care Administrator shall:
- (i) Possess and maintain the competencies necessary to effectively perform his or her responsibilities.
 - (ii) Practice administration in accordance with capabilities and proficiencies and, when appropriate, seek counsel from qualified others.
 - (iii) Actively strive to enhance knowledge of and expertise in long-term care administration through continuing education and professional development.
 - (iv) Demonstrate conduct that is in the best interest of the profession.
- (B) Proscriptions: The Health Care Administrator shall not:
- (i) Misrepresent qualifications, education, experience, or affiliations.
 - (ii) Provide services other than those for which he or she is prepared and qualified to perform.
 - (iii) Conduct themselves in a manner detrimental to the best interest of the profession.
- (4) Expectation III: Individuals shall strive, in all matters relating to their professional functions, to maintain a professional posture that places paramount the interests of the facility and its residents.
- (A) Prescriptions: The Health Care Administrator shall:
- (i) Avoid partisanship and provide a forum for the fair resolution of any disputes which may arise in service delivery or facility management.
 - (ii) Disclose to the governing body or other authority as may be appropriate, any actual or potential circumstance concerning him or her that might reasonably be thought to create a conflict of interest or have a substantial adverse impact on the facility or its residents.
- (B) Proscriptions: The Health Care Administrator shall not: Participate in activities that reasonably may be thought to create a conflict of interest or have the potential to have a substantial adverse impact on the facility or its residents.
- (5) Expectation IV: Individuals shall honor their responsibilities to the public, their profession, and their relationships with colleagues and members of related professions.
- (A) Proscriptions: The Health Care Administrator shall:
- (i) Foster increased knowledge within the profession of health care administration and support research efforts toward this end.
 - (ii) Participate with others in the community to plan for and provide a full range of health care services.
 - (iii) Share areas of expertise with colleagues, students, and the general public to increase awareness and promote understanding of health care in general and the profession in particular.
 - (iv) Inform the ACHCA Standards and Ethics Committee of actual or potential violations of this Code of Ethics, and fully cooperate with the ACHCA's sanctioned inquiries into matters of professional conduct related to this Code of Ethics.
- (B) Proscription: The Health Care Administrator shall not: Defend, support, or ignore unethical conduct perpetrated by colleagues, peers or students.
- (c) The Board adopts the following as an addition to the code of ethics: Administrators have a fiduciary duty to the facility and cannot serve as guardian of the person or of the estate, or hold a durable power of attorney or power of attorney for any resident of a facility of which they are an administrator.
- (d) Licensees shall place a copy of the Administrator Code of Ethics approved by the Board in a conspicuous location in a public area in the place of business requiring such license.

490:10-13-2. Administrator responsibilities

- (a) It is the responsibility of the long term care administrator, as the managing officer of the facility to plan, organize, direct, and control the day-to-day functions of a facility and to maintain the facility's compliance with applicable laws, rules, and regulations. The administrator shall be vested with adequate authority to comply with the laws, rules, and regulations relating to the management of the facility.
- (b) Long term care administrators licensed/certified by the Board shall adhere to the Administrator Code of Ethics as adopted by the Board.
- (c) Nursing home administrators licensed by the Board shall not concurrently serve as the administrator-of-record of more than one long term care facility except as otherwise permitted in this Chapter. A licensed nursing home administrator may serve as the administrator of more than one intermediate care facility for the mentally retarded with sixteen or fewer beds (ICF/MR-16), only if such facilities are located within a circle that has a radius of not more than fifteen (15) miles, and the total number of facilities and beds does not exceed the lesser of six (6) facilities or total licensed capacity of sixty-four (64) beds.

(d) A long term care administrator licensed/certified by the Board must devote at least one half (1/2) of such person's working time to on site, on the job supervision of a long term care facility at which he is listed as being the Administrator of Record. As used herein, 'working time' is defined as being a full time employee scheduled to work forty (40) hours per week. The administrator's working time on site at the facility shall be distributed throughout each calendar week, with emphasis placed on weekdays, Monday through Friday, between the hours of 9:00 a.m. and 5:00 p.m. This requirement shall not apply directly to an administrator of an intermediate care facility for the mentally retarded with sixteen or fewer beds (ICF/MR 16), or in any other facility an ALF or RCF when otherwise legally authorized to be the administrator of more than one such facility, and shall not apply to administrators governed under OAC 490:10-13-3.(g).

(ed) Every person licensed/certified as an administrator and designated the "Administrator-of-Record" shall display the appropriate "Certificate of" or "License" in a conspicuous place in the facility or place of business requiring such license/certification.

(fe) Each licensed/certified administrator shall update their licensure record, online, within fifteen (15) calendar days following the change of his name, business and/or personal mailing address, change in employment or change in employment status, ~~or online~~ in the manner as prescribed or as may be prescribed by the Board. The Board will assess a late fee as prescribed at OAC 490:1-7-2 if it is determined that the administrator failed to provide current contact information within this fifteen day period.

(gf) Upon receipt of satisfactory evidence that "Certificate" or "License" has been lost, mutilated, or destroyed, the Board may issue a duplicate replacement license upon payment of a fee as prescribed by the Board at OAC 490:1-7-2.

(hg) To change his name on a "Certificate of License", the licensee must provide legal proof of the name change (e.g., copy of marriage certificate, divorce decree, etc.) before a replacement "Certificate of License" will be issued.

(ih) An administrator shall not knowingly initiate contact with an individual currently residing in a long term care facility, or knowingly initiate contact with the family or guardian of an individual currently residing in a long term care facility, for the purpose of attempting to persuade a change in that individual's residence to another long term care facility.

(ji) An administrator shall not knowingly solicit, or permit an employee to solicit clients for his long term care facility through coercion or harassment. If an administrator has knowledge of such actions by an employee, the administrator shall take such steps as are reasonable and necessary to stop such conduct.

(kj) An Administrator, or applicant for Administrator licensure/certification, in connection with a license /certificate application or an investigation conducted by the Board or an investigation conducted by the Oklahoma State Department of Health, the Oklahoma Department of Human Services, the Oklahoma Health Care Authority, or any other agency of the State or federal government having regulatory responsibility

over or relating to the delivery of care to persons in a facility operated or managed by the Administrator, shall not:

- (1) knowingly make a false statement of material fact;
- (2) fail to disclose a fact necessary to correct a misrepresentation known by the Administrator or applicant for licensure/certification to have arisen in the application or the matter under investigation; or
- (3) fail to respond to a demand for information made by the Board or such government agency or designated representative thereof.

490:10-13-3. Requirements for administrators who serve as the Administrator-of-Record of two (2) or more licensed long term care (nursing) facilities located within a fifty (50) mile radius of each other, wherein the total number of occupied beds does not exceed one-hundred-twenty (120) beds and wherein one- or-more individuals is/are employed in Certified Assistant Administrator capacities

(a) The Administrator-of-Record is responsible for ensuring that all minimum requirements delineated herein relating to individuals who wish to serve in the capacity of Certified Assistant Administrator (CAA) are met prior to the delegation of duties and responsibilities to such individual.

(b) The Administrator-of-Record shall provide qualified individuals serving as ~~a CAA an Assistant Administrator~~ with adequate authority and responsibility to administer those aspects of the operations of the facility that are to be delegated to them, including the authority to act in an emergency.

(c) The Administrator-of-Record shall clearly, and in writing, develop a formal job description for the position of ~~CAA Assistant Administrator~~, wherein the duties and responsibilities of the individual serving as ~~an Assistant Administrator a CAA~~ are clearly delineated.

(d) The Administrator-of-Record shall provide supervision, training and direction to the ~~CAA Assistant Administrator~~ and delegate only those duties and responsibilities that may safely be performed by the individual filling that role and that are not otherwise proscribed by law, rule or statute.

(e) The Administrator-of-Record, being licensed by the Board, is legally and ultimately responsible for the management and operation of the facility and, as such, shall maintain sufficient on-site presence in the facility to effectively supervise the ~~CAA Assistant Administrator~~.

(f) The Administrator-of-Record shall ensure the ~~CAA Assistant Administrator~~ does not concurrently serve as ~~CAA Assistant Administrator~~ of more than one (1) long term care facility.

(g) The Administrator-of-Record shall spend at least ten (10) hours per calendar week on-site in the facility, providing guidance and direction to the ~~CAA Assistant Administrator~~, and further, such on-site supervisory visits shall not be more than ten (10) calendar days apart.

(h) The Administrator-of-Record shall establish a clearly-written policy delineating who the individual residents, residents' family members and/or guardians, and facility

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staff should contact when the Administrator-of-Record is absent from the facility as well as the procedure that is to be utilized that clearly indicates 'when' and 'how' such contact shall be made. The policy and procedure shall be provided to residents, residents' family and/or guardians, and facility staff and shall be posted in a conspicuous place in the facility.

(i) The Administrator-of-Record shall not delegate nor cause to be delegated to the ~~CAA Assistant Administrator~~ any duty or responsibility that has been specified in State or federal law, statute, rule or regulation as being a duty or responsibility that can only be performed by a duly licensed Administrator or any duty or responsibility that is otherwise prohibited by State or federal law, statute, rule or regulation.

(j) The Administrator-of-Record shall ensure that no individual serve as the ~~CAA Assistant Administrator~~ if that individual holds a license granted by this Board, but which license is suspended, revoked or otherwise restricted, or if that individual has been sanctioned (formally excluded from participation in federally-funded health programs) by the U.S. Department of Health and Human Services (DHHS), Office of Inspector General (OIG).

(k) The Administrator-of-record shall ensure that no individual serves as ~~ana CAA Assistant Administrator~~ if the facility at which the Assistant Administrator is to serve is not one of two-or-more facilities at which the Administrator serves as the Administrator-of-Record, that have a total bed complement not to exceed one-hundred-twenty (120) occupied beds and that are located with a fifty (50) mile radius of each other.

(l) The Administrator-of-Record shall establish a requirement for the certified assistant administrator to successfully complete no less than twenty-four (24) continuing education clock hours during each licensure period as a condition of employment and shall be responsible to ensure the certified assistant administrator(s) working under their license has renewed their certification with the Board by the end of each licensure period.

[OAR Docket #17-476; filed 6-21-17]

TITLE 490. OKLAHOMA STATE BOARD OF EXAMINERS FOR LONG TERM CARE ADMINISTRATORS CHAPTER 15. LONG TERM CARE CERTIFIED ASSISTANT ADMINISTRATORS

[OAR Docket #17-477]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 1. Certification of Long Term Care Assistant Administrators
- 490:15-1-1. Purpose [AMENDED]
- 490:15-1-3. Minimum qualifications for an individual applicant to meet certification requirements for ~~ana~~ Certified Assistant Administrator (CAA) [AMENDED]
- 490:15-1-4. Conditions of employment for individuals 'certified' by the Board as having met the minimum qualifications required for them to serve as an Assistant Administrator [AMENDED]
- Subchapter 3. Application for Certification and Requirements for Continued Eligibility

490:15-3-1. Application process [AMENDED]

490:15-3-2. Approval process [AMENDED]

AUTHORITY:

Oklahoma State Board of Examiners for Long Term Care Administrators; 63 O.S., §§ 330.51 et seq.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

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Approved by Governor's declaration on June 13, 2017

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SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The primary purpose of the proposed rulemaking action is to continue to follow up on the statutory changes effected by Enrolled House Bill No. 2282 of the 2016 Regular Session. It also is a housekeeping exercise where we have clarified some of the language and cleaned up some grammar issues in the document. The proposed changes, updates and add definitions, and revises language to standardize our language with other relevant statute/rules changes and improves the clarity of the intent of the document.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 1. CERTIFICATION OF LONG TERM CARE ASSISTANT ADMINISTRATORS

490:15-1-1. Purpose

This Chapter implements the specific rules allowing the Board to 'certify' that individuals have met certain minimum requirements established by the Board, enabling such individuals to serve as a long term care Certified Assistant Administrator (CAA) in those situations wherein the Administrator-of-Record at the facility in which they are to serve also serves as the Administrator-of-Record of one-or-more additional licensed facilities within a fifty (50) mile radius of each other and wherein the total number of occupied beds at such facilities does not exceed 120 beds. Individuals who serve as Certified Assistant Administrators do so under the direct supervision and license of the licensed long term care Administrator-of-Record.

490:15-1-3. Minimum qualifications for an individual applicant to meet certification requirements for ~~an Assistant Administrator~~ a Certified Assistant Administrator (CAA)

(a) In addition to the general requirements for administrators found at OAC 490:10-1-2.1, each applicant seeking certification as having met the minimum qualifications to be able to serve as ~~an Assistant Administrator~~ a CAA shall meet the requirements in this Section.

(b) In order to qualify to receive a ~~letter~~ certification from the Board ~~wherein the Board would 'certify'~~ that the individual met the minimum qualifications to be able to serve as a CAA ~~an Assistant Administrator~~, each applicant must provide evidence satisfactory to the Board of the following:

- (1) Successful completion of a high school education and receipt of a high school diploma, or receipt of his G.E.D.;
- (2) Successful completion of a Board- approved intensive review course on State Rules and Regulations;
- (3) Receipt of a passing score on the current Oklahoma State Standards examination; and
- (4) Two (2) years of current management, leadership or supervisory experience in a long term care facility.

490:15-1-4. Conditions of employment for individuals 'certified' by the Board as having met the minimum qualifications required for them to serve as an Assistant Administrator

(a) Under the supervision, direction and license of the licensed Administrator-of-Record, it shall be the responsibility of the ~~CAA Assistant Administrator~~ to plan, organize, direct, and control those day-to-day functions of a facility delegated to him and to maintain the facility's compliance with applicable laws, rules, and regulations during the absence of the licensed administrator.

(b) ~~An Assistant Administrator~~ A CAA shall practice only under the direct supervision and license of a licensed Administrator-of-Record who is in charge of two-or-more licensed nursing facilities within a 50-mile radius wherein the total number of occupied beds does not exceed 120, and whose license is active and otherwise unrestricted. ~~An Assistant Administrator~~ A CAA shall not continue to serve at a facility in the ~~assistant administrator~~ CAA capacity if the Administrator-of-Record is the Administrator-of-Record at a single nursing facility, the administrator's license is suspended, or revoked, or if the Administrator- of-Record resigns his employment or his employment is otherwise terminated, until such time as another licensed administrator is designated and begins serving as the Administrator-of-Record of two-or- more facilities. These facilities shall be owned/managed by the same owner/corporation.

(c) An individual serving as ~~an Assistant Administrator~~ a CAA shall be employed by the facility full-time in that capacity, regularly-scheduled for 40 hours per calendar week; shall not concurrently serve as the ~~Assistant Administrator~~ CAA of more than one (1) nursing facility; and shall spend at least eighty (80%) percent of his working time on-site at the

facility, equitably distributing his on-site time throughout each calendar week, with emphasis placed on weekdays, Monday through Friday, between the hours of 9:00 a.m. and 5:00 p.m.

SUBCHAPTER 3. APPLICATION FOR CERTIFICATION AND REQUIREMENTS FOR CONTINUED ELIGIBILITY

490:15-3-1. Application process

(a) ~~Each applicant who is seeking Board review and for the Board to 'certify' that as of the date of the letter, the applicant has met the minimum qualifications necessary to serve as an Assistant Administrator, shall make a verified application on a form furnished by the Board and remit a non-refundable application fee as prescribed by the Board at OAC 490:1-7-2. Applicants for approval as a certified assistant administrator (CAA) shall apply online, supplying all required documentation and shall pay a non-refundable application fee. Once the application is complete and the applicant has completed the required training and passed the appropriate examination(s), the applicant will be required to pay the non-refundable fee referenced at OAC 490:1-7-2(x) before being placed on the agenda for Board certification determination.~~

(b) ~~An application for review by the Board for purposes of the Board 'certifying' an individual's individual qualifications to serve in the capacity of a CAA an Assistant Administrator is valid for one year after the date the review fee of receipt is received by the Board.~~

(c) An application shall be determined complete when:

- (1) the criminal background check is received ~~by the Board~~;
- (2) all documentation ~~requested~~ required ~~in for~~ the application has been received ~~by the Board~~; and
- (3) the application fee prescribed ~~by the Board~~ at OAC 490:1-7-2 has been remitted and the monies credited to the Board's account with the State Treasurer.

(d) Once an application is determined complete, the applicant must then meet the remaining requirements for certification found in this Chapter.

490:15-3-2. Approval process

(a) Upon verification of compliance with all requirements, the Board shall 'certify' an individual as having met, as of the date of the ~~letter~~ certification, the minimum requirements to be eligible to serve as ~~an Assistant Administrator~~ a CAA within a single nursing facility, one which is administered by a licensed nursing home administrator who is serving as the administrator-of-record for that facility and for one-or-more additional licensed facilities within a 50-mile radius of each other and wherein the total number of occupied beds at all such facilities administered by this Administrator-of-Record does not exceed 120.

(b) The applicant shall be presented to the Board for consideration at the next Board meeting. Applicants are encouraged to attend the Board meeting.

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(c) Applicants shall be notified of the Board's decision by letter in which the Board will either 'certify' the individual as having met the minimum qualifications or will indicate the individual did not meet the minimum qualifications for the Board to issue its 'certification'. The Board will maintain a listing of individuals it has 'certified' as having met the minimum qualifications. Such listing shall include the individual's name, mailing address and the date the Board issued the letter of 'certification'. Certified applicants will receive a certificate documenting the Board's decision at the Board meeting if they are present or it will be mailed within 7 business days.

(d) As of the date the Board 'certifies' that an individual applicant meets the minimum requirements for that individual to serve in the capacity of an Assistant Administrator, the individual may serve in such an unlicensed capacity. However, it shall be the obligation of the Administrator-of-Record to subsequently verify that the individual serving as an Assistant Administrator continues to meet the minimum qualifications for continued certification (i.e. criminal background check and current employment in the industry as a supervisor). The administrator of record shall also require completion of CEUs in accordance with provisions in OAC 490:1-9-4, as a condition of employment, and a mechanism to ensure the assistant is current and professionally trained.

[OAR Docket #17-477; filed 6-21-17]

TITLE 505. BOARD OF EXAMINERS IN OPTOMETRY CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #17-629]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 3. Board Organization and Administration
 - 505:1-3-1. General Board purpose and method of operation [AMENDED]
 - 505:1-3-2. Powers and duties of the Board [AMENDED]
 - 505:1-3-3. Board composition and officers [AMENDED]
 - 505:1-3-4. Board meetings [AMENDED]
 - 505:1-3-5. Official Board records [AMENDED]
 - 505:1-3-7. Availability of Board rules, regulations, policy Statements [AMENDED]
 - 505:1-3-8. Office of the Board is deemed to be the Office of the ~~Secretary-Treasurer-Executive Director~~ [AMENDED]
- Subchapter 5. Rulemaking and Declaratory Rulings
 - 505:1-5-2. Petition for rulemaking [AMENDED]
 - 505:1-5-3. Notice [AMENDED]
 - 505:1-5-4. Rulemaking hearing [AMENDED]
 - 505:1-5-7. Request for declaratory ruling [AMENDED]
- Subchapter 7. Individual Proceedings
 - 505:1-7-2. Filing of papers [AMENDED]
 - 505:1-7-4. Notice to parties [AMENDED]
 - 505:1-7-5. Service of notice [AMENDED]
 - 505:1-7-6. Time of hearing; request for extension [AMENDED]
 - 505:1-7-8. Record of hearing [AMENDED]
 - 505:1-7-9. Findings of fact [AMENDED]
 - 505:1-7-14. Requests for disqualification [AMENDED]
 - 505:1-7-15. Rehearing, reopening or reconsideration [AMENDED]

AUTHORITY:

Oklahoma Board of Examiners in Optometry; 59 O.S. §§ 583, 604

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n/a

GIST/ANALYSIS:

The adopted revisions modernize and update the Board's rules, particularly to reflect the creation of the position of Executive Director to take over many of the functions of the Secretary Treasurer. These adopted rules makes several technical changes to the rules and updates them to better conform to the Administrative Procedures Act and the Open Records Act and to streamline administrative procedures of the Board. The revisions also formalize what had become the settled practice of the Board, such as quarterly meetings, and the dates of examination of candidates for licensure.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 3. BOARD ORGANIZATION AND ADMINISTRATION

505:1-3-1. General Board purpose and method of operation

The general purpose and method of the Board's operation is prescribed by the Legislature, and the Board acts as the agency in the exercise of the police powers of the State of Oklahoma for the protection of the health, safety and welfare of the people of the State, for the purpose of licensing and regulating the practice of Optometry in the State by administrative and disciplinary procedures whereby licenses are issued, denied, suspended or revoked, in accordance with the Oklahoma Administrative Procedures Act, ~~and these rules and regulations,~~ and to maintain personal data records on each licensee in this State.

505:1-3-2. Powers and duties of the Board

The Board shall have the following powers and duties, which shall include, but not necessarily limited to:

- (1) Conducting examinations required by law to determine the qualifications of persons seeking a license to practice optometry in the State of Oklahoma;
- (2) To promulgate rules and regulations to control applications for examinations and the taking of examinations and the preparation and grading of examination papers;
- (3) To issue, or refuse to issue, a license to practice optometry for any cause specified by law;
- (4) To revoke or suspend, if necessary, for cause any license issued by the Board, after an opportunity for a hearing has been granted.
- (5) To ~~prescribe~~ design and provide the forms of applications for licenses and the information to be shown thereon, and of all reports which it deems necessary in administering the law.
- (6) To hire personnel ~~it deems necessary~~ to advise and assist in the performance of its duties;
- (7) To collect and assess all fees prescribed by law and to deposit said fees in the "Board of Examiners in Optometry Revolving Fund", and to pay from said fund all necessary expenses incurred in the performance of its duties;
- (8) To maintain personal data records on each applicant or licensee;
- (9) To maintain proceedings to enjoin persons unlicensed from the practice of Optometry; and
- (10) To perform any other duties or functions specified by law or deemed necessary for the proper administration and enforcement of the laws and rules and regulations governing the practice of Optometry.

505:1-3-3. Board composition and officers

- (a) The Oklahoma Board of Examiners in Optometry is an administrative body consisting of five (5) members who are appointed by the Governor. The Board shall elect a President, Vice-President and Secretary-Treasurer. The President shall perform such duties as prescribed by the Board and by law.
- (b) The ~~State~~ Oklahoma Board of Examiners in Optometry consists of five (5) members, four (4) of whom shall be optometrists. The term of each licensed Optometrist member of the Board, one (1) being appointed each year, shall be five (5) years, or until a qualified successor is appointed. The lay member of the Board shall serve a term coterminous with that of the governor and shall serve at the pleasure of the governor.

505:1-3-4. Board meetings

- (a) Time and place of meetings. The Board meets ~~from time to time~~ quarterly, as official business requires and conducts examinations of applicants for ~~registration~~ certification as Optometrists. ~~Its meetings are not in any particular place, but are usually held in Oklahoma City.~~ The time and place of a meeting is fixed by a majority of the members of the Board. ~~The Board shall meet at least twice a year, at a time and place as shall be designated by the Board.~~ All Board Meetings comply with the Open Meetings Act.
- (b) Special meetings. Special meetings may be called by the President, or whenever petitioned for by members of the Board.

- (c) Quorum. Three (3) members of the Board shall constitute a quorum.
- (d) Adoption of Roberts' Rules of Order. The Board will follow Roberts' Revised Rules of Order at its meetings, whenever any objection is made as to the manner in which it proceeds at a meeting.

505:1-3-5. Official Board records

~~Information as to the~~ The operations or business transacted by the Board can be obtained from any of the five (5) members of the Board, but the official records of the Board are kept at the official office of the Board at such location as the Board may from time to time designate.

505:1-3-7. Availability of Board rules, regulations, policy Statements

Rules and regulations of the Board, ~~and all other written statements of policy or interpretations, formulated, adopted, or used by the Board in the discharge of its functions,~~ will be available in the office of the Board for public inspection from 9:00 o'clock a.m. to 4:00 o'clock p.m., daily, except Saturdays, Sundays and legal holidays; or on the Board website. ~~All other written statements of policy or interpretations, formulated, adopted, or used by the Board in the discharge of its functions and all final orders, decisions and opinions of the Board will similarly be available for public inspection. in the office of the Board for public inspection from 9:00 o'clock a.m. to 4:00 o'clock p.m., daily, except Saturdays, Sundays and legal holidays.~~

505:1-3-8. Office of the Board is deemed to be the Office of the Secretary-Treasurer Executive Director

The office of the Board of Examiners in Optometry is deemed to be the office of the ~~Secretary-Treasurer~~ Executive Director for all purposes under the rules of the Board. Any application, pleading, document or other matter which, under the rules of the Board, must be in any way filed with, submitted to, or requested of, the ~~Secretary-Treasurer~~ Executive Director shall be addressed to the ~~Secretary-Treasurer~~ Executive Director at the Board's office. Similarly, documents or records required to be kept by the ~~Secretary-Treasurer~~ Executive Director shall be kept at the Board's office and shall be available to the ~~Secretary-Treasurer~~ Executive Director for the performance of his or her duties.

SUBCHAPTER 5. RULEMAKING AND DECLARATORY RULINGS

505:1-5-2. Petition for rulemaking

- (a) Any interested person may petition the Board requesting promulgation, amendment, or repeal of a rule. The petition shall be filed with the ~~Secretary-Treasurer~~ Executive Director of the Board and shall set forth in writing, clearly and concisely, all matters pertaining to the requested action and the

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reasons for the request. The request should, also, state whether there is someone, known to the petitioner, who is concerned with the subject and should be notified of the hearing.

(b) The Board at its next regularly scheduled meeting ~~after the completion of notice~~ or at a special meeting specified in the notice will hear the petition and notify the petitioner of the ruling within twenty (20) days after the decision. In either event, a hearing on said petition shall be held within sixty (60) days after received in proper form by the ~~Secretary Treasurer~~ Executive Director. For just cause, the Board may postpone the discussion and ruling on the petition until a subsequent meeting and all parties shall be notified of the postponement, if necessary.

505:1-5-3. Notice

(a) In any rulemaking action, ~~whether initiated by the Board or~~ by petition, at least twenty (20) days' notice shall be given to the party filing the petition for rulemaking that his or her request will be heard by the Board. ~~and~~ The notice shall state ~~the issues involved,~~ the time and place, and the manner in which interested persons may present their views. Should the Board decide to proceed with rulemaking, it shall comply with the terms of the Administrative Procedures Act to do so.

(b) ~~The notice shall be mailed to all interested persons who have made a request of the Board for advance notice of its rulemaking proceedings, or who were specified in the petition for the rules, and shall be published in the Oklahoma Gazette Register or its successor publication. The twenty (20) days time shall be calculated from the date of mailing of notice or of the publication, whichever is later.~~

(c) ~~The Board shall set at their discretion the place and time where all hearings are to be conducted.~~

505:1-5-4. Rulemaking hearing

(a) A rulemaking hearing before the Board shall be informal, but in an orderly manner. The attendance of witnesses and production of records may be required in accordance with 505:1-7-13 (a).

(b) Minutes shall be kept of the official meetings of the Board. Transcripts of all matters pertaining to rulemaking shall be open for public inspection at the office of the ~~Secretary Treasurer~~ Board of Examiners in Optometry.

505:1-5-7. Request for declaratory ruling

Any person affected by any rule or order promulgated or issued by the Board, or wishing to determine the validity or applicability of a Board rule, or one of its authorized agents may request in writing to the Board an interpretation or declaratory ruling regarding the application of such a rule or order to the facts furnished with the request.

(1) **Filing and contents of petition.** The petition shall be styled similarly to an ex parte petition filed in a court of law in this State, and shall be filed with the ~~Secretary Treasurer~~ Executive Director of the Board in triplicate. It shall state fully, clearly and concisely the rule or order involved or affected, and state the facts giving rise to the need for

such ruling, giving all pertinent data necessary for consideration.

(2) Consideration of petition by Board; refusal to issue ruling.

(A) The Petition will be considered preliminarily at the next regular meeting of the Board or at a special meeting called to hear the petition, but in either event, a hearing shall be held on said petition within ninety (90) days after received by the ~~Secretary Treasurer~~ Executive Director, and the petitioner shall be notified promptly of the date by the ~~Secretary Treasurer~~ Executive Director and shall be entitled to be present in person or represented by counsel. At this meeting the Board shall determine whether or not to issue a ruling or to continue the matter for hearing upon the petition. The Board may refuse to entertain a petition for a declaratory ruling if it determines:

- (i) that the facts stated in the petition do not afford an adequate basis therefore, or
- (ii) that the experience under the rule or order is not adequate to enable it to make an effective or proper ruling, or
- (iii) that the request is premature, or
- (iv) that the request is one that should be handled through rule-making procedure, or that there exist other conditions rendering a declaratory ruling in opportune.

(B) If the Board determines to entertain the petition for the declaratory ruling, it may issue the ruling at its meeting or it may continue the matter to a day certain for further consideration and for hearing of evidence and argument if necessary.

(C) If the applicant is not represented at the preliminary consideration, he shall be notified of the ruling if one is issued, in accordance with the rules respecting notice of orders; or, if the matter is continued, he shall be notified of the continuance in accordance with the rules respecting notice of hearings in individual proceedings. If the applicant is present or is represented at the preliminary consideration, no further notice of the subsequent hearing than announcement in open meeting is necessary; but the applicant shall receive a written copy of any ruling that is issued, as in the case of orders.

(3) **Request for formal hearing.** A petitioner for a declaratory ruling in his petition or by written motion prior to or at the preliminary consideration may request a formal hearing at which to present evidence in support of his petition, setting forth the substance of the facts to be proved, if they do not appear in his petition. The Board thereupon will set the matters for formal hearing within sixty (60) days from the date of the preliminary consideration, and notice shall be given as prescribed in (2) of this Section.

(4) **Joining of other parties affected by rule.** If, at any time, it appears from the papers filed or from evidence adduced that the interests of persons other than the petitioner are so affected by the requested ruling that it is improper to entertain the proceedings without hearing

them, the Board may refuse to issue a declaratory ruling, or, in its discretion, it may require them to be made parties, and if the matter can be so handled consistently with the public interest and the efficiency of the Board's procedures, then in that event, notice shall be served upon them, as in individual proceedings, and the matter will be governed thereafter by the procedure applicable to individual proceedings.

(5) **Issuance of the ruling.** If the Board, conducts a hearing upon a petition for a declaratory ruling, at the conclusion of the hearing it may issue the ruling or it may decline to do so upon any of the rounds specified in (2) and (4) of this Section or upon any other legal grounds.

SUBCHAPTER 7. INDIVIDUAL PROCEEDINGS

505:1-7-2. Filing of papers

All papers required by this Subchapter are to be filed with the ~~Secretary-Treasurer~~ Executive Director of the Board.

505:1-7-4. Notice to parties

As soon as possible after the filing of an individual proceeding petition, the ~~Secretary-Treasurer~~ Executive Director shall notify the persons named therein of the filing and of the date set for hearing. The notice shall contain:

- (1) A statement of the time, place and nature of the hearing, and of the relief demanded;
- (2) A brief statement, which may be in the words of the petition or in adequate condensation, of the matters asserted as grounds for relief;
- (3) A citation of the statutes, rules or other legal foundation for the proceeding and for the Board's jurisdiction, giving specific citation and statement of the provisions basic to the proceedings;
- (4) A statement that the persons notified may appear at the hearing and be heard, in person or other counsel, and that they may file such answer or other pleading as they may deem appropriate including a request for more detailed statements of the matters asserted, if this is necessary to define the issues;
- (5) A statement that, in the default of appearance, the relief demanded may be granted.

505:1-7-5. Service of notice

(a) **Methods of serving notice.** All notices or other papers, service of which is required in individual proceedings shall, be served in one of the following manners;

- (1) Personally upon the notice, by any person appointed to make service by the ~~Secretary-Treasurer~~ Executive Director of the Board, and in any manner authorized by the law of this state for the personal service of summons in proceedings in the state courts; or
- (2) By certified mail, mailed by the ~~Secretary-Treasurer~~ Executive Director of the Board, or by such other person at such post office address as he may have filed

with the Board, or if no such address has been filed, at the noticee's last known post office address; or

~~(3) If no known post office address can be discovered in the exercise of due diligence, by publication in such newspapers and for such time, or by posting in such places for such time, as the Board may direct as most likely to give opportunity for information to notice.~~

(b) **Time notice is completed.** Service of notice shall be complete upon personal service, or upon the deposit of certified mail in the post office, or upon the posting of notice, or first publication thereof, as the case may be.

(c) **Proof of service.** Proof of service of all notices, subpoenas or other documents requiring service may be made by affidavit of the party making service, specifying dates and manner of service. Such proof shall be prima facie evidence of the fact of service as stated, and the burden of proof shall be upon any person or party contesting the same to establish its invalidity.

505:1-7-6. Time of hearing; request for extension

The time set for an individual proceeding hearing shall be specified in the notice thereof. If the noticee deems that the date specified gives inadequate time for preparation for the hearing, the noticee may apply in writing for an extension, stating the time desired and the reasons for the request. The application shall be acted upon promptly by the ~~Secretary-Treasurer~~ Executive Director, and if the extension is denied, the party may renew the request and make proper showing for a continuance at the hearing.

505:1-7-8. Record of Hearing

(a) The report of a hearing shall be set forth in such forms and detail as the President or Board may direct, unless the hearing is fully transcribed, and shall be placed on file in the ~~Secretary-Treasurer~~ office of the Executive Director. The record shall include all pleadings, motions, and intermediate rulings; evidence received or considered; a statement of matters officially noticed; questions and offers of proof, objections, and rulings thereon; and decision opinion, or report by the officer presiding at the hearing; all staff memoranda or data submitted to the hearing officer or members of the agency in connection with their consideration of the case.

(b) The full proceedings of any hearing shall be transcribed on the request of any party. The fee for the reporter shall be paid by the party requesting the services of a reporter, but may be taxed as costs to another party at the direction of the Board in appropriate circumstances.

505:1-7-9. Findings of fact

All findings of fact made by the Board in an individual proceeding shall be made in compliance with the Administrative Procedures Act based exclusively on the evidence, on matters officially noticed during the hearing, and if deemed reliable upon the information received by the Board through investigation and examination made by its agents or staff prior to or during the hearing as allowed pursuant to the Administrative Procedures Act. ~~which shall be reduced to writing,~~

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~~sworn to, and filed and made a part of the record, or the testimony of such agents shall be taken under oath, in the discretion of the Board.~~

505:1-7-14. Requests for disqualification

Requests for the disqualification of a member or members of the Board in an individual proceeding shall be embodied in an affidavit, stating with particularity the grounds alleged therefor. Such requests must be filed prior to the commencement of the hearing unless it is made to appear in the affidavit that the ground of disqualification was not previously known and that the application has been made promptly upon discovery. Upon the filing of such affidavit, the President of the Board or the ~~Secretary Treasurer~~ Executive Director, if the affidavit is filed against the President, shall set the matters for the hearing at the earliest date at which the Board can be convened giving notice thereof personally or by telephone to the party or his counsel. The Board, or those members thereof qualified to sit at the hearing, shall take evidence and make prompt decisions. In the event the disqualification is sustained or in the event of a mandamus requiring disqualification, the hearing shall be continued to such time as is necessary for the appointment of members pro tem to proceed with the matters, and due notice of the continuance shall be given to all parties.

505:1-7-15. Rehearing, reopening or reconsideration

A petition for rehearing, reopening or reconsideration of a final order in an individual proceeding must be filed with the ~~Secretary Treasurer~~ Executive Director within ten (10) days from the entry of the order. It must be signed by the party or his attorney, and must set forth with particularity such of the statutory grounds upon which it is based. However, a petition based upon fraud practiced by the prevailing party or upon procurement of the orders by perjured testimony or fictitious evidence may be filed at any time. All petitions for rehearing, reopening, or reconsideration will be considered and ruled upon as soon as the convenient conduct of the Board's business will permit.

[OAR Docket #17-629; filed 7-12-17]

TITLE 505. BOARD OF EXAMINERS IN OPTOMETRY CHAPTER 10. LICENSURE AND REGULATION OF OPTOMETRISTS

[OAR Docket #17-630]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 1. General Provisions
- 505:10-1-1. Purpose [AMENDED]
- 505:10-1-2. Forms and instructions [AMENDED]
- 505:10-1-3. Sample of official forms [REVOKED]
- Subchapter 3. Licensing Procedures
- 505:10-3-1. Application for license [AMENDED]

- 505:10-3-2. Examination of Candidates [AMENDED]
- Subchapter 5. Regulation of Licensees
- 505:10-5-1. Minimum standard of sanitation, hygiene and professional surroundings [AMENDED]
- 505:10-5-7. Practice in two locations [AMENDED]
- 505:10-5-11. Authorized post-graduate educational work [AMENDED]
- 505:10-5-13. Acts constituting unprofessional conduct [AMENDED]
- 505:10-5-14. Release of contact lenses prescription [AMENDED]
- Subchapter 7. Complaints, Regulations and Renewals
- 505:10-7-2. Complaints against licensees [AMENDED]

AUTHORITY:

Oklahoma Board of Examiners in Optometry; 59 O.S. §§ 583, 604

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November 17, 2016

COMMENT PERIOD:

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March 9, 2017

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

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APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 13, 2017

FINAL ADOPTION:

June 13, 2017

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SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The adopted revisions to Chapter 10 of Title 505 modernize and update the Board's rules, particularly to reflect the creation of the position of Executive Director to take over many of the functions of the Secretary Treasurer. The revisions also formalize what had become the settled practice of the Board, such as quarterly meetings, and the dates of examination of candidates for licensure. The revisions also clarify and update certain administrative practices of the Board, as well as updating somewhat the equipment each optometrist must have in his or her office. The revisions update the list of providers of continuing education for optometrists. The revisions also increase the fees for taking or retaking the licensure examination. Finally, the revisions conform the rules more closely to the Administrative Procedures Act and the Open Records Act.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 1. GENERAL PROVISIONS

505:10-1-1. Purpose

These rules provide for the method of obtaining licensure by qualified applicants, and for regulation of licensed practitioners of optometry. The Rules are to ensure that the public safety and welfare is protected by requiring all licensees to be competent and adequately skilled.

505:10-1-2. Forms and instructions

The following forms and instructions for their use have been adopted by the Board and are in use by the Board:

- (1) ~~Application for license to practice Optometry License Examination.~~
- (2) ~~License certificate Application for Special Volunteer License.~~
- (3) Annual License Renewal Certificate.
- (4) ~~Application for Reissuance of Certificate Seal to practice Optometry Branch Office.~~

505:10-1-3. Sample of official forms [REVOKED]

~~A sample of the official form of application for registration as an Optometrist, and of the official form of certificate and affidavit as the attendance at education programs is available from the Board.~~

SUBCHAPTER 3. LICENSING PROCEDURES

505:10-3-1. Application for license

The application for a license to practice Optometry shall be on a form prescribed by the Board. This form is provided on the Board of Examiner 's website. The forms may be obtained upon request to the Secretary Treasurer of the Board.

505:10-3-2. Examination of Candidates

- (a) **Times of meeting.** ~~The Board will meet at least twice a year, during the months of January and July during the month of July for the initial examination and then again in January for the re-examination of any applicant who fails to pass any part of the initial examination.~~
- (b) **Filing of application for examination.** A candidate desiring to take the examinations may obtain the official form of application for such purpose from the ~~Secretary Treasurer~~ Executive Director. The application and all necessary ~~papers~~ information must be filed with the ~~Secretary Treasurer~~ Executive Director at least thirty (30) days before the date of the examination, and the application must be accompanied by an examination fee in the amount of ~~\$150.00, in the form of cash, bank cashier 's check or acceptable money order~~ \$200.00. A failure to appear for an examination is cause for forfeiture of the examination fee.
- (c) **Required passing grade.** A candidate must make a passing grade of at least 75 grade points in all subjects of the examination in order to receive a certificate of registration.
- (d) **Retaking examination.** A candidate who fails to make the necessary passing grade at an examination may re-take the examination on the subjects failed at the ~~next regular examination~~ January Board Meeting with the payment of an examination fee in the amount of ~~\$150.00~~ \$200.00; but if passing grades are not made on the second examination, a new application for the entire examination must be instituted and another examination fee ~~\$150.00~~ of \$200.00 must be paid.

SUBCHAPTER 5. REGULATION OF LICENSEES

505:10-5-1. Minimum standard of sanitation, hygiene and professional surroundings

In order to establish a minimum standard of sanitation, hygiene and professional surroundings of and for optometric offices in this State, the Board of Optometry of Oklahoma, acting under authority of Subdivision "E", Section 3, House Bill No. 307 of the Sixteenth Legislature of Oklahoma, does hereby prescribe the following rules and regulations, to-wit:

- (1) All optometric offices, including instruments and equipment, contained therein, in this State, must at all times be kept clean and free from any condition or surroundings that will make or tend to make same unsanitary or unhygienic.
- (2) The Patient 's entrance to each optometric office in this state shall open on a public street, hall, lobby or corridor.
- (3) Every optometrist practicing his profession in this state must have available in his office for examination of the human eye the following minimum equipment, to-wit: an Ophthalmoscope, a Retinoscope, ~~an Ophthalmometer or a Keratometer, a Phoropter or Refractor, or their equivalent~~ and an instrument for recording visual fields. Every such examination must be made in an optometric office, such as is referred to in (1) and (2) of this Section, and in a room of such office used exclusively for the practice of optometry. Provided, that if a person desiring optometric services informed an Optometrist that by reason of sickness, or other cause, he or she is confined to his or her place of abode, said optometrist may make an examination at the place of abode of said person. Provided, further, that said optometrist must have available at said place of abode for said examination, the following minimum equipment, to-wit: an Ophthalmoscope, a Retinoscope, or their equivalent, a reliable astigmatic test and a reliable trial frame suitable for muscular test.
- (4) No Optometrist shall practice Optometry in a room or part of a room occupied in whole or in part by a wholesale or retail mercantile establishment, or maintain an optometric office therein, or in connection therewith.

505:10-5-7. Practice in two locations

Any licensed optometrist in Oklahoma may practice in two, but not more than two, office locations; either one principal and one branch or two principal offices. Practice in a government institution shall not be counted as one of these locations. Practice in another doctor's office shall be considered as one of the optometrist's two locations.

- (1) **Registration of each office.** Each office must be registered with the Board and such registration shall be renewed annually along with the Optometrist's license renewal. No less than a ~~\$30.00~~ \$100.00 late renewal fee ~~(for all renewals)~~ shall be charged after June 30th of each year. The fee for initial and renewal registration for a secondary office will be determined by the Board. Each optometrist is responsible for notifying the Board and registering each

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office with the ~~secretary~~ Executive Director of the Board on a form provided by the Board.

(2) **Displaying license certificate.** A license certificate must be displayed in each office location and duplicate licenses shall be furnished by the Board at a fee to be determined by the Board.

(3) **Minimum equipment in second office.** A second office is defined and construed by the Board as a secondary practice, at a fixed location and must be registered with the Board. The following minimum equipment is required in each office:

- (A) Phoropter
- (B) Projector
- (C) Auto Keratometer or Keratometer or Ophthalmometer
- (D) Slit Lamp or Biomicroscope
- (E) Tonometer
- (F) Ophthalmoscope
- (G) Retinoscope
- (H) Lensometer
- (I) Perimeter or other visual fields testing instrument
- (J) Color Vision Testing Device

(4) **Required personnel.** Each office must have such personnel present at all times the office is open which is necessary to assist the optometrist to make appointments for patients.

505:10-5-11. Authorized post-graduate educational work

(a) Every Optometrist must cause to be filed with the Board not later than June 30th of each year, beginning 2017 proof showing that during the preceding year he/she attended not less than twenty-five (25) hours of continuing medical education (CME) or an affidavit showing that he was unavoidably prevented, because of sickness or for some other reason satisfactory to the Board, from attending any such educational or post-graduate program. Of the twenty-five (25) required annually, up to six (6) hours of remote learning, up to three (3) hours of practice management and a minimum of one (1) hour shall be judicious prescribing of dangerous drugs and controlled dangerous substances provided by the Oklahoma Association of Optometric Physicians or the ~~Oklahoma Board of Examiners in Optometry~~ or a course provided by a vendor acceptable by the Board. Northeastern State University Oklahoma College of Optometry.

(b) The Board approves the following vendors providing continuing medical education (CME) provided the faculty or staff of each vendor substantially develops and presents the program and the program is free from any appearance of commercialism:

- (1) Optometry college accredited by the American Optometric Council on Education
- (2) American Optometric Association, or an affiliate of the American Optometric Association
- (3) College of Optometrists in Vision Development
- (4) Southeast Council of Optometry (SECO)
- (5) Oklahoma Association of Optometric Physicians

- (6) Great Western Council of Optometry (GWCO)
 - (7) Heart of America Contact Lens society
 - (8) American Academy of Optometry (AAO), or any affiliate of the AAO
 - (9) State Optometric Associations of the United States
- (c) Any Optometrist desiring approval of any other continuing medical education (CME) must make a written request for approval to Office of the Board of Examiners in Optometry at least fifteen (15) days before he/she attends such program.
- (d) Simultaneously with the requirement of this rule, every Optometrist shall not later than June 30, 2017 and each year thereafter file with the Board evidence that he or she has a current cardiopulmonary resuscitation card issued by the American Red Cross, or equivalent training.

505:10-5-13. Acts constituting unprofessional conduct

(a) Pursuant to 59 O.S. 1991, Section 585, the Board has authority to reprimand a licensee or to revoke or suspend a license to practice optometry for unprofessional or unethical conduct. The Board also has authority pursuant to this Section to enact rules stating what acts constitute unprofessional or unethical conduct.

- (b) It shall be unprofessional conduct for an Optometrist to:
- (1) Administer, dispense and/or prescribe dangerous drugs for purposes other than generally accepted treatment for the relief of ocular abnormalities.
 - (2) Prescribe controlled dangerous substances to immediate family members.
 - (3) Prescribe controlled dangerous substances for a period exceeding 7 days of supply and/or reissue refills without sufficient patient examination.
 - (4) Sell samples of medication.
 - (5) Indiscriminately or excessively prescribe, dispense or administer controlled dangerous substances.
 - (6) Prescribe, dispense, or administer controlled dangerous substances in excess of the amount considered good optometric practice or prescribing, dispensing or administering controlled dangerous substances without medical need in accordance with published standards.
 - (7) Habitually or excessively use any drug which impairs the ability to practice optometry with reasonable skill and safety to the patient.
 - (8) Disburse or prescribe any controlled dangerous substance for optometric physician's personal use.
 - (9) Dispense, prescribe or administer controlled dangerous substances without medical need.
 - (10) Delegate authority to another person for the signing of prescriptions for either controlled dangerous substances or drugs.
 - (11) Commit fraud or to misrepresent facts in applying for or procuring an optometric license or in connection with applying or procuring periodic re-registration of an optometric license.
 - (12) Cheat on or attempt to subvert the optometric licensing examinations.
 - (13) Be convicted of a felony or any offense involving moral turpitude whether or not related to the practice of optometry.

- (14) Be guilty of conduct likely to deceive, defraud or harm the public.
- (15) Make a false or misleading statement regarding skill or the efficacy or value of the medicine, treatment of remedy prescribed by an optometrist or at an optometrist's direction in the treatment of any ocular abnormality.
- (16) Represent to the patient that an incurable condition, sickness, disease or injury can be cured.
- (17) Willfully or negligently violate the confidentiality between an optometric physician and patient to the detriment of a patient except as required by law.
- (18) Grossly or repeatedly commit negligence in the practice of optometry.
- (19) Be found mentally incompetent or ~~insane~~ by any court of competent jurisdiction; involuntary commitment to a mental institution ~~for the insane~~ shall be considered prima facie evidence of ~~insanity or inability of~~ any optometrist to practice optometry until such optometrist satisfies the Board of his or her ability to safely practice optometry.
- (20) Be physically or mentally unable to practice optometry with reasonable skill and safety.
- (21) Practice or commit other behavior that demonstrates an incapacity or incompetence to practice optometry.
- (22) Use any false or fraudulent deceptive statement in any document connected with the practice of optometry.
- (23) Practice optometry under a false or assumed name.
- (24) Aid or abet the practice of optometry by an unlicensed, incompetent or impaired person.
- (25) Allow another person or organization to use an optometrist license to practice optometry.
- (26) Commit any act of sexual abuse, misconduct, or exploitation related to or unrelated to the licensee's practice of optometry.
- (27) Violate any state or federal regulation relating to controlled substances.
- (28) Obtain any fee by fraud, deceit or misrepresentation, including fees from Medicare, Medicaid, or insurance.
- (29) Have disciplinary action taken by another state or jurisdiction against a licensee to practice optometry based upon acts of conduct by the licensee similar to acts or conduct that would constitute grounds for action as defined by these files, with a certified copy of the record of the action taken by the other state or jurisdiction being conclusive evidence thereof.
- (30) Fail to report to the Board any adverse action taken against the optometrist by another licensing jurisdiction (United States or foreign), by any governmental agency, by any law enforcement agency, or conduct that would constitute grounds for action as defined in these rules.
- (31) Fail to report to the Board surrender of a license to practice optometry in another state or jurisdiction, or surrender of membership in any medical or professional association or society while under disciplinary investigation by any of those authorities or bodies for acts or

conduct similar to acts of conduct that would constitute grounds for actions as defined in these rules.

- (32) Improperly manage optometric records.
- (33) Fail to furnish the Board, its investigators or representatives, information lawfully requested by the Board, or to fail to comply with an order of the Board.
- (34) Fail to cooperate with a lawful investigation conducted by the Board.
- (35) Be unable to practice optometry with reasonable skill and safety to patients by reason of age, illness, drunkenness, excessive use of drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition. To enforce this paragraph, the Board, may upon probable cause, request an optometric physician to submit to a mental or physical examination by physicians designated by it. If the optometrist refused to submit to the examination, the Board shall issue an order requiring the optometrist to show cause why he will not submit to the examination and shall schedule a hearing on the order within 30 days after notice is served on the optometrist. The optometrist shall be notified by either service or by certified mail with return receipt requested. At the hearing, the optometrist and his attorney are entitled to present any testimony and other evidence to show why the optometrist should not be required to submit to the examination. After a complete hearing, the Board shall issue an order either requiring the optometrist to submit to the examination or withdrawing the request for examination. The optometric license of the optometrist ordered to submit to examination may be suspended until the results of the examination are received and reviewed by the Board.

505:10-5-14. Release of contact lenses prescription

- (a) Upon request by a patient, who has paid for all professional services rendered in connection with care, the Optometrist shall release to the patient a copy of the prescription for contact lenses. An Optometrist shall comply with any state or federal law or regulation regarding release of contact lens prescriptions.
- (b) A contact lens prescription release by an Optometrist upon patient request shall contain the following, to wit:
 - (1) Date of issue.
 - (2) Name and address of patient.
 - (3) Name, address and signature of the prescribing Optometrist.
 - (4) All parameters required to properly supply the contact lenses, to include brand names and materials types.
 - (5) A specific date of expiration, not to exceed twelve (12) months.
 - (6) Any limitations on refills and notification of scheduled follow-up visits.
 - (7) Explicit statement that it is a contact lens prescription.
 - (8) Specific notation that any person, firm or corporation that dispenses or sells contact lenses from the prescription should inform the patient in writing that they should return to the prescribing Optometrist to ascertain the accuracy and suitability of the contact lenses and

that the prescribing Optometrist shall not be responsible for any damage or injury resulting from negligence of third parties to include but not limited to negligence in packaging, manufacturing, improper care regimen or recommendations (cleaning, disinfection and wetting) or instructions provided by the seller that lead to over-wear of lenses or improper care of lenses which result in damage to lenses or visual system, and that the prescribing doctor shall not be responsible for contact lens damage, eye injury or damage occurring during the time that lenses are provided by another dispenser.

(9) Notice that the contact lens dispenser shall not adapt, substitute or change the contact lens prescription without prior authorization from the prescribing doctor, to include brand names and specific material types, to do so constitutes the practice of Optometry.

(10) A contact lens prescription is deemed to be determined after the refraction, eye health examination, corneal assessment, and diagnostic lens fitting. No Optometric physician will write a contact lens prescription until the above steps have been performed. No Optometric physician will write a contact lens prescription should the said patient's eye health be compromised because of contact lenses.

(11) The words "ok for contact lens", "fit with contact lenses" etc. or similar wording do not constitute a contact lens prescription.

(12) Further - all contact lenses used in the determination of a contact lens prescription are considered to be diagnostic lenses and the use of such lenses by anyone other than an optometric physician or medical physician or someone under his or her direct supervision shall constitute the practice of Optometry.

(c) Failure to comply with the provisions of this Section shall be considered unprofessional and unethical conduct.

SUBCHAPTER 7. COMPLAINTS, REGULATIONS AND RENEWALS

505:10-7-2. Complaints against licensees

Charges against Optometrists must be made in the form of a Complaint filed with the ~~Secretary-Treasurer~~ Executive Director. If the complaint is unable to be reconciled, then a formal or informal hearing will be set and the ~~Secretary-Treasurer~~ Executive Director will advise the ~~other four (4)~~ members of the Board of the filing of the same, whereupon the time and place of hearing the Complainant will be set. Notice of the time and place of hearing will be given to the Optometrists complained against, and to the Complainant, by the ~~Secretary-Treasurer~~ Executive Director by mail at least ten (10) days before the date of the hearing. The proceedings will be conducted in accordance with the Oklahoma Administrative Procedures Act, 75 O.S. 1971 Sections 301 - 327.

[OAR Docket #17-630; filed 7-12-17]

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

[OAR Docket #17-610]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 7. Individual proceedings

535:1-7-3. Hearings [AMENDED]

Subchapter 17. Pilot Projects [NEW]

535:1-17-1. Purpose [NEW]

535:1-17-2. General requirements [NEW]

AUTHORITY:

Oklahoma State Board of Pharmacy is the regulatory authority under Title 59 O.S., Sec. 353.3, 353.5 - 353.7, 353.9, 353.11-353.20.1, 353.22, 353.24 - 353.26-354; and Title 75 O.S., Section 302, 305, 307, and 309; and Title 63 O.S., Sec 2-201, 2-208 and 2-210; and Title 51 Sec. 24 A.5 (3)

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n/a

GIST/ANALYSIS:

Rule 535:1-7-3 removes old 'order of procedure' language from this section. Oklahoma Administrative Procedure act controls hearings.

New 535:1-17-1 and 535:1-17-2 describe pilot project purpose and general requirements e.g. application, approval, monitoring, reports, review, inspection, etc. Pilot project rules are not effective until and unless the pilot project statute passes.

CONTACT PERSON:

Dr. Chelsea Church, Executive Director, Oklahoma State Board of Pharmacy, 2920 N Lincoln Boulevard Suite A, Oklahoma City, OK 73105-4212, Phone number 405 521-3815

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 7. INDIVIDUAL PROCEEDINGS

535:1-7-3. Hearings

(a) **Notice time; continuances.** The time set for a hearing, specified in the notice, shall not be less than ten (10) days after the date of the notice. Written motions for any continuances or

extensions of time shall state the time desired and the reasons for the request, and shall be filed with the Board at least five (5) business days before the hearing, and may be denied by the Director if not filed at least (five) 5 business days before the hearing. The Director is authorized to rule on said motions. If the motion is denied; the party may renew the request for continuance at the hearing.

(b) **Imminent Danger Suspension.** If the Director finds that there is imminent danger to the public health or safety, he may immediately suspend any registration simultaneously with the scheduling of a Board hearing.

(1) **Method.** The registrant shall be notified of such suspension through an imminent danger letter signed by the Director.

(2) **Notice.** Notice shall be given in the manner described in 535:1-7-2.

(c) **Order of procedure.** Hearings shall be conducted in an orderly manner by the President of the Board, or his designee. The order of procedure shall follow that which applies in civil proceedings of Law. However, the rules of evidence shall be those specified by the Oklahoma Administrative Procedures Act.

(d) **Admissibility.** The President of the Board, or his designee, shall rule upon the admissibility of evidence and objections thereto, and shall rule upon other motions or objections arising in the course of the hearing.

SUBCHAPTER 17. PILOT PROJECTS

535:1-17-1. Purpose

The Board may approve pilot projects designed to utilize new or expanded technology or processes and designed to provide patients with better pharmacy products or provide pharmacy services in a more safe and efficient manner.

535:1-17-2. General requirements

(a) These pilot project rules become effective upon the pilot project statute effective date.

(b) A petitioner who wishes the Board to consider a pilot project for approval shall submit to the Board a petition that contains all of the following information:

(1) The name, address, telephone number, electronic mail address and Oklahoma license number of the pharmacist responsible for overseeing the proposed pilot project.

(2) The specific location where the proposed pilot project will be conducted. The petitioner shall include the Oklahoma license number of the pharmacy and a statement that the Oklahoma license of the pharmacy and any pharmacist involved with the pilot project is current and is not subject to sanction for violation of federal or state statutes or rules.

(3) A detailed summary of the proposed pilot project that includes all of the following:

(A) The goals and objectives, as applicable, of the proposed pilot project.

(B) A full explanation of the proposed pilot project and how the project will be conducted.

(C) The initial time frame for the pilot project, including the proposed start date and length of the project, which initial time frame shall not exceed twelve (12) months.

(D) All background information and literature review, as applicable, to support the proposed pilot project.

(E) If applicable, identification of the rules from which the petitioner is requesting an exception as provided in subsection (c) in order to complete the proposed pilot project and a request for that exception.

(F) If applicable, procedures the petitioner will use during the proposed pilot project to ensure that the public's health and safety are not compromised as a result of an exception to a rule being granted under subsection (c).

(c) The Board shall not approve a pilot project that does any of the following:

(1) Expands the definition of the practice of pharmacy.

(2) Provides for the therapeutic substitution or substitution of medical devices used in patient care.

(3) Allows a pharmacy or pharmacist to be involved with a pilot project if the pharmacy's or pharmacist's license is not current or is subject to a sanction for a violation of the Pharmacy Act and/or federal or state laws.

(d) The Board may grant to a petitioner conducting an approved pilot project under this section an exception to a rule promulgated by the Board. The Board may grant an exception under this section for a specified period of time, which period shall not exceed twelve (12) months, unless the pilot project is extended under subsection (h) and/or (i).

(e) Upon approval of a petition for a pilot project, the Board shall specify a time period for the operation of that pilot project, which period shall not exceed twelve (12) months. This time period may later be extended under subsections (h) and/or (i). The Board may include appropriate conditions or qualifications on approval of a pilot project. The Board may suspend the operation of a pilot project if it determines that the petitioner or any person involved with the pilot project has deviated the operation of the pilot project from the plan of operation that was approved. The Board may terminate a pilot project at any time if it determines that the health and safety of the public have become endangered by the pilot project.

(f) If determined appropriate for the pilot project approved under this section, the Board may require the petitioner to notify patients that pharmacy services are being provided as part of a pilot project. If required under this subsection, the petitioner shall notify patients in the manner required by the Board.

(g) The petitioner shall allow the Board to inspect and review pilot project documentation and the pilot project site at any time during the review process and after the pilot project is approved.

(h) The pharmacist responsible for overseeing an approved pilot project shall forward all of the following to the Board:

(1) Progress reports at intervals specified by the Board.

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(2) A summary of the results of the project and conclusions drawn from the results of the project within three (3) months after completion of the pilot project.

(3) Documentation required by these rules shall be maintained by the petitioner and be available for review for a minimum of two (2) years.

(i) If determined appropriate by the Board, the specified period of time for conducting a pilot project may be extended for an additional two periods of up to twelve (12) months each. The Board shall not grant an extension that would result in the specified period of time for conducting a pilot project under this section to exceed thirty-six (36) months.

(j) If the Board determines that a pilot project for which an exception to a rule has been granted under subsection (c) should be extended so that rules may be promulgated in order to allow the pilot project to be conducted on a permanent basis, the Board may extend the thirty-six (36) months period of time for conducting a pilot project under subsection (i) for an additional period of up to twelve (12) months in order to promulgate such rules.

[OAR Docket #17-610; filed 7-11-17]

TITLE 535. OKLAHOMA STATE BOARD OF PHARMACY CHAPTER 15. PHARMACIES

[OAR Docket #17-611]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 3. Pharmacies

535:15-3-2. Pharmacy responsibilities [AMENDED]

535:15-3-17. Pharmacy prescription records [AMENDED]

Subchapter 5. Hospital Pharmacies

535:15-5-2. Definitions [AMENDED]

Subchapter 6. Hospital Drug Room

535:15-6-8. Emergency dispensing and pre-packaged medications [AMENDED]

Subchapter 10. Good Compounding Practices

Part 1. Good Compounding Practices for Non-sterile Products

535:15-10-11. Pharmacy generated preparations requirements [AMENDED]

535:15-10-12. Compounding for a prescriber's office use [REVOKED]

535:15-10-13. Compounding veterinarian preparations [AMENDED]

Subchapter 13. Pharmacy Supportive Personnel

535:15-13-6. Duties [AMENDED]

Subchapter 15. Home Care Agency Pharmacy Agreements

535:15-15-1. Definitions [AMENDED]

Subchapter 17. Nuclear Pharmacy

535:15-17-5. General requirements [AMENDED]

AUTHORITY:

Oklahoma State Board of Pharmacy is the regulatory authority under Title 59 O.S., Sec. 353.7, 353.11 - 353.20.1, 353.22, 353.24 - 353.26 - 354, and 367.8.

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GIST/ANALYSIS:

The revision in 535:15-3-2 adds a minimum number of hours a pharmacist in charge (PIC) must be physically present in the pharmacy. The revisions in 535:15-3-17 and 535:15-5-2 correct definition cites. The revision in 535:15-6-8 removes the word 'practitioner' that was missed when the language of the rule was updated from practitioner to prescriber. The revisions in 535:15-3-2 and 535:15-15-1 also remove "pharmacy manager" and replace it with "PIC" to keep the rules consistent.

The revision in 535:15-10-11 adds that pharmacy generated products (PGPs) must be labeled in compliance with federal FDA OTC labeling law, rules, and guidance documents as required by federal law. Section 535:15-10-12 is revoked because federal law prohibits pharmacy generated products (PGPs) for a prescribers office use.

The revision in 535:15-10-13 for compounding veterinarian preparations removes the second sentence of (a) and removes subsections (b), (c), (e) and (f). It adds a new (b) explaining that compounded preparations must comply with federal law, rules and guidance, it changes (d) to (c) and changes (g) to (d).

The following revisions improve the clarity of the rules. The revision in 535:15-13-6 (b) (8) remove an unnecessary "and" as the "and" for the list is now in (9). The revision in 535:15-15-1 adds the definition language to this definition section and correct administer drugs" definition cite. The revision in 535:15-17-5(g) insert a period after the word "below" ahead of the last sentence. The revision in 535:15-17-5 (i) (1) (m) removes "beyond-use-date" ahead of "BUD" and remove the parenthesis around BUD for consistency.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 3. PHARMACIES

535:15-3-2. Pharmacy responsibilities

(a) **Pharmacy staffing responsibility.** Each pharmacy shall employ an adequate number of pharmacists to perform the practice of pharmacy as defined by the Oklahoma Pharmacy Act with reasonable safety.

(b) ~~Pharmacy manager~~**PIC.** Each pharmacy, in order to obtain and maintain a pharmacy license, must have a licensed pharmacist as the ~~pharmacy manager~~**PIC.**

(1) A ~~pharmacy manager~~ (~~pharmacist in charge~~ (PIC)) is designated by his signature on the original pharmacy application or by the appropriate notification to the Board as required in 535:15-3-10 (a), and is responsible for all aspects of the operation related to the practice of pharmacy. These responsibilities include, but are not limited to the:

- (A) supervision of all employees as they relate to the practice of pharmacy;
 - (B) establishment of policies and procedures for safekeeping of pharmaceuticals that satisfy Board requirements, including security provisions when the pharmacy is closed;
 - (C) proper record keeping system for the purchase, sale, delivery, possession, storage, and safekeeping of drugs;
 - (D) proper display of all licenses;
 - (E) annual controlled drug inventory; and,
 - (F) maintenance of prescription files;
- (2) Failure of the pharmacy to have a PIC pharmacy manager who fulfills these responsibilities is a violation of this code by both the pharmacy and ~~pharmacy manager (PIC)~~.
- (3) No pharmacist may serve as a PIC pharmacy manager in more than one pharmacy at a time.
- (4) The PIC shall be present and practicing at the pharmacy for which he holds the PIC position no less than 20 hours per week during the pharmacy's ordinary course of business. In the event the pharmacy's normal hours of business are less than 40 hours per week the PIC shall be present and practicing at least 50 percent of the normal business hours.
- (45) A PIC pharmacy manager shall work sufficient hours in the pharmacy to exercise control and meet the responsibilities of the PIC pharmacy manager.
- (c) **PIC's Pharmacy manager's and pharmacy's responsibilities.** The following describe responsibilities of the pharmacy and PIC pharmacy manager:
- (1) Where the actual identity of the filler of a prescription is not determinable, the ~~PIC manager of the pharmacy~~ and the pharmacy where the prescription was filled will be the subject of any charges filed by the Board.
 - (2) The pharmacy and the PIC pharmacy manager are responsible to establish and maintain effective controls against prescription errors or misfills.
 - (3) The pharmacy and/or PIC pharmacy manager shall notify the Board immediately by certified mail of the separation of employment of any pharmacist, pharmacy intern, or pharmacy technician for any suspected or confirmed drug or pharmacy related violation. If the ~~pharmacy manager (PIC)~~ is terminated for such reason, the owner or other person in charge of the pharmacy shall notify the Board by certified mail.
 - (4) The pharmacy, pharmacist, and/or PIC pharmacy manager shall establish and maintain effective controls against the diversion of prescription drugs into other than legitimate medical, scientific, or industrial channels as provided by federal, state or local laws or rules.
 - (5) The pharmacy, pharmacist and PIC pharmacy manager are responsible for supervision of all employees as they relate to the practice of pharmacy.
- (d) **Responsibility for automated pharmacy systems.** This subsection describes the responsibilities of the pharmacy and the PIC pharmacy manager for automated pharmacy systems.
- (1) Prior written notice must be provided to the Board of the installation or removal of automated pharmacy systems. Such notice must include, but is not limited to the:
 - (A) name and address of the pharmacy,
 - (B) name of PIC pharmacy manager,
 - (C) name of the manufacturer & model of system.
 - (2) The system being implemented should conform to Board automated pharmacy system guidelines.
 - (3) The pharmacy shall monitor the automated pharmacy system with a quality assurance program.
 - (4) The pharmacy, pharmacist, and/or PIC pharmacy manager shall establish and maintain effective controls against the diversion of prescription drugs into other than legitimate medical, scientific, or industrial channels as provided by federal, state or local laws or rules.
 - (5) The pharmacy, pharmacist and PIC pharmacy manager are responsible for supervision of all employees as they relate to the practice of pharmacy regarding automation.
- (e) **Responsibilities for personnel identification.** The PIC pharmacy manager and the pharmacy are responsible to assure that the public is able to distinguish pharmacy technicians, auxiliary support personnel, and/or interns from any pharmacist in the pharmacy.
- (1) All pharmacy technicians, auxiliary support personnel, and/or interns must wear a designation tag and be distinctly identifiable from a practicing pharmacist.
 - (2) Designation tags must be clear, readable and lettered with "Rx Tech", "Tech", "Clerk", or "Intern".
 - (3) All pharmacy interns, technicians or clerks must identify themselves as such on any phone calls initiated or received while performing pharmacy functions.
- (f) **Written drug diversion detection and prevention.** The pharmacy, pharmacist, and/or PIC pharmacy manager shall implement and follow a written drug diversion detection policy. The policy shall be available for Board review.
- (g) **Inspections.** Pharmacies are subject to inspection. The Board and/or its authorized representatives may conduct on-site periodic routine inspections and investigations during reasonable business hours.
- 535:15-3-17. Pharmacy prescription records**
- (a) The original prescription [as defined in 353.1(29)] shall be maintained and readily retrievable for five years.
 - (b) Faxed prescriptions received in electronic format (which have not been printed) or electronically transmitted prescriptions may be electronically stored and maintained in a readily retrievable format for five years.
 - (c) Prescriptions for controlled dangerous substances (CDS) must additionally meet the requirements of the federal Drug Enforcement Administration (DEA) and the Oklahoma Bureau of Narcotics and Dangerous Drugs (OBND).

SUBCHAPTER 5. HOSPITAL PHARMACIES

Permanent Final Adoptions

535:15-5-2. Definitions

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

"Automated dispensing systems" means a mechanical system controlled by a computer that perform operations or activities, relative to the storage, packaging, compounding, labeling, dispensing, administration, or distribution of medications, and which collects, controls, and maintains all transaction information.

"Auxiliary supportive personnel" or **"auxiliary supportive person"** means all persons, other than pharmacists, interns and techs, who are regularly paid employees of the hospital pharmacy and who work or perform tasks in the hospital pharmacy that do not require a permit or license (e.g. clerk, typist, delivery, or data entry person, etc.).

"Certified medication order" means a filled prescription that has been reviewed and certified by a pharmacist.

"Certified pharmacy technician" means a pharmacy technician who has a current Board approved pharmacy technician certification in addition to a current Oklahoma pharmacy technician permit.

"Director of Pharmacy" means a pharmacist licensed to engage in the practice of pharmacy in Oklahoma who is thoroughly familiar with the specialized functions of a hospital pharmacy and directs the activities of a hospital pharmacy.

"Drug room" means a secured room where drug inventories are maintained for use in a facility licensed and regulated by the Oklahoma Health Department, and which may be inspected by the Board.

"Hospital employee" means any individual employed by a hospital whose compensation for services or labor actually performed for a hospital is reflected on the payroll records of a hospital.

"Hospital" or **"Hospital facility"** means hospital as defined in 59 O.S. Section 353 et seq.

"Hospital pharmacy" means the place or places in which drugs, chemicals, medicines, prescriptions, or poisons are stored, controlled and prepared for distribution and administration for the use and/or benefit of patients in a hospital facility. Hospital pharmacy shall also mean the place or places in which drugs, chemicals, medicines, prescriptions or poisons are compounded and prepared for dispensing to the members of the medical staff, hospital employees, and the members of their immediate families, patients being discharged, and for other persons in emergency situations.

"Medical staff" means a prescriber who has privileges to practice in the hospital facility.

"Medication order" means a prescription as defined in Title 59 O.S. Section 353.1(29).

"Pharmacist" means any person licensed to practice pharmacy by the Oklahoma Board.

"Pharmacy technician", **"Tech"**, **"Technician"** or **"RxTech"** means a person who has been issued a permit by the Board to assist the pharmacist and performs nonjudgmental, technical, manipulative, nondiscretionary functions in the prescription department under the pharmacist's immediate supervision.

"Remote medication order processing" or **"RMOP"** means the processing of a medication order for a hospital facility by a pharmacist located in a remote medication order processing pharmacy site. Remote medication order processing does not include the dispensing of a drug, but may include receiving, interpreting, evaluating, clarifying and approval of medication orders. Additionally, remote medication order processing may include order entry, other data entry, performing prospective drug utilization review, interpreting clinical data, performing therapeutic interventions, and providing drug information services, and authorizing release of the medication for administration.

"Remote site" means a site located within the continental United States (US) or District of Columbia (DC) that is electronically linked to the hospital via a computer and/or other electronic communications system as defined in the operations, policies and procedures manual of a hospital pharmacy for the purposes of remote medication order processing (RMOP) of a remote medication order processing pharmacy.

"Supportive personnel" means supportive personnel as defined in 59 O.S. Section 353.1 et seq.

SUBCHAPTER 6. HOSPITAL DRUG ROOM

535:15-6-8. Emergency dispensing and pre-packaged medications

(a) **Emergency dispensing.** A pharmacist or licensed practitioner on duty may label and dispense an appropriate supply of a medication from the hospital drug room when ordered by a prescriber ~~practitioner~~ for a patient of the hospital to take with them when dismissed. An appropriate supply would include only sufficient doses required from the time of dismissal until resumption of normal business hours of local pharmacies.

(b) **Pre-packaged medications.** A pharmacist may pre-package medications in sufficient amounts to meet the immediate needs of patients of the hospital. The pre-dispensed medications must be labeled and packaged properly as required under sub-section 535:15-6-7 (c) Labeling, excepting items B, C, D, and E, and adding the medication expiration date and lot number. Such pre-packaged medications shall be securely stored, and an accurate accounting of their use shall be kept.

(1) When such medications are ordered by prescriber, to be used after dismissal from the hospital, the prescriber [with dispensing privileges] shall complete the medication label with the appropriate information including the patient's name, the prescriber's name, appropriate directions for use, the date the medication is distributed to the patient, and an identifying number.

(2) The prescriber who orders the medication shall be responsible for appropriate patient counseling and drug information dissemination.

SUBCHAPTER 10. GOOD COMPOUNDING PRACTICES

PART 1. GOOD COMPOUNDING PRACTICES FOR NON-STERILE PRODUCTS

535:15-10-11. Pharmacy generated preparations requirements

- (a) A Pharmacy Generated Preparation (PGP) if prepared from RX Only drugs, may not exceed recommended OTC strengths and doses.
- (b) PGP will be labeled properly and will be sold with the public's health and welfare in mind.
- (c) Compounded PGPs are to be sold directly to the consumer after professional interaction or consultation with the health care provider and the consumer.
- (d) A PGP cannot be bulk compounded to sell to a second entity for resale. This would require a manufacturer's license.
- (e) Compounded PGPs must be labeled in compliance with FDA OTC labeling regulations.

535:15-10-12. Compounding for a prescriber's office use [REVOKED]

- ~~(a) Pharmacies engaging in compounding may prepare compounded drug preparations for a licensed prescriber's office use.~~
- ~~(b) An order by the licensed prescriber indicating the formula and quantity ordered will be filed in the pharmacy.~~
- ~~(c) The preparation is to be administered in the office and not dispensed to the patient. The preparation label should state 'for office use only not for resale'.~~
- ~~(d) An invoice shall be kept on file by the pharmacy. This invoice shall include, but not be limited to, the name and address of purchaser, quantity sold, drug description, price, and date of transaction. These invoices must be readily available for inspection. A drug supplier permit is required per OAC 535:15-7.~~
- ~~(e) A record of the compounded drug may be kept as a prescription record in the pharmacy computer and a label may be generated and a number assigned by the pharmacy computer for the compounded drug Rx' unless the product is a radio-pharmaceutical prepared from an FDA approved commercially manufactured radiopharmaceutical drug. In such case labeling requirement can be found in 535:15-17.~~
- ~~(f) Under Oklahoma Bureau of Narcotics rules [475:30-1-3 (b) et seq.], a prescription for controlled dangerous substances cannot be filled "for office or medical bag use".~~
- ~~(g) Compounded preparations may not be given or sold for resale by prescribers or other persons.~~

535:15-10-13. Compounding veterinarian preparations

- (a) Prescriptions for animals may be compounded based on an order or prescription from a licensed prescriber. ~~Compounding for office use for administration by veterinarians is allowed.~~
- ~~(b) These prescriptions are to be handled and filled the same as the human prescriptions.~~
- ~~(c) The preparation is to be administered by a veterinarian and not dispensed to the patient. The preparation label should state 'for office use only not for resale'.~~

- (b) Compounded preparations must comply with federal statutes, rules and FDA guidances.
- ~~(c) Caution should be taken as to not violate federal patent laws by duplicating an available product in inordinate quantities.~~
- ~~(e) An invoice shall be kept on file by the pharmacy. This invoice shall include, but not be limited to, the name and address of purchaser, quantity sold, drug description, price, and date of transaction. These invoices must be readily available for inspection. A drug supplier permit is required per OAC 535:15-7.~~
- ~~(f) Under Oklahoma Bureau of Narcotics rules [475:30-1-3 (b) et seq.], a prescription for controlled dangerous substances cannot be filled 'for office or medical bag use'.~~
- ~~(g) Compounding with bulk chemicals for food-producing animals is not permitted.~~

SUBCHAPTER 13. PHARMACY SUPPORTIVE PERSONNEL

535:15-13-6. Duties

- (a) The following tasks may be performed by auxiliary supportive personnel:
 - (1) retrieval tasks such as retrieving prescriptions or files as necessary;
 - (2) clerical tasks such as data entry, typing labels and maintaining patient profiles;
 - (3) secretarial tasks such as telephoning, filing, and typing;
 - (4) accounting tasks such as record keeping, maintaining accounts receivables, third party billing and posting;
 - (5) inventory control tasks including monitoring, pricing, dating, invoicing, stocking pharmacy, and preparation of purchase orders; and
 - (6) help maintain a clean and orderly pharmacy.
- (b) The following tasks may be performed by pharmacy technicians:
 - (1) count and/or pour medications;
 - (2) prepackage (e.g. unit dose) and properly label medications;
 - (3) affix the prescription label to the proper container;
 - (4) affix auxiliary labels to the container as directed by the pharmacist;
 - (5) reconstitution of medications (i.e. liquid antibiotics);
 - (6) bulk compounding, including such items as non-sterile topical compounds, sterile bulk solutions for small volume injectables, sterile irrigation solutions and products prepared in relatively large volume for internal or external use. Documentation of a system of in-process and final checks and controls must be developed or approved by the certifying pharmacist and carefully and systematically enforced;
 - (7) functions involving reconstitution of single dose units of sterile compounded preparations that are to be administered to a given patient as a unit, and functions involving the addition of one manufacturer's prepared unit

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(whole or in part) to another manufacturer's prepared unit if the unit is to be administered as one dose to a patient. The pharmacist must establish the procedures for compounding sterile preparations and certify the ingredients, label and finished preparation;

(8) any duties auxiliary personnel are allowed to perform; ~~and~~

(9) assist the pharmacist in the annual CDS inventory. The pharmacist remains responsible for completeness and accuracy; and,

(10) take verbal authorizations from licensed prescriber or licensed prescriber's authorized agent (when allowed) for refill of non-controlled prescriptions with no changes to strength or directions.

SUBCHAPTER 15. HOME CARE AGENCY PHARMACY AGREEMENTS

535:15-15-1. Definitions

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

"Administer Drugs" means the direct application of a drug as defined in Title 59, O.S., Section 353.1 ~~(13)~~.

"Authorized Employee" means any employee of a Home Care Agency who in the course of their duties, is licensed by their appropriate Board to administer legend or dangerous drugs.

"Home Care Agency" or "HCA" means an entity required to license under the 1992 Home Care Act with the Oklahoma State Department of Health.

"Pharmacy manager" or "PIC" means the ~~PIC pharmacist manager~~ as described in 535:15-3-2.

SUBCHAPTER 17. NUCLEAR PHARMACY

535:15-17-5. General requirements

(a) A permit to operate a nuclear pharmacy shall only be issued to a person who is, or who employs a qualified nuclear pharmacist. All personnel performing tasks in the preparation and distribution of radiopharmaceuticals and ancillary drugs shall be under the direct supervision of a qualified nuclear pharmacist, who shall be in personal attendance when the pharmacy is open for business. The nuclear pharmacist-in-charge shall be responsible for all operations of the pharmacy.

(b) The permit to operate a nuclear pharmacy is effective only so long as the pharmacy also holds a current Radioactive Material License issued by the Oklahoma Department of Environmental Quality Control, or if in another state the Nuclear Regulatory Commission, or appropriate agreement state nuclear regulatory agency. Copies of inspection reports from Oklahoma Department of Environmental Quality Control, or if in another state the Nuclear Regulatory Commission, or appropriate agreement state nuclear regulatory agency shall be available for Board inspection.

(c) Nuclear pharmacies shall have adequate space and equipment, commensurate with the scope of services required and provided, meeting minimal space requirements established for all pharmacies in the state. All pharmacies handling radiopharmaceuticals shall include, but not be limited to, the following areas: radiopharmaceutical preparation/dispensing area; radioactive material shipping / receiving area; radioactive material storage area; and radioactive waste decay area.

(d) The nuclear pharmacy professional service area shall be secured from unauthorized personnel and must be totally enclosed and lockable.

(e) Nuclear pharmacies shall maintain records of acquisition, inventory and disposition of all radioactive drugs and other radioactive materials in accordance with Board and Nuclear Regulatory Commission statutes and regulations.

(f) Nuclear pharmacies shall compound and dispense radiopharmaceuticals in accordance with accepted standards of radiopharmaceutical quality assurance, including compounded sterile products. The Board recognizes that the preparation of radiopharmaceuticals involves the compounding skills of the nuclear pharmacist to assure that the final drug product meets accepted professional standards.

(g) A radiopharmaceutical shall be dispensed only to a licensed prescriber authorized by the Oklahoma Department of Environmental Quality Control, or if in another state the Nuclear Regulatory Commission or appropriate agreement state nuclear regulatory agency to possess, use and administer such drug. A radiopharmaceutical shall be dispensed only upon receipt of a prescription or medication order from such licensed prescriber. Otherwise, a radiopharmaceutical may be transferred to a person who is authorized to possess and use such drug for non-clinical applications as described in 535:15-17-5 subsection (k) below. Separate records will be kept for these transfers and sales, see drug supplier permit rules in 535:15-7.

(h) A nuclear pharmacy, upon receiving an oral prescription order for a radiopharmaceutical, shall immediately have the prescription order reduced to writing, or recorded in a data processing system.

(1) This writing or record shall contain at least the following:

- (A) the name of the institution and prescriber, or prescribers' agent;
- (B) the date of dispensing (or calibration) and the calibration time of the radiopharmaceutical;
- (C) the name of the procedure;
- (D) the name of the radiopharmaceutical;
- (E) the dose or quantity of the radiopharmaceutical;
- (F) the serial number assigned to the order for the radiopharmaceutical;
- (G) any specific instructions; and
- (H) the initials of the pharmacist who dispensed the order.

(2) Whenever an order is for a therapeutic or blood-product radiopharmaceutical, the patient's name must be obtained and recorded prior to dispensing.

(i)

(1) The immediate outer container shield of a radiopharmaceutical to be dispensed shall be labeled with:

- (A) the name and address of the pharmacy;
- (B) the name of the prescriber;
- (C) the date of dispensing (or calibration);
- (D) the serial number assigned to the order for the radiopharmaceutical;
- (E) the standard radiation symbol;
- (F) the words "Caution Radioactive Material";
- (G) the name of the procedure;
- (H) the radionuclide and chemical form;
- (I) the amount of radioactivity and the calibration date and time;
- (J) if a liquid, the volume;
- (K) if a solid, the number of items or weight;
- (L) if a gas, the number of ampules or vials;
- (M) the ~~beyond use date (BUD) date~~ and time; and,
- (N) the name of the patient or the words e.g. "Per Physician's Orders" in the absence of a patient name.

(2) When the prescription is for a therapeutic or blood-product radiopharmaceutical, the patient name shall appear on the label. The requirements of this sub-section shall be met when the name of the patient is readily retrievable from the physician upon demand.

(j) The inner container label of a radiopharmaceutical to be dispensed shall be labeled with, but not limited to:

- (1) the standard radiation symbol;
- (2) the identity of the radionuclide;
- (3) the amount of radioactivity and the calibration date and time;
- (4) the name of the procedure; and
- (5) serial number of the radiopharmaceutical.

(k) When a radiopharmaceutical is dispensed under the authority of an Investigational New Drug Application (IND), the nuclear pharmacy records shall include an investigator's protocol for the preparation of the radiopharmaceutical, a copy of the institutional radiation safety committee or equivalent radioactive use oversight committee approval, a copy of the Institutional Review Board approval form (or letter), and a letter from the manufacturer (sponsor) indicating that the physician requesting the radiopharmaceutical is a qualified investigator.

(l) Each nuclear pharmacy shall have an adequate library and a current copy of state and federal regulations governing the safe storage, handling, use, dispensing, transport and disposal of radiopharmaceuticals.

[OAR Docket #17-611; filed 7-11-17]

TITLE 535. OKLAHOMA STATE BOARD OF PHARMACY
CHAPTER 20. MANUFACTURERS, REPACKAGERS, OUTSOURCING FACILITIES, WHOLESALERS, THIRD-PARTY LOGISTICS PROVIDERS, AND MEDICAL GAS SUPPLIERS AND DISTRIBUTORS

[OAR Docket #17-612]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 6. Outsourcing Facilities
535:20-6-6. Personnel [AMENDED]

AUTHORITY:

Oklahoma State Board of Pharmacy is the regulatory authority under Title 59 O.S., Sec. 353.7, 353.11 - 353.20.1, 353.22, 353.24 - 354, and 367.8; Title 51 OS 24A et seq.; Title 75 OS, Sec 2-201, 2-208, and 2-210.

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n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The revision in 535:20-6-6 adds that a PIC may not serve in more than one outsourcing facility and/or pharmacy at time unless they are located at the same physical address.

CONTACT PERSON:

Dr. Chelsea Church, Executive Director, Oklahoma State Board of Pharmacy, 2920 N Lincoln Boulevard Suite A, Oklahoma City, OK 73105-4212, Phone number 405 521-3815

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 6. OUTSOURCING FACILITIES

535:20-6-6. Personnel

(a) Outsourcing facilities shall establish and maintain for Board inspection a list of each partner, limited liability company member or corporate officer and corporate director, as

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well as designated representatives and facility managers, including a description of their duties and a summary of their qualifications.

(b) Each outsourcing facility shall designate, in writing on a Board-approved form, a person to serve as the designated facility manager of the outsourcing facility for each location licensed.

(c) Each outsourcing facility shall designate, in writing on a Board-approved form, a person to serve as the ~~PIC pharmacist-in-charge~~ who is a pharmacist licensed by the Board. No pharmacist may serve as the PIC for more than one outsourcing facility and/or pharmacy at a time unless they are located at the same physical address and are dually licensed with the Board.

(d) No outsourcing facility shall have as an owner, designated representative, facility manager, or pharmacist-in-charge anyone convicted of any felony for conduct relating to compounding prescription drugs, any felony for violation of 21 U.S.C. § 331(i) or (k) or any felony for violation of 18 U.S.C. § 1365 relating to product tampering. No outsourcing facility shall have as an owner, designated representative, facility manager or pharmacist-in-charge anyone who has violated federal or state requirements for licensure that presents a threat of serious adverse health consequences or death to humans.

[OAR Docket #17-612; filed 7-11-17]

TITLE 535. OKLAHOMA STATE BOARD OF PHARMACY CHAPTER 25. RULES AFFECTING VARIOUS REGISTRANTS

[OAR Docket #17-613]

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PERMANENT final adoption

RULES:
Subchapter 9. Violations of the Rules of Registrant Conduct
535:25-9-9. Misfill or incorrect fill of a prescription or drug order

AUTHORITY:
Oklahoma State Board of Pharmacy is the regulatory authority under Title 59 O.S., Sec. 353.7, 353.11 - 353.20.1, 353.22, 353.24 - 353.26 - 354, and 367.8; Title 51 OS 24A et seq.; Title 75 OS, Sec 2-201, 2-208, and 2-210.

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n/a

GIST/ANALYSIS:

The revision in 535:20-6-6 adds that a PIC may not serve in more than one outsourcing facility and/or pharmacy at time unless they are located at the same physical address.

CONTACT PERSON:

Dr. Chelsea Church, Executive Director, Oklahoma State Board of Pharmacy, 2920 N Lincoln Boulevard Suite A, Oklahoma City, OK 73105-4212, Phone number 405 521-3815

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 9. VIOLATIONS OF THE RULES OF REGISTRANT CONDUCT

535:25-9-9. Misfill or incorrect fill of a prescription or drug order

The incorrect fill or misfill of ~~of~~—a prescription or drug order which departs from the standards of care ordinarily exercised by a registrant with proof of actual injury not having to be established is a violation of registrant conduct.

[OAR Docket #17-613; filed 7-11-17]

TITLE 550. OKLAHOMA POLICE PENSION AND RETIREMENT SYSTEM CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #17-614]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 5. Petition Procedures
550:1-5-7. Common law beneficiary requirements [AMENDED]

AUTHORITY:
Oklahoma Police Pension and Retirement Board; 11 O.S. Sections 50-105.2(A)(B), and 50-106(3)

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n/a

GIST/ANALYSIS:

The proposed amendment to OAC 550-1-5-7 changes "man and wife" to "husband and wife".

CONTACT PERSON:

Darcie Gordon, Administrative Officer, Oklahoma Police Pension and Retirement System, 1001 N.W. 63rd Street, Ste. 305, Oklahoma City, OK 73116-7335, 405-840-3555 Ext. 227.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 5. PETITION PROCEDURES

550:1-5-7. Common law beneficiary requirements

(a) In order for the Oklahoma Police Pension & Retirement Board to find in an individual proceeding that an applicant is a beneficiary based upon a common law marriage, the applicant asserting a common law marriage must prove by clear and convincing evidence the following elements:

- (1) An actual mutual agreement between the spouses to be husband and wife;
- (2) A permanent relationship;
- (3) An exclusive relationship, proved by cohabitation as ~~man~~ husband and wife; and
- (4) The parties to the marriage must hold themselves out publicly as husband and wife.

(b) Documentation accepted by the board as evidence of the existence of a common law marriage shall be; joint tax returns; joint bank accounts titled as husband and wife; real property deeds titled as husband and wife; and/or titles to vehicles and machinery held as husband and wife.

[OAR Docket #17-614; filed 7-11-17]

**TITLE 550. OKLAHOMA POLICE PENSION AND RETIREMENT SYSTEM
CHAPTER 10. RETIREMENT AND PENSION BENEFIT PROGRAM**

[OAR Docket #17-615]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- 550:10-1-6. Impairment Guidelines [NEW]
- 550:10-1-7. Physician Certificate of Disability [NEW]

AUTHORITY:

Oklahoma Police Pension and Retirement Board; 11 O.S. Sections 50-105.2(A)(B), and 50-106(3)

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GIST/ANALYSIS:

The proposed new rule, OAC 550:10-1-6, clarifies which AMA Guidelines are to be used in disability determination.

The proposed new rule, OAC 550:10-1-7, outlines the selection of Independent Medical Evaluator by the state board for disability determination

CONTACT PERSON:

Darcie Gordon, Administrative Officer, Oklahoma Police Pension and Retirement System, 1001 N.W. 63rd Street, Ste. 305, Oklahoma City, OK 73116-7335, 405-840-3555 Ext. 227.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

550:10-1-6. Impairment Guidelines

The computations of the percentage of impairment to the whole person or a member who is awarded a disability benefit are based upon and are in substantial accordance with the American Medical Association's Guides to the Evaluation of Permanent Impairment. The Fifth Edition is utilized for injuries occurring after June 28, 2001. The Fourth Edition is utilized for injuries occurring after November 1, 1993. The Third Edition, Revised is utilized for injuries occurring from January 1, 1989 to October 31, 1993. The Second Edition is utilized for injuries occurring from November 1, 1984 to December 31, 1988. The First Edition is utilized for injuries occurring July 1, 1978 to October 31, 1984.

550:10-1-7. Physician Certificate of Disability

(a) The State Board shall select a physician as an Independent Medical Evaluator (IME) to evaluate an applicant who has applied for a disability benefit. Said IME shall issue a report to the State Board prior to the State Board making a finding as to the disability of the member applicant.

(b) At the sole discretion of the State Board, other evidence of disability may be required.

[OAR Docket #17-615; filed 7-11-17]

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TITLE 575. STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS CHAPTER 1. ORGANIZATION OF BOARD AND PROCEDURES FOR HANDLING COMPLAINTS

[OAR Docket #17-653]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

575:1-1-2 [AMENDED]

575:1-1-3 [AMENDED]

AUTHORITY:

Oklahoma State Board of Examiners of Psychologists; 59, O.S., 2001, Section 1352.1(8)

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n/a

GIST/ANALYSIS:

The amendments allow for the rules, regulations and directory information to be maintained and published on the Oklahoma State Board of Examiners of Psychologists website. Additionally, a revision to the informal disposition of certain requests for inquiry provides alternative options to handle a matter informally.

CONTACT PERSON:

Teanne Rose, Executive Officer, Oklahoma State Board of Examiners of Psychologists, 421 N.W. 13th Street, Suite 180, Oklahoma City, OK 73103, 405-522-1333.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,
THE FOLLOWING RULES ARE CONSIDERED
FINALLY ADOPTED AS SET FORTH IN 75 O.S.,
SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE
DATE OF SEPTEMBER 11, 2017:**

575:1-1-2. Organization and proceedings of the Board; petitions for rule making; declaratory rulings

(a) **Meetings.** In accordance with the 1977 Open Meeting Law [Title 25, Sections 301 thru 314, of state statutes], all meetings of the Board are open to the public and votes of each member are to be publicly cast and recorded.

(1) **Regularly scheduled meetings.** The Secretary of State shall be given notice of all regularly scheduled meetings by December 15 of each calendar year, showing the date, time and place of such meetings for the following

calendar year. If any change is to be made in the date, time, or place of regularly scheduled meetings, then notice in writing shall be given to the Secretary of State not less than 10 days prior to the implementation of such change. At least 24 hours prior to regularly scheduled meetings, excluding Saturdays, Sundays, and holidays legally declared by the State of Oklahoma, public notice will be given setting forth thereon the date, time, place, and agenda for said meeting. Such notice shall not preclude the consideration of new business providing such was not known about or could not have been reasonably foreseen prior to the time of posting. If a meeting is to be continued or reconvened, public notice of the date, time, and place shall be given by announcement at the original meeting, and only matters appearing on the agenda of the meeting which is continued may be discussed at the continued or reconvened meeting.

(2) **Special meetings.** Special meetings shall not be held without public notice, indicating the date, time, and place, being given to the Secretary of State at least 48 hours prior to said meeting. In addition, at least 24 hours prior to such a meeting, public notice giving the time, place, and agenda shall be posted in prominent public view in the building containing the office of the Board. In exceptional circumstances, emergency meetings without public notice may be called.

(3) **Minutes.** The proceedings of all meetings shall be kept in the form of written minutes and shall be open to public inspection.

(b) **Official office; Board records.** The official office of the Board shall be designated by the Board and all records of the Board shall be kept at the official office.

(c) **Submissions to the Board to be in writing.** All communications with the Board must be in writing before official consideration will be given to issues, requests, or submissions brought before the Board.

(d) **Board monies.** The monies received by the Board shall be kept in the Psychologists Licensing Fund, No. 200. Expenditures from said fund shall be subject to the approval of the Board.

(e) **Reimbursement for travel expenses.** Each Board member, staff member, or other persons who are performing substantial and necessary services for the Board may be reimbursed for expenses incurred under authorized official travel [Pursuant to 74 O.S., Section 500.2 et seq].

(f) **Formal and informal procedures.** The Board shall have both formal and informal procedures for use, as appropriate, in conducting the business of the Board. Such procedures may involve, but are not limited to, hearings for individuals, questions of legal policy, inquiries concerning Board policies or decisions, or other Board business.

(g) **Forms.** The Board shall have such forms as are required for the conduct of Board business. Such forms shall include, but are not limited to, application for licensure, application for private practice under supervision, and applications for a psychologist to hire a psychological technician in his/her private practice.

(h) **Petitions regarding rules; declaratory rulings.** Any interested person may petition the Board requesting the

promulgation, amendment, or repeal of a rule. Petitions requesting declaratory rulings as to the applicability of any rule or order of the Board may also be submitted. The Board shall make prompt disposition of all such petitions.

(i) **Distribution of rules and regulations; annual directory.** The Board shall ~~distribute, maintain, and publish~~ all regulations and procedures established by the Board ~~to each licensed psychologist and psychologist practicing under supervision on the website for the Oklahoma State Board of Examiners of Psychologists. Such distribution shall occur not less than annually, and may be accomplished by inclusion of said rules in the Annual Directory.~~ The ~~Annual Directory website~~ shall contain, in addition to those items required by law [59 O.S., Section 1369], a verbatim copy of the licensing law as well as all rules and regulations duly established by the Board.

(j) **Board secretary.** The secretary of the Board, as described in 59 O.S., Sections 1358 and 1360, shall be employed by the Board.

(k) **Psychological consultant.** A qualified individual may be employed by the Board to perform certain activities to further the purposes of the Board. Such activities may include, but are not limited to: issues concerning training, credentialing, professional practice, regulation, ethical matters, and receiving and/or reviewing requests for inquiries; advising the chair in the informal conduct of the Board's procedures and providing consultation to the Board during its regular and special meetings.

575:1-1-3. Investigation of requests for inquiry

(a) **Choice of investigative mode when unlicensed individuals are involved.** When violations of the law by unlicensed individuals are brought to the attention of the Board, the Board may conduct an investigation in its own behalf, request investigation by appropriate state agencies, and/or refer the matter to the Office of the Attorney General. The choice of an investigative mode shall depend on the circumstances of the case and shall be made at the discretion of the Board.

(b) **Investigative procedure.** The following is the procedure for investigation of requests for inquiry against licensed psychologists:

(1) **Requirements for requests for inquiry.** The investigation of a request for inquiry about a licensed psychologist may be initiated only when the request for inquiry is in writing, signed, notarized, and filed with the Board. The notarized request for inquiry must contain a brief statement setting forth the allegations of fact and naming the licensee or licensees about whom the request for inquiry is filed. The request for inquiry provides the basis for the chairperson and/or vice chairperson of the Board to request an informal meeting with the licensee, whose participation is voluntary, and/or for appointment of an investigator for the case. The Board may receive, accept, process, investigate, act upon, and otherwise dispose of written requests for inquiry which are not in substantial compliance with this subsection if the Board, in its discretion, determines that the request for inquiry

otherwise contains sufficient indicia of reliability and/or the allegations can be independently verified by the Board.

(2) **Independently verified allegations - written request for inquiry may not be required.** In all inquiries, the Board shall require the request for inquiry to be in writing, signed, and notarized. However, alleged violations of the Psychologists Licensing Act which can be independently verified by the Board may not require written request for inquiry.

(3) **Selection of investigator.** The Board shall select a member or other qualified individual to investigate any request for inquiry regarding any psychologist. This selection may be by majority vote of the Board or by appointment by the chairperson, vice chairperson, or executive officer.

(4) **Compensation for expenses.** The investigator shall be compensated by the Board for necessary and prudent expenses which are properly documented and approved by the Board.

(5) **Investigator's gathering of information.** The Board member or other individual authorized to receive and investigate requests for inquiry shall gather all information necessary to adequately apprise a Probable Cause Committee. The investigation may include interviews with the requesting party, the licensee named in the request for inquiry, and others as appropriate. The licensee will have the opportunity during the investigator's interview to show compliance with all lawful requirements for the retention of the license. The gathering of information to assist the Board in its disposition of requests for inquiry is the only designated function of the investigator during the conduct of the investigation. Any investigative reports prepared and submitted to the Board's Probable Cause Committee, the prosecutorial arm of the Board, are to be used solely to determine whether or not to recommend the pursuit of disciplinary action, and thus constitute confidential and privileged work product material, not subject to disclosure. The investigator shall not offer his/her opinions to the requesting party and/or to the licensee. Such opinions shall include but not be limited to the merits of the request for inquiry and/or whether an ethical violation has occurred.

(6) **Subpoenas Investigative.** The Board may issue subpoenas for the purpose of investigating a request for inquiry following the same procedure as set forth at 575:1-1-4.

(7) **Presentation of Probable Cause Committee's summary and recommendation.** The Probable Cause Committee, comprised of the investigator, counsel to the Board and other appropriate individuals, is an advisory body whose function is to summarize the requests for inquiry and to make an informed recommendation regarding disposition of the requests for inquiry to the Board. The Probable Cause Committee's recommendation will be presented at an open meeting of the Board. The requesting party and the licensee will be given prior written notification of the date, time, and place of that meeting. During the Probable Cause Committee's presentation,

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no questions will be posed by or to the licensee or the complaining witness pertaining to the substance of the case. Such questions may be submitted in writing to the representative of the Attorney General's office following the Board meeting.

(8) **Dismissal of request for inquiry by majority vote.** Upon consideration of the recommendation of the Probable Cause Committee, the Board may decide not to pursue further the allegations, and may dismiss the request for inquiry by an approving vote of a majority of the members present in open meeting.

(9) **Informal disposition of certain requests for inquiry.** In some situations including, but not limited to, cases where the inquiry does not allege conduct as described in the Psychologists Licensing Act in Section 1370 or conduct punishable by suspension or revocation of a license, probation, or formal reprimand, the matter may be handled informally. The Board may handle a matter informally by sending an educational letter to the licensee, giving the licensee the opportunity to complete a tutorial, giving the licensee the opportunity to have an educational meeting with a member of the probable cause committee, or any other informal action the Board should deem appropriate. However, no matter can be considered closed until so voted by a majority of the Board in open meeting.

(10) **Recusal of Board member.** A Board member, acting as the appointed investigator or Probable Cause Committee member, shall be recused from all Board decisions relating to the request for inquiry.

(c) **Notification of the disposition of requests for inquiry against licensed psychologists and investigations of them.** At the point at which any request for inquiry and/or investigation is resolved, the Board shall inform the requesting party and the psychologist in writing of the disposition of the matter as well as the supporting rationale based on known facts and applicable laws or rules. The Board shall also notify the Attorney General's Office.

[OAR Docket #17-653; filed 7-13-17]

TITLE 575. STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS CHAPTER 10. LICENSURE OF PSYCHOLOGISTS

[OAR Docket #17-654]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
575:10-1-2 [AMENDED]
575:10-1-4 [AMENDED]
575:10-1-8 [AMENDED]

AUTHORITY:
Oklahoma State Board of Examiners of Psychologists; 59, O.S., 2001, Section 1352.1(8).

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n/a

INCORPORATIONS BY REFERENCE:
n/a

GIST/ANALYSIS:
The proposed amendments clarify the postdoctoral experience requirements, reduce the Jurisprudence re-examination fee and eliminate the EPPP re-examination for applicants. Additionally, a revision to the continuing professional education for psychologists updates the language regarding the credits allowed.

CONTACT PERSON:
Teanne Rose, Executive Officer, Oklahoma State Board of Examiners of Psychologists, 421 N.W. 13th Street, Suite 180, Oklahoma City, OK 73103, 405-522-1333.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

575:10-1-2. Requirements to become licensed as a psychologist

(a) **Application.** Persons desiring licensure as a psychologist may obtain official application information from either the Board office or the Official Board Website. Applicants are required to submit a non-refundable four hundred dollar (\$400.00) application fee in the form of a personal or certified check or acceptable money order. A minimum of three references from licensed psychologists shall be required for each applicant. Board members shall not serve as references for applicants except to verify portions of completed training or experience.

(b) **Consideration of application.** The Board may appoint a committee to consider and approve, the request of each applicant to take the examination for licensure as a psychologist under 59 O.S., Section 1362(1). In instances where the applicant fails to complete the requirements for licensure within five years of the date of approval, the Board may destroy the application and all related documents.

(c) **Doctoral programs.** Applicants for licensure shall have completed a doctoral program in psychology that is accredited by the American Psychological Association (APA), unless the doctoral program meets any of the following exceptions:

(1) Areas where no accreditation exists. This exception applies to doctoral programs, within the United States, that are in specialty areas of professional psychology that are not accredited by the APA.

- (2) New specialty areas of professional psychology. When a new specialty of professional psychology is recognized as being within the accreditation scope of the APA, doctoral programs within that specialty will be afforded a maximum transition period of eight (8) years from the first class of students to the time of accreditation. To be eligible for this exception the program must have a pending application for accreditation with the APA at the time of the applicant's application for licensure.
- (3) New doctoral programs in specialty areas currently within the scope of APA accreditation. This exception is available to new doctoral programs developed in APA accredited specialty areas of professional psychology. A doctoral program is only eligible for this exception during a maximum transition period of eight (8) years from the first class of students to the time of accreditation. To be eligible for this exception the program must have a pending application for accreditation with the APA at the time of the applicant's application for licensure.
- (4) Applicants trained in institutions outside the United States shall have completed a doctoral program in psychology that is accredited by the Canadian Psychological Association or that is deemed the equivalent of a program accredited by the APA by the Board in its sole discretion. The Board shall consider, but is not limited to, determinations made by a foreign credential evaluation service that is a member of the National Association of Credential Evaluation Services or from a recognized foreign credential evaluation service approved by the Board.
- (d) All doctoral programs in 575:10-1-2(c) shall meet all of the following criteria:
- (1) The doctoral program, wherever it may be administratively housed, must be clearly identified and labeled as a psychology program. Such a program must specify in pertinent institutional catalogs and brochures its intent to educate and train psychologists.
 - (2) The psychology program must stand as a recognizable coherent organizational entity within the institution.
 - (3) There must be clear authority and primary responsibility for the core and specialty areas whether or not the program cuts across administrative lines.
 - (4) The program must be an integrated, organized sequence of study.
 - (5) The program must have an identifiable psychology faculty and a psychologist responsible for the program.
 - (6) The program must have an identifiable body of students who are matriculated in that program for a degree.
- (e) **Practica and internship required.** The assessment of mental, emotional, or behavioral disorders and/or the treatment of individuals, couples, families, or groups with such disorders, by psychologists, requires a doctoral degree from an academic program designed to train psychologists to provide these services which integrates coursework and other experiences toward the goal of training psychologist practitioners. Practica and an internship experience are required.
- (f) **Evaluating doctoral programs.** The doctoral program shall be documented in writing to the Board. The institution is to document the name of the department granting the degree, the date of completion of the degree requirements, and the major program of study such as, but not limited to, clinical, counseling, developmental, educational, experimental, industrial-personnel, psychometrics, school, or social-personality, unless this information is indicated on the applicant's official transcript. A certified letter from the Registrar may be submitted as documentation of the date of completion of the degree requirements. Applicants trained in institutions outside the United States, besides those accredited by the Canadian Psychological Association, shall submit an evaluation of their doctoral program as described in 575:10-1-2(c)(4). All doctoral programs submitted for review under this subsection will be evaluated by the following criteria:
- (1) Except in school psychology, the three academic years leading to the doctoral degree must include a minimum of two years of full-time, on campus, graduate study (excluding internship). In school psychology, the three academic years leading to the doctoral degree must include a minimum of one year of full-time postmaster's graduate study as defined by the institution (excluding internship).
 - (2) At least forty-two (42) hours of the specified course work must be primarily psychological in content. The applicant must have a minimum of three (3) or more graduate semester hours in each of the following substantive content areas, for a total of twenty-one (21) hours:
 - (A) scientific and professional ethics and standards,
 - (B) research design and methodology,
 - (C) statistics and psychometrics,
 - (D) biological bases of behavior [e.g. physiological psychology, comparative psychology, neuropsychology, sensation, psychopharmacology].
 - (E) cognitive-affective bases of behavior [e.g. learning, memory, perception, cognition, thinking, motivation, emotion].
 - (F) social bases of behavior [e.g. social psychology, cultural, ethnic, and group processes, sex roles, organization and systems theory], and
 - (G) individual behavior [e.g. personality theory, human development, individual differences, abnormal psychology].
 - (3) The remaining twenty-one (21) hours of specified course work may be in the foregoing basic areas or in courses pertaining to the specific program of study.
- (g) **Doctoral degree in area related to psychology not sufficient.** The possession of a doctoral degree from an area related to psychology does not qualify one for licensure as a psychologist. This includes, but is not limited to, applicants with degrees in special education, pastoral psychology (or counseling), counseling and guidance, speech and hearing, and counselor education.
- (h) **Supervised experience.** An applicant for licensure as a psychologist must have two years of supervised experience satisfactory to the Board. Supervisors may not be members of the psychologist's immediate family or other individuals with whom the necessary level of objectivity cannot be maintained. This will include, but is not limited to, spouses, children,

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siblings, and parents or anyone with whom the psychologist has an emotionally or sexually intimate relationship. Any experience gained under such supervision will be disallowed. This two years of experience must be as a psychologist and in line with the applicant's major program of study for the doctoral degree as determined according to the procedure stated in 575:10-1-2(e). Applicants in the areas of clinical, counseling, and school psychology must have an internship experience. Applicants from psychology programs other than clinical, counseling, or school psychology, who assert the program's purpose to be the training of individuals to provide professional psychological services to the public, must have an internship experience. Internships of applicants from psychology programs with titles other than clinical, counseling, or school psychology programs will be evaluated using the same rules as those used to evaluate applicants with degrees from either clinical, counseling, or school psychology programs, depending upon which the Board deems is the most appropriate corollary based upon the program's training goals and objectives. A predoctoral internship may be used to partially fulfill the two-year experience requirement for licensure. Under no circumstances may more than one year of predoctoral experience as an intern be accepted. The internship must be consistent with the major program of study in the doctoral program which was documented in writing to the Board by the accredited institution [see 575:10-1-2(e)]. Internships in clinical psychology require a full-time experience (40 hours per week) either for one calendar year, or for two years of half-time experience. Counseling and school psychology internships require either a full-time experience (40 hours per week) for one calendar year or one academic contract year or a half-time experience for two calendar years or two academic contract years. An academic contract year means the school year of the elementary or secondary school setting in which an intern is fulfilling the internship requirement. If the counseling or school psychology internship is completed in other than an elementary or secondary school setting, the one calendar year requirement shall apply.

(i) **General requirements for internships.** Internships must be designed to provide a planned, programmed sequence of training experience. The primary focus and purpose of the internship must assure breadth and quality of training. An internship is an organized program of planned experiences in contrast to simply supervised experience or on-the-job training. The internship must provide training in a range of assessment and treatment activities conducted directly with patients or clients seeking psychological services. At least 25 percent of the trainee's time must be in direct patient or client contact. Internship training is at the post-coursework, post candidacy, post-clerkship, post-practicum, post-externship level. A written statement or brochure must be available which describes the goals and content of the internship, states clear expectations for the quantity and quality of trainee's work, and is furnished to prospective interns.

(j) **Supervision in internships.** A clinical or counseling psychology internship agency must have a clearly designated staff psychologist, who is responsible for the integrity and

quality of the training program and who is licensed. In a counseling or clinical psychology internship, the basic supervision must be conducted by a staff psychologist who is trained in the applicant's major program of doctoral study, or a closely related program, and who is licensed. While additional experience with professionals in other disciplines is highly desirable, it is required that clinical and counseling psychology interns have experience with multiple (three or more) supervisors who are licensed as psychologists. Supervision of counseling and clinical psychology interns shall consist of an average of at least 10 percent of the full-time or half-time intern's week. At least half of the supervision of clinical and counseling psychology interns must be regularly scheduled, formal, face-to-face, individual supervision by one or more licensed psychologists with the intent of dealing with psychological services rendered directly by the intern. The remaining half of the supervision may be conducted individually or in a group by licensed psychologists or by other licensed professionals as appropriate to the internship experience. The counseling or clinical psychology internship agency should ordinarily have a minimum of two interns at the internship level of training during the applicant's training period.

(k) **School psychology internships.** School psychology internships must have a clearly designated psychologist who is responsible for the integrity and quality of the training program and who is licensed. In a school psychology internship, the basic supervision must be conducted by a psychologist who is trained in the applicant's major program of doctoral study, or a closely related program, who is licensed, and who may be employed in a setting other than the school district in which the internship is situated. While additional experience with professionals in other disciplines is highly desirable, it is required that school psychology interns have experience with multiple (two or more) supervisors who are licensed as psychologists. Supervision of school psychology interns shall consist of an average of at least 10 percent of the full-time or half-time intern's week. At least half of the supervision of school psychology interns must be regularly scheduled, formal, face-to-face, individual supervision by one or more licensed psychologists with the intent of dealing with psychological services rendered directly by the intern. The remaining half of the supervision may be conducted individually or in a group by licensed psychologists or by other licensed professionals as appropriate to the internship experience.

(l) **Postdoctoral experience.** At least one year of the two-year experience requirement must be postdoctoral experience as a psychologist and in line with the applicant's major program of doctoral study as determined according to the procedure stated in 575:10-1-2(e).

(1) Except in school psychology, the postdoctoral experience must be a total of 2000 hours of appropriate experience. The postdoctoral experience must either be a full time (40 hours per week) for at least one calendar year (50 weeks), or part-time for a period not to exceed three years. Except in school psychology.

(2) The postdoctoral experience in school psychology must be full time (40 hours per week) for at least one calendar year (50 weeks) or one academic contract year, or a

total of 2000 hours (or the number of hours in an academic contract year) of appropriate experience, or equivalent, for a period not to exceed three years.

(3) The postdoctoral experience must be under the supervision of a licensed psychologist(s) who was trained in the applicant's major program of doctoral study, or a closely related program, and who is currently engaged in rendering psychological services relevant to that training.

(4) ~~The applicant~~ Applicants must have received and accumulated 75 hours of regularly scheduled, formal, face-to-face, individual supervision from his/her supervisor(s) reasonably distributed throughout each 12 months of the postdoctoral experience.

(5) The postdoctoral experience does not have to be in a private setting.

(6) The postdoctoral experience of applicants who desire a Health Service Psychologist designation must also meet the requirements of 575:10-1-6(b)(5)(B).

(m) **Examination process.** The full examination for licensure shall consist of two component examinations:

(1) **Objective examination.** An objective examination in basic psychology, known as the Examination for Professional Practice in Psychology ("EPPP").

(2) **Jurisprudence examination.** A jurisprudence examination based on the Rules of the Board, Psychologists Licensing Act, Code of Ethics and applicable Oklahoma Mental Health Law.

(n) **Passing scores on examinations.** An applicant is deemed to have passed the objective examination if he/she has obtained at least the minimum pass point designated by the developer of the examination. An applicant is deemed to have passed the jurisprudence examination if he/she has 70 percent of the total items correct.

(o) **Notification of results.** All applicants will be notified by mail of the results of each component examination within 30 days of the examination date. At the request of the applicant, specific information about his/her performance on any component examination will be provided to the extent the integrity of the exam is not violated.

(p) **Re-examination.** If either of the two component examinations is failed a total of four times, the application process shall cease. The former applicant may reapply for licensure by submitting a new application for consideration by the Board in accordance with the requirements to become licensed as a psychologist.

(q) **Waiver of portion of examination or re-examination.** Failure on either portion of the licensing examination will be considered failure of the entire examination for purposes of licensing; however, satisfactory performance on the objective examination or jurisprudence examination will be grounds for waiver of that portion of the examination for future re-examination.

(r) **Licensing by reciprocity.** Applicants for licensure under the reciprocity provisions of this act may only be licensed if they meet the requirements in 59 O.S. Section 1366(2).

(s) **Post-Military Service Applicants.**

(1) The Board shall consider the equivalent education, training and experience completed by an applicant while

the applicant was a member of the United States Armed Forces or Reserves, National Guard of any state, the Military Reserves of any state, or the Naval militias of any state, and apply it in the manner most favorable toward satisfying the qualifications for licensure.

(2) While examining the education, training and experience completed by an applicant while the applicant was a member of the military as described in the preceding paragraph, the Board may consider, but is not limited to, determinations made by institutions of higher education based on the Guide to the Evaluation of Educational Experiences in the Armed Services, published by the American Council on Education.

575:10-1-4. Fees for applicants

(a) **Application fee.** The application fee for licensure as a psychologist shall be four hundred dollars (\$400.00), and shall be submitted with the application for licensure.

(b) **Re-examination fee.** The fee for each written Jurisprudence re-examination for licensure as a psychologist shall be ~~two~~ one hundred dollars (~~\$200.00~~ \$100.00).

(c) **Fee required to engage in private practice under supervision.** The fee for applicants for licensure as psychologists authorized to conduct private practice under supervision shall be two hundred dollars (\$200.00) per year. Such fee shall be submitted with the application for approval to conduct such practice. The fee for each additional year of practice, if continued practice under supervision is authorized, shall ~~also~~ not exceed two hundred dollars (\$200.00) and shall be due on the anniversary date of approval for Private Practice Under Supervision. These fees may not be used to reduce or eliminate the fee for licensing.

(d) **Fee required to engage in institutional practice under supervision.** The fee for applicants for licensure as psychologists authorized to conduct Institutional practice under supervision shall be two hundred dollars (\$200.00) per year. Such fee shall be submitted with the application for approval to conduct such practice. The fee for each additional year of practice, if continued practice under supervision is authorized, shall ~~also~~ not exceed two hundred dollars (\$200.00) and shall be due on the anniversary date of approval for Institutional Practice Under Supervision. These fees may not be used to reduce or eliminate the fee for licensing.

575:10-1-8. Continuing professional education for psychologists

(a) **Purpose.** The purpose of continuing professional education requirements for psychologists is to assure that licensees update and advance their skills such that the public shall benefit from the most current and effective standards of professional practice. To further the goal of public benefit, all psychologists are encouraged to fulfill a portion of their continuing professional education requirements in the areas of ethics, professional conduct, and related legal issues. A minimum of three (3) of the twenty (20) continuing professional education credits required for yearly licensure renewal shall be earned by licensees with HSP certification in activities that are specific

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to ethics, relevant laws and legal issues, and/or applicable professional practice guidelines and standards.

(b) **Credits required for annual license renewal.** The minimum of twenty (20) credits of acceptable continuing professional education will be required for renewal of a license to practice psychology for the following year (one clock hour equals one credit). The continuing professional education year is a calendar year and all continuing professional education hours must be submitted online on the Board's official website by the close of business on December 31. For licenses issued after January 1 of a given year, the required credits of continuing professional education will be adjusted for the initial continuing professional education year only, to require 1.5 credits of continuing professional education per full month of licensure for the initial renewal of the license. Continuing professional education hours attained in a calendar year in excess of the minimum annual requirements may be carried forward for credit in the succeeding year up to twelve (12) hours of credit.

(c) **Preapproval of continuing professional education activities required.**

(1) Continuing professional education credits may be granted for acceptable educational activities at the graduate level which are preapproved by the Board, or by a committee appointed by the Board. No credits will be granted for any activities or categories of activities that have not been preapproved.

(2) A provider of educational activities may apply to the Board for preapproval of an activity. The provider shall be responsible for compliance with the standards for approval of the activity, verification of participation, and for the provision of the necessary verification of attendance forms to all participants. This verification of attendance form shall include:

- (A) The participant's name.
- (B) The presenter's name, academic degree, profession, and whether licensed.
- (C) The presentation topic.
- (D) The program sponsor agency.
- (E) The location of the presentation.
- (F) The dates of presentation.
- (G) The total number of clock hours presented.

(d) **Exceptions to the requirements.** Exceptions to the requirements of (c) of this section may be granted at the discretion of the Board for programs presented by recognized sponsors whose programs have been preapproved by the Board. The university academic hour is equal to fifteen (15) credits, and shall be verified by the presentation of an official graduate transcript showing course or audit credits. The licensee is ultimately responsible for providing all information necessary for the Board to make final determination concerning the acceptability of any requested continuing professional education credits.

(e) **Fee for preapproval.** Providers of educational activities may be charged a fee for the review and preapproval of their program. This fee shall be set by the Board.

(f) **Kinds of educational activities for which credit may be received.** Continuing professional education credits may

be earned through formal organized learning experiences, scientific publications, attendance at regularly scheduled meetings of international, national, regional, or state professional associations, or through presentations to appropriate groups not related to the psychologist's regular employment. The same kinds of educational activities, when the subject matter is so designated, may be used to fulfill the mandatory three (3) hours of credit in the areas of ethics, relevant laws and legal issues and/or applicable professional practice guidelines and standards. Other acceptable activities include attendance at Board meetings and serving the Board as an appointed investigator, tutor, practice monitor or supervisor.

(g) **Credits allowed.** Continuing professional education activities, whether received or presented by the psychologist, must be targeted toward a professional audience. In those instances when the psychologist is teaching in programs such as institutes, seminars, workshops, and conferences a continuing professional education activity which have has been granted preapproval by the Board, three (3) credits will be given for each one (1) hour that is taught, provided that such teaching is not a part of the psychologist's regular employment. Publication of a scientific book or chapter in a book, or publication of a scientific article in a refereed journal, shall be equal to ten (10) credits. Examination by the American Board of Professional Psychology shall be equal to twenty (20) credits.

(h) **List of approved Continuing Professional Education Recognized Sponsors.** This list shall be reviewed and approved by the Board.

(i) **Verification of continuing professional education.** Continuing professional education records shall be maintained in the Board files for two years. Individual psychologists are to keep verification of all continuing professional education credits claimed for a period of two years. In February of each year, the Board will randomly select from two (2) to twenty-five (25) percent of the number of psychologists on active status the previous year for an audit of their claimed continuing professional education credits. These selected psychologists must then provide the Board with verification of all credits claimed on their continuing professional education form within thirty (30) days following receipt of the audit notice.

(j) **Board audit.** The Board may, at its discretion, audit and require verification of any continuing professional education credits claimed which it may consider questionable or fraudulent. In either condition, selected psychologists who do not furnish verification of claimed continuing professional education credits to the Board within thirty (30) days following receipt of the audit notice shall as of December 31 have their licenses invalidated for the practice of psychology, with possible suspension or revocation of the license to practice psychology.

(k) **Late fee for late filing.** A psychologist who has not completed and reported the required twenty (20) credits of continuing professional education by December 31, shall pay a late fee which will be set by the Board.

(l) **Petition for relief for previous years.** Under the extraordinary circumstances of incapacitation or serious illness of the licensed psychologist, or of an immediate family member, and upon the presentation of acceptable evidence thereof, a psychologist who is otherwise in full compliance with all

renewal requirements, may petition the Board for partial or complete relief of the previous year's continuing professional education requirement. ~~A petition requested under these circumstances must be filed by November 1.~~ There shall be no fee for a psychologist who petitions the Board for compassionate relief of continuing professional education requirements under this subsection.

(m) **License rendered invalid for failure to comply.** A licensed psychologist who is not in compliance with the required twenty (20) credits (hours) of continuing professional education by December 31 and/or who has not completed and reported his/her continuing professional education hours by December 31, and who has not petitioned the Board for compassionate relief under (l) of this section, shall as of December 31 have his or her license invalidated for the practice of psychology, with possible suspension of the license to practice psychology.

[OAR Docket #17-654; filed 7-13-17]

**TITLE 590. OKLAHOMA PUBLIC EMPLOYEES RETIREMENT SYSTEM
CHAPTER 10. PUBLIC EMPLOYEES RETIREMENT SYSTEM**

[OAR Docket #17-563]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 9. Survivors and Beneficiaries
- 590:10-9-4. Probate waivers [AMENDED]
- Subchapter 17. Step-Up Election and Benefits
- 590:10-17-3. Irrevocable election of Step-Up [AMENDED]

AUTHORITY:

Oklahoma Public Employees Retirement System Board of Trustees; 74 O.S., § 909

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n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The proposed changes to Chapter 10 codify procedures already in place at OPERS. 10-9-4 establishes the line of succession for paying the death benefit or unpaid contributions when no named beneficiary exists. 10-17-3 clarifies that a member's election to participate in the Step-Up program is irrevocable regardless of a change in elected status.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 9. SURVIVORS AND BENEFICIARIES

590:10-9-4. Probate waivers

(a) In the event a member dies, leaving no living beneficiary or having designated his Estate as beneficiary, the System may require the judicial appointment of an administrator or executor for the member's estate prior to payment of any benefits or unpaid contributions. This requirement may be waived for payments in an amount of Twenty Five Thousand Dollars (\$25,000) or less upon presentation of the member's valid Last Will and Testament, trust documents or affidavit that a will does not exist, an Affidavit of Heirship naming all heirs to the member's estate, a Hold-Harmless Agreement signed by all heirs, a corroborating affidavit from someone other than an heir who is familiar with the deceased member, and proof of payment of all last debts of the member. These documents shall comply with the provisions of 74 O.S. §916.1. If there is any question as to the validity of any document herein required, the judicial appointment shall not be waived.

(b) If the System is paying a benefit or unpaid contributions under this rule, the payment shall be paid to the first of the following:

- (1) surviving spouse;
- (2) surviving children in equal shares;
- (3) surviving parents in equal shares;
- (4) surviving siblings in equal shares;
- (5) member's estate.

SUBCHAPTER 17. STEP-UP ELECTION AND BENEFITS

590:10-17-3. Irrevocable election of Step-Up

(a) Eligible OPERS members may make an irrevocable election to Step-Up or increase their benefit computation factor from 2.0% to 2.5%. Participating members will not be permitted to revoke the Step-Up election or stop the Step-Up contributions once the election has been made. The election is considered to be made upon the earliest of OPERS receipt of a member's completed election form or deposit of the member's Step-Up contributions.

(b) The Step-Up election is an irrevocable election and is binding on all future participation in OPERS, even if there is a

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break in service, a change in jobs, and/or a change in participating employers, or a change in elected or non-elected status.

[OAR Docket #17-563; filed 7-5-17]

TITLE 590. OKLAHOMA PUBLIC EMPLOYEES RETIREMENT SYSTEM CHAPTER 15. UNIFORM RETIREMENT SYSTEM FOR JUSTICES AND JUDGES

[OAR Docket #17-564]

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PERMANENT final adoption

RULES:

Subchapter 1. General Provisions
590:15-1-2. Administration [AMENDED]

AUTHORITY:

Oklahoma Public Employees Retirement System Board of Trustees; 20 O.S. §1108

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

December 5, 2016

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n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The plans administered by the OPERS Board of Trustees (Uniform Retirement System for Justices & Judges (URSJJ), SoonerSave & Pathfinder) use a formula to determine the administrative costs of each plan in order to reimburse OPERS. The proposed changes to 15-1-2 add Pathfinder, the new Defined Contribution System, to the rules for URSJJ.

CONTACT PERSON:

Dessa Baker-Inman, General Counsel, Oklahoma Public Employees Retirement System, 5801 N. Broadway Extension, Suite 200, Oklahoma City, Oklahoma 73118, 405-858-6737

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 1. GENERAL PROVISIONS

590:15-1-2. Administration

(a) **Administration of Plan.** The Oklahoma Public Employees Retirement System shall administer the Uniform

Retirement System for Justices and Judges, in accordance with the provisions outlined in 20 O.S. §§ 1101 et seq., and will coordinate with the Administrative Director of the Courts in the administration of the Uniform Retirement System for Justices and Judges.

(b) **Remittance of contributions.** The Administrative Director of the Courts shall remit all required court and employee contributions on a monthly basis. All required contributions and supporting documentation must be received by the System on or before the fifteenth (15th) day of the month following the month for which the contributions are due. The Administrative Director of the Courts will be assessed a late charge of 1.5% for any contributions remitted later than thirty (30) days following the due date. The late charge will be calculated on the unpaid balance and will compound monthly until paid.

(c) **Allocation of expenses.** The administrative expenses which are paid by the Oklahoma Public Employees Retirement System on behalf of the Uniform Retirement System for Justices and Judges, including operating expenses, depreciation expense, and investment related expenses other than fees for investment manager services, shall be allocated as of June 30 each year. An allocation percentage shall be calculated based on the amounts included in the audited financial statements from the prior year for the Oklahoma Public Employees Retirement System ("OPERS"), the 401(a) plan and the 457(b) plan of the Defined Contribution System, the Uniform Retirement System for Justices and Judges ("URSJJ"), the Oklahoma State Employees Deferred Compensation Plan ("DCP"), and the Oklahoma State Employees Deferred Savings Incentive Plan ("SIP") using the following factors: 1) benefits; 2) contributions; and 3) average investments. The ratio of each factor to the total for the individual plans will be calculated and the average of the sum of these ratios by plan will be the percentage used to allocate the expenses for reimbursement by the 401(a) plan and the 457 (b) plan of the Defined Contribution System, URSJJ, URSJJ, DCP and SIP to OPERS for the payments made on their behalf effective for the succeeding year beginning July 1.

[OAR Docket #17-564; filed 7-5-17]

TITLE 590. OKLAHOMA PUBLIC EMPLOYEES RETIREMENT SYSTEM CHAPTER 25. DEFERRED COMPENSATION

[OAR Docket #17-565]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 15. Trust
590:25-15-2. Payments from Trust Fund [AMENDED]

AUTHORITY:

Oklahoma Public Employees Retirement System Board of Trustees; 74 O.S., § 1701

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INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The plans administered by the OPERS Board of Trustees (Uniform Retirement System for Justices & Judges, SoonerSave & Pathfinder) use a formula to determine the administrative costs of each plan in order to reimburse OPERS. The proposed changes to 25-15-2 add Pathfinder, the new Defined Contribution System, to the rules for the Deferred Compensation Plan under SoonerSave.

CONTACT PERSON:

Dessa Baker-Inman, General Counsel, Oklahoma Public Employees Retirement System, 5801 N. Broadway Extension, Suite 200, Oklahoma City, Oklahoma 73118, 405-858-6737

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 15. TRUST

590:25-15-2. Payments from Trust Fund

(a) The Recordkeeper shall make payments from the Trust Fund to such persons in such manner, at such times and in such amounts as the Board, acting through the Plan Administrator, shall direct. The Recordkeeper shall be fully protected in making, discontinuing, or stopping payments from the Trust Fund in accordance with the directions of the Board and/or the Plan Administrator. The Recordkeeper shall have no responsibility to see to the application of payments so made or to ascertain whether the directions of the Board and/or Plan Administrator comply with the Plan. When the Board and/or the Plan Administrator directs that any payment is to be made only during or until the time a certain condition exists regarding the payee, any payment made by the Recordkeeper in good faith, without actual notice or knowledge of the changed status or condition of the payee, shall be considered to have been properly made by the Recordkeeper and made in accordance with the direction of the Board and/or Plan Administrator.

(b) To the extent permitted by law, the Board shall be reimbursed for its expenses, if any, that are reasonable and necessary for the administration of the Plan and the Trust. The administrative expenses which are paid by the Oklahoma Public Employees Retirement System on behalf of the Plan and the Trust, including operating expenses, depreciation expense,

and investment related expenses other than fees for investment manager services, shall be allocated as of June 30 each year. An allocation percentage shall be calculated based on the amounts included in the audited financial statements from the prior year for the Oklahoma Public Employees Retirement System ("OPERS"), the 401(a) plan and the 457(b) plan of the Defined Contribution System, the Uniform Retirement System for Justices and Judges ("URSJJ"), the Oklahoma State Employees Deferred Compensation Plan ("DCP"), and the Oklahoma State Employees Deferred Savings Incentive Plan ("SIP") using the following factors: 1) benefits; 2) contributions; and 3) average investments. The ratio of each factor to the total for the individual plans will be calculated and the average of the sum of these ratios by plan will be the percentage used to allocate the expenses for reimbursement by the 401(a) plan and the 457 (b) plan of the Defined Contribution System, URSJJ, USRJ, DCP and SIP to OPERS for the payments made on their behalf effective for the succeeding year beginning July 1.

(c) The Board, acting through the Plan Administrator and/or Recordkeeper is authorized, to the extent required under applicable law, to withhold from distributions to any payee such sum as the Board determines is necessary to cover federal and state taxes for which the Board may be liable, which are, or may be, assessed with regard to the amount distributable to such payee, in accordance with Section 15 of Subchapter 9 of Chapter 25. Upon discharge or settlement of such tax liability the Board shall pay the balance of such sum, if any, to such payee or to his estate. Prior to making any payment or distribution hereunder, the Board may require such releases or other documents from any lawful taxing authority and may require such indemnity from any payee or distributee as the Board shall reasonably deem necessary for its protection.

(d) No amounts shall be payable to the Employer hereunder, from the Trust Fund, except as provided in the Plan.

[OAR Docket #17-565; filed 7-5-17]

**TITLE 590. OKLAHOMA PUBLIC EMPLOYEES RETIREMENT SYSTEM
CHAPTER 35. DEFERRED SAVINGS INCENTIVE PLAN**

[OAR Docket #17-566]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 19. Administration of Plan
590:35-19-7. Payment of expenses [AMENDED]

AUTHORITY:

Oklahoma Public Employees Retirement System Board of Trustees; 74 O.S. §1701

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

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INCORPORATIONS BY REFERENCE:

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ANALYSIS:

The plans administered by the OPERS Board of Trustees (Uniform Retirement System for Justices & Judges, SoonerSave & Pathfinder) use a formula to determine the administrative costs of each plan in order to reimburse OPERS. The proposed changes to 25-15-2 add Pathfinder, the new Defined Contribution System, to the rules for the Deferred Savings Incentive Plan under SoonerSave.

CONTACT PERSON:

Dessa Baker-Inman, General Counsel, Oklahoma Public Employees Retirement System, 5801 N. Broadway Extension, Suite 200, Oklahoma City, Oklahoma 73118, 405-858-6737

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 19. ADMINISTRATION OF PLAN

590:35-19-7. Payment of expenses

(a) Forfeitures pursuant to Section 590:35-9-2, if any, shall be used to pay Plan and/or Trust expenses. To the extent not paid by the Employer, all costs and expenses incurred in administering this Plan and Trust shall be paid by the Plan and Trust, through the reduction of each Participant's Account.

(b) The fees payable for actuarial, consulting, legal, accounting or other reasonable and necessary services relating to the administration of the Plan and Trust, as provided for therein, including expenses for the Board of Trustees, shall be payable by the Board of Trustees out of the Trust Fund, and until so paid shall constitute a first and prior charge and lien against the Trust Fund, to the extent not paid by the Employer.

(c) The administrative expenses which are paid by the Oklahoma Public Employees Retirement System on behalf of the Plan, including operating expenses, depreciation expense, and investment related expenses other than fees for investment manager services, shall be allocated as of June 30 each year. An allocation percentage shall be calculated based on the amounts included in the audited financial statements from the prior year for the Oklahoma Public Employees Retirement System ("OPERS"), the 401(a) plan and the 457(b) plan of the Defined Contribution System, the Uniform Retirement System for Justices and Judges ("URSJJ"), the Oklahoma State Employees Deferred Compensation Plan ("DCP"), and the Oklahoma State Employees Deferred Savings Incentive Plan

("SIP") using the following factors: 1) benefits; 2) contributions; and 3) average investments. The ratio of each factor to the total for the individual plans will be calculated and the average of the sum of these ratios by plan will be the percentage used to allocate the expenses for reimbursement by the 401(a) Plan and the 457 (b) Plan of the Defined Contribution System, URSJJ, ~~URSJJ~~, DCP and SIP to OPERS for the payments made on their behalf effective for the succeeding year beginning July 1.

[OAR Docket #17-566; filed 7-5-17]

TITLE 590. OKLAHOMA PUBLIC EMPLOYEES RETIREMENT SYSTEM CHAPTER 40. DEFINED CONTRIBUTION SYSTEM

[OAR Docket #17-567]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 3. Administration of Defined Contribution System - Applicable to the 401(a) Plan and the 457(b) Plan

590:40-3-9. Payment of expenses [AMENDED]

Subchapter 5. Eligibility and Participation - Applicable to the 401(a) Plan and the 457(b) Plan

590:40-5-6. Employee additional contributions to the 457(b) plan [AMENDED]

AUTHORITY:

Oklahoma Public Employees Retirement System Board of Trustees; 74 O.S. §909, 935.3

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

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SUPERSEDED EMERGENCY ACTIONS:

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INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The proposed change to 40-3-9 clarifies that both plans under the defined contribution plan are included in the formula used by the Oklahoma Public Employees Retirement System to determine the administrative costs of each plan governed by the Board. The proposed change to 40-5-6 changes the option period for voluntary deferral changes from once per year to once per month as enacted by the 2016 legislature in Enrolled HB 2664.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 3. ADMINISTRATION OF DEFINED CONTRIBUTION SYSTEM - APPLICABLE TO THE 401(A) PLAN AND THE 457(B) PLAN

590:40-3-9. Payment of expenses

(a) Forfeitures to pay expenses - 401(a) plan. Forfeitures under 590:40-7-21 and 590:40-7-22 shall be used to pay 401(a) plan and/or Trust expenses. To the extent not paid by the Employer, all costs and expenses incurred in administering the 401(a) plan and the Trust shall be paid by the Plan and Trust through the reduction of each Participant's Account.

(b) Fees payable from Trust Fund. The fees payable for consulting, legal, accounting, or other reasonable and necessary services relating to the administration of each of the Plans and Trusts, as provided for, including expenses for the Board of Trustees, shall be payable by the Board of Trustees out of the Trust Funds, and until so paid shall constitute a first and prior charge and lien against the Trust Funds, to the extent not paid by the Employer.

(c) Allocation of expenses. The administrative expenses paid by OPERS on behalf of the each of the Plans, including operating expenses, depreciation expense, and investment related expenses other than fees for investment manager services, shall be allocated as of June 30 each year. An allocation percentage shall be calculated based on the amounts included in the audited financial statements from the prior year for the OPERS defined benefit plan, the Uniform Retirement System for Justices and Judges ("URSJJ"), the Oklahoma State Employees Deferred Compensation Plan ("DCP"), the Oklahoma State Employees Deferred Savings Incentive Plan ("SIP"), the 401(a) plan and the 457(b) plan of the Defined Contribution System using the following factors: 1) benefits; 2) contributions; and 3) average investments. The ratio of each factor to the total for the individual plans will be calculated and the average of the sum of these ratios by plan will be the percentage used to allocate the expenses for reimbursement by each of the Plans, URSJJ, DCP, and SIP to OPERS defined benefit plan for the payments made on their behalf effective for the succeeding year beginning July 1.

SUBCHAPTER 5. ELIGIBILITY AND PARTICIPATION - APPLICABLE TO THE 401(A) PLAN AND THE 457(B) PLAN

PART 3. CONTRIBUTIONS - APPLICABLE TO THE 401(A) PLAN AND THE 457(B) PLAN

590:40-5-6. Employee additional contributions to the 457(b) plan.

(a) Additional contributions; deposit of funds. Participants may contribute additional voluntary deferrals, above the 4.5% required contribution rate. All deferrals above the mandatory 4.5% contribution rate shall be considered voluntary deferrals. Participants may contribute 7% of compensation and it shall be matched by the Employer. Participants may contribute more than 7% of compensation, but any such amount over 7% shall not be eligible for Employer matching amounts. All voluntary deferrals shall be subject to the maximum deferral limits allowed under the Code and as set forth in Subchapter 9 of this Chapter. Voluntary deferrals shall be paid and remitted in the same manner as the mandatory contributions. All voluntary deferrals are intended to meet the requirements of Code Sections 457(b). All voluntary deferrals over the 4.5% mandatory contribution shall be placed by OPERS in the 457(b) plan as set forth by the Board of Trustees and in accordance with Subchapter 9 of this Chapter.

(b) Change in deferral rate. A Participant may change the voluntary contribution rate once per month by giving calendar year only during the option period as set forth by the Board. The Participant shall give notice to OPERS of such change prior to or during the option period. Any request for a change in the amount of the voluntary contribution rate and any change in the corresponding Employer matching amount shall become effective the month after the notice is received and the change is approved by OPERS. deferral subject to Employer matching received by OPERS after the close of the option period shall not be granted until the next month option period. The contribution rate selected by the Participant shall be continuous and remain in effect until a change is made by the Participant during the next option period.

(c) Notice. Any notice required under this Section means communication on forms approved by OPERS or the Recordkeeper, through the website of OPERS or the Recordkeeper, or through a dedicated telephone service of OPERS or the Recordkeeper.

[OAR Docket #17-567; filed 7-5-17]

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

[OAR Docket #17-631]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 1. Organization of the Department of Public Safety
595:1-1-3. Function of each division which deals directly with and affects the public [AMENDED]
Subchapter 3. Rules of Practice
595:1-3-4. General rules regarding hearings [AMENDED]
595:1-3-6. Computation of time [AMENDED]
595:1-3-7. Request for hearing [AMENDED]
595:1-3-8. Temporary license [REVOKED]
595:1-3-9. Notice of action and opportunity for hearing [REVOKED]

Permanent Final Adoptions

- 595:1-3-11. Withdrawal of hearing request or dismissal of hearings [AMENDED]
- 595:1-3-12. Effect of dismissal [REVOKED]
- 595:1-3-14. Conduct of hearings [AMENDED]
- 595:1-3-15. Witnesses and exhibits [AMENDED]
- 595:1-3-19. Procedures for telephonic implied consent hearings [AMENDED]
- Subchapter 9. Inspection and Copying of Final Orders, Decisions, Opinions and Open Records.
- 595:1-9-1. Purpose [AMENDED]
- 595:1-9-2. Inspection and copies of open records [AMENDED]
- 595:1-9-3. Records of the Department of Public Safety [AMENDED]
- 595:1-9-3.1. Retention and destruction of ~~department-Department~~ records [AMENDED]
- 595:1-9-4. Fees [AMENDED]
- 595:1-9-5. Obtaining open records [AMENDED]
- 595:1-9-6. Summary of ~~driving record~~ Motor Vehicle Report [AMENDED]

AUTHORITY:

Commissioner of Public Safety; 47 O.S. §6-101 et seq.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

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SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The changes made in Subchapter 1 update phone numbers and addresses of various Troop headquarters across the state. In several sections the term "examiner" has been changed to "Hearing Officer". Many of the changes up-date out-of-date language and update sections to bring them in-line with Open Records statutes. The Department has also updated the retention schedule for retaining documents. Three sections were revoked either for out of date language or the revoked rules subject is addressed elsewhere in rule. In section 1-9-4 Fees, the agency is requesting a fee increase for the cost distributing dvd/cd's as they relate to Open Records. The Department receives a high volume of requests from both the media and the general public.

CONTACT PERSON:

Chris Sherman, DPS Legislative Analyst, Department of Public Safety, 3600 N. Martin Luther King Ave., PO Box 11415, Oklahoma City, OK 73136-0415. Phone: 405.425.7394. E-mail: thomas.sherman@dps.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 1. ORGANIZATION OF THE DEPARTMENT OF PUBLIC SAFETY

595:1-1-3. Function of each division which deals directly with and affects the public

(a) **Oklahoma Highway Patrol Division.** The Oklahoma Highway Patrol Division provides safety and protection for the citizens on the highways of Oklahoma. The headquarters of the Oklahoma Highway Patrol Division is located at the Department of Public Safety. Telephone: (405) 425-2424 [47 O.S. §2-103] The division is divided into the following field and specialty troops and sections located throughout the state:

(1) **Field troops.** Field troops of the Highway Patrol have primary law enforcement authority on state, federal, and interstate highways, excluding those portions within city limits. Following is a list of the field troops, the location of their headquarters, and their telephone numbers:

- (A) Troop A: Oklahoma City, (405) 425-2285
- (B) Troop B: Tulsa, (918) 627-3881
- (C) Troop C: Muskogee, (918) 683-3256
- (D) Troop D: McAlester, (918) 423-3636
- (E) Troop E: Durant, (580) 924-2601
- (F) Troop F: Ardmore, (580) 223-8800
- (G) Troop G: Lawton, (580) 353-0783
- (H) Troop H: Clinton, (580) 323-2424
- (I) Troop I: Guymon, (580) 338-3366
- (J) Troop J: Enid, (580) 234-6147
- (K) Troop K: Perry, (580) 336-9880
- (L) Troop L: Vinita, (918) 256-3388
- (M) Troop M: Altus, (580) 477-2765

(2) **Turnpike troops.** Turnpike troops of the Highway Patrol have sole law enforcement authority on the turnpikes of this state. Following is a list of the turnpike troops, the turnpike each patrols, and their telephone numbers:

- (A) Troop XA: Will Rogers, (918) 256-7476
- (B) Troop XB: Muskogee, (918) 683-1782
- (C) Troop XC: Indian Nation, (918) 548-3799
- (D) Troop XD: Cherokee, (918) 868-2372
- (E) Troop XE: Creek, (918) 355-9069
- (F) Troop YA: Cimarron, (405) 425-3683
- (G) Troop YB: Turner, ~~(405) 425-3694~~ (918) 968-3000
- (H) Troop YC: H.E. Bailey, (405) 222-3165
- (I) Troop YD: Chickasaw, (580) 223-8800
- (J) Troop YE: Kilpatrick, (405) ~~425-3635~~ 424-1616

(3) ~~Specialty~~ **Specialty troops.** Specialty troops of the Highway Patrol perform specialized law enforcement functions within the scope of the mission and operation of the Department of Public Safety. Following is a list of the ~~specialty~~ specialty troops, their functions, and their telephone numbers:

- (A) Troop O: Aircraft, (405) ~~321-1831~~ 425-2335
- (B) Troop P: Public Information [see (j) of this Section]
- (C) Troop R: Capitol Patrol Section [see (4)(C) of this subsection]
- (D) Troop S:
 - (i) Motor Carrier Safety, (405) ~~521-6060~~ 702-0813,

- (ii) Hazardous Materials Transportation, (405) ~~521-6060702-0813~~,
- (iii) Size and Weight Enforcement Section [see (4)(A) of this subsection]
- (E) Troop SO: Special Operations, (405) 425-2473
- (F) Troop T: Training, (405) 425-2410
- (G) Troop W: Lake Patrol Section [see (4)(B) of this subsection]
- (H) Troop Z: Investigations Division, (405) 425-2137
- (I) Troop BT: Bomb Squad Section [see (4)(D) of this subsection]

(4) **Troops created by statute.** Following are sections within the Highway Patrol Division which are created by statute:

(A) **Size and Weight Enforcement Section (Troop S).** The Size and Weight Enforcement Section has the primary duty of enforcing the provisions of the size, weight and load laws [47 O.S. §14-101 et seq.] and rules [OAC 595:30]. Telephone: (405) ~~521-6060702-0813~~. [47 O.S. ~~§2-105.4A+16.11~~]

(B) **Lake Patrol Section (Troop W).** The Lake Patrol Section has the primary enforcement duty related to state boat registration laws [63 O.S. §4001 et seq. and §4101 et seq.], boating and water safety laws [63 O.S. §4200 et seq.], federal boating regulations, and Department of Public Safety or Department of Wildlife Conservation rules [OAC 595:45] pertaining to Oklahoma lakes, rivers and adjacent shores, and the duty of providing statutorily mandated boating safety education. The address for enforcement issues is ~~at the Arcadia Lake office, 7000 East 2nd ST. Edmond, 73034220 NE 38th Terr, Oklahoma City, OK 73105; telephone: (405) 341-1893522-1880. The address for boating safety education, marine theft, HIN inspections, U.S. Coast Guard liaison and grants, and marine patrol related training is at the Birch Lake office, 3156 CR 2409, Barnsdall, OK, 74002; telephone: (918) 847-2001.~~ [47 O.S. §2-105.6]

(C) **Capitol Patrol Section (Troop R).** The Capitol Patrol Section has the primary duty of providing law enforcement services to all state buildings and properties within Oklahoma County, including the State Capitol Park and the Governor's mansion, and Tulsa County, including the State Capitol Complex, and enforcing all parking, traffic, and criminal laws within the boundaries of Oklahoma and Tulsa Counties. Oklahoma City telephone: (405) ~~702-0944521-6040~~. Tulsa telephone: (918) 581-2000 [47 O.S. §2-105.7]

(D) **Bomb Squad Section (Troop BT).** The Bomb Squad Section has the primary duty of carrying out the duties prescribed in 63 O.S. §122.2. Telephone: (405) 425-2435 [47 O.S. §2-105.4B]

(E) **Communications Section.** The Communications Section is the link between the general public

and public safety services provided by the Department and other law enforcement agencies or emergency providers. These services may be obtained by telephone or in person at any of the thirteen Field Troop Headquarters statewide [see (1) in this subsection for telephone numbers]. [47 O.S. §2-105.8]

(b) **Legal Division.** The Legal Division provides legal services for the Department and administratively enforces Oklahoma's implied consent law [47 O.S. §751 et seq.]. Specific legal advice is not made available to the general public. The division is located at the Department of Public Safety. Telephone: (405) 425-2148. ~~Associate Counsel is also currently located in Jenks, Oklahoma. [47 O.S. §2-121]~~

(c) **Records Management Division.** The Records Management Division is the designated repository for all official traffic accident reports and records required to be submitted by law enforcement officers of municipal, county and state agencies, and for court abstracts and other records concerning motor vehicle and related convictions and offenses required to be reported by municipal and district courts. This division also ensures that appropriate entries from the above documents are made to the respective individual driver's record master file. This division is also responsible for providing ~~documents~~ certain records pursuant to available to the public under the provisions of the Open Records Act [see 595:1-9-5 and 595:1-9-6 (relating to obtaining open records)]. The division is located at the Department of Public Safety. Telephone: (405) 425-2192. [47 O.S. §2-103]

(d) **Size and Weight Permit Division.** The Size and Weight Permit Division issues appropriate permits for eligible oversize and overweight vehicles and loads. The central location of the division is located at 2401 Northwest 23rd Street, Suite 45, Oklahoma City, OK 73107. For information concerning operation and for addresses and telephone numbers of branch offices, call (405) 522-9006 or toll-free (877) 425-2390, or see OAC 595:30-3-3. [47 O.S. §2-103]

(e) **Driver License Services Division.** The Driver License Services Division issues permits for driver education instructors, administers tests for the purpose of issuing driver licenses, commercial driver credentialing, including driver qualification, HAZMAT Security Threat Assessment program and the licensing of truck driver training institutions, provides administrative services related to the issuance and renewal of driver licenses and identification cards, and coordinates the issuance of driver licenses and identification cards with motor license agents. The division is located at the Department of Public Safety. Telephone: (405) 425-7745. [47 O.S. §2-106]

(f) **Driver Compliance Division.** The Driver Compliance Division provides driver improvement and financial responsibility services, and may suspend, deny, cancel, revoke, or disqualify individual driving privileges, subject to statutory authorization. The division administers rules relating to the point system and discretionary suspensions [OAC 595:10-7], medical aspects [OAC 595:10-5], alcohol and drug substance abuse courses [595:10-5-12], mature driver accident prevention [OAC 595:10-5], and issues parking permits for the physically disabled [OAC 595:50-3]. It also administers the

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Driver License Compact [47 O.S., §781 et seq.] and the *Non-resident Violator Compact* [47 O.S., §§789 and 790]. This division is also charged with enforcement of the provisions of the financial responsibility laws of this state (47 O.S. §7-101 et seq.) and the Compulsory Insurance Law (47 O.S. §7-600 et seq.). The division is located at the Department of Public Safety. For information concerning operation and the availability of branch office services, call (405) 425-2098. [47 O.S. §2-106]

(g) **Identify Verification Unit.** The Identify Verification Unit is responsible for investigating identify fraud and theft. The division is located at the Department of Public Safety. Telephone: (405) 425-2477.

(h) **Wrecker Services Division.** The Wrecker Services Division is responsible for the licensing and governance of wrecker or towing services [47 O.S. §951 et seq.]. The division provides notification to owners and lien holders of the location of vehicles impounded at the request of law enforcement agencies within the state, and receives and maintains records of vehicles impounded from private property and of vehicles stored over thirty (30) days by wrecker or towing services. The division is located at the Department of Public Safety. Telephone: (405) 425-2312. [47 O.S. §2-103]

(i) **Public Affairs Office.** The Public Affairs Office acts as the liaison between the Department and the public, the media, and other city, county, state, and federal agencies. Information provided includes traffic safety campaigns, press releases, traffic statistics, road conditions, and services provided by each of the Department's divisions. Telephone: (405) 425-7707. [47 O.S. §2-103]

(j) **Oklahoma Highway Safety Office.** The Oklahoma Highway Safety Office (OHSO) is the state organization responsible for developing an annual statewide plan (Highway Safety Plan) to decrease fatalities and injuries on Oklahoma roadways. Each state has a highway safety program under the direction of the state governor. The OHSO administers federal highway safety funds in the form of highway safety projects with state and local agencies, nonprofit organizations, and private contractors. Project applications are normally due in February or March of each year for the following federal fiscal year, which begins on October 1. The OHSO is located at 3223 N. Lincoln, Oklahoma City, OK 73105. Telephone: 405-523-1570. Fax: 405-523-1586. [47 O.S. §2-106.2A et seq.]

(k) **Oklahoma Law Enforcement Telecommunications System.** The Oklahoma Law Enforcement Telecommunications System (OLETS) is a statewide telecommunications network which serves city, county, state, federal, and military law enforcement and criminal justice agencies in Oklahoma. Additionally, OLETS provides direct computer interfaces to the computer systems of the Department of Public Safety, the Oklahoma Tax Commission, the Oklahoma State Bureau of Investigation, the National Crime Information Center (NCIC), the National Law Enforcement Telecommunications System (NLETS), and the National Weather Service Computer System and Network in Oklahoma City, Oklahoma. OLETS is managed and operated by the Department of Public Safety.

The division is located at the Department of Public Safety. Telephone: (405) 425-2224. [47 O.S. §2-124]

(l) **Transportation Division.** The Transportation Division is responsible for the purchase, repair, and disposal of all Department vehicles. Repairs may be done at private facilities or at the Department garage with funding coordinated by the Division. Department vehicles are disposed of by sale to other law enforcement agencies in Oklahoma or by public auction. The location of the Transportation Division is at 2300 N.E. 36th Street at the Department of Public Safety. Telephone (405) 425-2129. [47 O.S. §2-103]

(m) **Finance Division.** The Finance Division is responsible for paying the bills of the Department within its approved budget and accounting for and depositing receipts collected for fees, fines, penalties, and other monies as provided by law. The Division also processes sales of surplus and forfeited property as provided in Subchapter 15 of this Chapter. The location of the Finance Division is at the Department of Public Safety. Telephone (405) 425-2833. [47 O.S. §2-103]

SUBCHAPTER 3. RULES OF PRACTICE

595:1-3-4. General rules regarding hearings

(a) The right to a hearing may not extend to any decision based solely on the results of any test or examination given or made by the Department of Public Safety.

(b) ~~In any case where Title 47 or the rules of the Department of Public Safety provide a procedure inconsistent with this chapter, the statute or specific rule shall govern to the extent of such inconsistency. Hearings shall be informal and not open to the public.~~

(c) Hearings may be afforded persons not otherwise qualified under rule 595:1-3-3, at the discretion of the Commissioner of Public Safety.

(d) Any person ~~entitled to requesting~~ a hearing must ~~demand~~ request the hearing in writing on a form prescribed by the Department of Public Safety and in compliance with this chapter. This form may be obtained from the Department's principal place of business at 3600 North Martin Luther King Avenue, Oklahoma City, OK or at www.ok.gov/DPS and in compliance with this chapter. A request that does not comply with these rules shall be rejected and shall not stay further action by the Department.

(e) A person is not entitled to a hearing when the action taken by the Department of Public Safety is made mandatory by law ~~or when the person has previously been afforded an opportunity with notice for hearing.~~

(f) ~~Every party may have the right to present his or her case or defense by oral or documentary evidence, to submit evidence in rebuttal and to conduct such cross-examination as may be required for a full and true disclosure of the facts. A person may present testimony, evidence and witnesses relevant to the matter being heard. The hearing examiner/Hearing Officer may limit or exclude evidence and testimony that is not relevant, or cross-examination when such cross-examination is cumulative, repetitive, or interferes with the conduct of the hearing.~~

(g) When two (2) or more hearings are to be held, and the same or substantially similar evidence is relevant and material to the matters in issue at each hearing, the ~~examiner~~ Hearing Officer may fix the same time and place for each hearing and conduct the hearings jointly. Where joint hearings are held, a single record of the proceedings may be made; the evidence introduced in one case may be considered as introduced in the other, and a separate or joint decision may be made as appropriate.

(h) Where the Department of Public Safety is not represented by counsel as an advocate, ~~the Hearing Officer~~ it may be the duty of ~~the hearing officer to neutrally inquire into each material and essential element which the department is obligated to prove, by questions of the witnesses~~ conduct an adequate inquiry for a proper resolution of the matter.

(i) Hearing Officers may take judicial notice of adjudicative facts, any matter of common law, statute, ordinance, rule and regulation, and any ~~relevant document which is a record of or received by the Department of Public Safety, or which has been received by the Department~~ in the usual and ordinary course of business.

(j) Continuances may be allowed only at the discretion of the Hearing Officer or their designee.

(k) ~~Proper dress is required of all persons attending a hearing. No tank tops, shorts, or other attire which would detract from maintaining order and proper decorum in the proceedings will be permitted.~~

~~(l) Use of tobacco, beverages, food or candy, in any form, by anyone, at any time during a proceeding, is forbidden. Following a hearing before the Department, an order shall be issued containing findings and the final decision of the Department.~~

595:1-3-6. Computation of time

(a) In computing any period of time prescribed or allowed by this chapter, by notice, order, rule of the Department of Public Safety, or by statute, the day of the act or event which the designated period of time begins to run is not included.

(b) The last day of the period so computed ~~may~~ shall be included unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day ~~which is not a Saturday, Sunday, or legal holiday~~ on which the Department is open to the public.

595:1-3-7. Request for hearing

~~A Request~~ request for a hearing must be in writing, on a form prescribed by the Department of Public Safety. This form is available at the Department's principal place of business at 3600 North Martin Luther King Avenue, Oklahoma City, OK or at www.ok.gov/DPS. The request shall be submitted ~~directed to the Department of Public Safety Headquarters to the Division or Bureau responsible for administering the act which is subject to hearing. The request for hearing shall include the name, mailing address and telephone number of petitioner, driver's license number and date of birth of the aggrieved party. If represented by counsel or another person, the name, mailing address, telephone number and capacity of the representative must also be provided.~~ Hearing requests

may only be submitted in person at the Department's principal place of business, or by mail to the address below. Hearing requests submitted other than in person or by mail will not be accepted and a hearing will not be granted. Hearing request forms mailed via the U.S. Postal Service shall be addressed to the Department of Public Safety, Legal Division, P.O. Box 11415, Oklahoma City, OK 73136.

595:1-3-8. Temporary license [REVOKED]

~~(a) The Department of Public Safety may, at the time the demand is filed, take up the regular form of license of the person against whom an order of revocation or suspension has been issued and, in some cases, issue a temporary license for the period he deems necessary in order to afford that person a hearing.~~

~~(b) The temporary license may operate as a stay of the order of suspension or revocation until the date of the hearing and may contain a notice to the holder thereof of the foregoing limitation of the stay of the order.~~

~~(c) The Department of Public Safety may, for good cause shown, issue additional temporary licenses as it may deem necessary in order to carry out the intent of this section.~~

~~(d) If any person fails to timely appear at a hearing scheduled by the Department of Public Safety without good cause shown, the stay of the order of suspension or revocation may become void and the order may become effective immediately upon the expiration of such stay with no further action required of the Department of Public Safety.~~

~~(e) The Temporary licenses issued under this section may be effective or renewed until the hearing examiner's decision is issued, the person fails to appear as required, or the permit is suspended or revoked on other grounds, whichever occurs first.~~

595:1-3-9. Notice of action and opportunity for hearing [REVOKED]

~~Notice of action and opportunity for hearing may be sent to the affected party whose license or permit is subject to denial, suspension or revocation by the appropriate division or department. Notice may include:~~

- ~~(1) Statement of time and method of requesting a hearing.~~
- ~~(2) Statement of the legal authority and jurisdiction under which the hearing is to be held.~~
- ~~(3) Reference to the particular statutes and rules involved.~~
- ~~(4) Short and plain statement of matters asserted.~~

595:1-3-11. Withdrawal of hearing request or dismissal of hearings

~~(a) With the approval of the hearing examiner, at any time prior to the mailing of notice of decision, a demand for a hearing may be withdrawn by the party or parties filing the demand for hearing. A request to withdraw from or cancel a scheduled hearing must be submitted in writing on a form prescribed by the Department. The form can be obtained from the Department at its principal place of business, 3600~~

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North Martin Luther King Avenue, Oklahoma City, OK or at www.ok.gov/DPS. A request for withdrawal of a scheduled hearing must be received by the Department no later than 12:00 PM two (2) business days prior to the scheduled hearing. If the request is not received by the Department by 12:00 PM two (2) business days prior to the scheduled hearing the Department may proceed with the hearing and take action based on the evidence.

(b) A party may request withdrawal by filing a written notice with the examiner or orally stating the request at the hearing. The hearing examiner may request written notice for the file. A request to withdraw from or cancel a scheduled hearing may only be submitted in person at the Department's principal place of business, or by mail to the address below. Any requests submitted other than in person or by mail will not be accepted and a hearing will not be granted. Request forms mailed via the U.S. Postal Service shall be addressed to the Department of Public Safety, Legal Division, P.O. Box 11415, Oklahoma City, OK 73136.

(c) A party may be deemed to have abandoned a demand for hearing if the party fails to timely appear at the place fixed for hearing, and prior to the time for hearing, the party has not shown good cause why he cannot appear. The hearing examiner may enter an order of default.

(d) The hearing examiner may, on his own motion, dismiss a hearing demand, either entirely or as to any stated issue, under any of the following circumstances:

(1) Where the doctrine of res judicata is applicable because of a final decision either by the Department of Public Safety or by judicial affirmance.

(2) Where the party demanding a hearing is not a proper party or does not otherwise have a right to a hearing. This would include, but is not limited to, cases in which an individual has been convicted of an offense following which revocation of the license is mandatory under an applicable statute, or those in which an individual has been convicted of an offense following which suspension of license is mandatory under an applicable statute unless proof of financial responsibility for the future is furnished the Department of Public Safety.

(3) Where the party has failed to file a timely hearing demand.

(4) Where the Hearing Examiner, in his opinion, finds that a petition filed in any proceeding does not raise a question of fact or the claim or prayer is frivolous.

(5) As a sanction for disrespectful conduct, or any conduct which interferes with the hearing examiner's ability to conduct a hearing.

595:1-3-12. Effect of dismissal [REVOKED]

(a) Notice of dismissal by the Hearing Examiner may be hand delivered to the parties or mailed to them at their last known address.

(b) The dismissal of a demand for hearing may be final and binding unless vacated.

(c) The action of dismissal may be in the form of an order by the examiner which may contain a statement of facts and the reason for the dismissal. No such order may be necessary

where all parties have filed an application for dismissal in writing.

595:1-3-14. Conduct of hearings

(a) After the hearing is closed by the Hearing Officer, the Hearing Officer shall prepare and issue a written final order containing findings and the decision of the Department.

(b) If the hearing examiner/Hearing Officer believes/finds that there is evidence relevant to the issues and material evidence available which has/was not been presented at the hearing, the hearing examiner/Hearing Officer may continue or reopen the hearing for the purpose of considering such evidence, or, at any time prior to the mailing of the final written order, mailing of notice of the decision Final Order, reopen the hearing for the receipt of such evidence.

(bc) The order in which evidence and allegation testimony may be presented and the procedure at the hearing generally, except as otherwise provided in this chapter or by statute, may/shall be at the discretion of the hearing examiner/Hearing Officer, and of such nature as to afford the parties a reasonable opportunity for a fair hearing and comport with the burden of proof required by law.

595:1-3-15. Witnesses and Exhibits

(a) **Witness list.**

(1) Upon written request, the Commissioner of Public Safety may issue a subpoena under the authority of *The Commissioner and officers of the Department designated by him shall have authority to summon witnesses to give testimony under oath or to give written deposition upon any matter under the jurisdiction of the Department. Such summons may require the production of relevant books, papers and records.* 47 O.S. §2-115.

(1) The responsibility for service of the subpoena, determination of expert witness fees, payment of witness fees, and enforcement of the subpoena may be solely with the petitioner requesting the subpoena.

(2) A subpoena may be issued on a form prescribed by the Commissioner of Public Safety.

(b) Witnesses at a hearing may testify under oath or affirmation.

(2) The availability and participation of any witness appearing on behalf of the party requesting the hearing shall be the sole responsibility of that party. The party presenting the witness is required to provide the Department with the name of the witness, along with a brief statement of the testimony to be offered by the witness. If the hearing is a telephonic hearing, the party presenting the witness shall provide a telephone number where the witness can be reached to participate in the hearing. The Hearing Officer will not subpoena or secure the attendance of any witnesses for the party requesting the hearing.

(c) The hearing examiner may examine the witnesses and may allow the parties or their representatives to do so.

(3) The party requesting the hearing shall provide the Department the following information, no later than three (3) business days prior to the date of the scheduled hearing.

If the following information is not received by the Department at least three (3) business days prior to the date of the scheduled hearing, the Hearing Officer may exclude the witness from the hearing:

- (A) the telephone number that will be used to contact the party for the hearing;
- (B) the name, mailing address, and telephone number of the party's attorney, if any;
- (C) the name of any witness appearing on behalf of the party requesting the hearing, along with a brief statement of the testimony to be offered by the witness.

(4) The Hearing Officer may examine the witnesses and may allow the parties or their representatives to do so.

(5) Witnesses giving testimony at a hearing shall do so under oath.

~~(4) If the examiner conducts the examination of a witness, he may allow the parties to suggest matters as to which they desire the witness to be questioned, and the hearing examiner may do so if such matters are relevant and material to any issue pending for decision before him.~~

(b) Exhibit list.

(1) Any exhibits to be presented by the licensee must be received by the Legal Division of the Department of Public Safety at least three (3) business days prior to the date of the scheduled hearing. Exhibits received more than three (3) business days prior to the date of the scheduled hearing may be excluded by the Hearing Officer.

(2) Exhibits shall be submitted to the Department only in person to the principal place of business located at 3600 Martin Luther King Avenue, Oklahoma City, OK, or by mail addressed to: Department of Public Safety, Legal Division, P.O. Box 11415, Oklahoma City, OK 73136.

(3) Any report or results of any tests, if deemed relevant by the Hearing Officer, shall be admitted without the testimony of the person making the report or performing the test.

595:1-3-19. Procedures for telephonic implied consent hearings

(a) **Opportunity for hearing.** ~~The opportunity for an Administrative Hearing, conducted by the Legal Division of the Department of Public Safety, is provided upon the timely written request of a person whose driving privilege is subjected to revocation or denial pursuant to the Implied Consent Law relating to a test result or test refusal under 47 O.S. 751, et seq. and/or 47 O.S. §6-205.1. will only be provided to a person whose driving privileges are subject to revocation pursuant to the Implied Consent law relating to a test result or test refusal. The hearing may shall be conducted by an Agent of the Hearing Officer designated by the Commissioner of Public Safety by telephone conference call or in person. The basis and scope of the hearing is provided by statute. [47 O.S. §754 (E)(1,2)].~~

(b) ~~Hearing may be conducted in person or telephonically~~**Exemptions.** ~~The Commissioner of Public Safety or his authorized agent will determine, at his discretion, whether the hearing will be conducted in person or telephonically [47 O.S.~~

~~§754 (E)]. The procedure for in person hearings is provided for by statute. Where a telephonic hearing is designated, the procedure specifically applicable to telephonic hearings is provided to the licensee, his attorney if designated, and witnesses involved in the hearing, along with the notice letter confirming that the hearing has been scheduled, or with the Subpoena for Telephone Hearing. Hearings for persons whose driving privileges are subject to revocation pursuant to the Implied Consent law relating to a test result or test refusal shall be exempt from and not subject to the provisions of the Oklahoma Administrative Procedures Act and the Oklahoma Pleading and Discovery Codes. The rules of this chapter shall govern the administration of such hearings.~~

(c) **Responsibilities of the licensee Hearing request.** The form to request an implied consent hearing may be obtained at the Department's principal place of business at 3600 North Martin Luther King Avenue, Oklahoma City, OK or at www.ok.gov/DPS. Hearing requests shall only be submitted as provided in 595:1-3-7.

(1) ~~As soon as possible after receiving notice of hearing, the licensee must determine:~~

(A) ~~Whether he will be represented by an attorney, as well as the name and mailing address of said attorney.~~

(B) ~~Whether there are witnesses on his behalf whom he desires to have present, the telephone number where they will be reached, and their mailing address(es).~~

(C) ~~What telephone number(s) will be used by licensee, attorney (if any), and licensee's witnesses (if any).~~

(2) ~~The licensee and attorney (if applicable) must complete and return the required information on the form provided with the notice by the Department of Public Safety within ten (10) days of the date of the notice letter.~~

(d) **Telephone number of licensee, attorney if designated, and witnesses.—Primary method.** The primary method of conducting implied consent hearings shall be by telephone. All persons participating in the hearing must be able to participate, as determined by the Hearing Officer. The Hearing Officer may designate an alternate method of conducting the hearing, if deemed necessary.

(1) ~~The licensee, attorney if designated, officers and additional witnesses must provide the hearing officer with the telephone number which he will be prepared to answer at the time of the hearing.~~

(2) ~~The telephone line must be available for the party who is to receive the call from the hearing officer at the time for the hearing.~~

(e) **Exhibits or documentary evidence Responsibilities of the party requesting the hearing.**

(1) ~~The Department of Public Safety will mail the licensee or his designated attorney and each witness a copy of the Officer's Affidavit which will be used in the hearing.~~

(2) ~~If the licensee, officer or other witness desires to have additional exhibits or documentary evidence included in the hearing, he must deliver said documents to the Department of Public Safety, Legal Division, at least~~

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ten (10) days prior to the hearing. The hearing officer may consider documentary evidence if it is received in time for the hearing. The materials shall be mailed to: Oklahoma Department of Public Safety, Legal Division, Room 102, P.O. Box 11415, Oklahoma City, Oklahoma 73136-0415.

(3) The licensee, his attorney, officers or other persons may examine the original Officer's Affidavit and any other exhibit or documentary evidence which may be on file, at any time during regular business hours, at: Department of Public Safety, Legal Division, 3600 M. L. King, Oklahoma City, Oklahoma 73112.

(1) A party requesting a hearing shall make a timely written hearing request on a form prescribed by the Department and the party shall provide the Department the following information:

(A) the telephone number that will be used to contact the party for the hearing;

(B) the name, mailing address, and telephone number of the party's attorney, if any;

(C) the name of any witness appearing on behalf of the party requesting the hearing, along with a brief statement of the testimony to be offered by the witness.

(2) The party is responsible for ensuring the Department receives the required information no later than three (3) business days prior to the date of the scheduled hearing.

(3) A party shall provide any other information or records if requested by the hearing officer.

(f) **Responsibility of hearing officer.**

(1) At or near the time scheduled for the hearing, the hearing officer will call all parties to the hearing at the telephone number(s) provided. If the telephone line for any of the parties is busy, or a party fails to answer, the hearing officer will call again approximately three (3) minutes later. The Hearing Officer will call the party or the party's attorney, if any, at the telephone number provided by the party. If the party requesting the hearing, or the party's attorney, fails to answer or participate in the hearing after two (2) attempts by the Hearing Officer, the hearing will be terminated.

(2) All parties will be sworn in prior to testimony. The Hearing Officer will call the witnesses, if any, at the telephone number provided by the party requesting the hearing. If the witness fails to answer or participate in the hearing after two (2) attempts by the Hearing Officer, the Hearing Officer may exclude the witness and continue with the hearing.

(3) Procedure for exclusion of witnesses under 12 O.S. §2615: Where "The Rule" is invoked, the appropriate witness will be disconnected from the conference call and reconnected prior to testimony by the hearing officer. The arresting officer shall testify before any other Department witness and remain on the line throughout the hearing. All persons providing testimony will be sworn in by the Hearing Officer prior to giving testimony.

(g) **Rescheduling.** If the date and time designated by the Department of Public Safety for the hearing is not suitable, the Legal Division must be notified immediately in writing upon receipt of the notice of hearing. Hearing will be rescheduled if the Department is informed of a conflict by noon on the day preceding the hearing. Only necessary and unavoidable reasons will be considered for rescheduling on the hearing date.

(1) Once the hearing has been scheduled, it may be continued or reset only at the discretion of the Hearing Officer or the Hearing Officer's designee.

(2) Any request for continuance or reset must be in writing on a form prescribed by the Department. The form may be obtained at the Department's principal place of business at 3600 North Martin Luther King Avenue, Oklahoma City, OK or at www.ok.gov/DPS. Requests shall be submitted in accordance with 595:1-3-7.

(3) The request for continuance or reset must be received by the Department no later than 12:00 P.M. on the first business day prior to the date of the scheduled hearing.

(4) Any request that does not comply with this subchapter or that is not received by 12:00 P.M. on the first business day prior to the date of the scheduled hearing, will not be considered. Emergency situations will be considered by the Hearing Officer on a case by case basis.

(h) **Default/set aside.**

(1) When the licensee and/or his designated attorney fail to provide a telephone number or to answer the telephone number provided to the Department, or the line is busy after the Hearing Officer has attempted a second call after the three (3) minutes as provided above, the hearing officer will not call again and an order of default will be entered. It is the responsibility of the licensee to keep the line(s) open to receive the call from the hearing officer.

(2) Where a necessary witness adverse to the licensee, such as an officer, fails to provide a telephone number or to answer or the line is busy, after the above procedure has been followed, the case will be set aside.

(i) **Provision for in-person hearing.**

(1) In person, rather than telephonic hearing may be requested, in writing, within ten (10) days of the receipt of the notice of hearing.

(2) Request must state specific reasons why a telephonic hearing is objectionable and be mailed to the Oklahoma Department of Public Safety, Legal Division, Room 102. An objection based upon criminal procedure, such as confrontation of witnesses, shall not be considered valid.

(3) The decision to offer an in person hearing will be made at the discretion of the Department.

SUBCHAPTER 9. INSPECTION AND COPYING OF FINAL ORDERS, DECISIONS, OPINIONS AND OPEN RECORDS

595:1-9-1. Purpose

The purpose of this subchapter is to establish the process for inspecting and copying records of the Department; set forth fees; to define terms; and to establish the retention period for certain records inform the public where public records of the Department may be inspected, to set forth the fees for copies, to define terms related to records of the Department, and to information regarding destruction of records of the Department.

595:1-9-2. Inspection and copies of open records

(a) ~~The Department maintains various records which are open for public inspection in accordance with the Open Records Act [51 O.S. §24A.1. et seq.]. Final orders, decisions, opinions, and open records, as described in 595:1-9-3, may be inspected at the Department of Public Safety. Copies of these records~~Records of the Department may be obtained pursuant to the fee schedule as set forth in 595:1-9-4 and as posted in the office of the County Clerk, Oklahoma County, Oklahoma, as required by 51 O.S. §24A.5-(3).

(b) Any record that is open to a person for examination, as provided in 47 O.S. §10-115 (B), shall be available to that person by copying or reproduction in the same medium as the record is available to the person for examination and for the fee required to be charged for the record.

(c) For the purposes of 47 O.S. §40-102 (A)(2)(b), "legal representatives of a party involved in the collision" shall mean persons who have a blood, marital, or legal relationship with the person involved in the collision, including but not limited to:

- (1) a spouse, widow, or widower,
- (2) an executor of the person's estate,
- (3) an adult child,
- (4) the biological or adoptive parent,
- (5) a person given authority by a notarized affidavit from a person described in (1), (2), (3), or (4) of this subsection,
- (6) an adult sibling, or another adult relative who can provide proof to the satisfaction of the Department that such relative is actively involved in the care of or is responsible for the person, the person's estate, or the person's family,
- (7) the medical service provider, or
- (8) any other person, at the discretion of the Commissioner or the Director of the Records Management Division of the Department.

595:1-9-3. Records of the Department of Public Safety

(a) **General.** The Department of Public Safety ("Department") is a "law enforcement agency", as defined under the Oklahoma Open Records Act, 51 O.S. §24A.1 et seq., and also ~~acts as a~~ "state department of motor vehicle vehicles," as used in ~~department, as defined under~~ the Driver's Privacy Protection Act ("DPPA"), 18 U.S.C. §2721, et. seq. Both of these ~~acts~~Acts place restrictions on the access to and disclosure of Department records of the Department.

(b) **Exemptions.** Pursuant to Section 2-111 of Title 47 of the Oklahoma Statutes, records of the Department shall not be subject to the provisions of:

- (1) Sections 305 through 317 of Title 67 of the Oklahoma Statutes or be transferred to the custody or control of the State Archives Commission;
- (2) Section 590 of Title 21 of the Oklahoma Statutes; or
- (3) The Records Management Act, Sections 201 through 215 of Title 67 of the Oklahoma Statutes.

(c) **Definitions.** In addition to terms defined in 47 O.S. §1-101 et seq., the following words or terms, when used in this subchapter, shall have the following meaning, unless otherwise defined or where the context clearly indicates otherwise. Use of the singular term includes the plural, and use of the plural term includes the singular.

(1) **"Ancillary record"** means any record that is routine in nature, having no material connection with a motor vehicle record, that transaction of public business, the expenditure of public funds or the administering of public property. Such records have neither evidential value nor being necessary for the transactions of the Department informational value beyond the immediate use for which the record was created or received.

(2) **"DPPA"** means the Driver's Privacy Protection Act of 1994, 18 U.S.C. §2721 et seq.

(3) **"Motor vehicle report."** Pursuant to 47 O.S. §6-117(D), a motor vehicle report ("MVR") is defined as:

(A) A summary of the driving record of the person, including the enumeration of any motor vehicle collisions, reference to convictions for violations of motor vehicle laws, and any action taken against the privilege of the person to operate a motor vehicle, as shown by the files of the Department for the three (3) years preceding the date of the request. [Ref. 47 O.S. §6-117(D)]

(B) A MVR shall also include a report which indicates that no driving record is on file with the Department of Public Safety based on the information in the request for a Motor Vehicle Report.

(C) A MVR shall not include any driving index required to be prepared and maintained by the Department pursuant to 47 O.S. §6-117(A).

(4) **"Personal information"** means information that identifies a person [47 O.S. §2-110 and 18 U.S.C §2725], including, but not limited to the person's:

- (A) photograph or image,
- (B) signature,
- (C) social security number,
- (D) residence or mailing address,
- (E) medical or disability information,
- (F) driver identification number
- (G) name, and
- (H) telephone number.

(5) **"Record"** means all documents, including, but not limited to, any book, paper, photograph, microfilm, data files created by or used with computer software, computer tape, disk, record, sound recording, film recording, video

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record, or other material regardless of physical form or characteristic, created by, received by, under the authority of, or coming into the custody, control or possession of the Department of Public Safety, or its representatives in connection with the transaction of public business, the expenditure of public funds or the administering of public property. Any document or other material specifically excluded from the definition of "Record" in the Oklahoma Open Records Act, 51 O.S. §21A.1 et seq., shall not be considered a "record" under this definition.

(bd) Records open for inspection. ~~All records~~ Records of the Department, as defined herein, other than records declared by law to be confidential, or any record or information not subject to the Oklahoma Open Records Act, or any record to which access has been denied pursuant to the Department's statutory authority, shall be open to public inspection, copying, or mechanical reproduction during regular business hours, which are not designated as confidential by any provision or requirement of Oklahoma law, federal law or regulation, or rule of the Department [OAC 595], and which are kept in connection with the transaction of public business, expenditure of public funds, or the administering of public property are open records.

(ee) Records not open for inspection. Records that are required by law to be confidential shall not be disclosed or open to inspection. In addition, the Department may deny access to law enforcement records, except where a court finds that the public interest or the interest of an individual outweighs the reason for denial, and may deny access to records where disclosure is discretionary pursuant to state and/or federal law. Records not open for inspection include, but are not limited to: Law enforcement records and records which contain personal or confidential information obtained in connection with a person's driver license, if kept in any form, are not open records, including, but not limited to:

- (1) Legal documents and materials prepared in anticipation of litigation and records protected by the state evidentiary privilege, including investigatory reports. These records are confidential and will not be released pursuant to the Open Records Act. Nongovernmental personal effects;
- (2) ~~Personal notes and personally created materials prepared as an aid to memory or research leading to the adoption of a public policy or implementation of a public project. These records may be kept confidential prior to taking action [51 O.S. §24A.9].~~ Except where authorized by state and/or federal law, any record in connection with a Motor Vehicle Report issued by the Department of Public Safety;
- (3) ~~Minutes of meetings lawfully closed to the public, such as executive sessions as authorized by the Open Meeting Act [24 O.S. §301 et seq.; 51 O.S. §24A.5,1,b]~~ Except where authorized by state and/or federal law, personal information within the driving record;
- (4) ~~Records that, if disclosed, would give an unfair advantage or disadvantage to competitors.—[51 O.S. §24A.10,B]~~ Records protected by a state evidentiary privilege such as the attorney-client privilege, the work

product immunity from discovery and the identity of informer privileges;

~~(5) Confidential information obtained in connection with a person's driver license~~ Records of what transpired during meetings of a public body lawfully closed to the public such as executive sessions authorized under the Oklahoma Open Meeting Act, Section 301 et seq. of Title 25 of the Oklahoma Statutes;

~~(6) Copies of traffic warnings~~ Personal notes and personally created materials other than department budget requests of a public body prepared as an aid to memory or research leading to the adoption of a public policy or the implementation of a public project;

~~(7) Audio tapes, from Oklahoma Highway Patrol officers or dispatchers, of traffic incidents~~ Information relating to investigation of an act of terrorism, or a plan or scheme to commit an act of terrorism, including, but not limited to:

- (A) assessments of the vulnerability of government facilities;
- (B) details for deterrence or prevention of or protection from an act or threat of an act of terrorism;
- (C) any response or remediation after an act of terrorism.

~~(8) Cell phone logs~~ Personnel records, including, but not limited to:

- (A) internal personnel investigation;
- (B) examination and selection material for employment, hiring, appointment, promotion, demotion, discipline or resignation;
- (C) disciplinary action that does not result in loss of pay, suspension, demotion of position, or termination;
- (D) home address, telephone numbers and social security numbers of any person employed or formerly employed by the Department.

~~(9) Arrest reports, citations, or other information regarding a traffic arrest prior to final disposition for that arrest~~ Department records relating to training, lesson plans, teaching materials, tests, and test results;

~~(10) Employee information normally kept in an employee's personnel file~~ Policies, procedures, and operations, any of which are of a tactical nature or where disclosure would pose a risk to the safety of Department personnel;

~~(11) Disciplinary actions which do not result in discharge, suspension, or loss of pay~~ Within radio logs, all telephone numbers, addresses, other than the location of incidents to which officers are dispatched, and personal information;

~~(12) Implied consent audio tapes in actions which are set aside by the hearing officer.~~

~~(13) Information concerning an individual where the driver license number or the name and date of birth is not provided.~~

~~(14) the requester is not a lawful recipient.~~

~~(15) Collision reports, except to lawful recipients under 47 O.S. §40-102 or §6-117 or under rules of this subchapter.~~

- (16) Oklahoma Highway Patrol Operations Manual.
- (17) Training materials for Oklahoma Highway Patrol officers.
- (18) Information contained on the Department's main frame which would require programming or reprogramming in order to produce.
- (19) Magnetic tapes, reels, or computer disks which contain confidential or privacy information.
- (20) Citizen complaints prior to final disposition.
- (21) Radio logs other than those applicable to a specific event.

(d) ~~Destruction of records.~~ Records of the Department shall be deemed no longer of value to the Department and may be destroyed pursuant to the conditions specified in this subsection; provided, nothing in this subsection shall compel the Department to destroy any record.

(1) ~~Record of conviction.~~

(A) ~~Any record of conviction of a holder of a Class D license or of an unlicensed operator of a Class D motor vehicle may be destroyed after five (5) years from the date of conviction.~~

(B) ~~Any record of conviction of a holder of a Class A, B, or C commercial driver licensee or of an operator of a Class A, B, or C commercial motor vehicle who is not licensed to operate such vehicle may be destroyed after ten (10) years; provided, any conviction for a major offense, as defined in 47 O.S., §6-205.2, may not be destroyed until at least fifty five (55) years from the date of conviction.~~

(2) ~~Record of Department action.~~ A record of Department action against any operator of a motor vehicle may be destroyed after five (5) years from the date of reinstatement or other closure of the action; provided, any Department action against a holder of a Class A, B, or C commercial driver licensee or against an operator of a Class A, B, or C commercial motor vehicle who is not licensed to operate such vehicle may not be destroyed until at least fifty five (55) years from the date of reinstatement or other closure of the action.

(3) ~~Collision reports and incident reports.~~ A collision report or an incident report may be destroyed after five (5) years from the date the investigation of the collision or incident was completed.

(4) ~~Other records related to driving privileges.~~ Any other record related to driving privileges of a person may be destroyed after five (5) years from the last activity related to the record.

(5) ~~Personnel records.~~ Personnel records of a Department employee may be destroyed seven (7) years after the final date of employment.

(6) ~~Other records.~~ Any other record of the Department may be destroyed seven (7) years after the last activity related to the record.

595:1-9-3.1. Retention and destruction of department records

(a) **General.** Records that are no longer of value to the Department in carrying out the powers and duties of the Department may be destroyed pursuant to the conditions specified in this subsection; provided, nothing in this subsection shall compel the Department to destroy any record. In the event there is uncertainty or ambiguity regarding what category or retention period applies to a particular record, the Commissioner of Public Safety, or the Commissioner's designee, shall make the final determination.

(b) **Records retention and disposal schedule.**

(1) **Conviction.**

(A) Any record of conviction of a holder of a Class D license or of an unlicensed operator of a Class D motor vehicle shall be retained for ten (10) years after the date of conviction.

(B) Any record of conviction of a holder of a Class A, B, or C commercial driver license or of an operator of a Class A, B, or C commercial motor vehicle who is not licensed to operate such vehicle shall be retained for ten (10) years; provided, any conviction for a major offense, as defined in 47 O.S. §6-205.2, shall be retained for fifty-five (55) years after the date of conviction.

(2) **Department action.** A record of Department action against any operator of a motor vehicle shall be retained for ten (10) years after the date of reinstatement or similar action; provided, any Department action against a holder of a Class A, B, or C commercial driver license or against an operator of a Class A, B, or C commercial motor vehicle who is not licensed to operate such vehicle shall be retained for fifty-five (55) years after the date of reinstatement or similar action.

(3) **Collision reports and incident reports.** A collision report or an incident report created or submitted by a law enforcement officer shall be retained for five (5) years after the date the investigation of the collision or incident is completed.

(4) **Other records related to driving privileges.** Any other record related to the driving privileges of a person shall be retained for ten (10) years after the date of the last activity relating to the record.

(5) **Personnel records.** Personnel records of a Department employee shall be retained for the term of employment plus an additional ten (10) years, unless a different time period is specified.

(A) **Applications, resumes and materials submitted for Employment-Not Hired.** Records shall be retained for one (1) year after receipt by the Department.

(B) **Applicant/Employee Drug Testing Records.** Records shall be retained for five (5) years after the date the test was administered to the applicant/employee.

(C) **Discipline Records.** Records of the final imposition of informal and formal discipline shall be

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retained for the term of employment plus an additional ten (10) years.

(D) **Graded examinations.** Examinations administered to Department employees, and the results of such examinations, shall be retained for the term of employment of the person tested plus an additional five (5) years.

(6) **Fitness for Duty Evaluations.** Records shall be retained for the term of employment plus an additional ten (10) years.

(7) **Audio and video recordings of the Department.**

(A) Audio ~~and~~ video recordings of, or created solely for (1) training events, (2) maintenance or testing purposes, or (3) capability demonstrations, may be destroyed when no longer of value to the Department.

~~(B) Audio and video recordings other than those listed in subsection 7(A) above, shall be maintained for three (3) years after the recorded event was captured. Other than records subject to (A) above, any audio or video recordings depicting (1) use of force, (2) vehicle pursuit, (3) custodial arrest, (4) discharge of a firearm, or (5) any felony offense shall be maintained for three (3) years after the event was recorded.~~

(C) Any audio and video recordings not identified in (A) or (B) above shall be maintained for ninety (90) calendar days after the event was recorded.

(8) **Ancillary records.** Ancillary records may be destroyed when no longer of immediate value to the Department.

(9) **Records relating to aircraft.** Records specified in 17 CFR §91.417, such as records of maintenance, preventive maintenance, and inspections, shall be retained for the life of the aircraft.

(A) All records specified in 14 CFR §91.417(a)(1) shall be retained until the work is repeated or superseded by other work or for one (1) year after the work performed.

(B) All records specified in 14 CFR §91.417(a)(2) shall be retained and transferred with the aircraft at the time the aircraft is sold. The Department shall retain a copy of such records for five (5) years after the date of sale.

(10) **Property records.**

(A) **Inventory.** Records relating to physical property, equipment, and materials shall be retained until the property is properly transferred or disposed of, plus an additional five (5) years.

(B) **Evidentiary or Asset Forfeiture.** Records shall be retained until the case is closed plus an additional ten (10) years.

(C) **Seized/confiscated property.** Records shall be retained until all seized property has been disposed of plus an additional one (1) year.

(11) **Use of Force Reports.** Records shall be retained for three (3) years after the date the report is created.

(12) **Administrative investigations.** Records relating to administrative or internal investigations conducted by

the Department shall be retained until the investigation is closed plus an additional three (3) years.

(13) **Criminal investigative files.** Records relating to criminal investigations conducted by the Department shall be retained until the investigation is closed plus an additional five (5) years.

(14) **Commercial motor vehicle enforcement records.** Records shall be retained for three (3) years after the date the record is created.

(15) **Driver license/identification card.** Records relating to the application or issuance of a driver license or identification card, to include original application, issuance and history related information, compliance and enforcement actions, driver license photo files, driver license updates, medical and vision files; waivers, etc. shall be retained for fifty-five (55) years from the date of the last activity relating to the record.

(16) **Training records.** Instructional materials, such as curricula, outlines, syllabuses, audio or visual training aids, handouts, computer presentations and other records associated with in-house training of Department personnel on policies and procedures, operations, job performance and other activities relating to the Department's programs, services, or projects, shall be retained until superseded plus an additional ten (10) years.

(17) **Instructor certification.** Records shall be retained for the term of employment of the instructor plus an additional five (5) years.

(18) **Graded examinations.** Examinations administered to the public by the Department, whether graded or in the nature of a ~~pass~~-pass/fail examination, shall be retained until no longer needed by the Department.

(19) **Policies and procedures.** Records relating to any internally posted or distributed manuals, guidelines, or similar records concerning the personnel, activity and operations of the Department, shall be retained until the record is superseded plus an additional ten (10) years.

(20) **Speed trap.** Records relating to the investigation of a speed trap shall be retained for three (3) years after the investigation is complete.

(21) **Grant administration information for federal Grant awards.** Grant awards, sub recipient agreements, expenditure details and approvals, reimbursement details and approvals, federal waiver requests, monitoring reports, and all other grant related documentation shall be retained for the current federal fiscal year plus three (3) years.

(22) **Contracts and leases.** Records relating to contracts, leases and other binding instruments to include bid specifications, affidavits of publication of calls for bids, accepted and rejected bids, performance bonds, contracts, purchase orders, inspection reports, and correspondence, shall be retained until expiration or termination of the instrument according to its terms plus an additional seven (7) years.

(23) **Correspondence.** Records or copies of general or administrative correspondence shall be retained for one

- (1) year after the creation, receipt or transmittal of the record, whichever is a longer period of time.
- (24) **Meeting agenda, minutes and notes.** Administrative records relating to meetings held or attended by Department personnel, to include personally created notes, shall be retained for one (1) year after the meeting is held.
- (25) **Government Publications.** Internal Department publications and publications of the state or other governmental entities shall be retained until superseded or when obsolete.
- (26) **Material safety data sheets.** Records shall be retained until superseded or when the hazardous item is no longer stored by the Department.
- (27) **Open record requests.** Requests for records and all related correspondence shall be retained until such request is fulfilled or denied plus an additional two (2) years. The original of any record provided in response to a record request shall be retained for the time period specified in these rules for that particular record, or for two (2) years after the request is fulfilled, whichever is longer.
- (28) **Subpoenas.** Subpoenas and all related correspondence shall be retained until the subpoena has been routed to the correct custodian of records, fully complied with, withdrawn by the issuing entity, or quashed by a court. The original of any record provided in response to a subpoena shall be retained for the time period specified in these rules for that particular record, or for two (2) years after the subpoena is complied with, whichever is longer.
- (29) **Public relations records.** Media or press releases issued by the Department shall be retained for three (3) years after being issued.
- (30) **Other records.** Any other record of the Department not identified specifically herein, shall be retained for ten (10) years after the last activity related to the record.

595:1-9-4. Fees

- (a) **General.** A fee shall be assessed for each individual record, or portion thereof, and for the recovery of the reasonable, direct costs of record copying, or mechanical reproduction, copies of records, materials, certification, searches, and other activities relating to records as allowed by law and in accordance with these rules.
- (b) **Search fees.** If a request for records is either solely for commercial purposes or would clearly cause excessive disruption of the essential functions of the Department, a search fee may be charged to recover the direct cost of record search and copying.
- (c) **Fee amounts.**
 - (1) A record produced on a single sheet of paper with dimensions of eight and one-half (8 1/2) by fourteen (14) inches or smaller: \$0.25 per page. [51 O.S. §24A.5(3)]
 - (2) Motor vehicle report: \$25.00 per report. [47 O.S. §6-117(D)]. Persons sixty-five (65) years of age or older shall not be required to pay a fee for their own Motor Vehicle Report furnished by the Department or tag agent.
 - (3) Certified Motor Vehicle Report: \$28.00 per report. [47 O.S. §§2-110(B) and 6-117(D)]

- (4) Collision report on file with the Department: \$7.00 per report. [47 O.S. §6-117(C)]
- (5) Certified collision report on file with the Department: \$10.00 per report. [47 O.S. §§2-110(B) and 6-117(C)]
- (6) Certified copy of a record, other than a Motor Vehicle Report or a Collision report: \$3.00 per report. [47 O.S. §2-110(B)]
- (7) Compact disc (CD), DVD or similar optical storage disc: ~~\$2.50~~\$25.00 per disc.
- (8) Search fee: The amount of the fee shall be for the cost of materials and labor directly attributable to fulfilling the request. [51 O.S. §24A.5(3)(b); Okl. Atty. Gen. Opinion 1996 OK AG 26]
- (9) For any other record not specified herein, a fee may be assessed for recovery of the reasonable, direct costs of record copying or mechanical reproduction.

(10) Persons sixty-five (65) years of age or older shall not be required to pay a fee for their own Motor Vehicle Report furnished by the Department or motor license agent.

(d) **Motor vehicle report.** As used in this Chapter, "**Motor Vehicle Report**" is defined as:

- (1) ~~A summary of the driving record of the person, including the enumeration of any motor vehicle collisions, reference to convictions for violations of motor vehicle laws, and any action taken against the privilege of the person to operate a motor vehicle, as shown by the files of the Department for the three (3) years preceding the date of the request. [Ref. 47 O.S. §6-117(D)]~~
- (2) ~~"Motor Vehicle Report" shall also include a report which indicates that no driving record is on file with the Department of Public Safety based on the information in the request for a Motor Vehicle Report.~~
- (3) ~~"Motor Vehicle Report" shall not include any driving index required to be prepared and maintained by the Department pursuant to 47 O.S. §6-117(A).~~
- (4) ~~Persons sixty five (65) years of age or older shall not be required to pay a fee for their own Motor Vehicle Report furnished by the Department or tag agent.~~

(e) **Format.** ~~The final format in which a record will be produced shall be determined by the Department. If the Department does not maintain a record in an electronic or computerized format, the Department shall not be required to convert a record to any particular electronic format for the convenience of the person requesting record. [Okl. Atty. Gen. Opinion 2006 OK AG 35].~~

595:1-9-5. Obtaining open records

- (a) **General guidelines.** Requests for records A schedule of fees stated herein shall be posted at the Department of Public Safety's principal place of business, 3600 North Martin Luther King Avenue, Oklahoma City, OK, and at the Oklahoma County Court Clerk's office. Records of the Department, as defined in 595:1-9-3, will be made available in accordance with rules 595:1-9-1 through 595:1-9-6. ~~In the event there is a conflict between these rules and any applicable state or federal law, state or federal law will govern access. The Department~~

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requires persons making a request to inspect or obtain a copy of a record to submit such request in writing and describe the records with reasonable specificity. All requests for records must be in writing and submitted using a form prescribed by the Department. The forms are available at the Department's principal place of business or at www.ok.gov/DPS. Requests may be submitted to the Department in person, by mail, facsimile, or email. Fees and charges may be collected for copies, materials, certification, searches and other activities relating to records as allowed by law and in accordance with these rules. Requests that do not comply with these rules may not be fulfilled.

~~(b) **Subpoena.** Records sought pursuant to a subpoena or other court order will be processed in accordance with applicable state and federal law and court rules.~~

~~(e-b) **Principal place of business.** Records may only be obtained from the principal place of business of the Department of Public Safety, located at 3600 North Martin Luther King Avenue, Oklahoma City, OK 73111. However, a Motor Vehicle Report may be obtained from either the Department, or from a motor license agent, or at www.ok.gov/DPS.~~

~~(e-c) **Availability.** Requests will be processed, and records will be made available, only during regular business hours. Regular business hours shall include only those dates and times that the Department is open to the public, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday. Requests are processed in the order they are received by the Department; however, certain prior to release, records may not be available until they have undergone a review by the Department's Legal Division.~~

~~(e-d) **Written requests.** A request for any Department record made pursuant to the Oklahoma Open Records Act, 51 O.S. §24A.1; et seq., shall be submitted in writing using a form prescribed by ~~to~~ the Department available from either the Department's principal place of business or at www.ok.gov/DPS, describing in as much detail as possible, the nature and extent of the record(s) being sought.~~

(1) The request shall include sufficient information for the Department to conduct a focused, time efficient search.

(2) The request should not be in the form of a question. The Oklahoma Open Records Act, 51 O.S. §24A.1 et seq., does not require public bodies to answer questions; it requires agencies to provide copies of records under their control.

(3) Requests that are not in writing or that fail to provide sufficient information to allow the Department to identify the record will not be fulfilled. Requests may be submitted by one of the following methods:

(4A) **Email.** Information for obtaining records can be found on the Department's website at www.ok.gov/DPS or by contacting the Records Management Division or the Legal Division.

(B) **Hand delivery-In person.** Requests may be presented in person in person to the Department of Public Safety, 3600 North Martin Luther King Avenue, Oklahoma City, OK 73111.

(2C) **United States mail.** Requests may be mailed to: Department of Public Safety, Attn: ~~Legal~~

Division, P.O. Box 11415, Oklahoma City, OK 73136-0415

~~(3) **Facsimile.** Requests shall be faxed to (405) 425-2660. Requesters shall clearly mark the facsimile with "Open Record Request."~~

~~(4) **Electronic Mail (email).** Requests may be sent to the Department via electronic mail (email) to: recd-mgmt@dps.state.ok.us. Requesters shall put "Open Record Request" in the subject line.~~

(D) **Other delivery methods.** Requests may be delivered to the Department of Public Safety via United Parcel Service (UPS) or FedEx using the physical address: Department of Public Safety, 3600 North Martin Luther King Avenue, Oklahoma City, OK 73111. The Department can receive from but cannot respond by delivery services other than the United States Postal Service.

(4) When the Department is asked to produce records, the Department will search for records within a default timeframe. The default timeframe will be from the date of the request and end on the date the search for records is commenced; however, a party seeking records may specify a different date-range for the records sought.

(5) Once records have been identified, those records shall undergo a legal review before releasing them to the requesting party.

~~(e) **Delivery of records.**~~

~~(1) Any applicable costs or fees charged pursuant to these rules shall be paid prior to the delivery of any record. The Department will not fulfill a request until all applicable fees and costs have been paid.~~

~~(2) Records will be delivered to the requester via U.S. Mail or may be made available for pick up at the Department's principal place of business. Some records may be made available through a third party web-based service and may involve a fee for the use of such service. Records responsive to a request may be picked up in person at the Department of Public Safety, 3600 N. Martin Luther King Avenue, Oklahoma City, OK 73111.~~

~~(A) **Records less than seven (7) pages.** Records consisting of less than seven (7) pages will be delivered at no cost via U.S. Mail, to the address provided by the requester, or may be picked up in person from the Department of Public Safety, 3600 North M.L. King Avenue, Oklahoma City, OK 73111.~~

~~(B) **Record seven (7) pages or more.** Records consisting of seven (7) or more pages, and records produced on an optical disc (CD or DVD) or similar storage media, must be picked up in person from the Department's principal place of business unless the requester provides the Department with a self-addressed, postage paid envelope or container.~~

(3) If delivery by mail is preferred, the requesting party shall provide a self-addressed, postage pre-paid envelope or container. Excess postage shall not be refunded to the requesting party. Records will not be delivered to the requesting party via UPS, FedEx, or other 3rd party mail delivery service. The Department of Public Safety will mail

records only in the envelope or container provided by the requesting party.

(4) At its discretion, the Department may make certain records available via electronic delivery. For the purpose of this subsection, "electronic delivery" shall mean delivery of a digitized or electronic file to the requesting party via email or by providing access to the record through a hyperlink.

(C) **Electronic delivery of records.** At its discretion, the Department may make certain records available via electronic means. For the purpose of this subsection, "electronic delivery" shall mean delivery of a digitized or electronic file to the requester via email or by providing access to the record through a hyperlink.

(5) Some records may be made available to authorized recipients through a third-party web service at the discretion of the Department. Use of this service may require payment of a fee or charge that is separate from any fee or charge imposed by the Department.

(6) The final format in which a record will be produced shall be determined by the Department. If the Department does not maintain a record in an electronic or computerized format, the Department shall not be required to convert a record to any particular electronic format for the convenience of the person requesting record. [Okl. Atty. Gen. Opinion 2006 OK AG 35].

(D) **Third-party web service.** Some records may be made available to authorized recipients through a third party web service. Use of this service may require payment of a fee or charge that is separate from any fee or charge imposed by the Department.

595:1-9-6. Summary of driving record/Motor Vehicle Report

(a) **Definitions.** As used in this Section:

(1) "DPPA" means the Driver's Privacy Protection Act, 18 U.S.C., Section §2721 et seq., and

(2) "Personal information" means information that identifies a person [47 O.S. §2-110], including, but not limited to the person's:

- (A) photograph or image,
- (B) signature,
- (C) social security number,
- (D) residence or mailing address, and
- (E) medical or disability information.

(b) **In general.** As required by the Drivers Privacy Protection Act of 1994 ("DPPA"), 18 U.S.C. §2721 et seq., the Department or any motor license agent shall not knowingly disclose or otherwise make available to any person or entity personal information, as defined in OAC 595:1-9-3(c)(4), about any individual obtained by the Department in connection with the motor vehicle record except as permitted in the DPPA. DPPA, the Department or any motor license agent will not release personal information from any driving record unless:

(1) the person about whom the record has been compiled waives his or her right to privacy under the DPPA,

(2) the Department is required by the DPPA to release the personal information without the consent of the person about whom the record has been compiled. Examples of when such information may be released without consent of the person include, but are not limited to:

- (A) matters of safety,
- (B) theft,
- (C) vehicle emissions,
- (D) product alterations, recalls, or advisories, and
- (E) certain federal laws, or

(3) the Department is authorized by DPPA to release the personal information to certain entities, such as:

- (A) governmental entities,
- (B) courts,
- (C) other entities specified on the "Records Request" form, required to be filed in (c) of this Section.

(eb) **Request by an individual for a summary of a driving record—motor vehicle report.** An individual requesting a summary of a driving record/motor vehicle report must submit the following to the Records Management Division of the Department or to a motor license agent for each driving record/report requested:

(1) **"Records Request" form.** This form must be completed by the individual, filling in all required information, checking all applicable statements regarding the request, and signing the request.

(2) **Photo identification.** The requesting party must produce a government issued photo identification to allow the Department to establish the requesting party's identity at the time the request is made. One of the following forms of photo identification must be presented by the individual at the time of request:

- (A) State driver license, or
- (B) State identification card.

(3) **Consent to Release.** If the individual requesting the driving record is not the person about whom the record has been compiled, the person about whom the record has been compiled must sign the consent to release portion of the "Records Request" form.

(4) **Fee.** The individual requesting the driving record shall make payment of the fee required by law [47 O.S. §6-117(D)].

(dc) **Entities requesting Motor Vehicle Records/Reports in volume.**

(1) **Requesting Motor Vehicle Records in volume. Written requests.** Certain entities, as authorized in (2) of this subsection, may request Motor Vehicle Reports/Records in volume from the Department by submitting a request in writing to the Director of the Records Management Division of the Department of Public Safety:

- (A) in person at Room 206, 3600 North Martin Luther King Avenue, Oklahoma City, OK, or
- (B) by mail to: Records Management Division, Department of Public Safety, P.O. Box 11415, Oklahoma City, OK, 73136-0415.

(2) **Authorized entities Obtaining Reports in Bulk Quantity.** Only the following entities may submit

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written request to the Department for the purpose of obtaining Motor Vehicle Reports in volume are authorized to obtain Motor Vehicle Reports from the Department in bulk quantities:

- (A) courts,
 - (B) federal, state, and local governmental agencies,
 - (C) insurance companies for the limited purpose of determining eligibility for insurance coverage or underwriting, or
 - (D) any other person or entity as authorized by the Commissioner or designee.
- (3) **Fee.** An entity requesting ~~driving records~~ motor vehicle reports in volume shall pay the required fee per request as required by law [47 O.S. §6-117 (D)] unless otherwise exempted from the fee by the Commissioner as authorized by 47 O.S. §2-110.
- (ed) **Obtaining forms.** All forms may be obtained:
- (1) in person at the Department of Public Safety, 3600 ~~N. M.L. North Martin Luther King Ave.~~ North Martin Luther King Avenue, Oklahoma City, OK 73111,
 - (2) by mail from the Department of Public Safety, P.O. Box 11415, Oklahoma City, OK, 73136-0415,
 - (3) by telephone by calling (405) 425-2262, or
 - (4) ~~from the Department's website at <http://www.dps.state.ok.us/> on the world wide web at www.ok.gov/DPS.~~

[OAR Docket #17-631; filed 7-12-17]

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

[OAR Docket #17-632]

RULEMAKING ACTION:
PERMANENT final adoption

- RULES:**
- Subchapter 1. Procedures for Obtaining and Maintaining a Driver License or Identification Card
 - Part 2. Application for Initial Driver License
 - 595:10-1-2. General Information [AMENDED]
 - 595:10-1-3. Procedures for obtaining an initial driver license [AMENDED]
 - 595:10-1-5. Graduated driver license; persons under eighteen (18) years of age [AMENDED]
 - Part 3. Driver License Renewal
 - 595:10-1-10. Procedure for obtaining a renewal driver license [AMENDED]
 - 595:10-1-12. Oklahoma licensee temporarily residing out of the state [AMENDED]
 - Part 5. Driver License Replacement
 - 595:10-1-18. Procedure for obtaining a replacement driver license [AMENDED]
 - Part 7. Identification Cards
 - 595:10-1-26. Procedure for obtaining a renewal identification card [AMENDED]
 - 595:10-1-27. Procedure for obtaining a replacement identification card [AMENDED]
 - Part 13. Motor License Agents
 - 595:10-1-51. Operational Procedures [AMENDED]

- Part 19. Driver License and Identification Card Content
- 595:10-1-92. Driving restriction codes [AMENDED]
- Subchapter 3. Examination
- 595:10-3-9. Skills examination [AMENDED]
- Subchapter 7. Points System
- 595:10-7-2. Points Assessed for conviction [AMENDED]
- Subchapter 11. Certified Schools and Designated Class D Examiners
- 595:10-11-3. Definitions [AMENDED]
- 595:10-11-5. Requirements for certification as a designated examiner; display of certificate; certification renewal [AMENDED]
- 595:10-11-6. Course of instruction for driver education instructors applying for certification as a designated examiner [AMENDED]
- 595:10-11-7. Examination requirements and standards [AMENDED]
- Subchapter 15. Provisional Driver License Program
- 595:10-15-3. Eligibility Criteria [AMENDED]
- 595:10-15-4. Participants in the PDL Program [AMENDED]
- 595:10-15-5. Terms and conditions under which the Participant Licensee can drive [AMENDED]
- 595:10-15-6. Proof of insurance [AMENDED]
- 595:10-15-7. Completion of Required forms, payment of the initial minimum monthly payment, and payment of the Provisional License fee [AMENDED]
- 595:10-15-8. Termination (removal) from the PDL Program, Cancellation of the Class A, B, C, or D Provisional Driver License issued under the Provisional Driver License program, ~~ineligibility~~ from future participation in the PDL Program, and review [AMENDED]
- Appendix A. Points assessed for conviction [NEW]

AUTHORITY:

Commissioner of Public Safety; 47 O.S. § 6-101 et seq.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

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Approved by Governor's declaration on June 13, 2017

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SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The amended rules are the result of legislation passed by the legislature and signed into law by the Governor. The Department has updated information throughout the chapter changing the name of the Driver License Examining Division to Driver License Services Division. Language has been added to clarify acceptable forms of documentary evidence of lawful presence in the US from foreign nationals and permanent resident aliens. HB1860 authorizes the submission of notarized affidavit in purposes related to the issuance of driver licenses. The language adds a notarized affidavit signed by a custodial legal parent or guardian as a legal means for a minor to obtain a restricted license. SB0034 modifies language related to applying for renewal or replacement Oklahoma Class D licenses or identification cards. The bill removes language concerning the process for renewing the license or identification when the person is not in the state at the time of the renewal or at a time a replacement is required. It also clarifies the statute's language to permit the Department of Public Safety to develop by rule an alternative method of applying for a renewal or replacement license or identification card. SB0390 states piston displacement on a motorcycle driven by someone with a restricted Class D license with a motorcycle-only restriction should not exceed 300 centimeters. Language has been added making a Motor License Agency responsible for mistakes they make in the process of printing licenses and ID cards. Language has been added to the Examinations section making speeding in a school zone or in a construction zone with workers present, an automatic disqualification.

Points will now be assessed to CDL holders who are convicted of using a hand-held device while operating a commercial vehicle (SB183). Additional requirements have been added for the certification of designated examiners and out of date language has been struck. The Provisional Driver License Program can now issue PDL's to class A, B, C, as well as D licensees, language has been added and updated to reflect the necessary changes for compliance.

CONTACT PERSON:

Chris Sherman, DPS Legislative Analyst, Department of Public Safety, 3600 N. Martin Luther King Ave., PO Box 11415, Oklahoma City, OK 73136-0415. Phone: 405.425.7394. E-mail: Thomas.Sherman@dps.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 1. PROCEDURES FOR OBTAINING AND MAINTAINING A DRIVER LICENSE OR IDENTIFICATION CARD

PART 2. APPLICATION FOR INITIAL DRIVER LICENSE

595:10-1-2. General information

(a) **Prerequisite.** A driver license shall not be issued to any person whose driving privilege is under suspension, revocation, disqualification, cancellation, or denial in this state or any other state or country until such privilege has been reinstated by the state or country withdrawing such privilege [47 O.S. §6-103].

(b) **Application for and issuance of driver licenses.** Information regarding the application for and issuance of driver licenses and identification cards may be obtained by:

- (1) Telephone: (405) 425-2026
- (2) Mail: Department of Public Safety, Driver License ~~Examining~~Services Division, P.O. Box 11415, Oklahoma City, Oklahoma 73136-0415
- (3) In person: Department of Public Safety, Driver License ~~Examining~~Services Division, 3600 North M. L. King Avenue, Oklahoma City, Oklahoma.
- (4) Internet: <http://www.dps.state.ok.us/dls/www.ok.gov/dps>

(c) **Driver license examinations.** Information regarding driver license examination and examination locations may be obtained:

- (1) Telephone: (405) 425-2020
- (2) Mail: Department of Public Safety, Driver License ~~Examining~~Services Division, P.O. Box 11415, Oklahoma City, Oklahoma 73136-0415.
- (3) Internet: <http://www.dps.state.ok.us/dls/www.ok.gov/dps>

595:10-1-3. Procedures for obtaining an initial driver license

(a) **Application.** Every applicant for an initial Oklahoma driver license shall appear before a Driver License Examiner

[47 O.S. §6-110]. An application for a driver license must be completed either by the applicant at the Driver License Examination Station or online, when an electronic process is made available by the Department of Public Safety, prior to the commencement of the required examination. An emergency contact name, address and phone number may be included on the application, which emergency contact may be changed or removed at any time by the licensee or by the emergency contact. The emergency contact information shall be for use by the Department and law enforcement officers only. Upon submitting a completed and approved application, providing proof of identity as provided for in (b) of this Section and proof that the applicant is a United States citizen, foreign national or a legal permanent resident alien [21 O.S., § 1550.42(B)], or having valid documentary evidence of lawful presence in the United States, and meeting all statutory requirements and successfully completing every required examination [Subchapter 3. Examination of this Chapter], the applicant may then proceed to a motor license agent or the Department of Public Safety Headquarters, Driver License Examining Division, and present the DL-10 form issued by the Driver License Examiner along with the same primary and secondary identification presented to the examiner, and paying the required fees, the applicant will be issued an Oklahoma driver license. A person who has been declared to be a disabled veteran receiving compensation at the 100% rate for a permanent disability shall receive an original, renewal, or replacement driver license or identification card at no charge, upon presentation of one of the following documents:

- (1) proof of 100% status from the U.S. Department of Veterans Affairs, or
- (2) a tax exempt card from the Oklahoma Tax Commission showing exemption from state tax based upon 100% status.

(b) **Required identification.** Every applicant must furnish both primary documentary proof of identity [47 O.S. § 6-106(A)(3)], to include whether the applicant is a United States citizen, foreign national or a legal permanent resident alien [21 O.S. § 1550.42(B)], and secondary documentary proof of identity [47 O.S. § 6-106(A)(3)] and proof of full legal name and birth date beyond any reasonable doubt when applying for an initial Oklahoma driver license [47 O.S. § 6-101(L)]. Any document furnished must be either a an original document or a certified copy of an original document~~certified or original copy~~ and issued by the proper authority; notarized documents will not be accepted. Any document presented shall be unexpired unless otherwise noted in this Section. Any document whose authenticity cannot be verified, or that has been or appears to have been duplicated, traced over, mutilated, defaced, tampered with, or altered in any manner or that cannot be read by the Driver License Examiner shall not be accepted or used for identification purposes. All identification documents must be approved by the Examiner before acceptance. The Examiner may, at his or her discretion, request additional identification documentation of the applicant.

- (1) **Primary proof of identification for original issuance to a United States citizen.** The following shall be

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presented by the applicant as primary proof of identification for a citizen of the United States:

(A) A certified birth certificate, as issued by the appropriate state agency from the state of birth. A certified birth certificate issued by a city or county may be accepted if it is issued on secure document paper and if the certificate either is from a state which the Department has verified authorizes the issuance of birth certificates certified by a city or county or contains a statement indicating the record is a copy of the facts on file with the state agency responsible for maintaining and certifying vital records. The birth certificate shall include the person's name, date of birth, and sex, shall be signed and sealed, and shall include the certificate number. The following documents are not acceptable:

- (i) a hospital birth certificate or record,
- (ii) a birth registration, or
- (iii) an abstract of birth, unless the abstract is issued on secure document paper and contains the following statement "I hereby certify that this abstract of birth facts has been provided to this office by the Department of Health, Bureau of Vital Statistics, from a document officially in its custody",

(B) A United States passport,

(C) For a United States citizen who is born in another country, a certification issued by the United States Department of State,

(D) For a naturalized citizen of the United States, a Certificate of Naturalization issued by the United States Citizenship and Immigration Service. The name on the document must be the same as the name used by the applicant on the driver license or identification card, and for every person born in another country and adopted as a minor child by a United States citizen parent, a Certificate of Citizenship issued by the United States Citizenship and Immigration Service,

(E) An Oklahoma driver license ~~originally~~ issued by the Department of Public Safety when legal presence has been noted in record on or after November 1, 2007,

(F) A State of Oklahoma identification card ~~originally~~ issued by the Department of Public Safety when legal presence has been noted in record on or after November 1, 2007, or

(G) If none of the forms of identification listed in this paragraph are available, any other documentation as approved by the Driver License Examiner Supervisor, Administrative Officer or Director. The Driver License Examiner shall list the approved documentation on the DL-10 form.

(2) **Primary proof of identification for renewal or replacement issuance to a United States citizen.** The following shall be presented by the applicant as primary proof of identification for a citizen of the United States:

(A) Finger image comparison, if a Department-generated finger image algorithm is already on file with the Department, or

(B) Any primary proof of identification listed in (1) of this subsection.

(3) **Primary proof of identification for original, renewal, or replacement issuance to a foreign national or legal permanent resident alien.** ~~The following shall be presented by the foreign national or legal permanent resident alien applicant as~~ As primary proof of identification and proof of lawful presence in the United States for a foreign national or legal permanent resident alien, an applicant shall present, in person, valid documentary evidence of one of the following:

(A) A passport issued by a country other than the United States and I-94 card, when applicable. The name on the passport shall be the same as the name used by the applicant on the driver license or identification card. An I-94 card, which shall be accompanied by the applicant's passport when applicable, shall not be considered a separate identification document. The following documents or passport classifications shall be accepted for the purpose of issuing a driver license or identification card:

- (i) I-688 Temporary Resident Card,
- (ii) I-688A/B Employment Authorization Card,
- (iii) I-766 Employment Authorization Card,
- (iv) I-551 Resident Alien/Permanent Resident Card [see (B)],
- (v) Temporary I-551,
- (vi) A-1,
- (vii) A-2,
- (viii) A-3,
- (ix) DA,
- (x) E-1,
- (xi) E-2,
- (xii) F-1, with Form I-20,
- (xiii) F-2, with Form I-20,
- (xiv) G-1,
- (xv) G-2,
- (xvi) G-3,
- (xvii) G-4,
- (xviii) G-5,
- (xix) H-1A,
- (xx) H-2A,
- (xxi) H-1B,
- (xxii) H-2B,
- (xxiii) H-3,
- (xxiv) H-4,
- (xxv) I,
- (xxvi) J-1, with IAP-66 or DS-2019,
- (xxvii) J-2 (dependent of J-1 holder, must be accompanied by J-1 holder),
- (xxviii) K-3,
- (xxix) K-4,
- (xxx) L-1(a/b),
- (xxxi) L-2,

- (xxxii) M-1, with I-20,
- (xxxiii) M-2 (dependent of M-1 holder, must be accompanied by M-1 holder),
- (xxxiv) NATO-1,
- (xxxv) NATO-2,
- (xxxvi) NATO-3,
- (xxxvii) NATO-4,
- (xxxviii) NATO-5,
- (xxxix) NATO-6,
- (xl) NATO-7,
- (xli) O-1
- (xlii) O-2
- (xliii) O-3
- (xliv) P-1
- (xlv) P-2
- (xlvi) P-3
- (xlvii) P-4
- (xlviii) Q-1
- (xlix) R-1
- (l) R-2
- (li) T-1
- (lii) T-2
- (liii) T-3
- (liv) T-4
- (lv) TC, with I-94 or letter form I-797,
- (lvi) TN-1,
- (lvii) TN-2,
- (lviii) TD,
- (lix) V-1,
- (lx) V-2,
- (lxi) V-3; or

(B) A permanent resident alien registration card issued by the United States Citizenship and Immigration Service (USCIS) which shall include the full, legal name, sex, and date of birth of the person identified on the card. The full, legal name, sex, and date of birth on the card shall be the full, legal name, sex, and date of birth used by the applicant on the driver license or identification card. A permanent resident alien registration card holder shall be allowed to renew his or her driver license or identification card at a motor license agency, provided, no changes are made to the full, legal name, sex, or date of birth. If, pursuant to 8 C.F.R., Section 264.5, a permanent resident alien registration card holder requests a name, sex, or date of birth change to his or her driver license or identification card, the changes shall be made at a driver license exam site with the applicant showing approved documentation provided by USCIS verifying the changes; or

(C) If none of the forms of identification listed in this paragraph are available, any other documentation as approved by the Driver License Examiner Supervisor, Administrative Officer or Director. The Driver License Examiner shall list the approved documentation on the DL-10 form.

(D) A pending application for any of the above documents shall not satisfy the requirements of this rule

and shall not be acceptable for issuance of an original, renewal, or replacement identification card or driver license. Provided, this provision shall not apply to the following:

- (i) A pending or approved application for asylum in the United States; or
- (ii) A pending or approved application for temporary protected status (TPS) in the United States; or
- (iii) A pending application for adjustment of status to legal permanent residence status or conditional resident status.

(4) **Secondary proof of identification.** The following shall be presented by the applicant as secondary proof of identification and shall contain the name of the applicant:

- (A) Any primary proof of identification listed in (1), (2), or (3), as applicable, of this subsection which is not used as the primary identification document of the applicant,
- (B) For any person under the age of 18, an affidavit provided by the Department and signed by the parent or legal guardian,
- (C) Photo identification card that is issued by an Oklahoma:
 - (i) public, private, or parochial secondary school,
 - (ii) institution of higher education,
 - (iii) technology center school, or
 - (iv) employer,
- (D) Oklahoma gun permit,
- (E) Pilot license,
- (F) Oklahoma lifetime hunting or fishing license,
- (G) Oklahoma voter identification card,
- (H) Social Security card,
- (I) Health insurance card,
- (J) Motor vehicle registration or title,
- (K) Marriage certificate,
- (L) Separation or divorce judgment,
- (M) High school, technology center school, college, or university diploma
- (N) Professional degree, certificate, or license,
- (O) Deed or title to property in Oklahoma, including a burial plot deed,
- (P) Health, life, or home insurance policy issued to the applicant,
- (Q) Automobile insurance policy or security verification form issued to the applicant,
- (R) A valid U.S.D.O.T. health card, as required by 49 C.F.R. Part 391,
- (S) Digital photograph comparison, if a Department-generated digital photograph is already on file with the Department,
- (T) Identification documents issued by the United States Armed Services:
 - (i) Military discharge (DD-214), unless specified not to be used for identification,
 - (ii) Military identification card, or
 - (iii) Military dependent identification card,

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(U) United States Bureau of Indian Affairs identification card or a Oklahoma tribal photo identification card, approved by the Department of Public Safety (the Department shall maintain on its website a list of tribes which comply with this provision), which identifies the person and includes the following information:

- (i) color photograph of the person,
- (ii) full legal name of the person,
- (iii) birth date of the person,
- (iv) signature of the person,
- (v) signature of person who verifies records, and
- (vi) tribal seal,

(V) Expired Oklahoma Driver License,

(W) Expired Oklahoma Identification Card,

(X) Oklahoma Tax Commission Agricultural Exemption Permit (tax exempt card),

(Y) Department of Corrections cards including:

- (i) Department of Consolidated Record Card
- (ii) Department of Corrections Inmate Identification Card,

(Z) Transportation Worker Identification Credential (TWIC card)

(AA) Out-of-State driver license, or

(BB) If none of the forms of identification listed in this paragraph are available, any other documentation as approved by the Driver License Examiner Supervisor, Administrative Officer or Director. The Driver License Examiner shall list the approved documentation on the DL-10 form.

(5) **Additional identification requirements.** The Department may require additional identification documents:

(A) when the Department is unable to determine the reliability or validity of the identification document(s) presented, or

(B) as provided in OAC 595:10-1-35.

(C) All persons acting as an interpreter must be eighteen (18) years of age or older and must supply proof of legal presence in the United States and a driver license or identification card issued by any state and must sign an affidavit provided by and filled out by Department personnel.

(c) **Driver license numbers.**

(1) Driver license numbers shall be assigned by computer. Use of the applicant's Social Security number as the driver license number is prohibited [47 O.S. § 6-106(B)]; provided, every applicant shall provide the Department with the Social Security number of the applicant [47 O.S. § 6-106(B),12], which shall be verified before a driver license shall be issued to the applicant. Verification shall be accomplished using the Social Security On-line Verification (SSOLV) system. The Department shall refer any applicant to the Social Security Administration whenever the Social Security number cannot be verified for the applicant.

(2) Any licensee may request to change his or her driver license number to any nine-digit number which is

not in use or has not been previously used by making a written request to the Department. Upon approval by the Department, the licensee shall obtain a replacement driver license from a motor license agent, and the licensee shall pay the required fee for the replacement license [OAC 595:10-1-18]

595:10-1-5. Graduated driver license; persons under eighteen (18) years of age

(a) **Purpose.** The purpose of this Section is to establish the procedures for a person under the age of eighteen (18) years to apply for and be issued a Class D driver license and whose parent has not filed an objection with the Department prohibiting the licensing of the person [47 O.S. § 6-103.1].

(b) **Exclusions.** This Section does not apply to motorcycles and other motor-driven cycles.

(c) **Learner Permit.** A person at least 15 1/2 but less than 16, who is currently receiving instruction in or has successfully completed a driver education course, or a person at least 16, with or without driver education, may make application to the Department for a Learner Permit. The Department will issue a Learner Permit under this subsection if the Department approves the application and if the person successfully passes all required examinations and is otherwise eligible for the driver license [47 O.S. §§ 6-103, 6-105].

(1) **Application requirements.** The applicant shall meet the following requirements before the Department grants driving privileges to operate a Class D motor vehicle and issues a learner permit to the person.

(A) The applicant shall provide proof of identity and other required documentation [see (B)], submit all application information, sign the application, and successfully pass the vision and written tests. The applicant shall have his or her driver license application signed by a legal custodial parent or legal guardian of the applicant either in person before a person authorized to administer oaths, electronically if completing an online application or by a responsible adult if there is no parent or guardian submit a notarized affidavit approved by the Department of Public Safety that is signed by a custodial legal parent or legal guardian [47 O.S. § 6-107(A)].

(B) Documentation shall be submitted proving:

(i) compliance with the school attendance requirements prescribed in 47 O.S. § 6-107.3,

(ii) successful passage of the eighth grade reading test as prescribed in 47 O.S. § 6-107.3(A)(2) and 70 O.S. § 1210.515, and

(iii) for an applicant at least 15 1/2 years of age but less than 16 years of age, documentation of attendance or successful completion of a driver education course as defined in 47 O.S. § 6-105(C)(1) shall be submitted. If the applicant is 16 years of age or older and has successfully completed a driver education course, documentation may be submitted. Documentation of attendance shall be the green card certificate of enrollment issued to the person from the driver education instructor, a

signed contract or an attendance card issued for the person by the commercial driver education school, or an affidavit from the Department of Public Safety and a receipt of purchase from a parent-taught driver education provider. Documentation of completion shall be the ~~completed green card completion certificate~~ issued to the person from the driver education instructor, a completion certificate issued to the person by the commercial driver education school, or a completion certificate from a parent-taught driver education provider. Any applicant who has completed driver education at a public high school in a state other than Oklahoma shall be required to obtain a ~~green card completion certificate~~ issued by the Oklahoma high school in which he or she is currently enrolled. Proof of driver education from an out-of-state commercial driver education program ~~shall not~~ may be acceptable, if the commercial school is approved through their state of record and verified by the Department of Public Safety.

(2) **Driving restrictions.** The permittee is authorized to operate a Class D motor vehicle between the hours of 5:00 a.m. and 10:00 p.m. and only *while accompanied by a licensed driver who is at least twenty-one (21) years of age and who is actually occupying a seat beside the permittee* [47 O.S. § 6-105(C)(2)]; provided, the license of the accompanying driver shall be current and valid.

(3) **Other information.** During the period the permittee is issued and possesses a Learner permit, the custodial legal parent or legal guardian shall ensure that the permittee *has received a minimum of fifty (50) hours of actual behind-the-wheel training, of which at least (10) hours of such training was at night, from a licensed driver who was at least twenty-one (21) years of age and who was properly licensed to operate a Class D motor vehicle for a minimum of two (2) years* [47 O.S. §6-105(D)(1)(c)]; provided, the license of the driver providing behind-the-wheel training shall be current and valid.

(d) **Intermediate License.** When a permittee *has applied for, been issued, and has possessed a Learner Permit for a minimum of six (6) months* [47 O.S. § 6-105(D)(1)(a)], the permittee may apply to the Department for an Intermediate License.

(1) **Application requirements.** The permittee shall meet the following requirements before the Department grants driving privileges to operate a Class D motor vehicle and issues an Intermediate License to the permittee.

(A) The permittee shall provide proof of identity and successfully pass the driving skills tests,

(B) The person must not have been, within the previous 6 months, convicted of, pled guilty to, or pled no contest to any moving vehicle violation [47 O.S. § 6-105(D)(1)(b)],

(C) the permittee's parent or legal guardian shall certify *to the Department by sworn affidavit that the permittee has received a minimum of fifty (50) hours of actual behind-the-wheel training, of which at least*

(10) hours of such training was at night, from a licensed driver who was at least twenty-one (21) years of age and who was properly licensed to operate a Class D motor vehicle for a minimum of two (2) years [47 O.S. §6-105(D)(1)(c)]; provided, the license of the driver providing behind-the-wheel training shall be current and valid, and

(D) for a person who was issued a learner permit and who was less than 16 years of age at the time of issuance pursuant to (c)(1)(B)(iii), documentation of successful completion of a driver education course as defined in 47 O.S. § 6-105(C)(1) shall be submitted. Documentation of completion shall be the ~~completed green card completion certificate~~ issued to the person from the driver education instructor or a completion certificate issued to the person by the commercial driver education school. If such documentation is not presented, the person shall not be eligible for issuance of an intermediate license until the person is at least 16 1/2 years of age.

(2) **Driving restrictions.** The intermediate licensee shall be:

(A) restricted to driving:

(i) *only between the hours of 5:00 a.m. and 10:00 p.m., except for driving to and from work, school, school activities, and church activities, or*

(ii) *at any time, if a licensed driver who is at least twenty-one (21) years of age is actually occupying a seat beside the intermediate Class D licensee;* provided the license of the accompanying driver shall be current and valid, *and*

(B) *shall not operate a motor vehicle with more than one passenger unless:*

(i) *all passengers live in the same household as the custodial legal parent or legal guardian, or*
~~(ii)~~ *a licensed driver at least twenty-one (21) years of age is actually occupying a seat beside the intermediate Class D licensee;* provided the license of the accompanying driver shall be current and valid. [47 O.S. § 6-105(D)(2)].

(e) **Class D driver license.** An intermediate licensee may apply to the Department for a Class D driver license if the licensee has applied for, been issued and possessed an Intermediate License for a minimum of:

(1) *one (1) year, or*

(2) *six (6) months, if the person has completed both the driver education and the parent-certified behind-the-wheel training provisions of subparagraph c of paragraph 1 of subsection D of this section* [47 O.S. § 6-105(E)(1)].

(A) **Application requirements.** The licensee shall meet the following requirements before the Department grants driving privileges to operate a Class D motor vehicle and issues a Class D driver license to the licensee.

(i) The licensee shall provide proof of identity and successfully pass the driving skills tests;

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(ii) The licensee must not have been convicted of, pled guilty to, or pled no contest to any moving vehicle violation [47 O.S. § 6-105(D)(1)(b)]; and

(iii) for a person who has completed both driver education and the parent-certified behind-the-wheel training, documentation shall be submitted. Documentation of completion of a driver education course as defined in 47 O.S. § 6-105(C)(1) shall be the ~~completed-green card~~ completion certificate issued to the person from the driver education instructor or a completion certificate issued to the person by the commercial driver education school. Documentation of completion of parent-certified behind-the-wheel training shall be by affidavit signed by the parent and approved by the Department of Public Safety.

(B) **Driving restrictions.** The Department may restrict the driving privileges of any person as provided by law [47 O.S. § 6-113].

(f) **Persons licensed by another jurisdiction.** A person who, at the time of application, is licensed by another jurisdiction, or whose license is not expired not more than 6 months past the expiration date listed on the license, may apply for driving privileges under this Section. As used in this subsection, "another jurisdiction" means one of the fifty (50) states, the District of Columbia, or a Canadian province.

(1) **Learner Permit.** If the person is operating under a learner permit, or equivalent, issued by another jurisdiction, the person may apply for:

(A) A Learner Permit, as provided in subsection (c); provided, a person who is less than fifteen and one half (15 1/2) years of age shall not be issued a Learner Permit; or

(B) An Intermediate License, as provided in subsection (d), if driving privileges granted by another jurisdiction have been in effect for a minimum of six (6) months; provided, a person who is less than sixteen (16) years of age shall not be issued an Intermediate License.

(2) **Intermediate License.** If the person is operating under an intermediate license, or equivalent, issued by another jurisdiction, the person may apply for:

(A) A Learner Permit, as provided in subsection (c); provided, a person who is less than fifteen and one half (15 1/2) years of age shall not be issued a Learner Permit;

(B) An Intermediate License, as provided in subsection (d); provided, a person who is less than sixteen (16) years of age shall not be issued an Intermediate License; or

(C) A Class D Driver License, as provided in subsection (e), if driving privileges granted by another jurisdiction have been in effect for a minimum of twelve (12) months; provided, a person who is less than sixteen and one half (16 1/2) years of age shall not be issued a Class D Driver License; or

(3) **Class D Driver License.** If the person is operating under a Class D Driver License, or equivalent, issued by another jurisdiction, the person may apply for:

(A) A Learner Permit, as provided in subsection (c); provided, a person who is less than fifteen and one half (15 1/2) years of age shall not be issued a Learner Permit;

(B) An Intermediate License, as provided in subsection (d); provided, a person who is less than sixteen (16) years of age shall not be issued an Intermediate License; or

(C) A Class D Driver License, as provided in subsection (e), if driving privileges granted by another jurisdiction have been in effect for a minimum of twelve (12) months; provided, a person who is less than sixteen and one half (16 1/2) years of age shall not be issued a Class D Driver License.

(4) **Considerations.**

(A) Credit shall be given for the time driving privileges have been granted and in effect, as evidenced by another jurisdiction. Evidence of driving privileges shall be confirmed by the issuance date on the permit or license from another jurisdiction, by the issuance date provided by the other jurisdiction, or both; provided, the earliest date shall be the date used to calculate credit.

(B) Examinations may be waived as provided in OAC 595:10-3-9(h).

PART 3. DRIVER LICENSE RENEWAL

595:10-1-10. Procedure for obtaining a renewal driver license.

(a) **General requirements.** During the month of expiration or as provided in (d) of this Section, each licensee shall present proper identification and pay the required fee to a Motor License Agent or to the Driver License Services Division of the Department of Public Safety for renewal of the driver license of the licensee. Failure to renew a driver license by the end of the month of expiration shall not relieve the person of the obligation to renew his or her driver license under the provisions required by law and this Section if the person wishes to keep his or her driver license in force.

(b) **Required identification.**

(1) **Renewal with valid and unexpired driver license.** The valid and unexpired Class D license provided as the primary identification may be retained by the licensee, after the motor license agent has first punched a hole through the identification number of the license. The person shall provide secondary identification as prescribed in OAC 595:10-1-3(b)(4).

(2) **Renewal with an expired driver license.** The expired Class D driver license provided as the primary identification may be retained by the licensee, after the motor license agent has first punched a hole through the identification number of the license. The person shall provide primary identification as prescribed in OAC

595:10-1-3(b)(2), as appropriate. Any applicant with a license expired more than one (1) year past the expiration date and the original issue date was before 11/01/2007 must show proof of legal presence in this country. If the motor license agent's operator is not Birth Certificate certified the applicant must go to an agent who is certified or they must see a Driver License Examiner.

(3) **Renewal without driver license.** Any person who does not have the valid and unexpired driver license shall provide both primary and secondary identification as prescribed in OAC 595:10-1-3(b).

(c) **Vision examination.** Persons holding a commercial driver license shall, upon renewal, meet the vision standards established in OAC 595:10-5-7 and 49 C.F.R. § 391.41.

(d) **Limitations to issuance of a renewal driver license.**

(1) A renewal driver license will be issued only to an individual whose driving privilege is not under suspension, revocation, disqualification, cancellation or denial and who complies with this Section.

(2) Any applicant who requests a renewal of his or her driver license when the license has been expired in excess of three (3) years is required to appear before a Driver License Examiner, pursuant to OAC 595:10-1-2.

(e) **Early renewal of a driver license.** Any licensee may renew his or her driver license no more than one (1) year prior to the expiration date. A renewal which occurs more than one (1) year prior to the expiration date shall be treated as a replacement under the provisions of OAC 595:10-1-18.

(f) **Change of driver license number.**

(1) Use of the licensee's Social Security number as the driver license number is prohibited. At the time of renewal, any licensee whose driver license number is his or her Social Security number shall inform the Department or the motor license agent of that fact. If the numbers are the same, a new driver license number will be assigned for the licensee by computer [47 O.S. § 6-106(B)].

(2) Any licensee may request to change his or her driver license number to any nine-digit number by making a written request to the Department. Upon approval by the Department, the licensee shall obtain a replacement driver license from a motor license agent, and the licensee shall pay the required fee for the replacement license [see OAC 595:10-1-18 regarding replacement driver licenses].

(g) **Persons who may appear before a motor license agent.** An individual who has previously held an Oklahoma Class D driver license that has been surrendered to another state in exchange for the other state's license, may apply directly to a motor license agent for reactivation of the previous Oklahoma Class D license, upon establishing Oklahoma residence and following the applicable procedure for renewal. The agent shall call the Driver License Services Division and request clearance to issue the license. Any applicant with a license expired more than one (1) year past the expiration date and the original issue date was before 11/01/2007 must show proof of legal presence in this country. If the motor license agent's operator is not Birth Certificate certified the applicant must go to an agent who is certified or they must see a Driver License Examiner. If the clearance is given by the Department, the

person shall surrender the out of state license to the agent, and the agent shall issue the Oklahoma license. ~~If the out of state license has been lost or destroyed, the person shall provide to a motor license agent a notarized affidavit of that fact.~~ In no case shall the out of state driver license be retained by the person when an Oklahoma license has been issued to the person. The agent shall retain the license and submit it to the Department with the agent's report. If clearance is not given, the person shall be informed to contact the state whose action is causing the clearance to be withheld.

(h) **Persons unable to appear due to medical situation.** An individual, who is an Oklahoma resident and who is located within the state, may declare in writing to the Department that, because of a medical reason or condition, he or she is unable to appear in person to renew his or her driver license, in which case the Department shall issue by mail an identification card to the person and shall not issue a driver license. The driver license shall be surrendered by the individual to the Department prior to issuance of the identification card. The individual shall provide both primary and secondary identification as prescribed in OAC 595:10-1-3(b).

(i) **Renewing driver license - not in person.** The Department may create an alternative method where any Oklahoma Class D driver license holder may apply to the Department of Public Safety to renew his or her Class D driver license without appearing in person as provided in this Section.

(1) The Class D driver license holder shall make application online or in writing to the Department and shall submit to the Department:

(A) copies of documentary evidence of the applicant's name and date of birth and

(B) the applicant's Class D driver license number, and

(C) both the Oklahoma residence address and Oklahoma mailing address with the specification as to which address is to be displayed on the license (display of both the residence address and mailing address, or any combination thereof, is prohibited; provided, this subsection shall not be construed to prohibit display of a residence address if it is also the mailing address); provided, if the address is different than the address on record at the Department, the application for renewal without appearing in person shall be denied by the Department, and

(D) the number of a nationally-recognized credit card and authorization for the required fee for the renewal Class D driver license to be paid by the applicant to the Department using the credit card; and

(E) the applicant's signature.

(2) Submission of the items required in (1) shall be made in one of the following manners:

(A) online application: www.dps.state.ok.us/dlrenewal/, or

(B) by first class mail: Department of Public Safety, PO Box 11415, Oklahoma City, OK 73136

(3) Method of payment:

(A) online: if you are submitting your application online you may only pay by credit card.

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(B) by mail: if the applicant is submitting their application by mail they must include a cashier's check or money order along with the required documents. No personal checks or other forms of payment will be accepted.

(4) If the Department approves the renewal Class D driver license without appearing in person, pursuant to the requirements of this chapter, and: if the digital photograph and digital signature of the applicant are available from the files of the Department, the Department shall create the renewal Class D driver license using that photo and signature.

(5) The Department may mail the renewal Class D driver license only to an applicant who is temporarily residing out of state to the out of state address provided by the licensee. The licensee shall provide a pre-paid self-addressed stamped envelope.

(6) If the Department denies the renewal Class D driver license to the applicant pursuant to this Section, the Department shall notify the applicant in writing of the denial, the reason for the denial, return any payment submitted by the applicant, and the applicant shall be required to appear in person for the renewal of the Class D driver license.

(7) A renewal Class D driver license without appearing in person shall be approved only when the immediately previous renewal was in person. Provided, any person or the spouse or dependent of a person:

(A) who is on active duty with the Armed Forces of the United States; or

(B) who is currently employed as a civilian contractor with the Armed Forces of the United States, outside of Oklahoma and having a valid Class D driver license issued by the State of Oklahoma, requiring no material change, may apply for no more than three (3) consecutive renewals or replacements of such license by mail or online. A fourth consecutive renewal or replacement must be done in person.

595:10-1-12. Oklahoma licensee temporarily residing out of the state

(a) Any Oklahoma licensee who is temporarily residing out of the state may request the Department of Public Safety to renew his or her license by mail. The Oklahoma licensee shall mail copies of documentary evidence of his or her name and date of birth as required by OAC 595:10-1-10 (documents sent for verification will not be returned; therefore, original documents should not be sent), his or her driver license number, his or her signature, both Oklahoma residence address and Oklahoma mailing address with the specification as to which address is to be displayed on the license (display of both the residence address and mailing address, or any combination thereof, is prohibited; provided, this subsection shall not be construed to prohibit display of a residence address if it is also the mailing address), and the required fee for a driver license renewal along with his or her out-of-state address to Department of Public Safety, Driver License Examining Services Division, P. O. Box 11415, Oklahoma City, Oklahoma 73136-0415.

(b) The Department shall not issue a remote renewal if there is any material change in personally identifiable information from the previous issuance. A material change means any change to the personally identifiable information of an individual, such as: their name or driver license number. A material change does not include a change of address.

~~(c)~~ If the Department approves the renewal by mail, the Department shall create the renewal license using the most recent digital photograph and digital signature of the licensee available from the files of the Department. The Department shall not renew a license by mail unless the immediately preceding issuance was done in person by the applicant. {47 OS 6-122 effective November 1, 2012}

~~(d)~~ The Department shall mail the renewal license to the out-of-state address provided by the licensee.

~~(e)~~ If the Department denies the renewal by mail, the Department shall notify the licensee in writing of the denial and the reason for the denial.

PART 5. DRIVER LICENSE REPLACEMENT

595:10-1-18. Procedure for obtaining a replacement driver license

(a) **General requirements.** Any person requiring a replacement driver license because the license was lost, stolen, or mutilated or because information on the license needs to be changed may request a motor license agent to issue a replacement, upon presentation of proper identification and payment of the required fee.

(b) **Required identification to replace lost, stolen, or mutilated license.** Any person shall provide both primary and secondary identification as prescribed in OAC 595:10-1-3(b).

(c) **Required identification to change information and replace a license.**

(1) **Name change.** Any person who requests a replacement driver license in order to make a name change shall comply with the primary and secondary identification requirements prescribed in OAC 595:10-1-3(b) in order to identify the person by his or her former name and with OAC 595:10-1-35 in order to identify the person by his or her new name. The former name shall be entered into the "Alias" field in the driver license database to provide historical information to the Department. The person requesting the name change may retain the old license, if it is available and is a Class D driver license, after the motor license agent has first punched a hole through the identification number of the license.

(2) **Address change.** Any person who requests a replacement driver license in order to make an address change shall provide both primary and secondary identification as prescribed in OAC 595:10-1-3(b). The person requesting the address change may retain the old license, if it is available, after the motor license agent has first punched a hole through the identification number of the license. An address change shall be made only to an Oklahoma address.

(3) **Endorsement or restriction change.** Any person who requests a replacement driver license in order to change endorsement or restriction information on the license shall provide both primary and secondary identification as prescribed in OAC 595:10-1-3(b). The person requesting the information change may retain the old license, if it is available, after the motor license agent has first punched a hole through the identification number of the license.

(4) **Sex change.** The licensee shall show an original or certified court order for name change, if applicable, and a notarized statement on letterhead from the physician who performed the sex change operation indicating the applicant or licensee has undergone a complete physical sex change. The letter shall state the sex change is "irreversible and permanent". The licensee shall also show proof of former legal name. The former name shall be entered into the "Alias" field in the driver license database to provide historical information to the Department. The person requesting the information change may retain the old license, if it is available, after the motor license agent has first punched a hole through the identification number of the license.

(d) **Limitations to issuance of a replacement driver license.** A replacement driver license will be issued only to an individual whose driving privilege is not under suspension, revocation, disqualification, cancellation, or denial and who complies with this Section. In addition, a person may not apply for, and the Department shall not issue, a renewal or replacement driver license while the person's license, permit or other evidence of driving privileges is in the custody of a law enforcement officer or the Department. [47 O.S. § 6-303)G)].

(e) **Change of driver license number.**

(1) Use of the licensee's Social Security number as the driver license number is prohibited. At the time of replacement, any licensee whose driver license number is his or her social security number shall inform the Department or the motor license agent of that fact. If the numbers are the same, a new driver license number will be assigned for the licensee by computer [47 O.S. § 6-106(B)].

(2) Any licensee may request to change his or her driver license number to any nine-digit number by making a written request to the Department. Upon approval by the Department, the licensee shall obtain a replacement driver license from a motor license agent, and the licensee shall pay the required fee for the replacement.

(f) **Persons unable to appear due to medical situation.** An individual, who is an Oklahoma resident and who is located within the state, may declare in writing to the Department that, because of a medical reason or condition, he or she is unable to appear in person to replace his or her driver license, in which case the Department shall issue by mail an identification card to the person and shall not issue a driver license. The driver license shall be surrendered, if available, by the individual to the Department prior to issuance of the identification card. The individual shall provide both primary and secondary identification as prescribed in OAC 595:10-1-3(b).

(g) **Replacing driver license - not in person.** The Department may create an alternative method where any Oklahoma Class D driver license holder may apply to the Department of Public Safety to replace his or her Class D driver license without appearing in person as provided in this Section.

(1) The Class D driver license holder shall make application online or in writing to the Department and shall submit to the Department:

(A) copies of documentary evidence of the applicant's name and date of birth, and

(B) the applicant's Class D driver license number, and

(C) both the Oklahoma residence address and Oklahoma mailing address with the specification as to which address is to be displayed on the license (display of both the residence address and mailing address, or any combination thereof, is prohibited; provided, this subsection shall not be construed to prohibit display of a residence address if it is also the mailing address); provided, if the address is different than the address on record at the Department, the application for replacement without appearing in person shall be denied by the Department, and

(D) the number of a nationally-recognized credit card and authorization for the required fee for the replacement Class D driver license to be paid by the applicant to the Department using the credit card; and

(E) the applicant's signature.

(2) Submission of the items required in (1) shall be made in one of the following manners:

(A) online application: www.ok.gov/dps, or

(B) by first class mail: Department of Public Safety, PO Box 11415, Oklahoma City, OK 73136

(3) Method of payment:

(A) online: if you are submitting your application online you may only pay by credit card.

(B) by mail: if the applicant is submitting their application by mail they must include a cashier's check or money order along with the required documents. No personal checks or other forms of payment will be accepted.

(4) If the Department approves the replacement Class D driver license without appearing in person, pursuant to the requirements of this chapter, and: if the digital photograph and digital signature of the applicant are available from the files of the Department, the Department shall create the replacement Class D driver license using that photo and signature.

(5) The Department may mail the renewal Class D driver license only to an applicant who is temporarily residing out of state to the out of state address provided by the licensee. The licensee shall provide a pre-paid self-addressed stamped envelope.

(6) If the Department denies the replacement Class D driver license to the applicant pursuant to this Section, the Department shall notify the applicant in writing of the denial, the reason for the denial, return any payment submitted by the applicant, and the applicant shall be required

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to appear in person for the replacement Class D driver license.

(7) A replacement Class D driver license without appearing in person shall be approved only when the immediately previous renewal was in person. Provided, any person or the spouse or dependent of a person:

(A) who is on active duty with the Armed Forces of the United States; or

(B) who is currently employed as a civilian contractor with the Armed Forces of the United States, living outside of Oklahoma and having a valid Class D driver license issued by the State of Oklahoma, requiring no material change, may apply for no more than three (3) consecutive renewals or replacements of such license by mail or online. A fourth consecutive renewal or replacement must be done in person.

PART 7. IDENTIFICATION CARDS

595:10-1-26. Procedure for obtaining a renewal identification card

(a) **General requirements.** During the month of expiration or as provided in (c) of this Section, any identification card holder, who wishes to keep his or her identification card in force, may present proper identification to a motor license agency and pay the required fee to a Motor License Agent or to the Driver License Services Division of the Department of Public Safety. Identification cards issued to individuals who have attained the age of 65 or older are issued for an indefinite period of time and are not subject to this Section. Failure to renew an identification card during the month of expiration shall not relieve the person of the obligation to renew the identification card under the provisions required by law and this Section if the person wishes to keep the identification card in force.

(b) **Required identification.**

(1) **Renewal with expiring or expired identification card.** The expiring or expired identification card provided as the primary identification may be retained by the cardholder, after the motor license agent has first punched a hole through the identification number of the card. The person shall provide secondary identification as prescribed in OAC 595:10-1-3(b)(2).

(2) **Renewal without identification card.** Any person who does not have the expiring or expired identification card shall provide both primary and secondary identification as prescribed in OAC 595:10-1-3(b).

(c) **Early renewal of an identification card.** Any identification card holder may renew his or her identification card not more than one (1) year prior to the expiration date. A renewal which occurs more than one (1) year prior to the expiration date shall be treated as a replacement under the provisions of OAC 595:10-1-27.

(d) **Change of identification card number.** Use of the cardholder's Social Security number as the identification card number is prohibited.

(e) **Persons who may appear before a motor license agent.** An individual who has previously held an Oklahoma identification card may apply directly to a motor license agent for renewal of the previous Oklahoma identification card, upon establishing Oklahoma residence and following the applicable procedure for renewal.

(f) **Renewing identification card - not in person.** The Department may create an alternative method where any Oklahoma Identification card holder may apply to the Department of Public Safety to renew his or her Identification card without appearing in person as provided in this Section.

(1) The Identification card holder shall make application online or in writing to the Department and shall submit to the Department:

(A) copies of documentary evidence of the applicant's name and date of birth, and

(B) the applicant's Identification card number, and

(C) both the Oklahoma residence address and Oklahoma mailing address with the specification as to which address is to be displayed on the identification card (display of both the residence address and mailing address, or any combination thereof, is prohibited; provided, this subsection shall not be construed to prohibit display of a residence address if it is also the mailing address); provided, if the address is different than the address on record at the Department,

the application for renewal without appearing in person shall be denied by the Department, and

(D) the number of a nationally-recognized credit card and authorization for the required fee for the renewal Identification card to be paid by the applicant to the Department using the credit card; and

(E) the applicant's signature.

(2) Submission of the items required in (1) shall be made in one of the following manners:

(A) online application: www.ok.gov/dps, or

(B) by first class mail: Department of Public Safety, PO Box 11415, Oklahoma City, OK 73136

(3) Method of payment:

(A) online: if you are submitting your application online you may only pay by credit card.

(B) by mail: if the applicant is submitting their application by mail they must include a cashier's check or money order along with the required documents. No personal checks or other forms of payment will be accepted.

(4) If the Department approves the renewal Identification card without appearing in person, pursuant to the requirements of this chapter, and: if the digital photograph and digital signature of the applicant are available from the files of the Department, the Department shall create the renewal Identification card using that photo and signature.

(5) The Department may mail the renewal Class D driver license only to an applicant who is temporarily residing out of state to the out of state address provided by the licensee. The licensee shall provide a pre-paid self-addressed stamped envelope.

(6) If the Department denies the renewal Identification card to the applicant pursuant to this Section, the Department shall notify the applicant in writing of the denial, the reason for the denial, return any payment submitted by the applicant, and the applicant shall be required to appear in person for the renewal Identification card.

(7) A renewal Identification card without appearing in person shall be approved only when the immediately previous renewal was in person.

595:10-1-27. Procedure for obtaining a replacement identification card

(a) **General requirements.** Any person requiring a replacement identification card because the card was lost, stolen, or mutilated or because information on the card needs to be changed may request a motor license agent or the Department to issue a replacement, upon presentation of proper identification and payment of the required fee.

(b) **Required identification to replace lost, stolen, or mutilated identification card.** Any person shall provide both primary and secondary identification as prescribed in OAC 595:10-1-3(b).

(c) **Required identification to change information and replace an identification card.**

(1) **Name change.** Any person who requests a replacement identification card in order to make a name change must comply with the primary and secondary identification requirements prescribed in OAC 595:10-1-3(b) in order to identify the person by his or her former name and with OAC 595:10-1-35 in order to identify the person by his or her new name. The former name shall be entered into the "Alias" field in the identification card database to provide historical information to the Department. The person requesting the name change may retain the old card, if it is available, after the motor license agent has first punched a hole through the identification number of the card.

(2) **Address change.** Any person who requests a replacement identification card in order to make an address change shall provide both primary and secondary identification as prescribed in OAC 595:10-1-3(b). The person requesting the address change may retain the old card, if it is available, after the motor license agent has first punched a hole through the identification number of the card. An address change shall be made only to an Oklahoma address.

(3) **Sex change.** The cardholder shall show an original or certified court order for name change, if applicable, and a notarized statement on letterhead from the physician who performed the sex change operation indicating the applicant or licensee has undergone a complete physical sex change. The letter shall state the sex change is "irreversible and permanent". The cardholder shall also show proof of former legal name. The former name shall be entered into the "Alias" field in the identification card database to provide historical information to the Department. The person requesting the information change may retain the old card, if it is available, after the motor license

agent has first punched a hole through the identification number of the card.

(d) **Change of identification card number.** Use of the cardholder's Social Security number as the identification card number is prohibited.

(e) **Persons who may appear before a motor license agent.** An individual who has previously held an Oklahoma identification card may apply directly to a motor license agent for replacement of the previous Oklahoma identification card, upon establishing Oklahoma residence and following the applicable procedure for replacement.

(f) Replacing identification card - not in person. The Department may create an alternative method where any Oklahoma Identification card holder may apply to the Department of Public Safety to replace his or her Identification card without appearing in person as provided in this Section.

(1) The Identification card holder shall make application online or in writing to the Department and shall submit to the Department:

(A) copies of documentary evidence of the applicant's name and date of birth, and

(B) the applicant's Identification card number, and

(C) both the Oklahoma residence address and Oklahoma mailing address with the specification as to which address is to be displayed on the identification card (display of both the residence address and mailing address, or any combination thereof, is prohibited; provided, this subsection shall not be construed to prohibit display of a residence address if it is also the mailing address); provided, if the address is different than the address on record at the Department, the application for replacement without appearing in person shall be denied by the Department, and

(D) the number of a nationally-recognized credit card and authorization for the required fee for the replacement Identification card to be paid by the applicant to the Department using the credit card; and

(E) the applicant's signature.

(2) Submission of the items required in (1) shall be made in one of the following manners:

(A) online application: www.ok.gov/dps, or

(B) by first class mail: Department of Public Safety, PO Box 11415, Oklahoma City, OK 73136

(3) Method of payment:

(A) online: if you are submitting your application online you may only pay by credit card.

(B) by mail: if the applicant is submitting their application by mail they must include a cashier's check or money order along with the required documents. No personal checks or other forms of payment will be accepted.

(4) If the Department approves replacement Identification card without appearing in person, pursuant to the requirements of this chapter, and: if the digital photograph and digital signature of the applicant are available from the files of the Department, the Department shall create the replacement Identification card using that photo and signature.

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(5) The Department may mail the renewal Class D driver license only to an applicant who is temporarily residing out of state to the out of state address provided by the licensee. The licensee shall provide a pre-paid self-addressed stamped envelope.

(6) If the Department denies the replacement Identification card to the applicant pursuant to this Section, the Department shall notify the applicant in writing of the denial, the reason for the denial, return any payment submitted by the applicant, and the applicant shall be required to appear in person for the replacement Identification card.

(7) A replacement Identification card without appearing in person shall be approved only when the immediately previous renewal was in person.

PART 13. MOTOR LICENSE AGENTS

595:10-1-51. Operational procedures

(a) The driver license computer, camera, printer, and other hardware, software, and supplies (which may be referred to as document issuance equipment) used in the production of driver licenses and identification cards shall be used solely for the issuance of Oklahoma driver licenses or identification cards. Driver licenses or identification cards shall be issued if the motor license agency is open for business. If the motor license agency is unable to issue licenses, the agent shall immediately notify the Driver License ~~Examining~~—Services Division to report why the agency is not issuing licenses.

(b) At the close of business each day, the agent shall remove the "Security Laminate", PVC card stock, and security key and lock them in a safe place and shall also destroy, by shredding or burning, all used color print ribbon. In addition, all printer supplies, DL10 and MVR consent forms shall be locked in a safe place. "To lock in a safe place", as used in this Section, is defined as a burglar safe that cannot be picked up and carried out. If the safe is ~~under~~less than 250 pounds, it shall be anchored to a permanent fixture to prevent removal. The safe shall have a combination lock, key lock, or both combination and key lock.

(c) The Department will maintain a database showing all current and past motor license agency driver license or identification card issuance employees. All criminal history investigations for each issuance employee will be stored in a Department database.

(d) Motor License agencies are prohibited from sharing driver license or identification card issuance consumables. Each motor license agency is responsible for all consumables obtained by its agency. Agents shall maintain correct inventory levels in the Secure Inventory Management System (SIMS).

(e) All issuing employees must pass a limited criminal history background investigation conducted by the Oklahoma Highway Patrol, Investigation Division, to be issued a temporary personal access code and complete a state criminal history background investigation conducted by the Oklahoma State Bureau of Investigation and national FBI criminal history

background investigation to be issued a permanent personal access code. The motor license agent is responsible for incurring the cost for any criminal history background investigation.

(1) Only persons who have been issued a personal access code by the Department of Public Safety shall be authorized to operate document issuance equipment and issue or make changes to driver licenses or identification cards.

(2) Personal access codes shall not be assigned to anyone under the age of eighteen (18) or to any employee whose driver license is suspended, revoked, cancelled or denied.

(3) Each application for a personal access code shall be submitted by the motor license agent to the Driver License ~~Examining~~—Services Division. A limited criminal history background investigation shall be conducted by the Oklahoma Highway Patrol, Investigations Division prior to the issuance of a temporary personal access code. The Department shall give temporary approval to the applicant to issue driver licenses and identification cards, pending an investigation of the applicant's complete national and state criminal history background investigation. The motor license agent shall submit the necessary criminal history background investigation requests within ten (10) business days of the issuance of the temporary access code, and submit proof of the request to the Driver License ~~Examining~~—Services Division within five (5) business days thereafter.

(4) The Department shall cancel the access code to issue driver licenses or identification cards upon determination the person's criminal history background investigation does not warrant certification, based upon a misdemeanor conviction for larceny, theft, fraud, perjury, or if the applicant is found to have made false statements on the application within the ten (10) years immediately preceding the application and/or any felony conviction.

(5) If no record of a conviction for the specified misdemeanors in (e)(4) of this Section, or of a felony within limited criminal history background investigation conducted by the Oklahoma Highway Patrol, the temporarily approved applicant shall be issued a temporary access code. Upon notification of the issuance of the temporary access code to the motor license agent, the agent shall submit to a national criminal history background investigation, as defined by 74 O.S. § 150.9 of the Oklahoma Statutes within ten (10) business days of said notification. If the national criminal history background investigation is not completed within ninety (90) days of the request for the national criminal history background investigation, the temporary personal access code may be revoked.

(6) The Department shall cancel the access code to issue driver licenses or identification cards upon determination the person's national criminal history background investigation does not warrant certification, based upon a misdemeanor conviction for larceny, theft, fraud, perjury, or if the applicant is found to have made false statements on an application with the ten (10) years immediately preceding the application and/or any felony conviction.

- (7) If no record of a conviction for the misdemeanors in (e)(4) of this Section or of a felony conviction is found within the national criminal history background investigation, the applicant shall be given a permanent access code number to issue driver licenses and identification cards.
- (8) If, during either the state criminal history background investigation or the national criminal history background investigation, it is discovered the applicant has pending charges that could result in the applicant being convicted of a misdemeanor for larceny, theft, fraud, or perjury or any felony, or if the applicant has a deferred sentence for the misdemeanors listed in (e)(4) or any felony the temporary personal access code shall be revoked pending the disposition of the court proceedings.
- (9) Personal access codes shall be kept confidential by the employee and motor license agent. Personal access codes shall be used only by the person to whom the code has been assigned.
- (10) A current national criminal history background investigation shall be required if:
- (A) an employee has any break in service and the result of the previous state criminal history investigation on file with the Department for the employee is more than one (1) year old, or
 - (B) if the employee changes motor license agents and it has been more than one (1) year since the last national criminal history background investigation was completed, or
 - (C) if a national criminal history background investigation was not previously required of the employee.
- (11) The Department may, at its discretion, require a current national criminal history background investigation of any individual operating the driver license equipment. Such national criminal history background investigation shall be at the motor license agency's expense.
- (12) The motor license agent shall be responsible for training new employees. The Department may offer periodic training programs as needed.
- (13) The motor license agent shall be responsible for the conduct of its employees.
- (f) Any motor license agent in possession of document issuance equipment will be subject to unannounced inspections by Department personnel to verify compliance with the Department's Administrative Rules as well as Departmental policy. Employees operating the document issuance equipment shall produce proof of identity if requested by Department personnel.
- (g) Any substitution of equipment or alteration in the making of a driver license or identification card is prohibited and may be subject to criminal prosecution. Driver licenses or identification cards shall be made in accordance with specifications as determined by the Department. If they do not meet these specifications, the agent or the employee shall not issue the license or card. The Motor License Agency shall be responsible for the cost of correcting a license created incorrectly due to negligence by the Motor License Agent or their employee. This could include the cost of the card and/or replacement fees.
- (h) Motor license agent's reports required by the Department shall be forwarded to the Driver License ~~Examining~~Services Division in accordance with the rules of the Oklahoma Tax Commission or as prescribed by law.
- (i) If the motor license agent plans to relocate its business, the agent shall immediately notify the Driver License ~~Examining~~Services Division in writing to make arrangements to have the document issuance equipment relocated. The motor license agent shall also immediately notify the Driver License ~~Examining~~Services Division in writing of its new address and telephone number. The motor license agent shall bear the cost of moving the document issuance equipment, unless the move is due to a natural disaster or for reasons beyond the control of the motor license agent.
- (j) In the event of loss, theft, or misuse of any of the document issuance equipment, supplies, or documents, or any violation of state law, Department rule, or other improper conduct related to the issuance of driver license or identification cards, the Department of Public Safety, Driver License ~~Examining~~Services Division, shall be notified immediately by telephone at (405) 425-7745. In case of loss or theft the motor license agent shall take an immediate inventory of all driver license documents and/or consumables on hand and list all missing items and equipment by number. A copy of the missing inventory list, the police investigation, and/or incident report shall be immediately forwarded to the Department of Public Safety, Driver License ~~Examining~~Services Division. In cases of misuse, the motor license agent must immediately contact the Driver License ~~Examining~~Services Division by telephone at (405) 425-7745. If the incident occurs after the Department's normal business hours, the motor license agent shall contact the Driver License ~~Examining~~Services Division no later than the next normal business day of the Department.
- (k) Agents are prohibited from accepting an altered driver license application (DL-10 form) or any other altered or unapproved document for the issuance of an Oklahoma driver license or identification card.
- (l) When a motor license agency goes out of business, any equipment, supplies, and documents issued to the agent by the Department of Public Safety must be accounted for and returned to the Department of Public Safety.
- (m) Each employee of the motor license agency is to be made aware by the motor license agent of the penalties for misuse of driver license documents, identification cards, or document issuance equipment and any production of fraudulent and erroneous driver licenses or identification cards.
- (n) When it comes to the attention of the Department of Public Safety that any motor license agent or an employee of a motor license agency is in violation of any statute, rule or policy, or has committed any fraudulent act regarding the issuance of driver licenses or identification cards, and after consultation with the Commissioner's office, the Director of the Driver License ~~Examining~~Services Division may notify the motor license agent and the Tax Commissioner that the access code number(s) issued to that motor license agent and its employees may be canceled or suspended and the document issuance equipment may be removed.

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- (1) In accordance with the Administrative Procedures Act, a hearing before the Commissioner or the Commissioner's designee may be requested by the motor license agency in writing within fifteen (15) calendar days of the date of the notification of the cancellation or suspension of access code number(s) for that motor license agency.
 - (A) The issues at the hearing will be whether or not a violation occurred, and
 - (B) the severity of the sanction which should be imposed.
- (2) If the suspected violation is upheld in the administrative hearing, the motor license agency shall have its ability to issue driver licenses or identification cards suspended for six (6) months for the first offense, one (1) year for the second offense, and permanently for third offense. However, the Department may issue a permanent suspension for any offense if the findings of the administrative hearing conclude the offense was criminal or grossly negligent in nature. Suspension time shall include the time pending the administrative hearing.
- (o) The following changes or activities to a driver license or identification card are not authorized by any motor license agency without the authorization from the Driver License ~~Examining Services~~ Division director or his or her designee:
 - (1) Driver license number or identification card number change, except when changing to a computer generated number,
 - (2) Sex,
 - (3) Eye color,
 - (4) Race,
 - (5) Date of birth,
 - (6) Class of license,
 - (7) Endorsement,
 - (8) Extension of expiration on driver license or identification card,
 - (9) Temporary receipt or authorization to drive,
 - (10) The use of issuance equipment for taking photographs for other identification cards (for example: police, fire, sheriff, passport, etc.),
 - (11) Adding titles to names, such as Sheriff, Police Officer, Judge, Senator, Representative, Dr., Rev., Fireman, etc., or information to indicate professional status on the face of the driver license or identification card such as JOHN DOE, OKLAHOMA HIGHWAY PATROL, or ROBERT DOE, M.D.
 - (12) Adding addresses. All addresses shall be the legal Oklahoma residence address or Oklahoma mailing address [47 O.S. § 6-106]. Display of both the residence address and mailing address, or any combination thereof, is prohibited; provided, this paragraph shall not be construed to prohibit display of a residence address if it is also the mailing address,
 - (13) Placing anything on a driver license or identification card, such as stickers of civic clubs, medical symbols, etc., except those approved by the Department of Public Safety,
 - (14) Producing more than one (1) driver license or identification card for the applicant at the time of application,
 - (15) Adding service charges to an application fee for any reason, or
 - (16) Providing information from the driver license or identification card application to private businesses, government agencies, or persons other than the Department of Public Safety, unless authorized by the Department.
- (p) No documents shall be removed from the office of the motor license agent by anyone unless authorized by the Driver License ~~Examining Services~~ Division. If a situation arises which warrants removal of documents required or authorized by the Department, the motor license agent shall telephone the Division at (405) 425-7745 to explain the circumstances and obtain authority.
- (q) During the issuance process for an original, renewal or replacement driver license or identification card, the applicant shall be offered the opportunity to donate One Dollar (\$1.00) to the Oklahoma Organ Donor Education and Awareness Program [63 O.S. § 2220.5]. If the applicant consents to the donation, the One-Dollar donation will be added to the amount collected with the cost of the license or card. Each One-Dollar donation shall be recorded and shall be reflected on the semi-monthly reports of the motor license agency. The applicant shall be given the option to become or to decline becoming an organ donor by marking either the "Yes" or "No" box on the signature pad. A mark of "Yes" shall cause an organ donor symbol to be placed on the driver license or identification card. If the holder of a driver license or identification card wishes to remove the organ donor symbol from the license or card, the applicant shall make the request of the motor license agency and shall be asked to mark the "No" box on the signature pad and a license or card shall be issued without the organ donor symbol. The holder of a Class A, B, or C commercial driver license shall be required to appear before a Driver License Examiner to remove or add the organ donor symbol.
- (r) Rules in this Chapter regarding motor license agents are specific and limiting. Whenever an action either is not included or is not prohibited, it shall not be construed to convey authority to perform that action within the duties, responsibilities, or authority of the motor license agent. Any activity performed by motor license agents or its employees, other than those approved in writing or through hands-on training provided by or authorized in writing by the Department can result in termination of the agency's ability to issue driver licenses or identification cards and/or criminal and civil prosecution.

PART 19. DRIVER LICENSE AND IDENTIFICATION CARD CONTENT

595:10-1-92. Driving restriction codes

A restriction or restrictions may be placed upon a person's driving privilege as deemed necessary by the Department [47 O.S. §6-113]. The restriction(s) will appear as a code on the person's driver license. Following are the various driving restriction codes and their meanings:

- (1) 1. Corrective lenses
- (2) 2. Left outside rearview mirror
- (3) 3. Restriction 1 or 2

- (4) 4. Automatic transmission
- (5) 5. Turn indicators, power steering, or steering knob
- (6) 6. Food, fruit, or candy within reach of driver
- (7) 7. Adequate artificial limbs
- (8) 8. Detailed restriction - Inquire Oklahoma driver license file (This restriction code is used when other restrictions are not applicable. A narrative explaining the restriction will appear on the person's driver license file.)
- (9) 9. Accompanied by licensed driver age 21 or older in front seat
- (10) 0. Motorcycle only - if under age 16, restricted to ~~250~~300cc motorcycle or motor scooter between the hours of 4:30 a.m. and 9:00 p.m.
- (11) A. Regardless of age, when operating a motorcycle must be in view of a person who is licensed to operate a motorcycle or motor-driven cycle and who is at least 21 years old
- (12) E. When operating a commercial motor vehicle, restricted to automatic transmission
- (13) G. Inquire of Oklahoma driver license file until age 17 or older
- (14) K. CDL intrastate only
- (15) L. When operating a commercial motor vehicle, restricted to a vehicle without air brakes
- (16) M. When operating a passenger bus, restricted to Class B or C commercial motor vehicle
- (17) N. When operating a passenger bus, restricted to a Class C commercial motor vehicle
- (18) O. Restricted from operating tractor trailer vehicles
- (19) R. Ignition interlock device
- (20) V. Medical variance
- (21) W. No Passengers (P or S) or Empty/Purged Tank Vehicle (N); provided, this restriction shall be used only on a commercial learner.
- (22) Z. When operating a commercial motor vehicle with air brakes, restricted to air over hydraulic

SUBCHAPTER 3. EXAMINATION

595:10-3-9. Skills examination

(a) **In general.** The skills examination shall only be administered after the applicant has successfully passed the knowledge test, or had it waived if eligible, and the vision test. Whenever a skills examination is required, the following general conditions shall apply:

- (1) The skills examination shall start at a designated location and shall include an actual demonstration of the applicant's ability to exercise ordinary and reasonable control in the operation of a motor vehicle. Applicants shall furnish the type of vehicle required for the Class D skills examination.
- (2) The skills examination shall not be administered in a vehicle:
 - (A) which is not insured as required by 47 O.S. §7-600 et seq.,
 - (B) which does not have a current license plate,

- (C) which is not equipped with seatbelts, if the vehicle was originally manufactured and equipped with seatbelts, or
- (D) which does not comply with vehicle equipment and safety standards as required by Chapters 12 and 13 of Title 47 of the Oklahoma Statutes.
- (3) An applicant determined by an examiner to be cheating on any portion of the skills examination shall:
 - (A) immediately forfeit the examination,
 - (B) be given a failing score by the examiner, and
 - (C) be disqualified from retaking the examination for one week.
- (b) **Scoring of examination.** The scoring procedure will be on a cumulative deduction system based on poor driving practices. The Commissioner or the Commissioner's representative shall determine a point value for each improper driving act.
- (c) **Content of examination for Class D driver license.**
 - (1) The skills examination shall include, but not be limited to, the following maneuvers:
 - (A) Starting,
 - (B) Backing (excluding two-wheel and three-wheel vehicles),
 - (C) Hill parking (excluding two-wheel and three-wheel vehicles),
 - (D) Starting on hill (excluding two-wheel and three-wheel vehicles),
 - (E) Intersection movement and observance,
 - (F) Lane observance and changing,
 - (G) Left and right turns,
 - (H) Pedestrian and vehicle right-of-way,
 - (I) Proper use of automatic transmission or clutch gear (excluding two-wheel or three-wheel vehicles),
 - (J) Use of brake and accelerator,
 - (K) Traffic lights or signals, and
 - (L) Parallel Parking (excluding two-wheel and three-wheel vehicles).
 - (2) The skills examination will not be conducted when examination route roadways are considered by the examiner to be slick or hazardous due to inclement weather.
 - (3) Criteria for a skills examination are as follows:
 - (A) Starting: To determine if the individual is familiar with the vehicle's controls and proper use, and to determine the individual's skill and ability to move the vehicle from a parking space or parking lot into the traffic lane.
 - (B) Backing: To determine the individual's ability to control vehicle while backing for a distance of approximately fifty (50) feet.
 - (C) Hill parking (stopping and starting): To determine if the individual has the ability to park a vehicle on an incline in a safe manner and leave that position in a safe manner.
 - (D) Transmission (automatic or standard): To determine if the individual has the coordination and ability necessary for reasonable control of the vehicle.
 - (E) Brakes: To determine the individual's skill and physical ability in the proper usage of the brake(s).

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(F) Control of speed: To determine the speed the individual maintains relative to speed limits and other traffic.

(G) Gap selection: To determine whether the individual exercises proper judgment when entering or leaving the roadway, when turning or crossing an intersection, or when changing lanes.

(H) Driver alertness: To determine whether the individual observes and is aware of situations and circumstances which play an important part in safe driving.

(I) Right-of-way: To determine the individual's knowledge of right-of-way and the ability to react properly, and to determine whether an individual shares the road properly with other drivers and pedestrians.

(J) Legal stop: To determine whether the individual observes, understands, and obeys stop signs and traffic signals.

(K) Traffic lights or signs: To determine whether the individual sees, understands, and obeys traffic lights and other signs.

(L) Signals: To determine whether the individual gives the proper signal when driving away from the curb, changing lanes, or turning.

(M) Lane usage: To determine whether the individual has the knowledge and ability to use lanes properly.

(N) Observation: To determine whether the individual observes those things which are necessary for safe driving.

(O) Final Park: To determine the individual's ability to park the vehicle at the conclusion of the skills examination in a manner compatible with safe driving practices and statutory requirements.

(P) Left turn items scored:

- (i) Cuts corner on approach.
- (ii) Cuts corner on lane entry.
- (iii) Turns into the wrong lane (does not affect other traffic).
- (iv) Turns from wrong lane (does not affect other traffic).
- (v) Turns wheels while stopped, waiting to make turn.
- (vi) Too wide on lane entry.
- (vii) Fail to signal turn for at least 100 feet before turning.
- (viii) Fail to approach turn in the proper lane.

(Q) Right turn items scored:

- (i) Too wide on approach.
- (ii) Too wide on lane entry.
- (iii) Turns from wrong lane (does not affect other traffic).
- (iv) Turns into wrong lane (does not affect other traffic).
- (v) Bumps, scrapes, or climbs curb.
- (vii) Fail to signal turn for at least 100 feet before turning.

(viii) Fail to approach turn in the proper lane.

(R) Passenger vehicles other than school buses or vehicles transporting passengers for hire are not required to stop at a railroad crossing.

(S) Parallel parking: To determine the proficiency an individual has attained in coordinating judgment, skill, and ability to park a vehicle and drive away from a designated area, and to maneuver the vehicle in close quarters.

(4) Disqualifications are as follows:

(A) **Seat belt not in use.** Applicant fails to use seat belt. The seat belt shall be properly adjusted and fastened before the vehicle enters a public roadway.

(B) **Moving traffic violation.** Applicant received a traffic citation for a moving violation during the skills examination.

(C) **Disobey sign or signal.** Applicant ignored or did not obey sign or signal.

(D) **Driver speeding.** Applicant's speed is more than five (5) miles per hour over the posted speed limit or the lawful speed limit for the vehicle being driven: Provided the speeding is not in a school zone during normal school hours or a construction zone with workers present. There will be no tolerance in a school zone during normal school hours and school is in session or in a construction zone with workers present.

(E) **Fail to stop.** Applicant rolled through stops or failed to stop.

(F) **Traffic laws.** Applicant ignored or did not obey traffic laws.

(G) **Yield to others.** Applicant did not yield to other road users (pedestrians, vehicles, etc.) Applicant did not appropriately yield the right-of-way to pedestrians or other vehicles during driving maneuvers.

(H) **Left of center.** Applicant drives left of center (except when needed to perform a turn safely or to proceed safely on a direct course).

(I) **Avoidable crash or incident or dangerous act.**

- (i) Applicant involved in an avoidable crash or collision.
- (ii) Applicant's vehicle has physical contact with other vehicles, objects, pedestrians, etc.
- (iii) Applicant commits any act or omission that creates a dangerous or unsafe traffic environment (near accidents, etc.).
- (iv) Applicant's actions causes drivers of other vehicles or pedestrians to take evasive actions.
- (v) Applicant's actions force examiner to take verbal or physical control of the vehicle.

(J) **Put vehicle over sidewalk or curb.** Applicant put vehicle over curbs or sidewalks unnecessarily.

(K) **Weighted Offenses.** Accumulation of four (4) or more of any of the following offenses, in any combination:

- (i) Failure to use turn signal.

- (ii) Coasting on a downgrade (gears in neutral or clutch disengaged).
 - (iii) Consistently goes over speed limit.
 - (iv) Proceed through intersection on yellow light when applicant could stop without creating a dangerous situation.
- (d) **Retesting.**
- (1) Applicants who fail the skills examination for a driver license or the motorcycle endorsement may be granted the opportunity to retest on the next available regular business day as scheduling permits. When an applicant fails to qualify for a Class D license after three (3) skills examination attempts, he or she will be required to obtain a restricted driver license, restricting the individual to operating a motor vehicle while accompanied by a qualified licensed driver in the front seat, before another skills examination will be administered.
 - (2) The Department shall conduct the skills examination for the holder of a restricted Class D driver license not more than three (3) times beginning thirty (30) days from the date of issuance of the restricted license. Should the restricted licensee fail the third examination, the licensee shall wait thirty (30) days before being given another skills examination by the Department. The fourth and subsequent examinations shall be given not more than one (1) time every thirty (30) days thereafter at the request of the restricted licensee.
 - (3) In computing any time period prescribed by this subsection, the day of the failed examination from which the designated period of time begins to run shall not be included. The last day of the period computed shall be included, unless it is not a working day, in which event the period runs until the end of the next working day.
- (e) **Minimum waiting period for examination.** The holder of a restricted driver license will not be eligible to have a skills examination administered until after a minimum of thirty (30) days following the issuance of such license, provided the applicant is at least eighteen (18) years of age. In computing the 30-day time period prescribed by this subsection, the day on which the restricted driver license is issued shall not be included. The last day of the period computed shall be included, unless it is not a working day, in which event the period runs until the end of the next working day.
- (f) **Skills examination when applicant must use special equipment.** Any applicant who must use special equipment, who has completed the standard skills examination and not been disqualified, will continue to drive an extended route, as provided in this subsection, in order to evaluate the operation of special equipment.
- (1) The extended skills examination will be at least thirty (30) minutes long, making the total examination at least forty-five (45) minutes in duration. However, the

individual may be given a four-minute rest stop midway through the examination.

(2) The extended skills examination may consist of interstate, expressway, or highway driving, or a combination of such driving situations, where possible so that a better evaluation may be rendered. Key points in this portion of the skills examination are as follows:

- (A) Proper usage of acceleration and deceleration lanes,
- (B) Lane usage,
- (C) Highway speed control,
- (D) Reaction to larger vehicles and fast traffic, and
- (E) Use of special control devices.

(3) If the individual fails to adequately perform on the extended portion of the examination, at the discretion of the driver examiner, the individual will be notified when he or she is eligible to return for the next examination.

(g) **Substitute for skills examination.** A skills examination may be waived for a licensee when one of the following requirements is met:

(1) The licensee is applying for a Class D driver license, provided all established requirements for a Class D license have been satisfied, and the licensee is licensed at the time of application by one of the fifty (50) states, by the District of Columbia, by a Canadian province, or by another country; provided, the current driver examination requirements of the country must be on file with the Department and must meet or exceed the standards, specifications, and requirements of the Department as set out in this Subchapter [47 O.S. § 6-110(A)(2)].

- (2) The licensee:
 - (A) has enrolled in and successfully completed a course taught by an instructor certified by the Motorcycle Safety Foundation and using the Motorcycle Safety Foundation curriculum, and
 - (B) submits to the Department at the time of application for a motorcycle endorsement a Motorcycle RiderCourse® or an Experienced RiderCourse® completion card filled out by the certified instructor [47 O.S. §6-101(D)].

SUBCHAPTER 7. POINTS SYSTEM

595:10-7-2. Points assessed for conviction

The following points shall be assessed to the driving record of any ~~licensed or unlicensed~~ person ~~when for the offenses which~~ the Department of Public Safety has received a record of a final conviction from any court for any of the following of the violations as stated below in appendix A of this Chapter:

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VIOLATION	POINTS
Reckless driving without regard for the safety of others	4
Failure to stop or to remain stopped for school bus loading or unloading	4
Speeding in excess of 25 M.P.H. above the posted speed limit	3
Inattentive driving resulting in a collision	2
Left of center or wrong way	2
Failure to yield right of way	2
Violation of driver license restrictions	2
Following too close or improperly	2
Failure to obey stop sign or traffic light	2
Careless driving	2
Speeding	2
Contest racing on public traffic way	2
Speed in excess of posted maximum	2
Speed less than posted minimum	2
Speed in school zone	2
Radar checked speed violation	2
Airplane checked speed violation	2
Vascar	2
Any violation related to a railroad crossing	2
Operating a defective vehicle	1
Operating a vehicle without being licensed	1
Leaving a vehicle unattended with engine running	1
Towing or pushing vehicle improperly	1
Failure to dim lights as required	1
Failure to stop at required stops with explosives or flammable load	1
Transporting hazardous substances without safety devices or precautions	1
Improper lane usage	1
Driving on shoulder, in ditch or on sidewalk	1
Making improper entrance to or exit from trafficway	1
Loading a vehicle so drivers view is obstructed	1
Starting improperly from parked position	1
Improper backing	1
Spinning wheels	1
Operating a vehicle with view obstructed	1
Negligent driving	1
Improper passing	1
Operating a motor vehicle at speed greater than reasonable and proper	1

Operating a motor vehicle at speed less than reasonable and proper	±
Coasting or operating with gears disengaged	±
Failure to follow instructions of police officer	±
Failure to obey traffic instructions stated on traffic sign or shown by traffic control device	±
Passing through or around barrier positioned to prohibit or channel traffic	±
Failure to observe warnings or instructions on vehicle properly displaying them	±
Failure to signal intention to change vehicle direction or to reduce speed suddenly	±
Giving improper signal	±
Improper stopping on roadway	±
Improper turns	±
Operating defective vehicle after receiving a warning or summons	±
Impeding traffic (and under 40 M.P.H.)	±
Crossing center median	±

SUBCHAPTER 11. CERTIFIED SCHOOLS AND DESIGNATED CLASS D EXAMINERS

595:10-11-3. Definitions

In addition to terms defined in 47 O.S. §1-101 et seq., the following words or terms, when used in this Subchapter, shall have the following meaning unless the context clearly indicates otherwise. Use of the singular term includes the plural, and use of the plural term includes the singular.

"Certified driver education instructor" means an instructor, as defined by 47 O.S. § 801(B) or 70 O.S. § 19-113 et seq., who is currently certified to instruct in a school students who are seeking a Class D driver license in a school, but shall not include an instructor who instructs for the operation of motorcycles only.

"Department" means the Department of Public Safety.

"Designated examiner" means a certified driver education instructor who has been approved and certified by the Department of Public Safety or State Department of Education to administer driving skills examinations, on routes approved by the Department and who is employed by or operating a school.

"Division" means the Driver License ~~Examining Services~~ Division of the Department.

"Driver education" or **"driver education course"** means

- (A) a public secondary school driver education course [70 O.S. §19-113 et seq.],
- (B) a parochial, private, or nonpublic secondary school driver education course, certified by the Department of Public Safety, or
- (C) a commercial driver training course [47 O.S. §801 et seq.].

"Examination" means the driving skills examinations for an Oklahoma Class D driver license.

"School" means a:

(A) public school which is a secondary school, as defined in 70 O.S. §1-106, within a school district, as defined in 70 O.S. §1-108, which offers a prescribed secondary school driver education course, as defined by 70 O.S. §19-113,

(B) private school which is a secondary school, including parochial and other nonpublic schools, which offers a driver education course certified by the Department of Public Safety, or

(C) commercial driver training school, as defined in 47 O.S. §801(A).

595:10-11-5. Requirements for certification as a designated examiner; display of certificate; certification renewal

(a) **Requirements and application for certification.** A certified driver education instructor may apply for certification as a designated examiner. The applicant must meet the following requirements:

- (1) Complete an application provided by the Department [see 595:10-11-12],
- (2) Be employed by a school,
- (3) Possess a portable computer which shall meet current specifications, as provided by the Department, to enable it to be loaded with software necessary to train the applicant and, upon certification as a designated examiner, to conduct examinations and report examination results electronically to the Department, and the applicant shall sign a user agreement with the Department regarding the installation, maintenance, and use of the software,
- (4) Maintain throughout the time period to be covered by the certification all other certification requirements to be a certified driver education instructor, and
- (5) Successfully complete a course of instruction prescribed by the Department [see 595:10-11-6].

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(b) **Certification.** Upon acceptance and approval by the Department of the application for certification from a driver education instructor, or upon acceptance and approval by the Department of the application for renewal of certification from a designated examiner, and upon completion to the satisfaction of the Department by the instructor or designated examiner of all other requirements for certification, the Department shall provide the designated examiner with:

(1) a certificate evidencing approval by the Department as a designated examiner, which shall be presented for inspection to each driver license applicant, and to the parent or legal guardian of any applicant under eighteen (18) years of age, before the applicant enters the vehicle in which the examination is to be administered. The certificate shall be carried in the vehicle in which any examination is being administered. The certificate shall be valid for the calendar in which it is issued, and

(2) an official seal to be used by the designated examiner as provided in 595:10-11-13.

(23) If the Certification of the Designated examiner becomes invalid, the certification badge and stamp are to be remanded to the Department of Public Safety.

(c) **Ineligibility.** Any person shall be deemed ineligible for certification as a designated examiner if the person is not a certified driver education instructor.

(d) **Renewal of certification.**

(1) A certified designated examiner shall be eligible for renewal of certification if the examiner:

(A) submits an application for certification renewal upon a form provided by the Department no later than December 1 of each year [see 595:10-11-12],

(B) is currently employed by a school,

(BC) currently meets the requirements and standards of the Department as prescribed by this subchapter,

(CD) administered twenty (20) or more examinations within the twelve (12) months immediately preceding the application for renewal of certification. IF the applicant fails to complete 20 drives during the previous 12 month period , the applicant must attend remedial training and pay all fees.

(2) Any driver education instructor who was previously certified as a designated examiner and whose previous certification has been expired for not more than one (1) year may make application for renewal of certification as provided in paragraph (1) of this section.

(3) Any third-party examiner who does not qualify for renewal of certification may apply, after a period of at least one (1) year from the date the examiner was notified he or she was not qualified for renewal of certification, for certification as a third-party examiner and shall meet all requirements as for an initial application for certification as a third-party examiner.

(34) Upon renewal the previous certification badge will be turned in to the Department of Public Safety and a new certificate badge will be issued.

595:10-11-6. Course of instruction for driver education instructors applying for certification as a designated examiner

(a) A driver education instructor applying for certification as a designated examiner shall enroll in and successfully complete a course of instruction as determined by the Department before the instructor will be considered for approval and certification as a designated examiner. The certification process must be completed within 12 months of the course start date.

(b) The Department shall, from time to time, conduct a course of instruction for driver education instructors applying for certification as designated examiners. The Department shall determine the standards and requirements for the curriculum and successful completion of the course of instruction. The curriculum shall include, but not be limited to, the following subjects:

(1) Examination standards and scoring.

(2) Forms and reports.

(3) Oklahoma statutes.

(4) Department rules.

(5) Behind-the-wheel driving.

(6) Records and recordkeeping.

(c) The dates and locations of courses of instruction will be determined by the Department.

595:10-11-7. Examination requirements and standards

(a) **Application.** Before an examination may be given to a driver license applicant by a designated examiner, the applicant shall provide a valid Oklahoma learner permit for inspection by the designated examiner and completely fill out and submit to the examiner an Oklahoma skills examination application (DPS Form DL-18-DE) which shall be provided to the applicant by the examiner [see 595:10-11-12]. ~~If the student is no longer in possession of the Oklahoma learner permit, the student shall provide the designated examiner a photo identification along with another form of identification listed under the primary forms of identification found in 595:10-1-3 and a signed, notarized affidavit stating the student is no longer in possession of his or her Oklahoma learner permit.~~ The examiner shall, by electronic means, verify with the Department on the day of the examination that the applicant is eligible to be administered the examination. If the applicant is not eligible, the examiner shall refer the applicant to a Driver License Examiner.

(b) **Standards.** Current minimum standards for the skills examination of applicants for an Oklahoma Class D intermediate license or driver license, as set forth in state statutes and Department rules shall be provided to all designated examiners by the Department.

(c) **Examinations.**

(1) The driving skills examination for an Oklahoma Class D intermediate license or driver license administered by a designated examiner shall:

(A) include all specified maneuvers as required by the Department, and

(B) meet or exceed all requirements of the Department for the Class D driver license.

(2) If an applicant fails a skills examination administered by the designated examiner, the examiner shall immediately notify the Division by electronic means of the failure. The notification shall include, at a minimum, the applicant's:

- (A) name and date of birth,
- (B) driver license number, if applicable;
- (C) score on the failed examination, along with any details of the failure which the examiner deems pertinent to the Department's records.

(d) **Location of examination.** All skills examination shall be administered on the route approved for the designated examiner which shall be a different route than any route used for training the applicant being examined.

(e) **Vehicle used for driving skills examination.** The applicant or parent or legal guardian of the applicant may specify the vehicle in which the driving skills examination is administered. The vehicle shall meet the same requirements as any vehicle which is used for Class D driving skills tests administered by the Department of Public Safety.

(f) **Auditing.** An employee of the Department of Public Safety or the State Board of Education may, at any time and without prior notice, accompany a designated examiner and a driver license applicant while a skills examination is being administered for the purpose of auditing the performance and effectiveness of the designated examiner.

SUBCHAPTER 13. PARENT-TAUGHT DRIVER EDUCATION

595:10-13-8. Prescribed forms

(a) **Parent-taught driver education provider applications.** Parent-taught driver education provider applications shall be requested from the Department to apply for certification as a parent-taught driver education provider. The application will require the applying parent-taught driver education provider to provide the following information:

- (1) Date of application;
- (2) Name of parent-taught driver education provider institution;
- (3) Complete school physical address and mailing address;
- (4) Name of administrator;
- (5) Statement of agreement to comply with rules of the Department and with the provisions of any contract entered into between the provider and a parent in Oklahoma;
- (6) Information required in 595:10-13-4;
- (7) Signature of administrator; and
- (8) Show proof of purchase and delivery of curriculum.

(b) **Completion certificates.** A completion certificate shall be provided by and issued by the parent-taught driver education provider to each student upon the successful completion of course work (both classroom and behind the wheel). The completion certificate shall not be issued unless the applicant has held a learner permit for the required amount of time while performing the behind the wheel portion of the curriculum. These certificates shall be computer generated, in a format

agreed upon by the Department and the provider, and shall contain the following:

- (1) Name of the provider;
- (2) Full legal name of student;
- (3) Number of total hours instruction, and a breakdown of in-class/in-car hours;
- (4) Date of completion;
- (5) Signature of administrator (stamped signature acceptable); and
- (6) Embossed or electronically generated seal of provider.

(c) **Parent affidavit.** The parent affidavit will be included in the parent-taught driver education packet [see 595:10-13-5(a) and (b) regarding the packet]. The affidavit shall be completed and signed by the parent(s) who will be teaching the parent-taught driver education course or online applications may be completed without any signature and submitted to and accepted by the Division prior to commencement of the parent-taught driver education course. The affidavit will contain the following information:

- (1) For each parent desiring to be a parent-instructor, the full legal name, mailing address, and driver license number of the parent;
- (2) The name of the parent-taught driver education provider selected by the parent;
- (3) The full legal name, mailing address, and instruction permit number or driver license number of the student;
- (4) A statement which affirms that any vehicle used for behind-the wheel instruction will comply with Oklahoma's insurance requirements (47 O.S. Chapter 7) and safety and equipment requirements (47 O.S. Chapters 12 and 13).
- (5) Statements to which the parent(s) and student(s) express understanding and agreement:
 - (A) The affidavit does not constitute authorization for the student to drive in lieu of possession of a valid Oklahoma instruction permit or driver license, nor is it a substitute for insurance verification.
 - (B) The accepted copy of the affidavit must be carried in the vehicle during any behind-the-wheel session of parent-taught driver education and must be presented upon demand to any law enforcement officer or Department of Public Safety employee.
 - (C) No more than two (2) students and two (2) parent instructors shall occupy the vehicle during any behind-the-wheel session of parent-taught driver education.
 - (D) All state laws regarding the operation of a motor vehicle and all rules of the Department regarding parent-taught driver education shall be obeyed by the student(s) and parent(s).
 - (E) The parent(s) and student(s) shall notify the Department immediately if any information on the affidavit changes.
 - (F) The parent(s) and student(s) agree to hold harmless and free from any liability the Department, any of the Department's employees, and the State of Oklahoma.

SUBCHAPTER 15. PROVISIONAL DRIVER LICENSE PROGRAM

595:10-15-3. Eligibility Criteria

~~The Applicant for the Provisional Driver License Program:~~

- ~~(1) cannot be a Commercial Driver License holder;~~
- ~~(2) must renew and/or retest, if required, if the Applicant's driver license has expired (If a driver license has never been issued to the Applicant, the Applicant must complete all requirements for the initial issuance of an Oklahoma license.);~~
- ~~(3) will not qualify if any requirement for reinstatement of driving privileges, other than the payment of all outstanding driver license reinstatement fee(s) has not been satisfied and proof of same provided to the Department of Public Safety;~~
- ~~(4) will not qualify if the Applicant cannot provide the Department of Public Safety with satisfactory proof of current liability insurance;~~

~~(a) In order to be eligible for a Provisional Driver License, the following criteria must be met by the Applicant:~~

- ~~(1) must provide the Department of Public Safety with satisfactory proof of current liability insurance in his or her name.~~
- ~~(2) will not qualify if any requirement for reinstatement of driving privileges, other than the payment of all outstanding driver license reinstatement fee(s) has not been satisfied and proof of the same provided to the Department of Public Safety;~~
- ~~(3) must renew and/or retest, if required.~~

~~(b) In addition to the requirements in (a) above, an applicant for a Class A, B, or C, Commercial Driver License under the Provisional Driver License Program, must meet the additional requirements below:~~

- ~~(1) must possess a unexpired Commercial Driver License;~~
- ~~(2) must not be currently disqualified;~~
- ~~(3) The Applicant's Commercial Driver License cannot have been expired for three (3) years or more;~~
- ~~(4) If the Applicant is ineligible for any reason for Commercial Driver License, the Applicant may only apply for a Class D Provisional Driver License.~~

595:10-15-4. Participants in the PDL Program

~~(a) Before being issued a Provisional Driver License, a Participant must obtain a valid unexpired Oklahoma Identification Card. The Identification Card and the Provisional Driver License must be carried together any time the Participant is operating a motor vehicle. A Participant must present both the Provisional Driver License (or Restriction Document for CDL holders) and the Oklahoma Identification Card (or CDL) when requested by a law enforcement officer. Any Participant who, while operating a motor vehicle, fails to have both items in their possession shall be in violation of the terms and conditions of the PDL Program which shall result in the cancellation of the Provisional Driver License and termination of the licensee's~~

~~participation in the PDL Program. The licensee shall be immediately returned to his or her previous license status and shall be ineligible for future participation in the PDL Program.~~

~~(ab) The Participant Licensee must enter into a written Pay-out Agreement with DPS which will stipulate that failure if the Participant Licensee fails to remit the minimum statutory monthly payment or if the payment is an untimely payment, the licensee's participation in the PDL Program shall be immediately revoked by the Department of Public Safety, and the licensee's failure to make a timely payment, shall result in the cancellation of the Provisional Driver License and termination of the licensee's participation in the PDL Program. The licensee shall be immediately returned to his or her previous license status and shall be ineligible for future participation in the PDL Program.~~

~~(bc) The Participant Licensee must further acknowledge that any violation of law by the Participant Licensee that would result in the suspension or revocation of a driver license shall result in the revocation the cancellation of the Provisional Driver License and the Participant Licensee termination of the licensee's participation in the PDL Program. The licensee shall be immediately returned to his or her previous license status and shall be ineligible for future participation in the PDL Program.~~

~~(ed) Upon acceptance into the PDL Program and paying the Twenty five dollar (\$25.00) fifty dollar (\$50.00) Provisional Driver License fee, the Class D license Participant Licensee will be issued a paper Provisional Driver License specifying the specific terms and conditions under which the Participant Licensee can lawfully operate a motor vehicle. The CDL Participant licensee shall retain their original CDL and will be issued a Restriction Document specifying the specific terms and conditions under which the CDL Participant Licensee can lawfully operate a motor vehicle. The Provisional Driver License and Oklahoma Identification card, or the CDL and Restriction Document, shall be carried by the Participant Licensee at all times while driving operating a motor vehicle.~~

~~(de) The Class D license issued under the The Provisional Driver License Program will be valid for a period of six (6) months from the date of issuance. Before the expiration of that six (6) month time period, the Participant Licensee shall return to a Driver Compliance Hearing Officer to be recertified and provide proof they are eligible to continue in the PDL Program. If the Participant Licensee is eligible, another Class D Provisional Driver License will be issued and will be valid for a period of six (6) months. Appearance before a Driver Compliance Hearing Officer and recertification will be required every six (6) months until all reinstatement fees are paid in full, or if the Participant Licensee is no longer eligible to participate in the PDL Program, or if the Participant Licensee is otherwise determined to not be eligible for the PDL Program. Failure to renew the Class D Provisional Driver License prior to its expiration will cause the cancellation of the Class D Provisional Driver License issued under this program and the removal of the Participant from the program. The Class D Provisional Driver License must be renewed every six (6) months in order for the Class D License Participant to continue in the program.~~

(f) The Restriction Document for the Class A, B, or C, Commercial Driver License issued under the Provisional Driver License Program will be valid for a period of six (6) months from the date of issuance. Before the expiration of that six (6) month time period, the Class A, B, or C, Participant Licensee shall return to a Driver Compliance Hearing Officer to be recertified and provide proof they are eligible to continue in the Provisional Driver License Program. If the Participant Licensee is eligible, another Restriction Document will be issued and will be valid for a period of six (6) months. Appearance before a Driver Compliance Hearing Officer and recertification and renewal of the Restriction Document will be required every six (6) months until all reinstatement fees are paid in full. Failure to renew the Restriction Document prior to its expiration will cause the cancellation of the Commercial Driver License issued under this program and the removal of the Participant from the program. The Restriction Document must be renewed every six (6) month in order for the Class A, B, or C Driver License Participant to continue in the program.

595:10-15-5. Terms and conditions under which the Participant Licensee can drive

The Participant Licensee will only be allowed to operate a motor vehicle ~~during the times and to and from the location(s) identified on the Provisional Driver License and under the same conditions and restrictions as shown on the driving record maintained by the Department of Public Safety~~ or commercial motor vehicle under one or more of the following circumstances:

- (1) Between their place of residence and their place of employment or potential employment;
- (2) During the scope and course of their employment;
- (3) Between their place of residence and a college, university or technology center;
- (4) Between their place of residence and their child's school or day care provider;
- (5) Between their place of residence and a place of worship; or
- (6) Between their place of residence and any court-ordered treatment program; as identified on the Class D Provisional Driver License or on the Restriction Document for the Class A, B, or C, Commercial Driver License issued under the Provisional Driver License Program and under the same conditions and restrictions as shown on the driving record maintained by the Department of Public Safety.

595:10-15-6. Proof of insurance

Prior to being accepted into the PDL Program, the Applicant shall provide DPS satisfactory proof of current liability insurance in his or her name. Upon acceptance into the PDL Program, the Participant Licensee shall maintain liability insurance for the duration of their participation in the PDL Program. Failure to maintain liability insurance shall result in the ~~revocation~~ cancellation of the Class D Provisional Driver License and/or the Class A, B, or C, Commercial Driver License issued under the Provisional Driver License Program. ~~The~~ the Participant Licensee shall be immediately

returned to his or her previous license status. The Participant Licensee shall also be ineligible for future participation in the PDL Program.

595:10-15-7. Completion of Required forms, payment of the initial minimum monthly payment, and payment of the Provisional License fee

- (a) The Applicant for the PDL Program will be required to complete all required forms for DPS, including but not limited to a written Payout Agreement, prior to being accepted into the PDL Program.
- (b) The minimum monthly payment of at least twenty-five dollars (\$25.00) per month toward the satisfaction of all outstanding driver license reinstatement fees will be agreed upon by the Participant Licensee and the Department of Public Safety. At no time will the Participant Licensee be allowed to pay less than the monthly statutory limit of twenty-five dollars (\$25.00).
- (c) The method of payment shall be paid in the manner prescribed by the Department of Public Safety.
- (d) The first payment is due and must be received by DPS on or before the last calendar day of the month in which the Applicant is accepted into the PDL Program. All subsequent payments are due and must be received by DPS on or before the last calendar day of each month thereafter.
- (e) Failure of the Participant Licensee to make the required monthly payments shall result in the removal of the Participant Licensee from the PDL Program, the ~~revocation~~ cancellation of the Class D Provisional Driver License or the Class A, B, or C, Commercial Driver License issued under the Provisional Driver License Program and the return of the Participant Licensee to his or her former driver license status.
- (f) The Participant Licensee shall pay a one-time Provisional Driver License fee to the Department of Public Safety in the amount of ~~twenty five dollars (\$25.00)~~ fifty dollars (\$50.00) prior to the issuance of the initial Class D Provisional Driver License or the Class A, B, or C, Commercial Driver License issued under the Provisional Driver License Program together with the accompanying Restriction Document. The Provisional Driver License fee shall be remitted to the State Treasurer to be credited to the Department of Public Safety Restricted Revolving Fund and are to be budgeted and expended solely for the purpose of administrating the provisions of the Provisional Driver License Program.

595:10-15-8. Termination (removal) from the PDL Program, cancellation of the Class A, B, C or D Provisional Driver License issued under the Provisional Driver License Program, ~~Ineligibility~~ ineligibility from future participation in the PDL Program, and Review

If a Participant Licensee has violated any of the provisions, requirements or terms of this program as determined by DPS, the Participant Licensee will be removed from the PDL

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program, their Class A, B, C or D Provisional Driver License issued under the Provisional Driver License Program shall be cancelled, and they will be ineligible for future participation in the PDL Provisional Driver License Program. More specifically, the following actions will result in removal from the PDL Program, cancellation of the Class A, B, C or D Provisional Driver License issued under the Provisional Driver License Program, and ineligibility from future participation in the PDL Program:

- (1) Failure to reappear before a Driver Compliance Hearing Officer for the issuance of the Class D PDL within sixty (60) days after being issued a Driver License Testing Authorization requiring the Applicant to take and pass a driver license test in order to participate in the Class D PDL Program;
- (2) Failure to reappear before a Driver Compliance Hearing Officer for the issuance of the Class D PDL within sixty (60) days after the Applicant was instructed to renew an expired driver license in order to participate in the Class D PDL Program;
- (3) Failure to carry the Class D PDL and Oklahoma Identification Card at all times while driving;
- (4) Any act that results in the suspension, revocation or disqualification of a driver license;
- (5) Failure to comply with the terms and conditions under which the Participant Licensee can drive as set forth in the Class D PDL or the Restriction Document for the Class A, B, or C, Commercial Driver License issued under the Provisional Driver License Program, or as shown by the Department's records;
- (6) Failure to maintain current liability insurance in the Participant Licensee's name;
- (7) Failure to carry proof of current liability insurance in the Participant Licensee's name when driving and/or to present proof of currently liability insurance on demand;

(8) Failure to remit to DPS the minimum statutory monthly payment, or to remit the minimum statutory monthly payment timely;

(9) Failure to remit to DPS the minimum statutory monthly payment in a manner specified by the Payout Agreement;

(10) Failure to reappear before a Driver Compliance Hearing Officer before the issued Class D PDL or the Restriction Document for the Class A, B, or C, Commercial Driver License issued under the Provisional Driver License Program expires;

(11) Failure to provide to a DPS Hearing Officer satisfactory proof of current liability insurance in the Participant Licensee's name at the time of renewal of the Class D PDL or the Restriction Document for the Class A, B, or C Commercial Driver License issued under the Provisional Driver License Program;

(12) Any attempt by the Participant Licensee to obtain or actually obtaining a driver license or driving privileges from another state or country while in the PDL Program;

(13) Failure to renew the Restriction Document for the Class A, B, or C, Commercial Driver License issued under the Provisional Driver License Program;

(14) Failure to comply with any other term or condition of the signed Payout Agreement not specifically mentioned above. If terminated from the PDL Program for any of the aforementioned reasons, the removed participant may appear before a Driver Compliance Hearing Officer and request review of the reasons which caused the termination (removal) from the PDL Program.

APPENDIX A. POINTS ASSESSED FOR CONVICTION [NEW]

VIOLATION	POINTS
Reckless driving	4
Speeding (41 mph or more over the limit)	4
Speeding (26 – 40 mph over the limit)	3
Inattentive driving resulting in a collision	3
Improper passing (failure to slow or move over as required)	3
Speeding (11-25 mph over the limit)	2
Speeding (1-10 mph over the limit)(CDL holder/CMV operator only)	2
Excessive speed (CDL holder/CMV operator only)	2
Public transit driver operating a vehicle while texting	2
Public transit driver operating a vehicle while using a hand-held mobile telephone	2
Texting while operating a CMV	2
Using a hand-held mobile device while operating a CMV	2
Driving left of center	2
Driving in the wrong direction	2
Failure to stop for stop sign or red light	2
Failure to yield right of way	2
Following too closely	2
Following emergency vehicle or driving to disaster area	2
Careless driving	2
Contest racing	2
Operator of any vehicle failing to stop at RR Xing when required	2
Driving any vehicle through, around or under crossing gate or barrier at RR Xing	2
Operator of any vehicle failing to obey directions of law enforcement officer at RR Xing	2
Operator of CMV other than bus or HAZMAT failing to slow and check for tracks clear of train	2
Operator of CMV or bus failing to slow and check for tracks clear of train	2
Failure to clear RR Xing while driving a CMV	2
Driving a CMV in a RR Xing with insufficient undercarriage clearance	2
Operating vehicle in violation of driver license restrictions	2
Failure to display lighted lamps	1
Failure to dim lights as required	1
Operating a vehicle without required headlamps or with improper or defective headlamps	1
Operating a vehicle without required lights or with improper or defective lights (other than headlamps)	1
Operating a vehicle without required brakes or with improper or defective brakes	1
Operating a vehicle without required muffler or exhaust system or with improper or defective muffler or exhaust system	1

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Operating a vehicle without required tires or with improper or defective tires	1
Operating a vehicle without required equipment or with improper or defective equipment	1
Transporting hazardous materials without required safety devices or placards	1
Improper towing or pulling a trailer or vehicle	1
Starting vehicle unsafely from parked or stopped position	1
Operating a vehicle with view obstructed or interference with control over vehicle	1
Operating a vehicle without a valid license	1
Leaving a vehicle unattended with engine running	1
Improper lane usage	1
Changing lanes unsafely	1
Improper passing	1
Failure to drive in proper lane	1
Passing vehicle on right unsafely	1
Failure to signal intention to change vehicle direction or reducing speed suddenly	1
Failure to give proper signal	1
Driving off roadway while passing on right	1
Making improper entrance or exit from any controlled-access roadway	1
Improper or unsafe turns	1
Improper backing	1
Spinning wheels	1
Operating a motor vehicle at speed greater than or less than reasonable and proper	1
Coasting or operating with gears disengaged	1
Failure to follow instructions of police officer	1
Failure to obey instructions of traffic control device (signal or sign)	1
Driving through, around or across a traffic control device, barrier or barricade	1
Failure to reduce speed	1
Driving through or within a safety zone	1
Impeding traffic	1
Crossing center median	1

[OAR Docket #17-632; filed 7-12-17]

TITLE 595. DEPARTMENT OF PUBLIC SAFETY
CHAPTER 11. COMMERCIAL DRIVER LICENSES

[OAR Docket #17-633]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 1. Commercial Driver Licensing
Part 2. Application for initial commercial driver license
595:11-1-15. Applicability, substitutions, limitations, and additions to federal regulations adopted by reference [AMENDED]
595:11-1-17. Medical examiner's certificate requirements [AMENDED]
Part 3. Commercial Driver License Renewal - In Person
595:11-1-21. Procedure for obtaining a renewal commercial driver license in person [AMENDED]
Part 5. Commercial Driver License Replacement - In Person
595:11-1-31. Procedure for obtaining a replacement driver license in person [AMENDED]
Subchapter 3. Examination
595:11-3-2. Study guide [AMENDED]
595:11-3-6. Written examination [AMENDED]
595:11-3-8. Skills examination [AMENDED]
595:11-3-9. Automatic failure of skills examination [AMENDED]
Subchapter 5. Commercial Driver License Third-Party Examiners
595:11-5-4. Requirements for certification as a certified school; display of certificate; certification renewal [AMENDED]
595:11-5-5. Requirements for certification as a third-party examiner; display of certificate; certification renewal [AMENDED]
595:11-5-9. Failed examinations and reexamination [AMENDED]
595:11-5-11. Records to be maintained by certified schools and third-party examiners [AMENDED]
595:11-5-13. Prescribed forms [AMENDED]
595:11-5-14. Official seal, map and CDL examiners manual [AMENDED]
595:11-5-17. Withdrawal or denial of certification [AMENDED]
Subchapter 7. Truck Driver Training
595:11-7-2. Definitions [AMENDED]
595:11-7-4. Qualifications for instructors [AMENDED]
595:11-7-13. Requirements for schools and classrooms [AMENDED]

AUTHORITY:

Commissioner of Public Safety; 47 O.S. §6-101 et seq.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

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Approved by Governor's declaration on June 13, 2017

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September 11, 2017

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The majority of changes in this section are a direct result of federal regulation updates. Changes were made in the CDL licensing requirements to match the state's Class D requirements.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 1. COMMERCIAL DRIVER LICENSING

PART 2. APPLICATION FOR INITIAL DRIVER LICENSE

595:11-1-15. Applicability, substitutions, limitations, and additions to federal regulations adopted by reference

(a) Applicability. The licensing regulations found in 49 C.F.R., Parts 383 and 391, as adopted in OAC 595:11-1-14 are applicable to all applicants for Class A, B, and C commercial driver licenses.

(b) Terminology substitutions. Unless otherwise specified, the following terminology shall apply to federal rules adopted by referenced in OAC 595:11-1-14:

- (1) "Department of Public Safety" shall be substituted wherever the term "Department of Transportation" or "Federal Motor Carrier Safety Administration" is used.
(2) "Commissioner of Public Safety" shall be substituted wherever the term "Federal Motor Carrier Safety Administrator" or "Regional Director" is used.

(c) Limitations to scope of definitions. The definitions provided in (b) of this Section are limited in application to 47 O.S. §6-101 et seq. and the rules adopted by the Department to carry out the provisions those statutes. These definitions do not alter, replace, or change any definitions contained in Title 47 of the Oklahoma Statutes.

(d) Additional qualification of all classes of commercial drivers. The following additions are made to the federal requirement in Qualifications of Drivers [49 CFR §391.11(b)(1)] that a driver be twenty-one (21) years of age or older:

- (1) A driver operating solely in intrastate commerce shall be at least eighteen (18) years of age; and
(2) Any person who is not at least twenty-one (21) years old shall not be licensed for:
(A) the transportation of hazardous materials which are required to be placarded or marked in accordance with 49 CFR §177.823, or
(B) transporting fifteen (15) or more passengers; provided, this subparagraph shall not apply to school bus drivers as provided in OAC 210:30-5.

(e) Additional qualifications for non-excepted commercial drivers. The following additions are made to the federal

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requirement in Commercial Driver's License Standards; Requirements and Penalties [49 CFR §384] relating to medical examiner's certificate:

- (1) A non-expected commercial driver operating solely in intrastate commerce shall meet the same qualifications as a driver operating in interstate commerce; and
- (2) Current medical examiner's certificate, including any variance if applicable, shall be delivered to the Department of Public Safety by the driver:
 - (A) by mail to: Department of Public Safety, Attn: CDL Program Administration
 - (B) by fax to: 405-419-2196
 - (C) by e-mail to: mec@dps.state.ok.us
 - (D) in person to: the Department of Public Safety headquarters or any Department of Public Safety Examination Site
- (3) Until January 30, 2014, the Department ~~shall~~may date stamp the medical examiner's certificate and return a copy, along with the variance if applicable, as a receipt to the driver; and the driver shall keep the copy of the medical examiner's certificate, and any variance if applicable, in his or her possession at all times when operating a commercial motor vehicle.
- (4) Changes to the status of any driver from non-expected status to expected status or from expected status to non-expected status shall be made in writing to the Department by the driver, using one of the delivery methods described in paragraph (2).

595:11-1-17. Medical examiner's certificate requirements

(a) **Definitions.** As used in this section: "**Licensed medical professional**" shall be a person who is listed on the National Registry of Certified Medical Examiners, and also be means one of the following:

- (1) medical doctor (M.D.),
- (2) doctor of osteopathy (D.O.),
- (3) chiropractor,
- (4) physician's assistant (P.A.), or
- (5) advanced practical nurse (A.P.N.).

(b) **Submission of medical examiner certificate.** The following persons shall submit to the Department and maintain with the Department a current approved medical examiner's certificate, and any variance if applicable, signed by a licensed physician authorized to perform and approve medical examiner's certificates:

- (1) Every applicant who is subject to the requirements of 49 C.F.R. Part 391 and is applying for an original, renewal, or replacement commercial license, and
- (2) Every person who is currently the holder of a commercial driver license and is subject to the requirements of 49 C.F.R. Part 391 and who does not apply for a renewal or replacement license prior to January 30, 2014.

(c) **Retention of medical examiner's certificate.** The Department shall maintain medical examiner's certificates pursuant to the requirements in 49 C.F.R., Parts 383 and 384.

(d) **Failure to deliver or maintain medical examiner's certificate.**

(1) If a person fails to deliver to or maintain with the Department his or her medical examiner's certificate as provided in subsection (b):

(A) the person, if an applicant for a commercial driver license, shall not be granted commercial driving privileges; or

(B) the person, if currently the holder of a commercial driver license, shall be downgraded to a Class D driver license by the Department. The person shall surrender the commercial driver license to the Department.

(2) If any person in (d)(1) later delivers a medical examiner's certificate to the Department:

(A) the person, if an applicant for a commercial driver license, may be reconsidered by the Department for commercial driving privileges; or

(B) the person, if previously downgraded to a Class D driver license by the Department, shall be eligible to obtain commercial driving privileges, if the person is otherwise eligible.

(e) **Requirement to possess medical examiner's certificate.** Until January 30, 2014, any person required to maintain a medical examiner's certificate for the purposes of operating commercial motor vehicles shall have in his or her possession ~~the date stamped~~ a copy of the certificate, along with the variance if applicable, at all times when operating a commercial motor vehicle. ~~[See OAC 595:11-1-15 regarding date stamped copy]~~

PART 3. COMMERCIAL DRIVER LICENSE RENEWAL - IN PERSON

595:11-1-21. Procedure for obtaining a renewal commercial driver license in person

(a) **General requirements.** During the month of expiration or as provided in (d) of this Section, each licensee shall present proper identification and pay the required fee to a Motor License Agent or to the Department of Public Safety for renewal of the commercial driver license. Failure to renew a commercial driver license by the end of the month of expiration shall not relieve the person of the obligation to renew his or her commercial driver license under the provisions required by law and this Section if the person wishes to keep his or her commercial driver license in force.

(b) **Required identification.**

- (1) **Renewal with expiring or expired commercial driver license.** The expiring or expired commercial driver license provided as the primary identification may be retained by the licensee, after the Department has invalidated the document by punching holes through the license class and license type displayed. The person shall provide secondary identification as prescribed in OAC 595:10-1-3(b)(2). Applicant must provide current United States citizenship or lawful permanent resident and proof of domicile in the State of Oklahoma.

(2) **Renewal without driver license.** Any person who does not have the expiring or expired commercial driver license shall provide both primary and secondary identification as prescribed in OAC 595:10-1-3(b).

(c) **Vision screening.** Persons holding a commercial driver license shall, upon renewal, meet the vision standards established in OAC 595:10-5-7 and 49 C.F.R., §391.41.

(d) **Limitations to issuance of a renewal commercial driver license.**

(1) A renewal commercial driver license shall be issued only to an individual whose driving privilege is not under suspension, revocation, disqualification, cancellation, or denial and who complies with this Chapter, state law, and federal law and regulation.

(2) Any applicant who requests a renewal of his or her commercial driver license when the license has been expired in excess of three (3) years shall be required to appear before a driver license examiner, pursuant to OAC 595:11-1-11 as for an original license.

(e) **Early renewal of a commercial driver license.** Any licensee may renew his or her commercial driver license no more than one (1) year prior to the expiration date. A renewal which occurs more than one (1) year prior to the expiration date shall be treated as a replacement under the provisions of OAC 595:10-1-18.

(f) **Change of commercial driver license number.** A request by a licensee to change the commercial driver license number shall conform to the provisions of OAC 595:11-1-12(c).

PART 5. COMMERCIAL DRIVER LICENSE REPLACEMENT - IN PERSON

595:11-1-31. Procedure for obtaining a replacement driver license in person

(a) **General requirements.** Any licensee requiring a replacement commercial driver license because the license was lost, stolen, or mutilated, or because information on the license needs to be changed, shall request a replacement, upon presentation of proper identification and payment of the required fee. The driver examiner shall retain the driver license to be replaced if it is available.

(b) **Required identification to replace lost, stolen, or mutilated license.** Any person shall provide both primary and secondary identification as prescribed in OAC 595:10-1-3(b). Applicant must provide current United States citizenship or lawful permanent resident and proof of domicile in the State of Oklahoma.

(c) **Required identification to change information and replace a commercial driver license.**

(1) **Name change.** Any person who requests a replacement commercial driver license in order to make a name change shall comply with the primary and secondary identification requirements prescribed in OAC 595:10-1-3(b) in order to identify the person by his or her former name and with OAC 595:10-1-35 in order to identify the person by his or her new name. The former name shall be entered

by the driver examiner into the "Alias" field in the driver license database to provide historical information to the Department. The person requesting the name change may retain the old license, if it is available, after the Department has invalidated the document by punching holes through the license class and license type displayed.

(2) **Address change.** A licensee shall request a replacement commercial driver license within ten (10) calendar days of any address change, shall provide the new address to the Department, and shall provide both primary and secondary identification as prescribed in OAC 595:10-1-3(b).

(3) **Endorsement or restriction change.** Any licensee who requests a replacement commercial driver license in order to change endorsement or restriction information on the license shall provide both primary and secondary identification as prescribed in OAC 595:10-1-3(b). The person requesting the information change may retain the old license, if it is available, after the Department has invalidated the document by punching holes through the license class and license type displayed.

(4) **Sex change.** The licensee shall show an original or certified court order for name change, if applicable, and a notarized statement on letterhead from the physician who performed the sex change operation indicating the applicant or licensee has undergone a complete physical sex change. The letter shall state the sex change is "irreversible and permanent". The licensee shall also show proof of former legal name, if applicable. The new sex shall be entered by the driver examiner in the "Sex" field in the driver license database, and the former name shall be entered by the driver examiner into the "Alias" field in the driver license database to provide historical information to the Department.

(d) **Limitations to issuance of a replacement driver license.**

(1) A commercial driver licensee shall appear before a driver examiner to request a replacement commercial driver license in order for the examiner to perform the federally required ten-year driving history check.

(2) A replacement driver license shall be issued only to an individual whose driving privilege is not under suspension, revocation, disqualification, cancellation, or denial and who complies with this Chapter, state laws, and federal laws and regulations.

(3) The commercial driver license number may be changed as provided in OAC 595:11-1-12(c).

SUBCHAPTER 3. EXAMINATION

595:11-3-2. Study guide

The official study guide for applicants shall be the "Commercial Driver's Manual", which is distributed by the Department of Public Safety. Copies are available free of charge:

(1) Driver License Examination stations,

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- (2) by mail from: Department of Public Safety, Commercial Driver License Program Administration, P.O. Box 11415, Oklahoma City, Oklahoma 73136-0415,
- (3) in person at the Department of Public Safety, Commercial Driver License Program Administration, 3600 North M. L. King Avenue, Oklahoma City, or
- (4) from the Department's website at <http://www.dps.state-ok.us/dls/www.ok.gov/dps>.

595:11-3-6. Written examination

(a) **General.** A written examination shall be administered by a driver examiner to each applicant for a commercial driver license to determine the applicant's ability to read and understand highway signs and the applicant's knowledge of the traffic laws of this state; provided, the written examination may be waived as provided in OAC 595:11-1-13(a). The written examination, if not waived, and the vision screening shall be successfully passed by the applicant before the skills test is administered. The written examination includes, when applicable, any separate endorsement/restriction examinations as described in this Section. An applicant determined by an examiner to be cheating on any portion of an examination shall:

- (1) immediately forfeit the examination,
- (2) be given a failing score by the examiner, and
- (3) be disqualified from retaking the examination for one week.

(b) Examination content.

(1) **Written examination.** The written examination administered for a commercial driver license shall consist of a minimum of fifty (50) multiple-choice questions. In addition, the combination vehicle test administered for a Class A commercial driver license shall consist of a minimum of twenty (20) multiple-choice questions. The minimum passing score for each written examination shall be eighty percent (80%).

(2) **Endorsement or restriction examination.** The minimum number of multiple-choice questions and the minimum passing score for each endorsement or restriction examination shall be as follows:

- (A) P passenger endorsement - 20 questions - 80% score
- (B) H hazardous material endorsement - 30 questions - 80% score
- (C) N tank vehicle endorsement - 20 questions - 80% score
- (D) M motorcycle endorsement - 20 questions - 75% score
- (E) S school bus endorsement - 20 questions - 80% score
- (F) T double or triple trailers endorsement - 20 questions - 80% score
- (G) Airbrakes - 25 questions - 80% score. Failure to pass at least 80% of the 25 questions regarding air brakes will result in a restriction code "L" (Vehicle Without Air Brakes) being placed on the applicant's license upon issuance. The applicant shall be prohibited from taking the skill examination in a vehicle with air brakes.

(c) **Alternate method of examination.** The Department may provide an alternate method for the written examination for an applicant who cannot read or has a language barrier.

(d) **Retesting.** An applicant failing the written examination may be granted the opportunity to retest on the next regular business day.

(e) **Discretionary examination.** Any examination, as deemed necessary by the Department, may be administered by the Department as required for the establishment and authorization of a special endorsement or to permit the operation of commercial motor vehicles.

(f) **Commercial learner permit.** Any person eighteen (18) years of age or older may apply for a Class A, B, or C commercial learner permit, as provided in 47 O.S. §6-101(F), solely for the purpose of behind-the-wheel training in a commercial motor vehicle while accompanied by a licensed driver who is twenty-one (21) years of age or older and who holds a valid commercial driver license, including any and all required endorsements, for the class and type of commercial motor vehicle being driven. The CLP must be valid for no more than 180 days from the date of issuance. The State may renew the CLP for an additional 180 days without requiring the CLP holder to take the general and endorsement knowledge test. However, any previously passed skills tests are only valid for the length of the permit. The issuance of a CLP is a pre-condition to the issuance of a CDL. The issuance of a CLP is also a pre-condition to the upgrade of a CDL if the upgrade requires a skills test. The CLP holder is not eligible to take the CDL skills in the first 14 days after initial issuance of the CLP.

(1) The commercial learner permit shall be issued as provided for 47 O.S.,—§6-101(F)(2). Any person may reapply for another ~~restricted commercial driver license~~ learner permit by complying with all requirements for the class of ~~restricted commercial driver license~~ learner permit desired.

(2) The Department shall not place a hazardous materials (H) endorsement on a ~~restricted commercial driver license~~ learner permit.

(3) A "No Passengers" restriction (restriction code "P") shall be placed on any commercial learner permit issued with a "P" or "S" endorsement. The permit holder shall not operate a commercial motor vehicle which carries any passengers [49 C.F.R. §383.25].

(4) An "Empty/Purge Tank" restriction (restriction code "X") shall be placed on any commercial learner permit issued with an "N" endorsement. The tank vehicle shall be empty and shall be purged if the tank vehicle contained hazardous materials, and the permit holder shall not operate a commercial motor vehicle with a tank vehicle which is not empty or which has not been purged if the tank vehicle contained hazardous materials. A current and valid purge certificate shall be carried in the vehicle at all times when operated by a driver with a permit [49 C.F.R. §383.25].

595:11-3-8. Skills examination

(a) **In general.** The skills examination shall be administered only after the applicant has successfully passed the

written examination, or had it waived if eligible under OAC 595:11-1-13(a), and the vision screening. Whenever a skills examination is required, the following general conditions shall apply:

- (1) The skills examination shall start at a designated location and shall include an actual demonstration of the applicant's ability to exercise ordinary and reasonable control in the operation of a commercial motor vehicle. You must take the skills test in the type of vehicle for which you wish to be licensed. ~~The applicant shall furnish for the skills examination the type of commercial motor vehicle required for the class of driver license requested.~~ It is the responsibility of the applicant to furnish for the skills examination a commercial motor vehicle in good working order which meets all state laws and federal requirements regarding operability and equipment. A vehicle not equipped with air brakes shall be required to have driving restriction code "L" (Vehicle Without Air Brakes) placed on the license of the applicant, upon approval of the issuance of the license.
 - (2) The skills examination shall not be administered in a commercial motor vehicle which:
 - (A) is transporting hazardous materials or which is required to be placarded for hazardous materials,
 - (B) requires an oversize permit under the laws of this state or the rules of the Department of Public Safety,
 - (C) was not designed and constructed by the manufacturer with a seating capacity for one or more persons in addition to the driver,
 - (D) is not insured as required by 47 O.S. §7-600 et seq.,
 - (E) does not have a current license plate,
 - (F) is saddle mounted,
 - (G) is a wrecker vehicle towing another vehicle, or
 - (H) is not equipped with seatbelts, if the vehicle was originally manufactured and equipped with seatbelts.
 - (I) any vehicle that has components marked or labeled cannot be used for the CDL skills test, or
 - (J) any vehicle hauling livestock.
 - (3) The applicant has been issued and held a commercial learner permit for a minimum of fourteen (14) days.
- (b) **Scoring of examination.** The scoring procedure will be on a cumulative deduction system based on poor or improper driving practices. The Commissioner or the Commissioner's representative shall determine a point value for each act of poor or improper driving. The applicant will be allowed ten (10) minutes per Basic Control Skills (BCS) maneuver to complete the maneuver. In the event the applicant is not able to complete the maneuver in the time allowed, the skills examination will be deemed an automatic failure.
- (c) **Content of examination for commercial driver license.** The skills examination shall be conducted in conformance with 49 C.F.R., Section 383.
- (d) **Retesting.**

(1) An applicant who fails the skills examination for a commercial driver license may be granted the opportunity to retest the following business day.

(2) The Department shall conduct the skills examination not more than three (3) times, each time at least one (1) business day apart or as instructed by the examiner, beginning no sooner than fourteen (14) days from the date of issuance of the commercial learner permit. Should the licensee fail the third examination, the licensee shall wait at least thirty (30) days before being given another skills examination by the Department. The fourth and subsequent examinations shall be given at the request of the ~~restricted~~ licensee but not more than one (1) examination shall be given every thirty (30) days.

(3) In computing any time period prescribed by this subsection, the day of the failed examination from which the designated period of time begins to run shall not be included. The last day of the period computed shall be included, unless it is not a working day, in which event the period runs until the end of the next working day.

(e) **Substitute for skills examination.** A skills examination may be waived by the Department for an applicant when one of the following requirements is met:

(1) The applicant is the holder of a valid commercial driver license from one of the fifty (50) states, the District of Columbia, or a Canadian province.

(2) The applicant is a fireman or an active member of any branch of the military, Military Reserves or National Guard on active duty, including personnel on full-time or part-time National Guard training, National Guard Military Technicians (civilians who are required to wear a military uniform), and active duty personnel of the U.S. Coast Guard; provided, the person for the two (2) years immediately preceding application for a commercial driver license [49 C.F.R. Parts 383 and 391];

(A) can show, with proper documentation, that he or she has operated a representative class commercial motor vehicle,

(B) certifies that he or she has not been licensed by more than one jurisdiction at the same time,

(C) certifies that he or she has not had any suspension, revocation, cancellation, denial, or disqualification of driving privileges in the two (2) years immediately preceding the application,

(D) has not been convicted of any major disqualifying offense, as defined in 47 O.S., §6-205.2,

(E) has not been convicted more than once of a serious traffic offense, as defined in 47 O.S. §6-205.2, regardless of the type or class of vehicle the offense occurred in, and

(F) certifies that he or she has not been involved in any collision in which he or she was recorded as being at fault.

595:11-3-9. Automatic failure of skills examination

An occurrence of any of the following will result in the automatic failure of the skills examination by the applicant:

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- (1) **Seat belt not in use.** Applicant failed to use the seat belt. The seat belt shall be properly adjusted and fastened before the vehicle enters a public roadway.
- (2) **Moving traffic violation.** Applicant received a traffic citation for a moving violation during the skills examination.
- (3) **Disobey sign or signal.** Applicant ignored or did not obey sign or signal.
- (4) **Speed.** Applicant sped more than five (5) miles per hour over the posted speed limit or the lawful speed limit for the vehicle being driven. Provided the speeding is not in a school zone during normal school hours or a construction zone with workers present. There will be no tolerance in a school zone during normal school hours and school is in session or in a construction zone with workers present.
- (5) **Fail to stop.** Applicant rolled through stops or failed to stop.
- (6) **Fail to yield.** Applicant did not yield to other road users (pedestrians, vehicles, etc.). Applicant did not appropriately yield the right-of-way to pedestrians or other vehicles during driving maneuvers.
- (7) **Left of center.** Applicant drove left of center (except when needed to perform a turn safely, or any other lawful reason).
- (8) **School bus endorsement.** Commit any of the following in the procedures for pickup or discharge of students established by the State Department of Education ("SDE"):
 - (A) Fail to activate amber warning lights before stop
 - (B) Fail to set park brake and/or fail to shift to neutral
 - (C) Use hand outside the bus to direct students
 - (D) Fail to make final check of crossover mirrors before the bus is set in motion
- (9) **School bus endorsement, passenger endorsement, or hazardous materials endorsement.** Commit any of the following:
 - (A) Fail to stop vehicle at most fifty (50) feet and no less than fifteen (15) feet from first rail of railroad tracks.
 - (B) Shift gears while crossing railroad track.
 - (C) Vehicle in motion with door open or unnecessarily impeding traffic.
- (10) **Avoidable crash or incident; dangerous act.** Commit any of the following:
 - (A) Applicant was involved in an avoidable crash or accident.
 - (B) Applicant's vehicle had physical contact with other vehicles, objects, pedestrians, etc.
 - (C) Applicant commits any act or omission that creates a dangerous or unsafe traffic environment (near accidents, etc.).
 - (D) Drivers of other vehicles or pedestrians were forced to take evasive actions.
 - (E) Applicant's actions force examiner to take verbal or physical control of the vehicle.

- (11) **Put vehicle over sidewalk or curb.** Driver put vehicle over curb or sidewalk unnecessarily.
- (12) **Improper backing.** Driver opens door and leans out of cab during backing maneuver.
- (13) **Weighted offenses.** Accumulation of four (4) or more of any of the following offense in any combination:
 - (A) Failure to use turn signal
 - (B) Failure to turn on headlamps (if required)
 - (C) Coasting on a downgrade (gears in neutral or clutch disengaged)
 - (D) Consistently exceed speed limit
 - (E) Proceed through intersection on yellow light when applicant could have stopped without creating a dangerous situation.
- (14) **Violation of time limit for Pre-trip.** Applicant does not complete full pre-trip within forty (40) minutes.
- (15) **Violation of time limit for Basic Control Skills ("BCS").** Applicant does not complete each BCS maneuver within ten (10) minutes.

SUBCHAPTER 5. COMMERCIAL DRIVER LICENSE THIRD-PARTY EXAMINERS

595:11-5-4. Requirements for certification as a certified school; display of certificate; certification renewal

- (a) **Requirements and application for certification.** A school district or technology center school may apply for certification as a certified school. The applying school shall meet the following requirements:
 - (1) Be actively enrolling students and teaching a formal course of instruction for school bus drivers training as approved by the State Board of Education or truck driver training as approved by the Oklahoma Board of Career and Technology Education.
 - (2) Obtain and possess written approval to make application for and be, if approved, a certified school from:
 - (A) the State Board of Education, if the school is a school district, or
 - (B) the Oklahoma Board of Career and Technology Education, if the school is a technology center.
 - (3) Submit an application to the Department on a form prescribed by the Department [see OAC 595:11-5-13].
 - (4) Have its on-site examination route or routes examined and approved by an employee of the Department. A route:
 - (A) shall start and end on the premises or property of the certified school, unless otherwise approved by the Department,
 - (B) shall meet all state and federal requirements,
 - (C) shall not be altered or changed in any manner without first being examined and approved by the Department,
 - (D) shall not be replaced by an alternate route unless the alternate route is first examined and approved by the Department. If, during the course of the examination, it is determined that any of the approved

routes could not be followed, the third-party examiner shall notify the Department in writing the same day the test is administered as to the reason for the change in route,

(E) shall not be used to conduct training or practicing for the examination, and

(F) shall be configured to be at least seventy-five percent (75%) different from any route used for training or practicing.

(5) Agree to:

(A) meet minimum examination standards required by the Department and by the Federal Motor Carrier Safety Regulations [49 C.F.R. Part 383];

(B) allow access to school facilities by the Department and by the Federal Motor Carrier Safety Administration for the purpose of monitoring examinations and examining records;

(C) comply with the Oklahoma Open Records Act [51 O.S., §24a.1 et seq.] with regard to records kept pursuant to this Subchapter;

(D) maintain security of examination documents and related material as deemed necessary by the Department;

(E) ensure all examinations are administered by a third-party examiner;

(F) ensure third-party examiners administer the examination only to driver license applicants who:

(i) have enrolled in and successfully completed a formal course of instruction, as submitted to and approved by the Department, at the institution where the third-party examiner is employed and certified, and

(ii) have commercial learner permit and driver license issued by Oklahoma. The commercial learner permit must be issued at least fourteen (14) days prior to testing;

(G) ensure no person acts as a third-party examiner without current certification from the Department;

(H) provide immediate written notification to the Department of any impropriety or misconduct of any third-party examiner employed by the school;

(I) acknowledge that the Department reserves the right to take prompt and appropriate remedial action against the certification of any school or of any third-party examiner in the event that the school or the third-party examiner fails to comply with:

(i) any state law, Department rule, or federal regulation regarding the examination of an applicant for a commercial driver license, or

(ii) any terms of the appropriate memorandum of understanding or of a subsequent contract or agreement entered into pursuant to the memorandum of understanding;

(J) maintain records of all third-party examiners employed by the school and copies of all documents relating to examinations administered for a period of not less than three (3) years; provided, if a school discontinues doing business, the school shall send

to the Department a roster of all students who were administered examinations by the school during the immediately preceding three (3) years;

(K) immediately notify the Department by telephone, followed by written notification within five (5) days, of the termination of employment of any third-party examiner. The official seal of the Department, and the certificate and identification card issued by the Department to the third-party examiner shall be returned to the Department with the written notification;

(L) immediately notify the CDL Coordinator within the Commercial Driver License Program Administration of the Department by telephone or first-class mail of every fraudulent application made to obtain a commercial driver license; and

(M) acknowledge that the Department reserves the right to randomly reexamine applicants tested by third-party examiners for purposes of quality assurance.

(N) and are required to maintain an electronic means of communication that must be checked on a weekly basis.

(b) **Certification.** Upon acceptance and approval by the Department of the application for certification from a school district or technology center school, or upon acceptance and approval by the Department of the application for renewal of certification from a certified school, and upon completion to the satisfaction of the Department by the school of all other requirements for certification, the Department shall provide the certified school with a certificate evidencing approval by the Department as a certified school. The certificate shall be posted at the examination location at the certified school and in full view of the public. The certificate shall be valid for four (4) years.

(c) **Renewal of certification.** A certified school may apply for renewal of certification as a certified school. The school shall meet the following requirements:

(1) Have evidence on file with the Department of a satisfactory on-site inspection conducted by an employee of the Department prior to renewal.

(2) Employ at least one third-party examiner.

(3) Submit an application for renewal on a form prescribed by the Department no later than December 1 of the year of expiration [See 595:11-5-13].

595:11-5-5. Requirements for certification as a third-party examiner, display of certificate, certification renewal

(a) **Requirements and application for certification.** A driver training instructor may apply for certification as a third-party examiner. The applicant shall meet the following requirements:

(1) Meet all the requirements for a Driver License Examiner of the Department [47 O.S., §2-106(c) and (d)].

(2) Complete an application provided by the Department [see 595:11-5-13] and submit a nationwide criminal

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background check certified within the immediately preceding thirty (30) days and, if the applicant has not lived in Oklahoma for the immediately preceding five (5) years, a criminal background check from the agency responsible for keeping criminal history in the state or states of previous residence.

- (3) Be employed by a certified school.
- (4) Have and maintain throughout the time period to be covered by the certification:
 - (A) a valid Oklahoma commercial driver license for the class or classes of vehicle, including any endorsement or endorsements, for which the instructor desires to administer examinations; provided, the applicant shall not be required to have a hazardous materials endorsement (endorsement H),
 - (B) in order to administer school bus examinations, a valid School Bus Workshop Instructor Certificate issued by the State Board of Education, and
 - (C) in order to administer truck examinations, a valid certificate issued by the Oklahoma Board of Career and Technology Education showing the applicant has met the current requirements.
- (5) Successfully complete a course of instruction prescribed by the Department [see 595:11-5-6].
- (6) Meet the same vision standards as for Driver License Examiners of the Department [see OAC 595:10-5-7 and 49 C.F.R., §391.41 regarding vision standards].
- (7) Have full use of both upper and lower extremities.
- (8) Agree to submit examination reports to the Department by electronic means immediately upon completion of each examination.

(b) **Ineligibility based upon driving record or criminal record.** A driver training instructor shall be deemed to be ineligible for certification as a third-party examiner upon evidence of a record of any of the following convictions:

- (1) Two (2) or more convictions for a moving traffic offense within the twelve (12) months immediately preceding the application-, or
- (2) Any alcohol- or drug-related conviction requiring the Department to revoke, suspend, or disqualify the instructor's driving privilege within the five (5) years immediately preceding the application.
- (3) Any conviction for any offense which required or will require the Department to take any type of action against the instructor within the three (3) years immediately preceding the application, including, but not limited to:
 - (A) a warning letter, or
 - (B) a revocation, suspension, cancellation, denial or disqualification of the instructor's driving privileges.
- (4) Any misdemeanor conviction, except for a misdemeanor conviction for a traffic offense, within the five (5) years immediately preceding the application.
- (5) Any felony conviction in this state or any other state or country.

(c) **Certification.** Upon acceptance and approval by the Department of the application for certification from a driver

training instructor, or upon acceptance and approval by the Department of the application for renewal of certification from a third-party examiner, and upon completion to the satisfaction of the Department by the instructor or third-party examiner of all other requirements for certification, the Department shall provide the third-party examiner with:

- (1) a certificate evidencing approval by the Department as a third-party examiner, which shall be posted at the examination location at the certified school and in full view of the public. The certification will be valid for four (4) years.
 - (2) an identification card to be carried by the third-party examiner whenever the examiner is administering an examination.
 - (3) an official seal to be used by the third-party examiner to be used as provided in 595:11-5-14.
- (d) **Renewal of certification.**
- (1) A certified third-party examiner shall be eligible for renewal of certification if the examiner:
 - (A) submits an application for certification renewal upon a form provided by the Department no later than December 1 of each year [see 595:11-5-13],
 - (B) submits a nationwide criminal background check certified within the immediately preceding thirty (30) days,
 - (C) submits a current copy of the State Department of Education instructor certificate,
 - (D) is currently employed by a certified school,
 - (E) currently meets the requirements and standards of the Department as prescribed by this Subchapter,
 - (F) administered fifteen (15) or more full examinations within the twelve (12) months immediately preceding the application for renewal of certification, and
 - (2) Any driver training instructor who was previously certified as a third-party examiner and whose previous certification has been expired for not more than one (1) year may make application for renewal of certification as provided in paragraph (1) of this section.
 - (3) Any third-party examiner who does not qualify for renewal of certification may apply, after a period of at least one (1) year from the date the examiner was notified he or she was not qualified for renewal of certification, for certification as a third-party examiner and shall meet all requirements as for an initial application for certification as a third-party examiner.

595:11-5-9. Failed examinations and reexamination

- (a) If the commercial driver license applicant fails an examination administered by a third-party examiner, the third-party examiner may administer the examination to the applicant up to two (2) additional times. The third-party examiner shall wait the required amount of time before reexamining the applicant. If the applicant fails any section of the examination three (3) times, the third-party examiner shall refer the applicant to the Department for any further examination.
- (b) The third-party examiner shall:
 - (1) record each failed examination on application form DL-18-CT [OAC 595:11-5-13(e)];

(2) within twelve (12) hours of examination, each failed exam must be reported to the Department:

- (A) during normal business hours:
 - (i) by emailing the CDL Coordinator or his or her designee, and
 - (ii) electronically through CSTIMS immediately upon completion of each exam.
- (B) after normal business hours:
 - (i) by emailing the CDL Coordinator or his or her designee, and
 - (ii) electronically through CSTIMS immediately upon completion of each exam.

(3) not administer a reexamination to the same student that has failed any part of the examination until the next business day unless the student has failed the examination three (3) times. To which the Third-party examiner will refer the student to the Department of Public Safety for the fourth examination.

595:11-5-11. Records to be maintained by certified schools and third-party examiners

(a) **Certified schools.** A certified school shall be responsible for maintaining all records pertaining to:

- (1) the certification of the school,
- (2) third-party examiners currently employed by the school,
- (3) the certification of each third-party examiner,
- (4) third-party examiners employed by the school for the immediately preceding three (3) years,
- (5) examination certificates and pre-trip forms for each examination administered,
- (6) Form DL-18-CT,
- (7) class rosters for classes conducted or certificate of completion for online training and completion letter for SDE instructor for five (5) hours behind-the-wheel training,
- (8) commercial learner permits and base license,
- (9) commercial driver license application in which an examination was administered by a third-party examiner employed by the school,
- (10) examinations and the scores of those examinations, and
- (11) records of previously certified third-party examiners.

(b) **Third-party examiner.** A third-party examiner shall be responsible for assisting the school in the maintenance of records described in (a).

(c) All records shall be kept for a period of three (3) years and shall be open for audit and inspection by the Department, the State Board of Education, the Oklahoma Board of Career and Technology Education, and the Federal Motor Carrier Safety Administration. An employee of any of the aforementioned entities shall not be required to give prior notice before appearing to examine the records of a certified school or a third-party examiner.

595:11-5-13. Prescribed forms

(a) **Certified school application.** A school district or technology center school shall request an application from the Department to apply for certification as a certified school. A certified school shall request an application form from the Department to apply for renewal of certification as a certified school. The application shall require the applying school to provide the following information:

- (1) Date of application.
- (2) Whether the application is an original or renewal application.
- (3) Name of the school.
- (4) Name and number of the school district.
- (5) Complete physical address and mailing address.
- (6) County name and number.
- (7) Name of administrator or superintendent.
- (8) Telephone number of administrator or superintendent of the school district.
- (9) Name of transportation director of the school district.
- (10) Name of each third-party examiner employed by the certified school, if the application is for renewal of certification.
- (11) Statement of agreement to comply with rules of the Department and with the provisions of the appropriate memorandum of understanding and any subsequent contracts and memorandums.
- (12) Any other information the Department deems necessary to process the application.
- (13) Signature of the administrator or superintendent.

(b) **Third-party examiner application.** A driver training instructor shall request an application form from the Department to apply for certification as a third-party examiner. A third-party examiner shall request an application form from the Department to apply for renewal of certification as a third-party examiner. The application shall require the applicant to provide the following personal information:

- (1) Date of application.
- (2) Whether the application is an original or renewal application.
- (3) Full name of the applicant.
- (4) Complete home address and mailing address of the applicant.
- (5) Telephone numbers (residence and business) of the applicant.
- (6) Name of the employing school.
- (7) Name and number of the school district in which the employing school is located.
- (8) Date of birth of the applicant.
- (9) Social security number of the applicant.
- (10) Oklahoma commercial driver license number of the applicant.
- (11) Any other information the Department deems necessary to process the application.
- (12) Signature of the applicant.

(c) **Certified school certificate.** The certificate for a certified school shall include, but not limited to, the following information:

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- (1) Official name and seal of the Department.
 - (2) Official name of the school.
 - (3) School district name and number or technology center school name.
 - (4) City (when applicable) and county where the school is located.
 - (5) Type of certification.
 - (6) Date of certification.
 - (7) Expiration date of certification.
 - (8) A unique certification number.
 - (9) Name and signature of the Commissioner of Public Safety.
- (d) **Third-party examiner certificate.** The certificate for a third-party examiner shall include, but not limited to, the following information:
- (1) Official name and seal of the Department.
 - (2) Full name of the third-party examiner.
 - (3) Name, school district name and number or technology center school name, city (when applicable), county, and certification number of the certified school employing the third-party examiner.
 - (4) Type of certification.
 - (5) Date of certification.
 - (6) Expiration date of certification.
 - (7) A unique certification number.
 - (8) Name and signature of the Commissioner of Public Safety.
- (e) **Oklahoma commercial driver license application.** ~~Oklahoma commercial driver license application forms (DPS Form DL-18-CT) shall be provided to each certified school.~~ Each portion of the application shall be completed by the appropriate person, as indicated on the application, using black ink only. The commercial driver license applicant shall complete the applicant's portion of the application form and submit the form to the third-party driver license examiner. The third-party examiner shall document on the application form the gross vehicle weight rating (GVWR), the license plate number, as well as any other specific identifier pertinent to the commercial motor vehicle used in the skills examination. The third-party examiner shall also document on the form the results of the each skills examination, whether passed or failed administered to the applicant, verifying all the information on the application, and approving the application, if the applicant successfully passes the skills examination administered for the class of commercial motor vehicle and any endorsements. Upon approval by the third-party examiner and completion of all information required of the examiner, the examiner shall return the application form to the applicant. The applicant shall surrender the approved application to a Driver License Examiner of the Department to complete any required licensing procedures, ~~including, but not limited to, the administration of written examinations.~~
- (f) **Where to obtain forms.** All necessary forms are provided by the Department and can be obtained by a certified school or a third-party examiner by written or electronic request to: Department of Public Safety, CDL Program Administration, P.O. Box 11415, Oklahoma City, Ok 73136-1415.

595:11-5-14. Official seal, Map and CDL Examiners Manual

- (a) The Department will provide its official seal to each third-party examiner. The certified school shall provide its official seal to each third-party examiner it employs. The seals shall be imprinted upon each approved Oklahoma Commercial Driver License Application (DPS Form DL-18-CT) signed by the third-party examiner as a part of the examiner's verification of each skills examination, ~~whether passed or failed,~~ administered to the applicant whose name appears on the application form.
- (b) If the third-party examiner does not renew certification as a third-party examiner, or leaves the employment of or is terminated from employment by the certified school, the official seal of the Department shall be surrendered by the examiner to the school. The school shall ensure the official seal of the Department is surrendered to it by the third-party examiner. The school shall immediately notify the Department by telephone of the status of the third-party examiner ~~and shall, within five (5) days, return the official seal of the Department~~ along with written notification of the status of the examiner.
- (c) All documentation required by the Department, including the official seal, map and examiners manual, shall be locked up in a secure area on the school premises.

595:11-5-17. Withdrawal or denial of certification

- (a) The Department may:
 - (1) cancel, suspend, revoke, or refuse to renew the certification of a certified school or third-party examiner for failure to comply with any provisions of state law, federal regulation, or Department rule.
 - (2) deny certification to a school district or technology center school applying for certification as a certified school for failure to meet the requirements prescribed by this Subchapter.
 - (3) deny certification to any driver training instructor applying for certification as a third-party examiner for failure to meet the requirements prescribed by this Subchapter.
- (b) Where it is determined that a minor disqualification exists which may readily be rectified by the school or third-party examiner, the Department may informally notify the party by mail or telephone of the minor disqualification or violation, with a request for compliance within a specified period of time. If the party fails to rectify the disqualification or violation, the Department may proceed to deny, suspend, revoke or cancel certification.
- (c) The Department may deny or cancel certification of any applicant, certified school, or third-party examiner for not more than five (5) years when it is determined and good cause appears that the applicant, school, or examiner demonstrated willful disregard of the rules established in this Subchapter or committed other negligent acts.
- (d) Should the Department be required to re-test applicants as a result of fraudulent or negligent testing practices; the contractor shall be required, if not bonded, to reimburse the Department at the base rate of pay for a current Department of

Public Safety Commercial Driver License Examiner, including any travel, and other accrued expenses.

SUBCHAPTER 7. TRUCK DRIVER TRAINING

595:11-7-2. Definitions

In addition to terms defined in 47 O.S., §1-101 et seq., the following words or terms, when used in this Subchapter, shall have the following meaning unless the context clearly indicates otherwise. Use of the singular term includes the plural, and use of the plural term includes the singular.

"**Credential**" means endorsements, major and/or minor teaching areas, licenses, as well as professional, standard, provisional, temporary, and emergency certificates.

"**Commercial motor vehicle**" means a vehicle used for training students in Class A, B, or C commercial motor vehicles as defined in 47 O.S. §1-107.1, 1-107.2 1-107.3.

"**Course of study**" means a course of study in truck driver training, including highway signs, signals, markings and design, rules of the road, state laws, local ordinances, basic driving maneuvers, and safe operation of commercial motor vehicles on streets and highways.

"**Endorsements**" means credentials placed on valid licenses or certificates, or both, to indicate that the holder is eligible to teach specific subjects. An endorsement qualifies the holder to teach a full day in the subject of the endorsement.

"**Instructor**" means a qualified commercial truck driver training instructor who ~~instructs~~ is certified by the Department to instruct students desiring to apply for a commercial license, at an approved commercial truck driver training school, students desiring to apply for a commercial truck driver license.

"**School**" means a business enterprise conducted as a commercial truck driver training school by an individual, association, partnership, or corporation for the purpose of education and training of students desiring to apply for a commercial driver license.

595:11-7-4. Qualifications for instructors

An instructor employed by a school shall submit to the Department of Public Safety, upon application, proof of the following:

- (1) current employment by a school which offers a prescribed course of study;
- (2) possessing a valid Oklahoma commercial driver license, with proper class and endorsements commensurate with type or types of vehicles and endorsements which are the subject of instruction;
- (3) being at least twenty-one (21) years of age;
- (4) having never been convicted of a felony as evidenced by a nationwide criminal background check certified within the immediately preceding thirty (30) days;
- (5) if applicable, having driving privileges reinstated for at least twelve (12) months, if driving privileges were suspended, canceled, revoked, denied, or disqualified for a driving-related conviction or for Department action

related to driving under the influence or driving while impaired. If driving privileges are suspended, canceled, revoked, denied, or disqualified only for a non-driving-related conviction or reason, the applicant shall be eligible immediately upon reinstatement of driving privileges;

- (6) having not been convicted of misdemeanor possession or use of alcohol or drugs within the past twelve (12) months;
- (7) having not more than five (5) point violations on the driving record;
- (8) having no administrative action pending at the Department pursuant to 47 O.S. §§753, 754, or 754.1;
- (9) having a high school diploma or general education diploma; and
- (10) having three (3) years verifiable driving experience in the type of vehicle or vehicles used by the school for instructional purposes. The verifiable driving experience must be within 10 years of the application date.

595:11-7-13. Requirements for schools and classrooms

(a) **Location and classroom facility of schools.** The school shall:

- (1) have at least one (1) permanent classroom. Each classroom shall be used exclusively for classroom instruction during the time of instruction. A classroom shall not be located in:
 - (A) a residence or residential facility or complex,
 - (B) a motor vehicle, or converted motor vehicle,
 - (C) a hotel or motel, or
 - (D) any other facility which has a bar, lounge, or other business which sells alcohol for public consumption on the premises;
- (2) display its current and valid school license in the licensee's principal place of business at all times when classes are in session. The license or a copy of the license shall also be made available for inspection to students or prospective students;
- (3) comply with local municipal ordinances regarding lighting, heating, ventilation, and restroom facilities; and
- (4) have adequate room for equipment such as chalkboard, projector, tables and chairs for the number of students enrolled in the class being taught ~~at the time,~~
- (5) an on location basic control skills pad.

(b) **Advertising.**

- (1) No school shall use or conduct any business under any name other than its fully licensed name.
- (2) A sign reading "This school is licensed by the Department of Public Safety, State of Oklahoma" or similar language may be displayed on the school premises.
- (3) The school may place language such as "This school is licensed by the Department of Public Safety, State of Oklahoma" in any advertisements and publications of the school. However, a school may not use advertisement or publicity that states or implies that the school is specifically or uniquely recognized, recommended, or endorsed, or directly supervised by the Department of Public Safety.

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- (4) No fraudulent or deceptive statements, promotions, or fee incentives shall be used on any sign or in advertisement, whether written or oral.
- (5) No school shall advertise, by any means, or otherwise state or imply that a commercial driver license or permit is guaranteed or assured to any student or individual who will take or complete any instruction offered by the school.
- (c) **Agreements and schedule of fees.**
- (1) A sample copy of each type of contract or agreement which the school may enter into with students shall be submitted to the Department with the application for an original or renewal license.
- (2) Prior to enrollment or payment of fees, each prospective student shall be provided the following information, in writing:
- (A) the type of instruction offered, whether classroom or behind-the-wheel, or both;
 - (B) the length of the course of study and the length of each lesson;
 - (C) the cost of the course of study, or the cost per lesson, as applicable to the fee structure of the school;
 - (D) the cost to lease a commercial motor vehicle from the school for the purpose of taking the skills examination;
 - (E) the terms of payment and disclosure of any interest charged;
 - (F) a statement indicating the specific date and time when instruction is to start.
- (3) The complete schedule of fees shall be posted in easy view of students and prospective students.
- (4) If any school fails to comply with the provisions of this Subchapter, the school shall refund, on a prorated basis, all monies collected from the student.
- (d) **Records to be maintained.**
- (1) Each school shall maintain a permanently bound book with pages consecutively numbered or a computer spreadsheet, setting forth the name of the school; the name of each student; the contract or agreement number for each student; the type and date of instruction given, whether classroom or behind-the-wheel, for each student. If written, all entries shall be made in ink. This record shall be on a daily time sheet form approved by the Department and initialed by each student for verification.
- (2) All student instruction records for classroom and behind-the-wheel instruction and a duplicate copy of each contract or agreement entered into between the school and the student (the original shall be given to the student) shall be kept on file in the office of each school for a period of three (3) years after the student has concluded instruction at or with the school. Each school shall furnish the student, if requested, an exact copy of his or her instruction record when all of the contracted courses are completed or the student otherwise ceases taking instruction at or with the school. If a school discontinues doing business, the school shall send to the Department a roster of all students who attended the school during the immediately preceding three (3) years, with each student identified as to whether

the student successfully completed or did not successfully complete the course of study.

(3) The student instruction record shall contain a copy of a receipt for any monies paid to the school by the student. The receipt shall contain:

- (A) The name of the school.
- (B) The name of the student.
- (C) The date of payment.
- (D) The amount of payment.
- (E) The signature of the person receiving the payment.

(4) The student instruction record maintained by the school shall be available at all times for inspection and/or copying by an authorized representative of the Department of Public Safety.

(5) A copy of the student's completion certificate, in a preprinted format prescribed by the Department, shall be provided and issued by the school to each student upon the successful completion of course work (both classroom and behind-the-wheel). The certificate shall contain, at a minimum, the following:

- (A) Name of the school;
- (B) Full legal name of student;
- (C) Number of total hours of instruction (optional)
- (D) Date of completion;
- (E) Signature of administrator (a stamped signature is acceptable).

(6) Medical examiner's certificate.

(7) Copy of the student's valid driver license and commercial learner permit.

(8) Copy of proof of Oklahoma residency: utility bill or Government form bearing the name and address of the student.

[OAR Docket #17-633; filed 7-12-17]

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

[OAR Docket #17-634]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 3. Wrecker License

595:25-3-1. General requirements [AMENDED]

595:25-3-2. Applications [AMENDED]

595:25-3-3. Renewal [AMENDED]

595:25-3-4. Trade name [AMENDED]

Subchapter 5. All Wrecker Operators

595:25-5-1. Physical requirements for storage facility [AMENDED]

595:25-5-2. Equipment requirements for all classes of wrecker vehicles [AMENDED]

595:25-5-3. Operation [AMENDED]

595:25-5-5. Records [AMENDED]

595:25-5-6. Schedule of rates and fees [REVOKED]

Subchapter 9. Oklahoma Highway Patrol Rotation Log - Additional Requirements

595:25-9-2. Operator requirements [AMENDED]

AUTHORITY:

Commissioner of Public Safety; 47 O.S. §6-101 et seq.

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n/a

GIST/ANALYSIS:

Section 25-3-1 updates education requirements and continuing education requirements for wrecker drivers and operators. Outdated language was deleted as it relates to size of lettering required for wrecker vehicles which has to be 3 inches in height. Updates language to include operators and drivers as persons who cannot operate a wrecker service as an operator or driver who have been convicted of certain crimes and updates language as it relates to itemized statements. Section 25-3-2, Applications, has been updated and language has been removed as it relates to temporary 30 day permits. The department no longer issues temporary permits as it conflicts with current statute. Again, in Section 25-3-3, language has been redacted that is in conflict with current statute. In section 23-3-4 small changes were made to clarify the rule. The changes in Section 25-5-1 clarify what the requirements for a storage facility are and redacts outdated language. Section 25-5-2 updates equipment requirements for wreckers. The operation section, 25-5-3, updates were made to help delineate evidence of ownership, proof of identification and proof of insurance documents that are acceptable. Outdated language was struck and language was added to again clarify what is required from an owner or authorized agent. Section 25-5-5 takes out the requirement that the Department furnish record keeping documents to wrecker services as all of the information is online. Section 25-5-6 was completely redacted; DPS is no longer in charge of the rates and fees as it has become an OCC issue. The last change comes in Section 25-9-2 and adds language that an operator will advise dispatch of their current location and time of arrival.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 3. WRECKER LICENSE

595:25-3-1. General requirements

The following are the requirements for obtaining a wrecker license:

- (1) **License required.** No operator as defined by law, regardless of storage location, shall operate a wrecker vehicle upon any public street, road or highway of this

state for the offering to tow vehicles or the actual towing of vehicles without first obtaining from the Department a license as provided in this Chapter. Any wrecker vehicle being operated on any public street, road, highway or turnpike in violation of Oklahoma law or these rules may be removed from service by Oklahoma law enforcement officers.

(2) **Display and use.** An operator's wrecker service license shall be personal to the holder thereof and a wrecker vehicle license shall be unique to the vehicle. Each license shall be issued only to a person, a corporation or some definite legal entity. The licenses are non-transferable and any change in ownership, whether of a wrecker service or wrecker vehicle, shall cancel the applicable license. The wrecker service license shall be conspicuously displayed at the primary place of business. The license shall be valid only at the place of business as shown on the license. Additional or satellite places of business shall not be permitted or approved on the same license but shall require a separate application and license.

(3) **Reason for application.** No showing of public convenience or necessity need to be made in support of an application for a wrecker or towing license.

(4) **Issuance.** No license for operation of a wrecker or towing service shall be issued until:

- (A) The wrecker operator has a minimum of one towing/wrecker vehicle,
- (B) Certificates of insurance as prescribed by the Department are on file with the Department, ~~and~~
- (C) Each wrecker vehicle has been inspected by an officer of the Department to verify that equipment requirements of this Chapter have been met, ~~and~~
- (D) Each new wrecker owner and driver of a wrecker/towing vehicle has successfully completed a minimum of 16 hours of Department approved course of training or have minimum of 2 years of experience on the following:

- (i) Traffic incident management
- (ii) Wrecker vehicle recovery controls
- (iii) Connecting or loading vehicle onto wrecker
- (iv) Tie down and secure vehicle to wrecker
- (v) Wrecker operation safety
- (vi) Annually complete 8 hours of continuing education approved by the department

(5) **Carry license.** A copy of the wrecker vehicle license issued by the Department shall be carried at all times in the wrecker vehicle for which the license was issued.

(6) **Return license to Department.** Any wrecker operator that disposes of or deletes any wrecker vehicle from operation shall return the license and window decal issued for that particular vehicle and window decal to the Department of Public Safety. When an unlicensed wrecker vehicle is observed with decals identifying it as a licensed wrecker vehicle, law enforcement personal may remove the decals and seize the cab card license and return both to the Department. Any operator that cancels its last remaining wrecker vehicle from operation will have

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thirty (30) days to have another wrecker vehicle inspected, approved, and licensed or the wrecker license issued to that operator will be cancelled.

(7) **Additional wreckers.** Any wrecker operator that adds a wrecker vehicle shall:

(A) Register the wrecker vehicle with the Oklahoma Tax Commission, in the name of the operator or the name of the wrecker service, and properly display a current license plate. A leased wrecker vehicle shall show the owner information and the name of the lessee on the vehicle registration.

(B) Notify the Department of the make, model, GVW and serial number of the vehicle.

(C) Send notification to the Department from the insurance carrier of the wrecker operator that the vehicle has been added to present insurance coverage.

(D) Have the vehicle inspected and approved by an employee of the Department.

(E) A wrecker license plate, or a proportional license plate, must be purchased and affixed to the wrecker vehicle after the vehicle has been inspected and approved and before the vehicle can be used by the operator to tow vehicles.

(8) **Sticker required on each vehicle.** Each wrecker vehicle which is used by an operator in pulling or towing a vehicle shall display in the lower right hand corner of the windshield a valid sticker furnished by the Department indicating the classification of wrecker service.

(9) **License number and business name.**

(A) The DPS number issued to the operator by the Department for the operation of a wrecker or towing service, along with the name of the wrecker service, shall be clearly visible at all times and shall be conspicuously displayed and vertically centered on each side of every tow vehicle used by the operator in the wrecker or towing service.

(B) On wrecker vehicles in use ~~on or before July 14, 2002, the wrecker license number shall be at least two inches (2") in height. On wrecker vehicles put into use on or after July 15, 2002, the~~ DPS number and business name shall be at least three inches (3") in height. The font shall not be a font which is highly decorative or difficult to read. The lettering shall be in a color that will contrast with the color of the tow vehicle in order to be readily noticed and legible.

(C) The signage required by this paragraph shall be permanent in nature and shall not contain any misleading or false information. The wrecker vehicle shall not have more than one wrecker service name on the vehicle.

(D) Magnetic signs are not approved; provided, if requested of and approved by the Commissioner's designee, a magnetic sign may be used for a period of thirty (30) days in an emergency situation.

(10) **Service of notice.** Any notice required by law or by the rules of the Department served upon any holder of a wrecker or towing license shall be served personally or

mailed to the last known address of such a person as reflected by the records on file with the Department. It is the duty of every holder of a certificate or license to notify the Department of Public Safety, Wrecker Services Division, in writing as to any change in the address of such person or of the place of business.

(11) **License prohibited.**

(A) No person under eighteen (18) years of age shall be licensed or employed as a wrecker operator.

(B) No person shall be licensed as a wrecker/towing service operator or employee who has been convicted of:

(i) a felony, larceny, theft or untruthfulness; or

(ii) any provision of Title 21 O.S. §1029 while providing wrecker services; or

(C) No person shall be licensed as a wrecker/towing service or be employed by a wrecker/towing service until five (5) years after completion of the sentence for the conviction, including probation or supervised release. In cases of deferred judgment and sentence, the prohibition shall extend to five (5) years after the end of the deferred judgment and sentence.

(D) Any person who is required to register as a sex offender, as required by 57 O.S. §583_582, shall be prohibited from owning or working for a wrecker service for the period of time the person is or is required to be registered.

~~(12) **Itemized statement.** All wrecker operators shall develop and maintain for each vehicle towed, or serviced an itemized statement [see OAC 595:25-5-5(b) regarding records] and shall furnish the owner or the agent of the owner, of each vehicle with an itemized statement, and a bill or invoice of the towing and charges incurred, which shall include, but not be limited to, the beginning and ending times of service and the beginning and ending mileage of the wrecker vehicle or vehicles used for the service. The itemized statement may be listed on the bill or invoice or may be listed separately but shall, in any case, be provided to the owner or agent, upon request or within a reasonable length of time.~~

~~(13) **One Class AA license per place of business.** Wrecker operators shall be issued no more than one Class AA wrecker license for any one place of business.~~

~~(14) **One Class AA wrecker service on Oklahoma Highway Patrol's rotation log in same rotation area.**~~

An operator shall be permitted to rotate no more than one Class AA wrecker service in the same Highway Patrol rotation area on the Highway Patrol's rotation log. For purposes of this paragraph, "Class A wrecker service" shall include those services with a Class AA-TL wrecker vehicle.

~~(15) **Business telephone number.** Each wrecker service shall have a local business telephone number published in the local telephone directory. The telephone number published shall be a number that is accessible to the public twenty-four hours a day. The operator shall~~

provide in writing to the Department notice of any permanent business telephone number change prior to the new telephone number being placed in service.

(4615) **Business sign.** Each AA Wrecker Service and each G Wrecker Service with storage shall have a business sign at the business location. The sign shall be at least 2 feet by 4 feet with letters at least 3 inches in height with contrasting background and shall display, at a minimum, the name of the wrecker service as shown on the license and a telephone number accessible to the public twenty-four (24) hours a day.

(4716) **Wrecker drivers.** Wrecker services shall notify the Wrecker Services Division within ten (10) days of hiring or termination of employment of any wrecker driver.

595:25-3-2. Applications

(a) Every applicant shall file with the Department a written application on a form prescribed by the Department and shall tender with the application a fee of One Hundred Dollars (\$100.00) by check or money order. The application shall be completed using the applicant's legal name, and also include every alias and nickname by which the applicant is or has been known. Every applicant shall submit with the application a current original Oklahoma State Bureau of Investigation (O.S.B.I.) criminal record check for each individual, partner or corporate officer as shown on the application. If any owner, partner or officer has not lived in Oklahoma for the immediately preceding five (5) years, he or she shall submit a criminal record check from the agency responsible for keeping criminal history in the state or states of residence for the immediately preceding five (5) years. Upon the return of any dishonored check the application shall be canceled.

(b) Upon receipt and approval of the application, the Department shall assign to the operator a permanent identification number for all matters relating to the approved wrecker and towing service. ~~The Department may issue a temporary 30 day permit, after inspection, which will authorize the wrecker service to operate while paperwork for the permanent license is being processed. The temporary 30 day permit Wrecker Services Inspector/Trooper will issue a contact report form may be presented by the operator to present to the Oklahoma Tax Commission or a motor license agent for the purpose of being issued a wrecker license plate pursuant to 47 O.S. §1134.3. The temporary 30 day permit shall only be valid for use if a wrecker license plate is purchased and affixed to the wrecker vehicle.~~

(c) The filing of an application for a license does not authorize wrecker or towing service operations by the applicant. Operation may commence only after all requirements have been met and proper authorization has been issued by the Department.

(d) The application shall be an affidavit containing the following information together with any additional information the Department may require.

(1) The trade name (business name) of the wrecker service. If the business name is registered with the Oklahoma Secretary of State, such registered name shall be used. A copy of the Certificate of Limited Liability Company, a

Certificate of Authority, a Certificate of Limited Partnership or a Certificate of Incorporation from the Secretary of State must be submitted with the application.

(2) The name of the individual (owner/applicant) or, in the event of a legal entity such as a corporation, limited liability company, partnership or limited partnership, the names of any two of the following:

- (A) President,
- (B) Vice-President,
- (C) Another officer, such as a Secretary or the name of the person responsible for the day to day operation of the legal entity. The legal entity shall notify DPS immediately in the event any officer or the person responsible should change.

(3) A statement substantially as follows: "Under oath, I affirm the information submitted in this application is true and I further affirm that I have read the rules of the Department of Public Safety and hereby agree in good faith to abide by the applicable laws and rules governing the wrecker and towing services for which this application is made."

(4) Date of application.

(5) ~~Notarized~~ signature Signature of the individual applicant or of each company officer, as named on the application.

(6) For each driver, the name, date of birth and driver license number.

(7) *If an officer of the Department of Public Safety or a law enforcement officer of any political subdivision may have an interest, financial or otherwise, in or may be employed by a wrecker or towing service, the wrecker service shall affirm that its sole purpose and only business is to perform repossessions of vehicles which are subject to lien and are being repossessed by the lien holder of record [47 O.S. §956(C)].* If a determination is made that the wrecker service performs services other than repossessions, it shall be grounds for revocation of the wrecker license.

(e) If, within ninety (90) days of receipt of an application, the Department is unable to verify all information as required by these rules, the application shall be denied. Such applicant may reapply ~~any time~~.

(f) It is within the Department's discretion to disallow the licensing of a wrecker operator should it appear, by a preponderance of the evidence, that the identity of the business is substantially the same as that of one that is currently under suspension by the Department.

595:25-3-3. Renewal

(a) 47 O.S. §953, provides that the wrecker license shall expire on the 31st day of December of each year. ~~The Department shall send a renewal application to each operator not later than the November 15 of each year.~~ The renewal shall be truthfully and completely filled out.

(b) The operator shall ~~return the completed~~ complete and submit a renewal application with a Fifty Dollar (\$50.00) renewal fee to the Department not later than December 31 of the same year.

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(c) Any Class AA wrecker service which fails to renew its wrecker license on or before December 31 shall be removed from the rotation log on the immediately following January 1.

(d) Any wrecker service which fails to renew its wrecker license on or before December 31 ~~shall have a grace period of 31 (thirty one) days, until the immediately following January 31, to make application for renewal. This grace period does not allow the wrecker service to tow vehicles but only to make application for renewal. Any wrecker service which fails to renew by the immediately following February 1 shall be considered cancelled, revoked, or suspended, and any an application for an original or reinstatement license may be submitted, but not be effective until on or made by the cancelled wrecker service after February 1 shall be required to be a new application with all procedures and fees to apply.~~

595:25-3-4. Trade name

(a) Each operator shall use a unique trade name, approved by the Department, which shall be printed and appear on the license and shall be clearly distinguishable from the trade name of any other operator. Provided, however, the Department shall approve any trade name which has been accepted and currently registered with Oklahoma's Secretary of State.

(b) Upon written request by the operator, the Department may change the trade name of a wrecker or towing service if there is no change in ownership. The identifying number shall be retained and no license fee shall be assessed.

(c) Any change in ownership due to sale, merger, dissolution, or any other reason, except as provided in subsection (d), shall reserve the wrecker service trade name for a period of ~~thirty (30)~~sixty (60) days, during which time the successor or owner ~~may shall~~ apply for a wrecker license using the same trade name or another trade name. However, the successor may not operate as a licensed wrecker service until the application has been accepted and approved by the Department.

(d) When the owner of a sole-proprietorship wrecker service dies, the wrecker license shall be considered cancelled by the Department effective upon the date of the death of the owner. Upon the death of the wrecker service owner, the wrecker service shall be immediately removed from Oklahoma Highway Patrol rotation. The heirs shall ~~have thirty (30) days to~~ apply for a reinstatement of the wrecker service license using the same name and the same Department-assigned number; provided, the application shall be treated by the Department as a new application, and all procedures and fees shall apply.

SUBCHAPTER 5. ALL WRECKER OPERATORS

595:25-5-1. Physical requirements for storage facility

(a) **General requirements.** All wrecker operators, who, in conjunction with or as part of a licensed wrecker operation, store, park or maintain possession of a towed vehicle, shall store such vehicle in a storage facility which shall meet the minimum physical requirements prescribed in this Section. No vehicle shall be stored in any facility or area which has not been inspected and approved by the Department except in

case of exceptional circumstances such as natural disasters or at the direction of law enforcement officers at the scene of an incident.

(1) An operator shall not store vehicles:

- (A) at their home,
- (B) in another operator's storage lot; or
- (C) any other location unknown to the Department.

(2) The entrance to the storage facility shall be separate from any other business entity.

(3) A vehicle accepted for storage may not be altered without consent of the vehicle owner or their authorized representative.

(4) No stored vehicle may be used for personal or business use without the prior written consent of the vehicle's owner.

(b) **Outdoor storage facilities.**

(1) Every outdoor storage facility:

(A) shall be designed to be adequate in size for the individual wrecker service's need for storing vehicles,

(B) shall be surrounded by a fence. Construction material for fences shall be of wood, and be at least six feet (6') in height. Outdoor storage facilities, effective July 1, 2014, shall meet new standards or if facilities previous of date, upon a failed inspection, if found the fence did not meet previous standards, new standards will be imposed.

(C) shall have at least one (1) gate of the same quality of material and height of the fence and must be locked if not attended.

(D) The storage lot area:

(i) shall be maintained, including but not limited to removal of tall weeds, overgrown vegetation and debris,

(ii) The lot surface shall be an all-weather surface such as concrete, asphalt, black-top, gravel, or any materials equivalent

(iii) and cover the complete area of the storage lot that enables the safe and effective movement of stored vehicles upon all portions of the storage lot.

(2) If the construction requirements in paragraph (1) of this subsection are in violation of municipal zoning ordinances or other laws, regulations, or ordinances, the operator may file with the Department a petition for exemption and a proposed security plan in lieu of the requirements, which the Department may approve. The operator shall attach a copy of such zoning ordinance or other laws, regulations, or ordinances with the petition.

(c) **Facility location and number.**

(1) A minimum of one (1) primary storage facility shall be located within a two (2) mile radius of the place of business address as reflected on the wrecker license and, effective January 1, 2005, shall be located within Oklahoma. Secondary storage facilities may be located outside the two (2) mile radius.

(2) Each vehicle stored must be initially stored and held at the primary storage facility. After thirty (30) days from date of initial storage, vehicles may be moved to a

secondary storage facility. The provisions of this paragraph shall not apply to junk vehicles.

(d) **Alternate primary storage facility.** In lieu of or in addition to the primary storage facility described in this Section, a wrecker operator that tows a vehicle pursuant to a contract with a municipality or county may store such vehicle in a facility meeting the requirements set forth in such contract; provided, that:

- (1) A copy of the proposed contract is furnished to the Department, along with documentation that requirements specified in this Section will be or have been met.
- (2) Only vehicles towed at the request of the municipality shall be stored in such facilities unless such facility meets all the requirements of this Section.
- (3) The wrecker operator shall have assumed reasonable responsibility with respect to the owner of such towed vehicle for any damages or loss of contents occurring during such time as the towed vehicle is stored in the facility.
- (4) If the storage facility is not owned by the operator, the owner of such storage facility shall also assume joint responsibility for damages or loss of contents to the vehicle secured during such time as the vehicle is stored at such facility.
- (5) Such storage facility must meet or exceed the requirements of this Section.
- (6) If such storage facility is not operated by the operator, the operator shall have made arrangements with the owner of such storage facility to enable the owner of the vehicle to make full payment for towing and storage costs at the storage facility location and thereby obtain full release of the vehicle.
- (7) A wrecker operator may not store any vehicle in a facility which has not been inspected and approved by the Department.

(e) **Indoor storage facility.** An operator may also provide an indoor storage facility as either a primary or secondary storage facility. An indoor storage facility shall be a permanent structure that meets the following minimum physical requirements:

- (1) A solid roof,
- (2) A solid hard-surface floor, and
- (3) Solid walls which fully enclose all sides, i.e. reach from corner to corner on each side and from the floor to the roof on all sides. The walls may be penetrated by windows and doors which must be fully operable so as to make the facility fully enclosed when the windows and doors are closed.

(f) **Each wrecker service is a separate entity.** Each wrecker service shall be licensed as a separate legal entity. Any wrecker service with storage shall maintain a primary storage facility that is physically separated from any other entity's storage facility as determined by the Department, so that the responsibility and accountability of the operator relating to compliance with these rules is maintained.

(g) **Shared storage prohibited.** Shared use of any outdoor or indoor storage facility by two (2) or more wrecker services is not permitted, except as may be determined by the Commissioner.

(h) **Leased or rented storage.** Wrecker operators intending to lease or rent any storage facilities shall file such plan of lease or rent with the Department for approval. Such plan shall be of at least one year in duration and include specific terms therein delineating the responsibility of the operator relating to compliance with the rules of this Chapter and assurance that accountability is maintained.

(i) **Accessibility.** Any primary storage facility used to store vehicles at the request of law enforcement shall be accessible to the public by way of an all-weather road. This provision shall not apply to primary storage facilities which have been approved prior to July 14, 2003.

595:25-5-2. Equipment requirements for all classes of wrecker vehicles

(a) **All wrecker vehicles.** Each wrecker which is used by an operator in the performance of a wrecker or towing service shall be equipped with the following:

- (1) **Fire extinguisher.** One (1) or more dry chemical, B.C. rating, fire extinguisher having a minimum of ten pounds (10 lbs.) total capacity, which shall be mounted and readily accessible.
- (2) **Flashing light.** At least one (1) amber rotating or flashing light, visible from 360 degrees or on a lightbar, and approved by an officer of the Department. The amber rotating light is for use only at the scene of an emergency or where a traffic hazard exists and there is the necessity to warn approaching vehicles, such as at a routine vehicle pickup [47 O.S. 12-218.1]. Wreckers presently approved will not be required to have lights of another color replaced with an amber light until such time as the present lights become defective to the point of needing replacement, at which time it shall be replaced with an amber light. Any wrecker service approved after April 27, 1990, shall be required to have the amber light. Any wrecker vehicle approved after July 15, 2004, shall be required to have the amber rotating or flashing light or light bar permanently mounted on each wrecker. In addition to the required amber rotating light, the wrecker may be equipped with a red or blue flashing light, or a combination of red and blue flashing lights, for use only at the scene of an emergency [47 O.S. 12-218.1]; provided, on any wrecker vehicle approved after July 15, 2005, the red or blue light, or the combination of red and blue flashing lights, shall be on a separate switch from the amber light. Under no circumstances are any of the rotating or flashing red or blue lights intended for use when traveling on the streets or highways [47 O.S. 12-218.1]. White rotating lights are not authorized under Oklahoma statutes.
- (3) **Chains.** Two (2) chains of sufficient grade to assist in securing the towed vehicle.
- (4) **Broom.** One (1) push-type broom, suitable for clearing debris from the road.
- (5) **Shovel.** One (1) shovel, suitable for clearing debris from the road.
- (6) **Tire chains.** One (1) set of tire chains, mud and snow tires or other device to assist wrecker to maintain traction in mud, snow or ice.

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- (7) **Warning devices.** Warning devices, applicable to trucks as required in 47 O.S. §12-407, capable of protecting the scene of a collision by day or night.
- (8) **Lighting for towed vehicle.** Wreckers must be equipped to operate a towed vehicle's stop, turn and clearance lights (if applicable), or be equipped with a light bar or other lighting equipment to provide the highway lighting requirements for vehicles. When used, the light bar or tow lights shall be affixed securely to the towed vehicle to assure a minimum of movement while traveling on the highway and to prevent any damage to the towed vehicle.
- (9) **Safety chains or straps.** Two (2) safety chains or wheel straps of sufficient capacity to keep the towed vehicle attached to the wrecker in the event of disengagement.
- (10) **Additional equipment.** Each operator of a roll back wrecker shall secure towed vehicles with four-point tie downs. Operator of other wrecker vehicle types shall secure towed vehicles in accordance with wrecker vehicle chassis recommendations.
- (11) **Approved dolly use.** When a wrecker dolly is used as the lift or towing device, both the wrecker dolly and the wrecker shall first be approved and licensed as a unit by the Department. In addition to the requirements in (a) of this Section for all wreckers, a wrecker dolly towing vehicle shall also be equipped at a minimum with the following:
- (A) A ball or pintle hook of sufficient size and capacity to safely control the wrecker dolly, securely fastened to the appropriate frame member of the wrecker.
 - (B) Two safety chains of sufficient capacity to keep the wrecker dolly attached to the wrecker in the event of hitch failure.
- (12) **Safety Apparel.** A minimum of (1) one high-visibility safety apparel (vest, jacket or shirt), per wrecker vehicle, in compliance with 23 C.F.R., section 634.
- (13) **Safety Apparel while in right-of-way.** Each wrecker operator or driver shall wear high visibility safety apparel, in compliance with 23 C.F.R., section 634, when working in any highway right-of-way.
- (b) **Class AA wrecker vehicles.** Each Class AA wrecker vehicle, in addition to the equipment required by subsection (a), shall be equipped with the following:
- (1) **Scotch blocks.** Two (2) scotch blocks, or similar devices, capable of adding stability to the wrecker during winching. Scotch blocks shall be constructed of steel plate with a chain or cable of sufficient grade and quality to attach to the frame or body of the wrecker. Hydraulic stabilizing equipment shall be approved. (NOTE: Roll-back wrecker vehicles are exempt from this requirement.)
 - (2) **Dollies.** Dollies for the purpose of providing a method of towing a disabled vehicle which is otherwise incapable of being towed safely on either axle. (NOTE: Roll-back wrecker vehicles are exempt from this requirement.)
 - (3) **Axe.** One (1) axe.
 - (4) **Pry-bar.** One (1) pry-bar or wrecking bar capable of prying open doors.
 - (5) **Sling and stay-bar.** One (1) sling and stay-bar, wheel lift device, or other type of device capable of safely loading and protecting the disabled vehicle while being towed.
 - (6) **Dual rear wheels.** At least one (1) set of dual rear wheels for stability in towing another vehicle.
 - (7) **Winch.** A winch or winches permanently mounted at the rear of the vehicle with a minimum factory rated capacity of eight thousand pounds (8,000 lbs.) and equipped with a cable to be compatible with manufacturer's specifications and be of sufficient length based on the design of the wrecker vehicle.
 - (8) **Absorbent.** An adequate supply of an absorbent capable of absorbing liquid spills from vehicles (not including cargo spills); provided, the wrecker service or wrecker operator shall not be required to pick up or dispose of the used absorbent. The Department recommends keeping at least four (4) gallons of absorbent on each wrecker vehicle.
 - (9) **Hydraulic jack.** One (1) hydraulic bottleneck jack or floor jack with a minimum two and a half ton rating
- (c) **Class AA-TM wrecker vehicles.** Each Class AA-TM wrecker (medium truck wrecker), in addition to the equipment required by subsection (a), shall be equipped with the following:
- (1) **Minimum vehicle requirements.**
 - (A) **Air brakes.** Factory or certified installed full air brakes with a full tractor package (hand control, in line foot valve, air hoses and trailer emergency valve) capable of releasing the air brakes on a tractor-trailer and capable of operating the brakes of the towed vehicle with the same application as the towing vehicle.
 - (B) **Parking brake.** Air-activated spring parking brake.
 - (C) **GVWR compatibility.** Wrecker body and equipment shall be compatible with the chassis GVWR in size and shall be suitable by design to operate under emergency conditions.
 - (i) Vehicle body must be capable of safely anchoring scotch blocks.
 - (ii) Vehicle must be designed to adequately anchor snatch blocks.
 - (2) **Equipment requirements.**
 - (A) **Winch.** A winch or winches permanently mounted at the rear of the vehicle with a minimum factory rated capacity of thirty thousand pounds (30,000 lbs.) and be equipped with a cable to be compatible with manufacturer's specifications and be of sufficient length based on the design of the wrecker vehicle.
 - (B) **Boom.** A boom or booms constructed so as to be compatible with winch rating.
 - (C) **Snatch blocks.** A minimum of two (2) snatch blocks compatible with winch cable size and cable rating.
 - (D) **Axe.** One (1) axe.
 - (E) **Pry-bar.** One (1) pry-bar or wrecking bar capable of prying open doors.

(F) **Sling and stay-bar.** One (1) sling and stay-bar, wheel lift device, or other type of device capable of safely loading and protecting the disabled vehicle while being towed.

(d) **Class AA-TL wrecker vehicles.** Each Class AA-TL wrecker (large truck wrecker), in addition to the equipment required by subsection (a), shall be equipped with the following:

(1) **Minimum vehicle requirements.**

(A) **Air brakes.** Factory-installed or certified installed full air brakes with a full tractor package (hand control, in-line foot valve, air hoses, and trailer emergency valve) capable of releasing the air brakes on a tractor-trailer and capable of operating the brakes of the towed vehicle with the same application as the wrecker.

(B) **Parking brake.** Air-activated spring parking brake.

(C) **Axle and suspension.**

(i) Minimum front axle and suspension of twelve thousand pounds (12,000 lbs.). (Note: GVWR ratings are altered or affected by tires, springs and axles.)

(ii) Minimum rear axle and suspension combination of thirty-two thousand pounds (32,000 lbs.).

(iii) Be equipped with full-driven tandem axle (NOTE: A drag axle or pusher axle is not acceptable).

(D) **Wheel base.** Minimum wheel base of two hundred inches (200").

(E) **GVWR compatibility.** Wrecker body and equipment shall be compatible with chassis GVWR and size and shall be suitable by design to operate under emergency conditions.

(i) Body must be capable of safely anchoring scotch blocks.

(ii) Must be designed to adequately anchor snatch blocks.

(2) **Equipment requirements.**

(A) Winch(s) permanently mounted at the rear of the vehicle and must have a factory rated capacity of at least forty thousand pounds (40,000 lbs.) and must be equipped with a cable to be compatible with manufacturer's specifications and be of sufficient length based on the design of the wrecker vehicle.

(B) Boom(s) must be constructed as to be compatible with winch rating and must be capable of being adjusted to accomplish proper weight distribution.

(C) **Pry-bar.** One (1) pry-bar or wrecking bar capable of prying open doors.

595:25-5-3. Operation

All operators using the public roads and highways within the State of Oklahoma shall comply with the following:

(1) All operators shall require each driver of a wrecker vehicle be proficient in the operation thereof, and be properly licensed for the type vehicle operated.

(2) No operator shall knowingly permit any operator of a wrecker vehicle to consume beer, wine, intoxicating

beverages, drugs or other stimulants or depressants while subject to call nor knowingly permit any operator to come on duty after having inhaled or consumed any such beverage, drug or other stimulants or depressants.

(3) No operator shall proceed to the scene of a collision or traffic tie-up without being requested to do so by a law enforcement agency or the owner or driver of a vehicle involved.

(4) Any operator traveling on the roads and highways of the State of Oklahoma during the normal course of his business may, upon arriving at the scene of a collision or traffic tie-up, stop and assist in rendering emergency aid. However, the operator shall not solicit business directly or indirectly from the owner or drivers at the scene.

(5) An operator at the scene of a collision or traffic tie-up is subject to the same traffic-control directions issued by an officer to the motoring public.

(6) An operator shall not use the rotating or flashing light while traveling on the roadway en route to any location. The use of the flashing or rotating light is authorized only in the vicinity of hook-up or at the scene of an incident to protect the scene and the vehicle involved. Only amber flashing lights may be used when leaving the scene of a wrecker service call for the purpose of warning the operators of other vehicles to exercise care in approaching, overtaking or passing. [47 O.S. §12-218.1]

(7) Each operator must be a person of good moral character and reputation in his community, as determined by the Commissioner of Public Safety, and conduct the operation of the storage facilities and towing service in a responsible manner so as not to endanger the public safety of persons or property of others in the custody of the operator.

(8) No operator shall tow a vehicle when the combined weight of the wrecker vehicle and the wrecker supported weight of the towed vehicle exceeds the factory gross vehicle weight rating of the wrecker vehicle, regardless of the weight for which the wrecker vehicle is licensed.

(9) No wrecker service shall suspend or abandon said service without prior written notice to this Department of such intent and returning of all wrecker licenses issued.

(10) Wrecker services and operators shall be responsible for the removal of any glass or other injurious substances dropped upon the highway or highway right-of-way at the location of an accident as required by ~~comply with~~ comply with title 47 O.S. § 11-1110(C).

(11) Upon payment of the reasonable cost of removal, and storage of a stored vehicle, whether stored at the request of law enforcement or a private property owner and recorded by the wrecker service as provided in OAC 595:25-5-5(b), the vehicle shall be released to:

(A) ~~the owner, upon presentation of an Oklahoma driver license, Oklahoma identification card, other state driver license, other state identification card, or any federally issued identification, proof of valid insurance or affidavit of nonuse, and evidence of ownership which is satisfactory to the wrecker operator and required by 47 O.S. §904 & §955, such~~

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~~as a certificate of title, to show proof of purchase and ownership, or recent registration, or written verification from a local law enforcement agency as to the identity of the owner, or other documentation acceptable to the wrecker owner/operator. If unacceptable, the wrecker service shall explain why an ownership document is not acceptable;~~ of one (1) of each of the following: proof of ownership, identification and insurance (if required by law); Evidence of ownership may be:

- (i) A valid certificate of title, to show proof of purchase and ownership to include tribal and other state titles;
- (ii) Registration Receipt (Digital or Electronic verification shall be accepted) or;
- (iii) Title properly assigned by the seller, dated, notarized (if required on title) and the owner 's name filled out on the title or;
- (iv) Written verification from a local law enforcement agency as to the identity of the owner or;
- (v) Other appropriate documentation sufficient to establish ownership. Proof of identification may be :
- (vi) Oklahoma driver license or;
- (vi) Oklahoma identification card or;
- (vii) Other state driver license or;
- (viii) Other state or federally issued photo identification or;
- (ix) Other documentation sufficient to establish identity. Proof of Insurance may be: (Insurance may not be in owner's name, as required in Title 47 955A.)
- (x) Valid insurance verification form, not expired with VIN of vehicle listed or
- (xi) Valid insurance policy not expired with VIN of vehicle listed or
- (xii) Valid affidavit of non-use and vehicle cannot be driven from facility (Digital or Electronic verification shall be accepted).

(B) a person representing the owner, upon presentation of ~~the certificate of title,~~ a notarized letter from the owner permitting said person to act in behalf of the owner, with year, make, model and vehicle identification number of the vehicle and proof as listed in paragraph A. proper personal identification, such as a driver license, of the representative, or written verification from a local law enforcement agency as to the identity of the person representing the owner;

~~(C) an individual with possessory interest in the vehicle, upon presentation of an agreement with the owner of the vehicle giving that individual a present possessory interest in the vehicle;~~

~~(D) a lien holder or a duly authorized agent of a lien holder, upon presentation to the wrecker operator proof of being a lien holder [47-904.1], hold harmless letter and a notarized letter from the lien holder permitting said person to act on behalf of the lien holder~~

that includes year, make, model and vehicle identification number; or

~~(E) the insurer of or the representative of the insurer accepting liability for or purchasing a motor vehicle as provided in 47 O.S., Section 904, 953.1, or 953.2, must provide a hold harmless letter and a letter from the insurer permitting said person to act on behalf of the insurer that includes year, make, model and vehicle identification number.~~

(12) Personal property, which shall include everything in a stored vehicle except the vehicle and its attached or installed equipment, vehicle keys, or devices to start and unlock the vehicle, and the spare tire and tools to change the tire, shall be released, upon request, to the owner or owner 's representative, upon showing of proof as described in (11) of this section. Wrecker operators shall allow the vehicle owner or owner 's representative to have access to the vehicle for the sole purpose of retrieving ownership documentation, such as title or registration. [47 O.S. §955 E]

(13) Wrecker operators shall not call hazardous materials remediation companies unless at the direction of the vehicle owner or a governmental agency.

(14) Each operator shall require each wrecker driver to maintain the appropriate driver license for the type vehicle being operated.

(15) Each operator shall prohibit any known thief or felon from loitering, visiting, or otherwise being on the premises of the place of business or any storage facility of the wrecker service.

(16) Each operator shall secure vehicles on roll back wreckers with four (4) point tie down. Other wrecker vehicles shall secure vehicles in accordance with wrecker vehicle chassis recommendations.

(17) A wrecker operator or driver responding to the scene of a motor vehicle collision in the capacity of a first responder, fireman, or volunteer fireman shall not respond to the scene in a wrecker vehicle.

~~(18) Each wrecker operator or driver shall wear high-visibility safety apparel, in compliance with 23 C.F.R., Section 634, when working in any highway right-of-way.~~

595:25-5-5. Records

(a) Each operator shall comply with the provisions of 47 O.S. §4-105(c), and provide a thirty (30) day vehicle report to the Department. A junk vehicle may be reported beginning on the fifth day of storage of the junk vehicle, and the vehicle report shall be notated with the word "JUNK".

(b) Each operator shall maintain, on a form prescribed ~~and furnished or approved~~ by the Department, a record system covering all services performed in pulling or towing all vehicles impounded for law enforcement or at the request of private property owners, and such records shall include the following:

- (1) The day and time the operator was contacted and requested to perform the service.
- (2) The name of the person requesting this service.
- (3) The location of the vehicle.

- (4) A description of the towed vehicle, including license tag and vehicle identification number.
- (5) The owner or driver of the vehicle when known.
- (6) The service charge and fees.
- (c) The operator shall maintain said records for at least three (3) calendar years from the date the records are created.
- (d) All records herein shall be stored in a manner which makes such records readily retrievable for inspection or examination of an individual record by the Department.
- (e) Every operator shall cooperate with the Department whenever the Department requests copies of or finds it necessary to review, audit, examine, or investigate any records relating to the operation of the wrecker service.

595:25-5-6. Schedule of rates and fees [REVOKED]
~~Posting of schedule of rates and fees. The operator shall at all times keep a copy of the current schedule of rates and fees posted in a conspicuous place, readily accessible to the public.~~

SUBCHAPTER 9. OKLAHOMA HIGHWAY PATROL ROTATION LOG - ADDITIONAL REQUIREMENTS

595:25-9-2. Operator requirements

Operators on the Rotation Log shall comply with the following:

- (1) When more than one (1) vehicle is towed on one (1) call, each tow shall be counted as another call to that operator.
- (2) When an operator receives a request for services from the Oklahoma Highway Patrol and no services are rendered for which the operator is able to receive compensation, the operator shall not lose position on the Rotation Log.
- (3) If an operator has received a request for services, but does not respond to the scene within a reasonable length of time, including but not limited to such factors as distance from the scene, weather, and nature of the collision or traffic tie-up, the Oklahoma Highway Patrol may request the services of the next operator on the Rotation Log. Under these circumstances, the operator who receives the first request shall lose position on the Rotation Log.
- (4) When an emergency condition exists, the Oklahoma Highway Patrol reserves the right to request the services of any appropriately equipped and licensed wrecker service best able to handle the emergency and can reach the scene in the shortest time, regardless of the operator 's position on the Rotation Log. Said call shall count as a call on the Rotation Log.
- (5) Only one (1) wrecker service shall be approved for Highway Patrol rotation at any one place of business and/or storage facility, unless otherwise approved by the Commissioner.
- (6) Wrecker services shall respond to Highway Patrol requests only in a wrecker vehicle licensed to the

- requested wrecker service, unless otherwise approved by the Commissioner.
- (7) Every wrecker service on the Highway Patrol Rotation Log shall maintain twenty-four (24) hour service.
- (8) A wrecker service called from the Highway Patrol Rotation Log shall not accept a request for services unless the operator has a vehicle immediately available to perform the requested service.
- (9) Each operator shall require each driver responding to a request to maintain the appropriate driver license for the type vehicle being operated.
- (10) Each operator shall require each driver to obey in good faith the rules of the road.
- (11) Each operator shall prohibit any known thief or felon from loitering, visiting, or otherwise being on the premises of the place of business or any storage facility of the wrecker service.
- (12) Every operator shall accept each Oklahoma Highway Patrol call unless there exists a valid reason for refusal. Upon acceptance of a call an operator shall advise dispatch of their current location and estimated time of arrival.
- (13) Each operator shall provide service for a minimum of seventy-five (75%) percent of the requests made by the Highway Patrol to be computed on a quarterly basis. Failure to meet this standard for any reason shall be grounds for removal from the Oklahoma Highway Patrol Rotation Log.
- (14) Any Class AA wrecker operator who uses an answering service as a means of dispatch and who fails to properly respond in a timely manner, as determined by the Commissioner 's designee of the Wrecker Services Division, to a rotation call request may have the Class AA license revoked for failure to properly respond to rotation call requests. The operator shall not be licensed as a Class AA wrecker service while utilizing the same answering service as a means of dispatch.
- (15) Persons responding to calls must be able to speak and understand the English language.
- (16) A wrecker operator shall respond to law enforcement agencies ' wrecker service requests with a wrecker vehicle and operator capable of efficiently uprighting an overturned vehicle, pulling or winching a vehicle back onto the roadway, lifting a vehicle off a victim, or assisting with opening a vehicle to extricate a victim. In addition, the wrecker vehicle shall be equipped to remove a disabled vehicle without inflicting further damage to the disabled vehicle.
- (17) If two or more vehicles are involved in a collision and two or more wrecker services are called the following shall apply:
 - (A) The first wrecker service arriving at the scene will tow the vehicle causing the greatest traffic hazard, which shall be determined by the investigating officer.
 - (B) If a requested wrecker service is first on scene, said wrecker service will assist in removing the vehicle causing the traffic hazard from roadway, then will

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proceed to pick up the vehicle it has been requested to tow.

(18) Any wrecker service having a wrecker vehicle with major or critical mechanical failure or failing to meet equipment requirements, which does not have another wrecker vehicle of the same classification approved for rotation, shall become temporarily unavailable for rotation until the wrecker vehicle has been approved to return to service or a new wrecker vehicle of the same classification has been inspected, if necessary, and approved by the Department.

(19) A wrecker service shall become temporarily unavailable for rotation if there is no approved Certificate of Insurance (WA) filing on file with the Department for the wrecker service or wrecker vehicles approved for rotation.

(20) Any wrecker service with a wrecker vehicle displaying an expired tag, which does not have another wrecker vehicle of the same classification approved for rotation, shall become temporarily unavailable for rotation until the wrecker license plate has been renewed and is properly displayed on the wrecker vehicle.

[OAR Docket #17-634; filed 7-12-17]

TITLE 595. DEPARTMENT OF PUBLIC SAFETY CHAPTER 30. SIZE AND WEIGHTS PERMITS

[OAR Docket #17-635]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 3. Size and Weight Permit Load
595:30-3-17. Requirements for escort vehicles and escort vehicle operators [AMENDED]

AUTHORITY:

Commissioner of Public Safety; 47 O.S. §6-101 et seq.

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n/a

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Update definition to eliminate confusion. Add steerman and the definition of steerman to 595:30-3-17(d)(3) to read: "The operator of the escort

vehicle shall not perform as a tillerman or steerman while performing escort operations. A passenger in the escort vehicle may act as a steerman. For purposes of this paragraph, "tillerman" means a person who is physically located on the CMV, has a valid commercial driver license and who operates by remote control or other means any axle of the CMV; "steerman" means a person who is not physically located on the CMV, not required to have a valid commercial driver license, and who operates by remote control or other means any axle of the CMV." Applicable federal regulation guidance found at FMCSR §383.3 Question 34 and §390.5 Question 14. Within the last year there has been multiple questions and confusion from carriers regarding the differences and requirements.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 3. SIZE AND WEIGHT PERMIT LOAD

595:30-3-17. Requirements for escort vehicles and escort vehicle operators

(a) **General requirements for escort vehicles.** Any vehicle to be used as an escort vehicle must be either a pickup truck of not less than one-quarter (1/4) ton rated load capacity or an automobile of not less than 2,000 pounds. The escort vehicle must be properly licensed under the statutes of the State of Oklahoma [47 O.S. §1101 et seq.] or properly licensed in another state. If commercially licensed, an escort for an intrastate move must obtain a temporary registration from the Oklahoma Tax Commission Motor Vehicle Registration Division.

(b) **Identification of escort vehicles.** The owner of an escort vehicle must have displayed on each side of the escort vehicle the name, city and state of the escort vehicle company or operator, or the owner of the escort vehicle, or both. Such identifying markings must be:

- (1) Plainly legible and visible to the motoring public.
- (2) Readily legible during daylight hours from a distance of fifty (50) feet while the vehicle is stationary.
- (3) Kept and maintained in a manner to preserve legibility.
- (4) In a color or colors which sharply contrast with the background on which they are placed.

(c) **Equipment of escort vehicles.** An escort vehicle must carry the following items of equipment at all times when escorting an oversize/overweight vehicle or load:

- (1) **Flags.** Red flags shall be at least twelve (12) inches square and shall be attached to standards angled upward to the left and right at forty-five (45) degrees and mounted on the top of the cab. No flags shall be displayed unless the escort vehicle is actually engaged in escorting.
- (2) **Mirrors.** The vehicle shall be equipped with an outside rear-view mirror on each side of the vehicle.

(3) **Radio.** Escort and towing vehicles shall be equipped with a two-way radio which is capable of transmitting and receiving voice messages over a minimum distance of one-half (1/2) mile and which is compatible with radios in the escorted vehicle and any other escort vehicle(s).

(4) **Fire extinguisher.** One (1) ten-pound or two (2) five-pound ABC fire extinguishers. Extinguishers shall be checked annually to ensure they are operational.

(5) **Flares or reflectors.** Four (4) fifteen minute flares or three (3) portable triangle reflector units.

(6) **Sign.** The regulation "Oversize Load" sign, as provided in 595:30-3-16(a), except that sign shall be at least ten (10) inches high, shall be mounted either on the front or the roof of front escort vehicles and on the rear or on the roof of the rear escort vehicle while escorting an oversize vehicle or load. The sign shall be clearly visible without an obstruction. No signs shall be displayed unless the escort vehicle is actually engaged in escorting.

(7) **Warning lights.** One AAMVA-approved rotating or flashing amber beacon or a flashing amber light bar system shall be mounted on top of the escort vehicle and shall be of sufficient intensity when illuminated to be visible from five hundred (500) feet in normal sunlight, and shall rotate, oscillate or flash through 360 degrees. Blue, red, or white rotating lights are not authorized under Oklahoma statutes. In addition:

(A) Headlights of escort vehicles shall be lighted at all times during movement.

(B) Warning lights in conformance with 47 O.S. §12-220(D) and §12-227(C) may be used in conjunction with the headlights.

(C) No warning lights shall be displayed unless the escort vehicle is actually engaged in escorting.

(8) **Measuring pole.** A current height measuring pole made of non-conductive, flexible, non-fragile material when escorting a load or vehicle which is fifteen (15) feet and nine (9) inches or more in height.

(9) **Traffic control sign.** Two (2) "STOP" and "SLOW" paddle signs at least 18" inches in diameter with letters at least 6" high with a reflective surface which meets standards set by the Manual on Uniform Traffic Control Devices.

(10) **Safety clothing.** A hard hat and a jacket or vest, both of which meet standards set by the Manual on Uniform Traffic Control Devices, for each person who may be assigned to traffic control, setting reflectors or any other duties conducted on or near a roadway.

(11) **Flashlight.** A flashlight equipped with and powered by at least two (2) D cell batteries.

(12) **Spare tire.** A full-size spare tire for the escort vehicle, tire jack and lug wrench.

(d) **Prohibitions when operating escort vehicles.** The escort vehicle shall not:

(1) Carry any item, equipment or load in or upon the vehicle which:

(A) Exceeds the height, length or width of the vehicle, overhangs the escort vehicle; or otherwise

impairs its immediate recognition as an escort vehicle by the motoring public.

(B) Impairs the view of the operator of the escort vehicle or the escorted vehicle.

(C) Obstructs the view of signs or flags used by the escort vehicle or causes safety risks to the motoring public.

(D) Impairs the performance of the escort vehicle.

(2) Tow any trailer or other vehicle, except that an escort vehicle operator not required to be certified by the Department may tow a trailer when escorting a manufactured home. Such trailer shall not exceed eight and one-half (8 1/2) feet in width and twenty (20) feet in length with siding not to exceed four (4) feet in height measured from the bed of the trailer. The trailer may only be used to transport supplies and equipment necessary to carry out the mission of escort vehicle operators [47 O.S. §14-120.1(C)] and shall not be used to carry other supplies, equipment, or cargo.

(3) The operator of the escort vehicle shall not perform as a tillerman or steerman while performing escort operations. A passenger in the escort vehicle may act as a ~~tillerman~~ steerman. For purposes of this paragraph, "tillerman" means a person who is physically located on the CMV, has a valid commercial driver license and who operates by remote control or other means any axle of the ~~CMV, escorted vehicle.~~ "steerman" means a person who is not physically located on the CMV, not required to have a valid commercial driver license, and who operates by remote control or other means any axle of the CMV.

(e) **Duties of escort vehicle operators.**

(1) **Traffic control.** In the performance of duties as the operator of an escort vehicle, the operator is authorized to direct traffic to stop, slow down or proceed in situations where such direction is necessary to allow traffic or the escorted vehicle or load to continue moving safely.

(A) The operator of the escort vehicle shall require the escorted vehicle or load to stop, and the escorted vehicle shall move as far off of the roadway as practicable

(i) When the escorted vehicle or load becomes disabled.

(ii) When the movement of the escorted vehicle or load on a particular section of roadway presents a safety risk or unreasonable risk to or unreasonably interferes with the efficient movement of other traffic, based upon such factors as the widths of the escorted vehicle or load, roadway, volume of traffic, limited visibility or mountainous terrain.

(iii) When driving conditions for the escorted vehicle or load are hazardous for any reason including weather.

(B) When the escorted vehicle or load stops, the escort vehicle operator shall direct other traffic past the escorted vehicle or load as necessary until such time as the escorted vehicle or load can reenter the roadway and continue moving without presenting a

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safety risk or unreasonably interfering with efficient movement of other traffic.

(2) **Escort vehicle operation.**

(A) The operator of an escort vehicle must comply with all applicable traffic laws of this state and with the requirements of this Chapter when escorting a vehicle on all routes of the state highway system, including but not limited to the Dwight D. Eisenhower National system for Interstate and Defense Highways, all turnpikes, and such other roads, streets, or public ways that the Commissioner of Public Safety and the Oklahoma Department of Transportation shall deem appropriate.

(B) On two-lane highways, the first escort vehicle will travel far enough to the front and the second escort vehicle, if required, will travel far enough to the rear of the escorted vehicle or load to timely warn approaching motorists. On multi-lane highways, the first escort vehicle will travel far enough to the rear of the escorted vehicle or load to timely warn motorists approaching from the rear.

(C) The operator of an escort shall not:

(i) possess, use, or be under the influence of alcohol, or have any measureable alcohol concentration within four (4) hours before or at any time while operating or in actual physical control of any escort vehicle.

(i) use alcohol or be under the influence of alcohol within 4 hours before going on duty or while operating or having actual physical control of an escort vehicle; or

(ii) use alcohol, be under the influence of alcohol, or have any measured alcohol concentration or detected presence of alcohol, while on duty, or operating, or in physical control of an escort vehicle.

(iii) Operate an escort vehicle and be in possession of wine, beer, or distilled spirits.

(iv) be on duty and possess, be under the influence of, or use, any of the following drugs or other substances:

(I) Any Title 63 O.S. §2-204 Schedule I substance;

(II) An amphetamine or any formulation thereof;

(III) A narcotic drug or any derivative thereof; or

(IV) Any other substance, to a degree which renders the driver incapable of safely operating a motor vehicle.

(f) **Insurance.**

(1) Each certified escort vehicle operator who operates in interstate commerce, and on and after August 1, 2012, each certified escort vehicle operator, shall maintain a valid insurance policy issued by an insurance company currently authorized to issue policies of insurance covering risks in the State of Oklahoma, and proof of insurance shall be carried in the escort vehicle at all times. The insurance policy shall protect the public against loss of life,

bodily injury to persons, and damage to property, as evidenced by a current certificate of insurance, including any applicable endorsement, which indicates that the operator, or the operator's employer, has in full force and effect insurance coverage for bodily injury or property damage, or both, as a result of the operation of the escort vehicle or of the actions of escort vehicle operator, or of both, causing the bodily injury or property damage, or both, arising out of an act or omission by the escort vehicle operator relating to the escort duties required by this chapter. The insurance shall be no less than \$1,000,000 combined single limit or \$1,000,000 per occurrence, or both, of commercial liability coverage, as applicable, and must be maintained at all times during the term of the certification.

(2) Until July 31, 2012, paragraph (1) of this subsection shall not apply to any operator who operates only in intrastate commerce or in interstate commerce into or through states which do not have escort vehicle certification requirements for the type of vehicle and/or load being escorted and who applies for and is granted restricted certification as provided for in OAC 595:30-3-17.1(c)(3); provided, the operator shall meet all minimum requirements for compulsory liability insurance in this state, and proof of insurance shall be carried in the escort vehicle at all times.

(3) On and after August 1, 2012, paragraph (1) of this subsection shall apply to all certified escort vehicles. operators.

[OAR Docket #17-635; filed 7-12-17]

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

[OAR Docket #17-636]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

595:35-1-6. Deletions, substitutions, and additions to federal rules adopted by reference [AMENDED]

595:35-1-9. Hearings [AMENDED]

595:35-1-12. Department of Public Safety port of entry officers [NEW]

AUTHORITY:

Commissioner of Public Safety; 47 O.S. §6-101 et seq.

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GIST/ANALYSIS:

The rule conflicts with federal regulations. This rule is intended to only contain deletions, substitutions, and additions to federal rules adopted by reference in 595:35-1-4. The rule as it reads currently contains exceptions that need to be adjusted to comply with federal regulations. The thought it to remove any exceptions that need to be changed to match the federal exceptions, why have the exemption in both places when it has already been adopted by reference. In 2008 the FMCSA ran a compliance audit on our state laws and admin rules and within that audit they found that 595:35-1-6 was out of compliance with at least 5 federal regulations. Some of the required changes were made to 595:35-1-6o2 but need to be added to 595:35-1-6 with some additional changes. It is indicated in our FY2017 CVSP for the MCSAP grant that we are aware that 595:35-1-6 is not compatible with the federal regulations and that a rule change would be requested for FY2017.

Additionally, states no longer have the ability to issue USDOT numbers, the current rule still allows for this. We are required for federal compliance to adopt the registration through the Uniform Registration System and the change of markings no later than October 23, 2018. Also, the rule allows for a cargo tank exemption in (d)(1) that expired in 1/1/99; we would like to remove it from the rule; federal regulation 173.315(k) contains this exception. Lastly, the substitute terminologies for Troop S in (b)(3) are not used anywhere else within 595:35-1 and are not necessary. The hearings under 595:35-1-9 for civil penalties on motor carrier safety and hazardous material violations fall within Article II of the APA (Administrative Procedures Act). The current rule does not align with the requirements under the APA. Rule 595:35-1-9 currently allows for a rehearing, reopening, or reconsideration request under 75 O.S. §317 both before and after a final order is issued. Statute 75 O.S. §317 only allows for a rehearing, reopening, or reconsideration request after a final order is issued. The APA separately allows for oral arguments and briefing before the administrative head prior to the final order being issued under 75 O.S. §311. DPS has been directed to promulgate rules. Statute 47 O.S. §14-116 was amended during the 2016 legislative session. The amending language created DPS port of entry officers (hereafter "DPS POE officers") and provided funding. The amended statute enables and directs DPS to promulgate rules specifying the powers and duties of the DPS POE officers. Troop S would like the possibility for DPS POE officers to be CLEET certified peace officers. The benefit of having CLEET certified peace officers is a safety concern for the officer and for the motoring public. The officer will potentially be alone day/night many miles away from a town needing to protect themselves and others. The officer may also run into a driver that needs to be detained. We have been granted this opportunity by the legislature to fill the port of entries; if we do not jump on this opportunity as soon as possible we run the risk of losing it. The hiring of DPS POE officers, from the additional funds specifically appropriated to DPS from permit fees, will allow Troop S to drastically increase the number of inspections conducted every day which will in turn drastically increase the number of Out-of-Service violations discovered. There has been a new section added to this chapter for DPS Port of Entry officers. The legislature amended 47 O.S. §14-116 in 2016 to provide funding for Department of Public Safety port of entry officers (DPS POE officers) and directing the Department to promulgate rules specifying the powers and duties of DPS POE officers.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

595:35-1-6. Deletions, substitutions, and additions to federal rules adopted by reference

(a) **Changes.** The changes in this Section to the federal rules adopted by reference in 595:35-1-4 apply only to intrastate commerce.

(b) **Terminology.** Unless otherwise specified, the following terminology shall apply:

(1) "Department," as defined in 595:35-1-2, shall be substituted wherever the term "Department of Transportation" or "Federal Motor Carrier Safety Administration" is used.

(2) "Commissioner," as defined in 595:35-1-2, shall be substituted wherever the term "Federal Motor Carrier Safety Administrator" or "Regional Director" is used.

~~(3) "Troop S," as defined in 595:35-1-2, shall be substituted wherever the term "Office of Motor Carriers" or "Motor Carrier Division" is used.~~

(c) **Scope of Definitions.** The definitions provided in (b) of this Section are limited in application to the Act and the rules adopted to carry out the Act. These definitions do not alter, replace or change any other definitions contained in Title 47 of the Oklahoma Statutes.

~~(d) **Exceptions in the transportation of hazardous materials.**~~

~~(1) Cargo Tank Specifications [49 CFR §173.33(a)], concerning the qualifications and maintenance of cargo tanks used to transport hazardous materials, shall include the following exemption: Intrastate movements of petroleum products in on specification cargo tanks of 3,500 gallons and less by motor carriers transporting petroleum products solely in intrastate commerce may continue, provided the cargo tanks meet the general packaging requirements of 49 CFR §173.24, except specification packages as stated in paragraph (c), and have been in actual operation transporting similar materials prior to October 1, 1987. This provision will expire on January 1, 1999. Any retrofitting of cargo tanks after October 1, 1987 shall be made to meet specification requirements for the type of hazardous material transported in them. This exemption does not apply if at any time after October 1, 1987 the cargo tank is sold or ownership of the cargo tank is otherwise transferred.~~

~~(2) The transportation of agricultural product other than a Class 2 material, over local roads between fields of the same farm, is excepted from the requirements of 49 CFR §§100 through 199 when transported by a farmer who is an intrastate private motor carrier.~~

~~(3) The transportation of an agricultural product to and from a farm, within 150 miles of the farm, is excepted from the requirements in subparts G and H of part 172 of 49 CFR §§100 through 199 when:~~

~~(A) It is transported by a farmer who is an intrastate private motor carrier.~~

~~(B) The packaging conforms to the requirements of 49 CFR §173.24 in so far as it does not leak, and the total amount of the agricultural product being transported on a single vehicle does not exceed:~~

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- (i) 16,094 pounds (7,300 kilograms) of ammonium nitrate fertilizer properly classed as Division 5.1, PG III, in a bulk packaging, or
- (ii) 502 gallons (1,900 liters), for liquids or gases, or 5,070 pounds (2,300 kilograms), for solids, of any other agricultural product.

(C) ~~Each person having any responsibility for transporting the agricultural product or preparing the product for shipment has been instructed in the applicable requirements of 49 CFR §§100 through 199.~~

(D) ~~Formulated liquid agricultural products in specification packagings of 58 gallons (220 liters) or less capacity, with closures manifolded to a closed mixing system and equipped with positive dry disconnect devices, may be transported by a private motor carrier between a final distribution point and an ultimate point of application or transported for loading aboard an airplane for aerial application.~~

(E) ~~Pertaining to nurse tanks of anhydrous ammonia [see 49 CFR §173.315(m)].~~

(4) ~~Permission to drive a transport vehicle in intrastate commerce containing a hazardous material in an emergency without the proper markings or placards, as provided under Marking and Placarding Motor Vehicles [49 CFR §177.823(a)(2)] shall be obtained from the following: Department of Public Safety, Troop S, Commercial Vehicle Enforcement Division, P. O. Box 11415, Oklahoma City, OK 73136-0415, Phone: (405) 521-6104.~~

(de) Motor Carrier Identification Report, Unified Registration System.

(1) Applicability. ~~All motor carriers conducting operations in intrastate commerce shall complete the Unified Registration System (URS). All motor carriers conducting operations in intrastate commerce shall file a Motor Carrier Identification Report (Form MCS-150) before commencing operations, or if already operating, as soon as practical.~~

(2) Availability. ~~The Unified Registration System with complete instructions is available on the Federal Motor Carrier Safety Administration website <https://www.fmcsa.dot.gov/registration>. The Motor Carrier Identification Report with complete instructions, is available from:~~

- (A) ~~Department of Public Safety:~~
 - (i) ~~in person: Troop S Headquarters, 220 NE 38th Terrace, Oklahoma City~~
 - (ii) ~~by mail: Troop S, 200 NE 38th Terrace, Oklahoma City, OK 73105~~
 - (iii) ~~by telephone: (405) 521-6060~~
- (B) ~~Corporation Commission:~~
 - (i) ~~in person: 2101 N. Lincoln Blvd., Oklahoma City~~
 - (ii) ~~by mail: P.O. Box 52000, Oklahoma City, OK 73152-2000~~
 - (iii) ~~by telephone: (405) 521-2251~~
- (C) ~~Oklahoma Division Office of the Federal Motor Carrier Safety Administration:~~

(i) ~~in person or by mail: 300 N. Meridian, Suite 106 S., Oklahoma City, OK 73107~~

(ii) ~~by telephone: (800) 823-5660~~

(iii) ~~from the internet: <http://www.fmcsa.dot.gov/>~~

(3) Filing. ~~Intrastate motor carriers are required to complete the Unified Registration System before commencing operations, or if already operating, as soon as practicable. The completed Motor Carrier Identification Report shall be filed:~~

(A) ~~**Intrastate carriers.** For intrastate carriers, the Report must be filed with either:~~

(i) ~~Department of Public Safety, Commercial Vehicle Enforcement Section, 200 NE 38th Terrace, Oklahoma City, OK 73105, or~~

(ii) ~~Corporation Commission, 2101 N. Lincoln Blvd., P.O. Box 52000, Oklahoma City, OK 73152-2000.~~

(B) ~~**Interstate carriers.** For interstate carriers, the Report must be filed at the address as indicated on the Motor Carrier Identification Report.~~

(4) Motor carrier name updating information in the Unified Registration System. ~~Only the legal name or single trade name of the motor carrier may be used on the Motor Carrier Identification Report. Each intrastate motor carrier must update their information:~~

(A) ~~Any time a motor carrier changes its name, address, or other details in their record; and~~

(B) ~~Every two years based on the filing schedule found in 49 CFR 390.19(b). Only the legal name or single trade name of the motor carrier may be used on the Motor Carrier Identification Report.~~

(5) Penalties. ~~A motor carrier who fails to file a Motor Carrier Identification Report or who, upon the report, furnishes misleading information or makes false statements is subject to the penalties prescribed in 47 O.S., §230.9.~~

(6) Issuance and display of USDOT number. ~~Upon processing of the Unified Registration System, an identification number (USDOT number) will be issued to the motor carrier. The motor carrier must display the number on both sides of each self-propelled commercial motor vehicle, as defined in 595:35-1-5. Intrastate motor carriers must mark each CMV power unit as follows: Upon receipt and processing of the Motor Carrier Identification Report, an identification number (USDOT number) will be issued to the motor carrier. The motor carrier must display the number on each self-propelled commercial motor vehicle, as defined in 595:35-1-5, along with the additional information required by 49 C.F.R., Part 390.21. Intrastate USDOT numbers shall be displayed as follows:~~

(A) ~~the motor carrier's legal name or single trade name (DBA name) as shown in the Unified Registration System; and the letters "USDOT";~~

(B) ~~the letters "USDOT" preceded by the identification number issued to the motor carrier, the identification number itself, and~~

(C) ~~the suffix letters "OK".~~

(~~f~~) **Qualification of drivers.** The following addition is made to the federal requirement in Qualifications of Drivers [49 CFR §391.11(b)(1)] that a driver be twenty-one (21) years of age or older: A driver in solely intrastate commerce must be at least eighteen (18) years old and be at least twenty-one (21) years old for the transportation of hazardous materials which are required to be placarded or marked in accordance with 49 CFR §177.823 or for transporting more than eight (8) passengers for compensation or more than fifteen (15) passengers not for compensation.

(~~g~~) **Relief from regulations.**

~~(1) Anyone requesting relief from the hours of service regulations must contact the Troop Commander or, if declared to be unavailable by personnel at the Troop headquarters, the duty supervisor at the Troop headquarters for the region in which the emergency exists. This contact must be made and the prior approval obtained before the requesting party may claim relief from the regulations. The requesting party must provide the following information:~~

- ~~(A) the type of emergency,~~
- ~~(B) if applicable, the company on whose behalf the requesting party is seeking the exception,~~
- ~~(C) the region the emergency covers,~~
- ~~(D) the type of work required to restore services in the area, and~~
- ~~(E) the approximate time to restore those services.~~

~~(2) The decision to declare an emergency and grant relief from the hours of service regulations rests in the sound discretion of the Troop Commander or duty supervisor Commissioner of Public Safety or the Commissioner's designee, the Governor, the appropriate Federal Motor Carrier Safety Administration Field Administrator, or the President of the United States.~~

~~(3) Upon completion of the emergency restoration services, any on duty hours accumulated during the emergency will be counted against the driver's allowable on duty hours and the driver may not drive as long as the amount of accumulated on duty hours exceeds those allowed by 49 CFR §395.3. However, any period of eight (8) consecutive days may end with the beginning of an off-duty period of ~~twenty~~thirty-four (24)(34) or more successive hours when taken at the end of any emergency restoration service.~~

~~(4) Within thirty (30) days after completion of the emergency restoration services, the individual who had been granted relief from the hours of service regulations must submit a report detailing the following:~~

- ~~(A) Nature and extent of the emergency,~~
- ~~(B) Type of services restored during the emergency,~~
- ~~(C) Names and driver license numbers of those drivers for which the exemption was granted, and~~
- ~~(D) Total hours on duty during the declared emergency for each driver.~~

~~(5) Said report must be sent to the following address: Department of Public Safety, Troop S, 200 NE 38th Terrace, Oklahoma City, OK 73105.~~

595:35-1-9. Hearings

(a) In responding to the Notice of Claim, the respondent may submit to the official who issued the notice written explanations, information, or arguments in response to the allegations or the amount of the assessed penalty set forth in the Notice of Claim. The contents of the informal response will be reviewed by the Commissioner's representative who may choose to amend, dismiss, or let the Notice of Claim remain as issued. If the Commissioner's representative does not dismiss the administrative penalty in whole, the respondent shall be notified as soon as reasonably possible. The respondent shall then be given either the longer of the twenty-five (25) days still outstanding or at least ten (10) days to pay the penalty. Should a proposed settlement be rejected by the respondent, the amount of the assessed penalty set forth in the Notice of Claim shall be reinstated.

(b) Any request for a hearing must be filed by the respondent with the Department of Public Safety, Troop S, 200 NE 38th Terrace, Oklahoma City, OK 73105 within twenty-five (25) days after the Notice of Claim was sent.

(c) The request for a hearing must be in writing and must:

- (1) state the name and address of the respondent and of the person submitting the request if different from the respondent,
- (2) state which allegations of violations, if any, are admitted,
- (3) state generally the issues to be raised by the respondent at the hearing, but issues not raised in the written request are not barred from presentation at the hearing, and
- (4) be addressed to the official who issued the notice.

(d) If the hearing is timely requested, such hearing shall be scheduled either at the Department or by telephone.

(e) The Commissioner shall designate the hearing officer. Each party shall be afforded the opportunity to respond and present evidence and argument on all issues involved. Either party may make application for a continuance of the hearing. The granting or denial of such a continuance is within the reasonable discretion of the hearing officer.

(f) The Commissioner or the hearing officer will determine, at his discretion, whether the hearing will be conducted in person or telephonically. Where a telephonic hearing is designated, the procedure specifically applicable to telephonic hearings will be provided to the respondent and the respondent's attorney, if designated, along with the notice letter confirming that the hearing has been scheduled.

(1) Within ten (10) days after receiving notice that the hearing is being held telephonically, the respondent must provide to the Department:

- (A) the name, mailing address, and phone number of the respondent's attorney, if the respondent is being represented by an attorney,
- (B) the name, mailing address(es), and telephone numbers of any witnesses on the respondent's behalf who the respondent desires to have present, and
- (C) the telephone number at which the respondent will be available.

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- (2) If the respondent, the investigating officer, or a witness desires to have additional exhibits or documentary evidence included in the hearing, the exhibits or evidence must be delivered to the Department's Legal Division at least ten (10) days prior to the hearing. The hearing officer may consider documentary evidence if it is received in time for the hearing. The materials shall be mailed to: Department of Public Safety, Troop S MCSAP Hearing Officer, 200 NE 38th Terrace, Oklahoma City, OK 73105~~Department of Public Safety, Legal Division MCSAP Hearing Officer, P.O. Box 11415, Oklahoma City, OK 73136-0415.~~
- (3) At or near the time scheduled for the hearing, the hearing officer will call all parties to the hearing at the telephone number(s) provided. If the telephone line for any of the parties is busy, or a party fails to answer, the hearing officer will call again approximately three (3) minutes later.
- (A) All parties will be sworn in prior to testimony.
- (B) If the rule of sequestration is invoked pursuant to 12 O.S. §2615, the appropriate witness will be disconnected from the conference call by the hearing officer and reconnected prior to testimony.
- (4) When the respondent or the designated attorney fails to provide a telephone number or to answer the telephone number provided to the Department, or the line is busy after the hearing officer has attempted a second call after the three (3) minutes as provided in (3) of this subsection, the hearing officer will not call again and an order of default will be entered. It is the responsibility of the respondent to keep the line(s) open to receive the call from the hearing officer.
- (5) Should a necessary witness adverse to the licensee, such as an officer, fail to provide a telephone number or to answer or the line is busy, after the procedure provided in (3) of this subsection has been followed, the case will be set aside.
- (g) The hearing officer shall render a ~~decision~~proposed order based upon the law and the evidence presented. Each party shall be ~~promptly~~ notified of the ~~decision~~proposed order either personally or by mail.
- (h) The proposed order shall become the final order twenty (20) days from the date of entry.
- (i) By written stipulation the respondent may waive compliance with 75 O.S. §311, in accordance with 75 O.S. §311. Unless the hearing officer timely receives a request for a rehearing, reopening, or reconsideration of the decision as provided by the Administrative Procedures Act [75 O.S. §317], the hearing officer shall, after Such a request must:
- (1) be in writing, and
 - (2) be received within twenty (20) days of the entry of the proposed order.~~twenty (20) days from the entry of the decision, enter an appropriate final order. Each party shall be notified of the final order personally or by mail.~~
- (ij) If the respondent fails to appear at the scheduled hearing without good cause, the hearing officer shall record the non-appearance and enter a final order reflecting the effective date of twenty-five (25) days after the date of the Notice of Claim in lieu of the decision and final order as described in (h) of this Section.
- (jk) If the representative fails to appear without good cause, the hearing officer shall record the nonappearance and enter a final order dismissing the administrative penalty action, with prejudice. The parties shall be notified that the department action has been dismissed with prejudice. However such a dismissal affects only those violations listed in the Notice of Claim and does not affect the same or other violations occurring at another time.
- (kl) A party aggrieved with the ~~final order~~hearing officer's decision may file an appeal with the Commissioner requesting a rehearing, reopening, or reconsideration of the case in accordance with~~75 O.S. §317~~. Such an appeal must:
- (1) be in writing,
 - (2) be within ~~twenty (20)~~ten (10) days of the entry of the ~~final order~~decision by the hearing officer, and
 - (3) state the grounds for the appeal and include all arguments and information pertinent to the grounds for appeal.
- (lm) Where a timely written exceptions to the proposed order or request for a rehearing, reopening, or reconsideration of the case is received, the administrative penalty will be stayed ~~suspended~~ until a final order has been entered. Grounds for rehearing, reopening, or reconsideration are limited to those in the Administrative Procedures Act [75 O.S. §317].
- (mn) The administrative penalty assessed shall be due immediately upon issuance of the final order. If, within twenty-five (25) days after the issuance of a final order, the concerned party does not comply with the terms of the order by paying any administrative penalty assessed ~~or correcting the violation, or both, if required, or by filing an appeal of the final order~~, the case may be prosecuted by the Commissioner or the representative for enforcement through the Oklahoma County District Court.
- (no) A respondent aggrieved with both the hearing officer's and the Commissioner's decisions may file an appeal with the Oklahoma County District Court.
- (op) At any time prior to the Commissioner or the representative bringing an action in Oklahoma County District Court for enforcement of the final order, either the respondent or the Commissioner's representative, whose names appears on the Notice of Claim, may recommend a compromise of the amount of the penalty by submitting an offer for a specific amount to the other party. An offer of compromise shall be submitted to the representative who may, after consultation with the Troop S Commander, accept or reject it.
- (1) A compromise offer stays the running of any response period then outstanding.
 - (2) Any compromise agreed to by the parties is also subject to approval by the hearing officer. If a compromise is agreed to by the parties and approved by the hearing officer, the respondent will be notified in writing. Upon receipt of payment by the Department, the respondent will be notified in writing that acceptance of the payment is in

full satisfaction of the administrative penalty proposed or assessed, and the Department closes the case with prejudice to the respondent.

(3) If a compromise cannot be agreed to, the respondent will be notified, either personally or by mail, and shall be given ten (10) days or the amount of time remaining in the then outstanding response period, whichever is longer, to respond to whatever action has been taken by Troop S or any other representative authorized to enforce the provisions of the Act.

(pq) The administrative penalty is not a substitute for compliance and is not intended to preclude injunctive relief or other non-duplicative remedies, particularly if the Commissioner has determined an order requiring compliance is necessary under the circumstances. Money penalties are not fees allowing the concerned party to continue to operate in violation of the Act or of any rules adopted to carry out the Act. [47 O.S. §230.9(F)]

595:35-1-12. Department of Public Safety port of entry officers

(a) The legislature amended 47 O.S. §14-116 in 2016 to provide funding for Department of Public Safety port of entry officers (DPS POE officers) and directing the Department to promulgate rules specifying the powers and duties of DPS POE officers. DPS POE officers are DPS commissioned inspectors or DPS civilian inspectors assigned to Troop S to work only at and around port of entry locations.

(b) In accordance with 47 O.S. §2-117 any officer designated and commissioned by the Commissioner is declared to be a peace officer of the State of Oklahoma and shall be so deemed and taken in all courts having jurisdiction of offenses against the laws of the state.

(c) The Commissioner shall designate and commission DPS POE officers. The Commissioner may also appoint civilian DPS POE officers. All DPS POE officers shall only be assigned to and supervised by Troop S.

(d) The Commissioner has the authority to authorize any officer, employee, or agent of the Department to conduct the activities necessary to administer the Oklahoma Motor Carrier Safety and Hazardous Material transportation Act through 47 O.S. §203.4.

(e) Commissioned DPS POE officers shall have the powers and authority now and hereafter vested by law in other peace officers, including the right and power of search and seizure, except the serving or execution of civil process, and the right and power to investigate and prevent crime and to enforce the criminal laws of this state. However, the duties of the DPS POE officers and civilian DPS POE officers shall be limited to:

(1) Enforce all or any portions of the federal motor carrier safety regulations and the hazardous materials regulations of the United States Department of Transportation, as now or hereafter amended, as adopted by reference;

(2) Conduct investigations; make reports; require the production of relevant documents, records and property; demonstration and training activities;

(3) Enter upon, inspect and examine at reasonable times and in a reasonable manner, the records and properties of persons to the extent such records and properties

relate to motor carrier safety or the transportation or shipment of hazardous materials in commerce, and to inspect and copy records and papers of carriers and other persons to carry out the purposes of the Oklahoma Motor Carrier Safety and Hazardous Materials Transportation Act;

(4) Stop and inspect any driver or commercial motor vehicle for any violation of the Oklahoma Motor Carrier Safety and Hazardous Materials Transportation Act or rules and regulations issued pursuant thereto;

(5) Declare and mark any transport vehicle or container as out of service if its condition, filling, equipment or protective devices would be hazardous to life or property during transportation, or if records thereof reflect such hazard, or if required records are incomplete;

(6) Prohibit any commercial driver from transporting hazardous materials if such driver is unqualified or disqualified under any federal or department regulation;

(7) Administer and enforce the provisions of the Oklahoma Motor Carrier Safety and Hazardous Materials Transportation Act and any rules and regulations issued pursuant thereto and;

(8) All power and authority vested by law in other peace officers regarding law violations committed in the presence of the commissioned DPS POE officer at and around port of entry locations.

(f) All commissioned DPS POE officers shall be CLEET certified peace officers. To become qualified for designation as peace officers, DPS POE officers shall meet the training and screening requirements conducted by the Department and certified by the Council on Law Enforcement Education and Training within six (6) months of employment.

(g) Only CLEET certified peace officers shall carry a weapon.

(h) DPS POE officers are not and shall not be considered Oklahoma Highway Patrol Troopers.

(i) The powers and duties conferred upon said commissioned DPS POE officers shall in no way limit the powers and duties of sheriffs or other peace officers of the state, or any political subdivision thereof.

(j) No state official, other than members of the Department, shall have any power, right, or authority to command, order, or direct any DPS POE officer to perform any duty or service. DPS POE officers shall not be commanded, ordered, or directed to perform any duty or service outside the limitations of (d).

[OAR Docket #17-636; filed 7-12-17]

**TITLE 595. DEPARTMENT OF PUBLIC SAFETY
CHAPTER 40. DRIVER TRAINING AND IMPROVEMENT**

[OAR Docket #17-637]

RULEMAKING ACTION:
PERMANENT final adoption

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RULES:

- Subchapter 1. Driver Education Instruction
- 595:40-1-2. Definitions [AMENDED]
- 595:40-1-3. Driver education instructor permit/license [AMENDED]
- 595:40-1-4. Qualifications for instructors [AMENDED]
- 595:40-1-9. Prescribed course of study [AMENDED]
- 595:40-1-13. Reports [AMENDED]
- 595:40-1-15. Requirements for all ~~commercial~~ driver education schools and classrooms except public schools [AMENDED]
- 595:40-1-18. Hearings [AMENDED]

AUTHORITY:

Commissioner of Public Safety; 47 O.S. § 6-101 et seq.

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- Subchapter 1. Driver Education Instruction
- 595:40-1-9

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INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The changes in 595:40-1-2 update the definition of "Driver Education Instructor" to include the words demonstrating and supervising. The updates in section 40-1-3 update language as it relates to background checks and updates the name of the division to Driver License Services Division from the Driver Examining Division. Section 595:40-1-4 adds sex offenders who are required to register to the list of disqualifications from becoming a driver instructor. The language also adds non-public schools in section (b) to include those instructors and some out of date language was struck as well. In section 595:4-1-9 the requirement was added that a Driver Education instructor must occupy the front seat of the vehicle while instructing students. Language was updated in part (6) to reflect that a paper or electronic filed copy of the student roster is required before instruction can begin and part (8) updates the Motorcycle Safety Foundation Curriculum to the most recent version and it makes it the only acceptable course of instruction. Section 595:40-1-13 ads language that requires the Commercial Driver Education schools must submit a paper or electronic list of all enrolled students before training begins. Section 595:40-1-15 updates the list of requirements for all driver education schools and classrooms and adds part (7) which lays out the requirements for a motorcycle range facility and equipment for motorcycle classes. The hearings under 595:40-1-18 for commercial driver school schools and instructor licenses fall within Article II of the APA (Administrative Procedures Act). Rule 595:40-1-18 currently requires that a hearing, when requested, be set no less than 15 days nor more than 30 days from the date the request was received. This time restriction is not necessary. This type of time restriction has been removed in other types of administrative hearings. Prior to 1977 47 O.S. §754 required a type of administrative hearing to be set within 30 days, which has since been removed. Most importantly, the APA does not have a time restriction of when administrative hearing must be held. Additionally, the current rule does not align with the requirements under the APA. The current rule allows for a rehearing, reopening, or reconsideration request under 75 O.S. §317 before and after the final order is issued. Statute 75 O.S. §317 only

allows for a rehearing, reopening, or reconsideration request after a final order is issued. The APA separately allows for oral arguments and briefing before the administrative head prior to the final order being issued under 75 O.S. §311.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 1. DRIVER EDUCATION INSTRUCTION

595:40-1-2. Definitions

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

"Career and Technology Education" means any school that is governed by the Oklahoma Department of Career and Technology Education.

"Credential" means endorsements, major and/or minor teaching areas, licenses, as well as professional, standard, provisional, temporary, and emergency certificates.

"Commercial driver education course" means a course of study including highway signs, signals, markings and design, rules of the road, state laws, local ordinances, basic driving maneuvers, and safe operation of motor vehicles on streets and highways.

"Commercial driver education school" means a business enterprise conducted by an individual, association, partnership, or corporation for the education and training of fifteen year old or older students for a class D driver license and charging a consideration or tuition for such services.

"Commercial motorcycle driver training instructor" means a qualified instructor of Motorcycle Safety Foundation curriculum and certified by the Department of Public Safety

"Commercial motorcycle driver training schools" means a business enterprise conducted by an individual, partnership, or corporation for the education and training of motorcycle drivers.

"Commercial School" means a "Commercial driver education school" or "Commercial Motorcycle driver training school."

"Commercial Instructor" means a qualified Driver Education Instructor or a qualified Commercial motorcycle driver training instructor.

"Driver Education Instructor" means a qualified instructor who provides instruction to, demonstrating to, or supervising ~~instructs~~ students seeking a driver license according to the rules set forth in this chapter.

"Endorsements" means credentials placed on valid licenses/certificates to indicate that the holder is eligible to teach specific subjects. An endorsement qualifies the holder to teach a full day in the subject of the endorsement.

"High School or Secondary School" means a school offering continuous programs of general education for regularly enrolled full-time students including grades nine through twelve.

"Private, parochial and non-public high school" means any high school or secondary school which is not a public school supported with public funds and/or does not meet the definition of a Commercial School under Title 47, Chapter 69.

595:40-1-3. Driver education instructor permit/license

(a) **Requirement of Driver Education Instructor Permit/license.** A Driver Education Instructor Permit/license is required for instructors who teach Driver Education as prescribed under 47 O.S. §6-105 (D) and 47 O.S. § 801, who offer behind the wheel instruction to students who do not possess a valid Oklahoma driver license.

(b) **Application for Driver Education Instructor permit/license.**

(1) **Public schools.** The State Department of Education, Comprehensive Health/Driver and Traffic Safety Section, shall provide an application for Driver Education instructor permits/licenses and renewal permit/licenses for public schools upon request.

(A) The instructor shall make application to the State Department of Education by mail to: State Department of Education, Comprehensive Health/Driver Education, Room 314, 2500 Lincoln Boulevard, Oklahoma City, Oklahoma 73105-4599.

(B) The State Department of Education shall review the application as to teacher qualification and prescribed course of study and forward the application to the Department of Public Safety.

(C) Driving privileges of the applicant shall not be under suspension, revocation, denial, or cancellation at the time of original or renewal application.

(2) **Commercial schools - original application.**

(A) All applications for an original school license shall be made on a form provided by the Department. The term of each original school license shall be for a period of one (1) year. Each place of business and/or location shall be considered a separate school and require a separate license.

(B) Each application for an original school license shall be accompanied by:

- (i) a fee of Twenty-five Dollars (\$25.00), which shall be paid to the Department by money order, cashier's check, or business/personal check,
- (ii) a class curriculum, and
- (iii) an e-mail address.

(C) Each applicant shall maintain ~~at the school~~ and have available for audit and inspection by the Department:

- (i) certificates of insurance from a company licensed to conduct business in this State certifying proper commercial insurance coverage, as required by OAC 595:40- 1-12,

(ii) the make, model, vehicle identification number, and registration number of each vehicle used for training purposes, except motorcycles used for motorcycle training, and

(iii) school brochures, contracts of all agreements, and a schedule of fees and charges.

(D) No license fee shall be refunded in the event the license is rejected, suspended or revoked by the Commissioner of Public Safety.

(E) All applications must be approved by the Department before a school will be permitted to open for business.

(F) Every operator of a Commercial Driver Education school shall be required to have a Commercial Driver Education Instructor License.

(G) Application for Driver Education Instructor license for non-public schools may be obtained from the Department of Public Safety, at: Driver License ~~Examining~~Services Division, P.O. Box 11415, Oklahoma City, Oklahoma 73136-0415, or on the website of the Department, www.dps.state.ok.us.

(H) All schools shall meet the requirements of OAC 595:40-1-15.

(3) **Commercial schools - renewal application.**

(A) All applications for a renewal school driver education license shall be made on a form provided by the Department of Public Safety. The term of each renewal school driver education license shall be for a period of one (1) year. Each place of business and/or location shall be considered a separate driver education school and require a separate driver education license.

(B) Each application for a renewal school driver education license shall be accompanied by:

- (i) a fee of Twenty-five Dollars (\$25.00), which shall be paid to the Department by money order, cashier's check, or business/personal check,
- (ii) a schedule of fees and charges, if any changes have been made since the last license issuance, and
- (iii) an e-mail address.

(C) Each school desiring to renew shall submit a DPS approved application to each licensee at the school and shall remit all fees and submit all applications to the Department no later than November 15 of the year of expiration. If application for renewal is not received by the required date and the Department is unable to process and approve the application by December 31 of the year of expiration, the commercial school shall cease operation on January 1 of the year following the year of expiration and shall not resume operation until the application for renewal is processed and approved by the Department.

(4) **Commercial instructors - original applications.**

(A) All applications for an original driver education instructor license shall be made on a form provided by the Department. The term of each original driver education instructor license shall be for a period of

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no more than one (1) year. A driver education instructor shall make application for each Commercial School he or she is employed and will be instructing. A driver education instructor license shall become invalid upon termination of employment with the school ~~or schools of a single owner~~. If a driver education instructor accepts employment with another school ~~or schools of a different owner~~, the driver education instructor license is not transferrable, and the driver education instructor shall apply for an original license as a new employee of the other school.

(B) Each application for an original driver education instructor license shall be accompanied by:

- (i) documentation required by OAC 595:40-1-4, and
- (ii) a fee of Five Dollars (\$5.00) [47 O.S. § 805], which shall be paid to the Department by money order, cashier's check, or business/personal check.

(5) **Commercial instructors - renewal applications.**

(A) All applications for a renewal driver education instructor license shall be made on a form provided by the Department. The term of each renewal driver education instructor license shall be for a period of one (1) year. A driver education instructor shall make application for each Commercial School location where he or she will be instructing. A driver education instructor license shall become invalid upon termination of employment with the school or schools of a single owner. If a driver education instructor accepts employment with another school ~~or schools of a different owner~~, the driver education instructor license is not transferrable, and the driver education instructor shall apply for an original license as a new employee of the other school.

(B) Each application for a renewal driver education instructor license shall be accompanied by:

- (i) a full certified finger print based criminal history background investigation from the ~~Oklahoma State~~ Federal Bureau of Investigation certified within the immediately preceding thirty (30) days, and
- (ii) a fee of Five Dollars (\$5.00) [47 O.S. § 805], which shall be paid to the commercial school which employs the driver education instructor and the school shall remit the Five Dollar (\$5.00) fee to the Department by money order, cashier's check, or business/personal check. If the driver education instructor is licensed at multiple schools ~~with different owners~~, a fee of Five Dollars (\$5.00) shall be paid for each school ~~with a different owner~~.

595:40-1-4. Qualifications for instructors

(a) **All driver education instructors.** Instructors of public, private, commercial driver education schools and other non-public schools shall submit to the Department of Public Safety, upon application, proof of the following:

- (1) current employment by a school which offers a prescribed course of study;
- (2) a valid and unexpired Oklahoma driver license that is not suspended, revoked, denied or cancelled at the time of original or renewal application;
- (3) at least twenty-one (21) years of age;
- (4) never been convicted of a felony, have any pending court action that could result in a felony conviction, or any conviction, whether within Oklahoma or in another state, that would result in the applicant having to register according to the Sex Offenders Registration Act, as evidenced by an full finger print based ~~Oklahoma State~~ Federal Bureau of Investigation criminal history background investigation conducted within the immediately preceding thirty (30) days.

(A) Once the Department has received the state criminal history background investigation, showing no adverse action, pending or otherwise, the Department will issue a ninety (90) day temporary driver education instructor license to the applicant and the applicant shall be directed to have a national criminal history background investigation conducted by the Federal Bureau of Investigations.

(B) The commercial school shall submit the necessary national criminal history background investigation request within ten (10) business days of the issuance of the temporary driver education instructor license and submit proof of the request to the Driver License Examining Division within five (5) business days thereafter. If the national criminal history background investigation is not completed within ninety (90) days of the request for the national criminal history background investigation, the temporary driver education instructor license may be revoked.

(C) If either the state or national criminal history background investigation is returned with:

- (i) no adverse action, the Department will issue the temporary or permanent driver education instructor license; or
- (ii) adverse action is found on the applicant's criminal history background investigation, the Department will ~~not issue or~~ revoke the temporary driver education instructor permit and will not issue another temporary or permanent driver license instructor license to the applicant as long as the adverse action remains on the applicants criminal history; or
- (iii) if the applicant has pending court proceedings that could result in a felony conviction, the temporary or permanent driver education instructor license shall not be issued until the pending action has been dispensed.

(5) if applicable, have driving privileges reinstated for at least twelve (12) months, if driving privileges were suspended, canceled, revoked, denied, or disqualified for a driving-related conviction or for Department action related to driving under the influence or driving while impaired. If driving privileges are suspended, canceled,

revoked, denied, or disqualified only for a non-driving-related conviction or reason, the applicant shall be eligible immediately upon reinstatement of driving privileges;

- (6) not been convicted of misdemeanor possession or use of alcohol or drugs within the past twelve (12) months;
- (7) not more than five (5) point violations on the driving record;
- (8) no administrative action pending pursuant to 47 O.S. §§ 753, 754, or 754.1;
- (9) a high school diploma or general education diploma; and
- (10) a motorcycle instructor shall have a valid Motorcycle Safety Foundation instructor's certificate.

(b) **All commercial school and non-public school driver education instructors.** At the time of original application, all commercial school and non-public school driver education instructors shall take the vision, skills, and written examinations given by the Department for the purposes of driver licensing and, for licensing as a commercial school or non-public school driver education instructor. Commercial motorcycle driver training instructors will not be required to take the basic Class D written exam and skills test but instead will take the motorcycle written exam and skills test. The skills test will be performed on a motorcycle. All driver education instructors shall be required:

- (1) to receive a score of at least eighty percent (80%) on driver license written examination. Should the applicant fail to achieve the required score after three (3) attempts, the applicant shall be denied certification and may reapply after one (1) year;
- (2) to pass the standard Class D driver license or motorcycle road test with a passing score of at least eighty percent (80%). Should the applicant fail to achieve the required passing score after (three) attempts, the applicant shall be denied certification and may reapply after one (1) year.

(c) **Public school driver education instructors only.** Qualifications for public driver education instructors are set out in the rules for Oklahoma High School Driver and Traffic Safety Education by the Oklahoma State Board of Education.

(d) **Non-public school driver education instructors.** Instructors of driver education for non-public schools, except commercial driver education schools, shall submit to the Department of Public Safety proof of the following:

- (1) a valid Oklahoma secondary, elementary-secondary, library media specialist, speech-language pathology or technology center school license/certificate,
- (2) credentials in Driver and Traffic Safety Education or five (5) years consecutive experience in driver safety training, and
- (3) a valid and unexpired Oklahoma driver license.

(e) **Commercial school driver education instructors other than motorcycle training instructors.** Commercial driver education school instructors, other than motorcycle training instructors, shall submit to the Department of Public Safety proof of the following:

- (1) a minimum of six (6) semester hours of Driver Education I and Driver Education II, and a minimum of

three (3) semester hours of General Safety Education from an accredited college or university; or

- (2) a course equivalent to that described in paragraph (1) offered by a nationally recognized commercial driver instructor course approved by the Department of Public Safety; or
- (3) certification by the State Department of Education as a driver education instructor, which certification shall be for at least five (5) years immediately preceding application and approval as a commercial driver education school instructor in conjunction with having taught driver education for at least five (5) years in public, private, or parochial school; ~~or~~

(f) **Commercial motorcycle training school instructor qualifications.** Commercial motorcycle training school instructors shall submit to the Department of Public Safety proof of the following:

- (1) a high school diploma, or equivalent, and
- (2) an instructor's certificate issued by the Motorcycle Safety Foundation.

(g) **MSF Basic Rider Coach training.** A participant in the MSF Basic Rider Coach training will be exempt from the Oklahoma certification requirement while acting as an instructor under the supervision of a MSF certified Rider Coach Trainer during the Basic Rider Coach training. MSF certification must be signed by the MSF and Oklahoma Certified Rider Coach Trainer.

595:40-1-9. Prescribed course of study

(a) A prescribed course of study of Driver Education shall be designed to develop knowledge of those provisions of the Oklahoma Vehicle Code and other laws of this state relating to the operation of motor vehicles, acceptance of personal responsibility in traffic, appreciation of the causes, seriousness, and consequences of traffic collisions, and to develop the knowledge, attitudes, habits, and skills necessary for the safe operation of motor vehicles.

(b) Public Schools must be in compliance with Oklahoma State Board of Education rules and regulations. Non-public/Commercial schools must meet the following requirements:

- (1) Students must be at least fifteen (15) years of age and regularly enrolled and certified by the instructor as taking a prescribed driver education course, certified by the Department of Public Safety.
- (2) Private and Parochial students shall receive a minimum of thirty (30) hours of classroom instruction and a minimum of six (6) hours of actual driving in the Driver Education vehicle, while accompanied by and under the supervision of a qualified Driver Education instructor who is occupying the front seat of the vehicle.
- (3) Each commercial student, except for commercial motorcycle students, shall receive a minimum of ten (10) hours of classroom instruction and a minimum of six (6) hours of actually driving the Driver Education vehicle, while accompanied by and under the supervision of a qualified Driver Education instructor who is occupying the front seat of the vehicle.

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- (4) Instruction shall include, but not be limited to, the following:
- (A) Signs, signals, highway markings and highway design.
 - (B) Rules of the road, state laws, and local ordinances.
 - (C) Driving attitude toward motorcyclists, bicyclists, and pedestrians.
 - (D) Basic driving maneuvers.
 - (E) Operation of motor vehicle on streets and highways.
 - (F) Familiarity with the Oklahoma Driver's Manual, distributed by the Department of Public Safety. Copies of this manual are available at motor license agencies or online at www.dps.state.ok.us/dls/.
 - (G) Insurance laws of the State.
 - (H) Financial responsibility.
 - (I) Seat belt use and laws.
 - (J) Effects of natural laws on driving.
 - (K) Alcohol and drug substance abuse and the effect on driving.
 - (L) Basic vehicle maintenance including fluid levels, tire pressure and lighting systems.
 - (M) Skills:
 - (i) Starting.
 - (ii) Backing.
 - (iii) Parallel parking.
 - (iv) Hill parking.
 - (v) Starting on hill.
 - (vi) Intersection movement and observance.
 - (vii) Lane observance and changing.
 - (viii) Left and right turns.
 - (ix) Pedestrian and vehicle right-of-way.
 - (x) Proper use of automatic and/or standard transmission.
 - (xi) Use of brake and accelerator.
 - (xii) Traffic lights or signals.
- (5) All passengers, students and instructors in the driver education vehicle shall comply with the Oklahoma Mandatory Seat Belt Use Act, 47 O.S. §§ 12-416 through 12-420, whenever the vehicle is in operation.
- (6) ~~Maintain a student roster list (paper or electronic) of students that are receiving or will be receiving behind the wheel instruction.~~ Maintain and file with the Department of Public Safety a student roster list (paper or electronic) of students that are receiving or will be receiving behind-the-wheel instruction before such instruction begins.
- (7) Driving instruction shall not be conducted within a one mile radius of the Department of Public Safety or any district office thereof.
- (c) The Motorcycle Safety Foundation Curriculum (MSFC) 16th revision January 2011 is hereby adopted by reference, ~~which~~ and it shall be the only course of instruction used by motorcycle education instructors certified by the Department of Public Safety.
- (1) A copy of the curriculum is available at the Department of Public Safety Driver License Examining Division.

- (2) Every school shall develop written and driving examinations to determine the students knowledge and performance in accordance with the prescribed curriculum.

595:40-1-13. Reports

(a) The Comprehensive Health/Driver and Traffic Safety Education section of the State Department of Education will furnish all forms for the required reports for public schools. These reports are addressed in the rules of the State Department of Education. For private, parochial, Commercial, and other non-public schools, the Department of Public Safety, Driver Examining Division, will provide the following report forms which must be completed and filed with the Department of Public Safety:

- (1) A current list of all students enrolled in Driver Education shall be maintained in a file (paper or electronic) at the offices of the Commercial Driver Education school and submitted to the Department of Public Safety prior to beginning behind the wheel instruction. These files shall list the complete legal name, and date of birth of those students who will be or are currently receiving instruction.
- (2) While conducting instruction of the students one of the following must be in the vehicle:
 - (A) readable ~~approved~~ copy of the roster (paper or electronic), or
 - (B) a daily paper or electronic copy of the student roster and/or schedule (~~form provided by DPS~~), which includes a list of students being instructed on a given day ~~and must have the instructors signature that will be in the vehicle,~~ or
 - (C) students receiving instruction must carry the original or a copy of the school contract.
- (3) At the discretion of the Commissioner of Public Safety, an affidavit may be required from the principal of the school, or one of equivalent authority verifying that the curriculum offered the Driver Education student meets the requirements of these rules.
- (4) Other reports that may be requested by the Department of Public Safety.

(b) Driver Education schools must furnish the Department of Public Safety, Driver License Examining Division, with a copy of an official collision report on any driver education vehicle which is involved in an collision while used for training purposes. This is in addition to the collision report required by law.

595:40-1-15. Requirements for all ~~commercial~~ driver education schools and classrooms except public schools

(a) **Location and classroom facility of commercial driver education schools.** An application for a Commercial Driver Training School license shall not be approved if the school is located or driving instruction is conducted within one (1) mile, using the most direct driving route, of the Department of Public Safety or any district office thereof. The school shall:

(1) have at least one (1) permanent classroom. Each classroom shall be used exclusively for classroom driver education instruction during the time of such instruction. A classroom shall not be located in:

- (A) a residence or residential facility or complex,
- (B) a motor vehicle, or converted motor vehicle,
- (C) a hotel or motel, or
- (D) any other facility which has a bar, lounge, or other business which sells alcohol for public consumption on the premises;

(2) display its current and valid Commercial Driver Training License in the licensee's principal place of business when classes are in session. The school's and/or driver education instructor's license or a copy of the license shall also be made available for inspection to students, or prospective students and their parents;

(3) comply with all local municipal ordinances ~~regarding lighting, heating, ventilation, and restroom facilities~~. Separate restroom facilities shall be provided for males and females, shall be fully plumbed with at least one toilet and one sink in each restroom, and shall be located in the same building as the classroom. The requirement for separate restroom facilities may be waived if a single restroom facility is provided that has a door which is capable of being locked from the inside;

(4) have adequate room for equipment such as chalkboard, projector, tables and chairs. Tables and chairs will be provided for the number of students enrolled in the class being taught at the time;

(5) when moving locations the school shall be responsible for notifying the Department of Public Safety Driver License Examining Division in writing no later than two (2) weeks prior to the relocation. The Division shall schedule with the school an appointment for inspection of the new location. Use of the new facility will not be allowed until the inspection is complete; and

(6) if the commercial driver education school is located in a public school, the commercial driver education school shall present to the Department upon application and upon every renewal a current contract with the school district signed by the superintendent of the district. The contract shall stipulate that:

(A) the presence of the commercial driver education school on the public school property is in compliance with state law and specifically in compliance with 70 O.S. § 5-130, and

(B) any public school in the school district, including the public school where the commercial driver education school named in the contract is located, is available on an equal and non-discriminatory basis to any other commercial driver education school desiring to conduct business on public school property in the school district on the same terms and at the same time as the commercial driver education school named in the contract as required by *Hennessey v. ISD No. 4*, 552 P.2d 1141 (Okla. 1976), and

(C) should the school district refuse to allow another commercial driver education school to conduct

business on public school property within the school district, whether at the same public school as the commercial driver education school named in the contract or any other school in the district, the contract shall be null and void upon the date of the refusal, and the school district and the commercial driver education school named in the contract shall both agree to notify the Department of Public Safety of the voiding of the contract.

(7) Motorcycle Range Facility and Equipment for Motorcycle Classes

(A) The Motorcycle Range must adhere to standards related to participant safety and have equipment to ensure safe instruction.

(B) The motorcycle range facility should be maintained and be free from all obstacles/potential obstacles or problematic surface conditions and there must be a minimum 20 foot paved buffer from any obstacles.

(C) The range must be free from pedestrian, animal or vehicle traffic. The pavement needs to be kept suitable for riding maneuvers such as sharp turns, braking and safe vehicle travel.

(D) The surface must provide good traction and there must not be any obstacles that present an unsafe environment.

(E) Ranges must be correctly laid out to meet curriculum and safety standards. The surface and markings need to be maintained for proper instruction and safety.

(F) Motorcycles must be properly maintained in safe operating condition for the safety of the students.

(b) Advertising.

(1) No Commercial Driver Education School shall use or conduct any business under any name other than its fully licensed name.

(2) A sign reading "This school is licensed by the Department of Public Safety, State of Oklahoma" or similar language may be displayed on the school premises.

(3) The school may place language such as "This school is licensed by the Department of Public Safety, State of Oklahoma" in any advertisements and publications of the school. However, a school may not use advertisement or publicity that states or implies that the school is specifically or uniquely recognized, recommended, or endorsed, or directly supervised by the Department of Public Safety.

(4) No fraudulent or deceptive statements shall be used on any sign or in advertisement, whether written or oral. If a promotion or fee incentive is used for an applicant, the school shall attach a copy of the promotion or fee incentive to the contract.

(5) No school shall advertise, by any means, or otherwise state or imply that a driver license or permit is guaranteed or assured to any student or individual who will take or complete any instruction offered by the school.

(c) Agreements and schedule of fees.

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- (1) A sample copy of all contracts or agreements with students must be submitted to the Department with the application for licensing.
- (2) Prior to enrollment or payment of fee all prospective students shall be provided the following information, in writing:
 - (A) the type of instruction offered, whether classroom or behind the wheel;
 - (B) length of each lesson;
 - (C) rate per lesson;
 - (D) rate for use of school vehicle for road test, if extra charge is made;
 - (E) terms of payment and disclosure of any interest charged;
 - (F) a statement indicating the specific date and time when instruction is to start.
- (3) The schedule of fees shall be posted in easy view of students and prospective students.
- (4) If any school fails to comply with the provisions, the school shall refund, on a prorated basis, all monies collected from the student.
- (d) **Records to be maintained.**
 - (1) Each school shall maintain a permanently bound book with pages consecutively numbered or a computer spreadsheet/database, setting forth the name of the school; the name of the student; the contract or agreement number; the type and date of instruction given, whether classroom or behind-the-wheel. If information is kept in a bound book, all entries shall be made in ink.
 - (2) All student instruction records, including a duplicate copy of each contract or agreement entered into between the school and the student (the original must be given to the student) must be kept on file in the office of each school or at the primary office of multiple site schools owned by one individual for a period of (1) calendar year after the student has concluded instruction at or with the school. Each school shall furnish the student, if requested, a duplicate of his/her instruction record when all of the contracted courses are completed or the student otherwise ceases taking instruction at or with the school.
 - (3) The student instruction record shall contain a copy of a receipt for any monies paid to the school by the student. The receipt, in a format prescribed by the Department, shall contain:
 - (A) The name of the school.
 - (B) The name of the student.
 - (C) The date of payment.
 - (D) The amount of payment.
 - (E) The signature of the person receiving the payment.
 - (4) The student instruction record file maintained by the school shall be available at all times for inspection or copying by an authorized representative of the Department of Public Safety.
- (e) **Completion certificates.** A completion certificate, in a preprinted format prescribed by the Department, shall be provided and issued by the Commercial School to each student

upon the successful completion of course work (both classroom and behind the wheel). The certificate shall contain the following:

- (1) Name of the provider;
- (2) Full legal name of student;
- (3) Number of total hours of instruction (optional)
- (4) Date of completion;
- (5) Signature of administrator (a stamped signature is acceptable).

595:40-1-18. Hearings

- (a) In the event the Department has determined that a school's or instructor's license should be denied, suspended, revoked, or canceled, notice shall be provided by mail to the applicant or licensee of the facts or conduct which warrant the intended action, and an opportunity for hearing shall be offered. The aggrieved party may request a hearing within twenty (20) days of receipt of the notice. The request for a hearing shall be in writing and must:
 - (1) state the name and address of the respondent,
 - (2) state which allegations of violations, if any, are admitted,
 - (3) state generally the issues to be raised by the respondent at the hearing, but issues not raised in the written request are not barred from presentation at the hearing, and
 - (4) be addressed to the official who issued the notice.
- (b) If the hearing is timely requested, the Department shall grant the person an opportunity to be heard~~such hearing shall be scheduled at the Department no less than fifteen (15) days nor more than thirty (30) days from the date the Department received the request. However, the parties may agree to schedule the hearing at another location or time.~~
- (c) The Commissioner shall designate the hearing officer. Each party shall be afforded the opportunity to respond and present evidence and argument on all issues involved. Either party may make application for a continuance of the hearing. The granting or denial of a continuance is within the reasonable discretion of the hearing officer.
- (d) The hearing officer shall render a proposed order~~decision~~ based upon the law and the evidence presented. Each party shall be promptly notified of the proposed order~~decision~~ either personally or by mail.
- (e) The proposed order shall become the final order twenty (20) days from the date of entry~~Unless the hearing officer timely receives a written request for a rehearing, reopening, or reconsideration of the decision as provided by the Administrative Procedures Act [75 O.S. §317], the hearing officer shall, after twenty (20) days from the entry of the decision, enter an appropriate final order. Each party shall be notified of the final order personally or by mail.~~
- (f) By written stipulation the respondent may waive compliance with 75 O.S. §311, in accordance with 75 O.S. §311. If not waived the respondent may make written exceptions to the proposed order requesting the opportunity to present briefs and oral argument to the Commissioner. Such a request must:
 - (1) be in writing, and

(2) be received within twenty (20) days of the entry of the proposed order.

(fg) If the respondent fails to appear at the scheduled hearing without good cause, the hearing officer shall record the nonappearance and enter a final order.

(gh) If the Department representative fails to appear without good cause, the hearing officer shall record the nonappearance and enter a final order dismissing the administrative penalty action, with prejudice. The parties shall be notified that the department action has been dismissed with prejudice.

(hi) A party aggrieved with the final orderhearing officer's decision may file an appeal with the Commissioner requesting a rehearing, reopening or reconsideration of the case in accordance with 75 O.S. §317. Such an appeal must:

- (1) be in writing,
- (2) be within tentwenty (1020) days of the entry of the final orderdecision by the hearing officer, and
- (3) state the grounds for the appeal and include all arguments and information pertinent to the grounds for appeal.

[OAR Docket #17-637; filed 7-12-17]

**TITLE 605. OKLAHOMA REAL ESTATE COMMISSION
CHAPTER 1. ADMINISTRATIVE OPERATIONS**

[OAR Docket #17-557]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions
605:1-1-4 [AMENDED]

AUTHORITY:

Title 59, Oklahoma Statutes, Section 858-208; Oklahoma Real Estate Commission

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n/a

GIST/ANALYSIS:

605:10-1-1-4. Operational Procedures - Adding language to clarify that if an assessment on licensees must be collected as required in statute to replenish the Oklahoma Education and Recovery Fund, such assessment must be paid within sixty (60) days or the license will be placed on inactive status and shall not be placed on active status until such assessment is paid.

CONTACT PERSON:

Charla J. Slabotsky, Executive Director, Oklahoma Real Estate Commission, 1915 North Stiles, Suite 200, Oklahoma City, Oklahoma 73105 405-521-3387

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF NOVEMBER 1, 2017:

SUBCHAPTER 1. GENERAL PROVISIONS

605:1-1-4. Operational procedures

(a) **Organization.** The organization of the Commission is declared to be that as enumerated in Sections 858-201 through 858-204 of the heretofore described Code.

(b) **Operational procedures.** The general course and method of operation shall be as hereinafter specified in overall provisions of the rules of this Title.

(c) **Open Records Act.** In conformance with Title 51, Section 24 A.1., et seq, Oklahoma Statutes, 1985, titled "Oklahoma Open Records Act" all open records of the Real Estate Commission may be inspected and copied in accordance with procedures, policies, and fee as required by the Commission. The Commission shall charge the following:

- (1) A fee of \$.25 for each xerographic copy or micrographic image.
- (2) A fee of \$1.00 for each copy to be certified.
- (3) A fee of \$10.00 per hour for a record or file search.
- (4) A fee of Forty Dollars (\$40.00) per extract for License Data extract.
- (5) A fee of Fifty Dollars (\$50.00) every three (3) months for an Examinee Data extract.
- (6) A fee of no more than Seven Dollars and Fifty Cents (\$7.50) for a convenience fee for any electronic/on-line transaction.

(d) **Petition for promulgation, amendment or repeal of any rule.** Any person may petition the Commission in writing requesting a promulgation, amendment or repeal of any rule.

- (1) The petition must be in writing in business letter form or in the form of petitions used in civil cases in this State, and shall contain an explanation and the implications of the request and shall be:
 - (A) Signed by the person filing the petition and be filed with the Secretary-Treasurer of the Commission.
 - (B) Submitted to the Commission at least thirty (30) days prior to a regular meeting.
 - (C) Considered by the Commission at its first meeting following such thirty (30) days.
 - (D) Scheduled for a public hearing before the Commission within sixty (60) days after being considered by the Commission in a regular meeting.

(2) Within sixty (60) days after the public hearing, the Commission shall either grant or deny the petition. If the petition is granted, the Commission shall immediately

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begin the procedure for the promulgation, amendment or repeal of any rule pursuant to Title 75 O.S. 303.

(3) If the petition is denied the parties retain their rights under 75 O.S. Sec. 318, to proper Judicial Review.

(e) **Petition for declaratory ruling of any rule or order.**

(1) Any person may petition the Commission for a declaratory ruling as authorized by Section 307 of Title 75 of the Oklahoma Statutes as to the applicability of any rule or order of the Commission. Such petition shall:

- (A) be in writing;
- (B) be signed by the person seeking the ruling;
- (C) state the rule or order involved;
- (D) contain a brief statement of facts to which the ruling shall apply; and
- (E) if known and available to petitioner, include citations of legal authority in support of such views.

(2) The Commission shall have at least thirty (30) days to review the petition. Following the review period, the Commission shall consider the petition at its next meeting.

(3) The Commission may compel the production of testimony and evidence necessary to make its declaratory ruling.

(4) Declaratory rulings shall be available for review by the public at the Commission office.

(f) **Contract Forms Committee.**

(1) The Contract Forms Committee is required to draft and revise real estate purchase and/or lease contracts and any related addenda for standardization and use by real estate licensees (Title 59 O.S. 858-208 {14}).

(2) The committee shall consist of eleven (11) members. Three (3) members shall be appointed by the Oklahoma Real Estate Commission; three (3) members shall be appointed by the Oklahoma Bar Association; and five (5) members shall be appointed by the Oklahoma Association of Realtors, Incorporated.

(3) The initial members' terms shall begin upon development of the forms and each member shall serve through the effective date of implementation of form(s) plus one (1) year. Thereafter, the Oklahoma Real Estate Commission shall appoint one (1) member for one (1) year, one (1) member for two (2) years, and one (1) member for three (3) years; the Oklahoma Bar Association shall appoint one (1) member for one (1) year, one (1) member for two (2) years, and one (1) member for three (3) years and; the Oklahoma Association of Realtors, Incorporated shall appoint two (2) members for one (1) year, two (2) members for two (2) years, and one (1) member for three (3) years. Thereafter, terms shall be for three (3) years and each member shall serve until their term expires and their successor has been appointed. Any vacancy which may occur in the membership of the committee shall be filled by the appropriate appointing entity.

(4) A member can be removed for just cause by the committee.

(5) Each member of the committee shall be entitled to receive travel expenses essential to the performance of the duties of his appointment, as provided in the State Travel Reimbursement Act.

(g) **Oklahoma Education and Recovery Fund.** If a special levy is assessed on licensees as outlined in Title 59 O.S. 858-604 (E), the levy must be paid within sixty (60) days of assessment or the license will be placed on inactive status and shall not be placed on active status until the levy is paid.

[OAR Docket #17-557; filed 6-30-17]

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

[OAR Docket #17-558]

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RULES:

Subchapter 13. Trust Account Procedures

605:10-13-2 [AMENDED]

APPENDIX A. [REVOKED]

APPENDIX A. [NEW]

AUTHORITY:

Title 59, Oklahoma Statutes, Section 858-208; Oklahoma Real Estate Commission

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GIST/ANALYSIS:

605:10-13-2. Duty to account; associate - Adding language to clarify that an associate may open, maintain, and/or be a signer on a trust or escrow account when the associate is providing activities that do not require a real estate license.

APPENDIX A. RESIDENTIAL PROPERTY CONDITION DISCLOSURE STATEMENT - Revising Question 4 to read "Is the property located in a floodway?" and allowing for a yes/no answer; also including a statutory reference for the legal definition of "floodway." Adding two new questions to address wells and/or dams located on the property, and who is responsible for the maintenance of any dams located on the property.

CONTACT PERSON:

Charla J. Slabotsky, Executive Director, Oklahoma Real Estate Commission, 1915 North Stiles, Suite 200, Oklahoma City, Oklahoma 73105 405-521-3387

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S.,

SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF NOVEMBER 1, 2017:

SUBCHAPTER 13. TRUST ACCOUNT PROCEDURES

605:10-13-2. Duty to account; associate

The obligation of an associate to remit monies, valuable documents and other property coming into his or her possession within the meaning of subsection six (6), Section 858-312 of the Code shall be construed include but shall not be limited to the following:

- (1) Shall turn over all documents, files and monies deposited, payments made, or things of value received by the associate to his or her broker promptly; and

- (2) Shall deliver a copy of all instruments to any party or parties executing the same when such has been prepared by the associate or pertains to the consummation of a transaction in which he or she participated.

- (3) Shall not be authorized to open or maintain a trust or escrow account, or be a signer on a trust or escrow account wherein the associate is providing licensed activities as defined in the License Code and Rules; however, an associate may open or maintain a trust or escrow account, or be a signer on a trust or escrow account, when the associate is performing activities as outlined in Section 858-301 of the Code.

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APPENDIX A. RESIDENTIAL PROPERTY CONDITION DISCLOSURE STATEMENT [REVOKED]

APPENDIX A. RESIDENTIAL PROPERTY CONDITION DISCLOSURE STATEMENT [NEW]

Notice to Seller: Oklahoma Law (the "Residential Property Condition Disclosure Act," Title 60, O.S., §831 et seq., effective July 1, 1995) requires Sellers of 1 and/or 2 residential dwelling units to complete this form. A Seller must complete, sign and date this disclosure form and deliver it or cause it to be delivered to a purchaser as soon as practicable, but in any event no later than before an offer is accepted by the Seller. If the Seller becomes aware of a defect after delivery of this statement, but before the Seller accepts an offer to purchase, the Seller must deliver or cause to be delivered an amended disclosure statement disclosing the newly discovered defect to the Purchaser. If the disclosure form or amendment is delivered to a Purchaser after an offer to purchase has been made by the Purchaser, the offer to purchase shall be accepted by the Seller only after a Purchaser has acknowledged receipt of this statement and confirmed the offer to purchase in writing.

Notice to Purchaser: The declarations and information contained in this disclosure statement are not warranties, express or implied of any kind, and are not a substitute for any inspections or warranties the Purchaser may wish to obtain. The information contained in this disclosure statement is not intended to be a part of any contract between the Purchaser and Seller. The information and statements contained in this disclosure statement are declarations and representations of the Seller and are not the representations of the real estate licensee.

LOCATION OF SUBJECT PROPERTY _____

SELLER IS ___ IS NOT ___ OCCUPYING THE SUBJECT PROPERTY.

Instructions to the Seller: (1) Answer ALL questions. (2) Report known conditions affecting the property. (3) Complete this form yourself. (4) If an item is not on the property, or will not be included in the sale, mark "None/Not Included." If you do not know the facts, mark "Do Not Know if Working." (5) The date of completion by you may not be more than 180 days prior to the date this form is received by a purchaser.

ARE THE ITEMS LISTED BELOW IN NORMAL WORKING ORDER?

Appliances/Systems/Services	Working	Not Working	Do Not Know if Working	None/Not Included
Sprinkler System				
Swimming Pool				
Hot Tub/Spa				
Water Heater ___ Electric ___ Gas ___ Solar				
Water Purifier				
Water Softener ___ Leased ___ Owned				
Sump Pump				
Plumbing				
Whirlpool Tub				
Sewer System ___ Public ___ Septic ___ Lagoon				
Air Conditioning System ___ Electric ___ Gas ___ Heat Pump				
Window Air Conditioner(s)				
Attic Fan				
Fireplaces				
Heating System ___ Electric ___ Gas ___ Heat Pump				
Humidifier				
Ceiling Fans				

Buyer's Initials _____ Buyer's Initials _____

Appliances/Systems/Services	Working	Not Working	Do Not Know if Working	None/Not Included
Gas Supply ___ Public ___ Propane ___ Butane				
Propane Tank ___ Leased ___ Owned				
Electric Air Purifier				
Garage Door Opener				
Intercom				
Central Vacuum				
Security System ___ Rent ___ Own ___ Monitored				
Smoke Detectors				
Dishwasher				
Electrical Wiring				
Garbage Disposal				
Gas Grill				
Vent Hood				
Microwave Oven				
Built-in Oven/Range				
Kitchen Stove				
Trash Compactor				
Source of Household Water ___ Public ___ Well ___ Private/Rural District				

Seller's Initials _____ Seller's Initials _____

(OREC-11/17)

LOCATION OF SUBJECT PROPERTY _____

IF YOU ANSWERED Not Working to any items on page one, please explain. Attach additional pages with your signature.

Zoning and Historical			
1. Property is zoned: (Check One) ___ residential ___ commercial ___ historical ___ office ___ agricultural ___ industrial ___ urban conservation ___ other ___ unknown			
2. Is the property designated as historical or located in a registered historical district? Yes ___ No ___			
Flood and Water		Yes	No
3. What is the flood zone status of the property? _____			
4. Are you aware if the property is located in a floodway as defined in the Oklahoma Floodplain Management Act?			
5. Are you aware of any flood insurance requirements concerning the property?			
6. Are you aware of any flood insurance on the property?			
7. Are you aware of the property being damaged or affected by flood, storm run-off, sewer backup, draining or grading problems?			
8. Are you aware of any surface or ground water drainage systems which assist in draining the property, e.g. "French Drains"?			
9. Are you aware of any occurrence of water in the heating and air conditioning duct system?			
10. Are you aware of water seepage, leakage or other draining problems in any of the improvements on the property?			
Additions/Alterations/Repairs		Yes	No
11. Are you aware of any additions being made without required permits?			
12. Are you aware of any previous foundation repairs?			
13. Are you aware of any alterations or repairs having been made to correct defects or problems?			
14. Are you aware of any defect or condition affecting the interior or exterior walls, ceilings, roof structure, slab/foundation, basement/storm cellar, floors, windows, doors, fences or garage?			
15. Are you aware of the roof covering ever being repaired or replaced during your ownership of the property?			
16. Approximate age of roof covering, if known _____ number of layers, if known _____			
17. Do you know of any current problems with the roof covering?			
18. Are you aware of treatment for termite or wood-destroying organism infestation?			
19. Are you aware of a termite bait system installed on the property?			
20. If yes, is it being monitored by a licensed exterminating company? If yes, annual cost \$ _____			
21. Are you aware of any damage caused by termites or wood-destroying organisms?			
22. Are you aware of major fire, tornado, hail, earthquake or wind damage?			
23. Have you ever received payment on an insurance claim for damages to residential property and/or any improvements which were not repaired?			
24. Are you aware of problems pertaining to sewer, septic, lateral lines or aerobic system?			
Environmental (Continued on Page 3)		Yes	No
25. Are you aware of the presence of asbestos?			
26. Are you aware of the presence of radon gas?			
27. Have you tested for radon gas?			
28. Are you aware of the presence of lead-based paint?			
29. Have you tested for lead-based paint?			
30. Are you aware of any underground storage tanks on the property?			
31. Are you aware of the presence of a landfill on the property?			
32. Are you aware of the existence of hazardous or regulated materials and other conditions having an environmental impact?			
33. Are you aware of the existence of prior manufacturing of methamphetamine?			
34. Have you had the property inspected for mold?			
35. Are you aware of any remedial treatment for mold on the property?			
36. Are you aware of any condition on the property that would impair the health or safety of the occupants?			

Buyer's Initials _____ Buyer's Initials _____ Seller's Initials _____ Seller's Initials _____
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LOCATION OF SUBJECT PROPERTY _____		
Environmental (Continued from Page 2)		
37. Are you aware of any wells located on the property?	Yes	No
38. Are you aware of any dams located on the property? If yes, are you responsible for the maintenance of that dam? ____ YES ____ NO		
Property Shared in Common, Easements, Homeowner's Associations and Legal		
39. Are you aware of features of the property shared in common with the adjoining landowners, such as fences, driveways, and roads whose use or responsibility has an effect on the property?	Yes	No
40. Other than utility easements serving the property, are you aware of any easements or right-of-ways affecting the property?		
41. Are you aware of encroachments affecting the property?		
42. Are you aware of a mandatory homeowner's association? Amount of dues \$ _____ Special Assessment \$ _____ Payable: (check one) ____ monthly ____ quarterly ____ annually Are there unpaid dues or assessments for the property? ____ YES ____ NO If yes, what is the amount? \$ _____ Manager's Name _____ Phone Number _____		
43. Are you aware of any zoning, building code or setback requirement violations?		
44. Are you aware of any notices from any government or government-sponsored agencies or any other entities affecting the property?		
45. Are you aware of any surface leases, including but not limited to agricultural, commercial or oil and gas?		
46. Are you aware of any filed litigation or lawsuits directly or indirectly affecting the property, including a foreclosure?		
47. Is the property located in a fire district which requires payment? If yes, amount of fee \$ _____ Paid to Whom _____ Payable: (check one) ____ monthly ____ quarterly ____ annually		
48. Is the property located in a private utility district? Check applicable ____ Water ____ Garbage ____ Sewer ____ Other If other, explain _____ Initial membership fee \$ _____ Annual membership fee \$ _____ (if more than one utility attach additional pages)		
Miscellaneous		
49. Are you aware of other defect(s) affecting the property not disclosed above?	Yes	No
50. Are you aware of any other fees or dues required on the property that you have not disclosed?		

If you answered YES to any of the items on pages two and three, list the item number(s) and explain. If needed, attach additional pages with your signature(s), date(s) and location of the subject property. _____

On the date this form is signed, the seller states that based on seller's **CURRENT ACTUAL KNOWLEDGE** of the property, the information contained above is true and accurate.

Are there any additional pages attached to this disclosure? (circle one): YES NO If yes, how many? _____

Seller's Signature Date Seller's Signature Date

A real estate licensee has no duty to the Seller or the Purchaser to conduct an independent inspection of the property and has no duty to independently verify the accuracy or completeness of any statement made by the Seller in the disclosure statement.

The Purchaser understands that the disclosures given by the Seller on this statement are not a warranty of condition. The Purchaser is urged to carefully inspect the property, and, if desired, to have the property inspected by a licensed expert. For specific uses, restrictions and flood zone status, contact the local planning, zoning and/or engineering department. The Purchaser acknowledges that the Purchaser has read and received a signed copy of this statement. This completed acknowledgement should accompany an offer to purchase on the property identified. This is to advise that this disclosure statement is not valid after 180 days from the date completed by the Seller.

Purchaser's Signature Date Purchaser's Signature Date

The disclosure and disclaimer statement forms and the Oklahoma Residential Property Condition Disclosure Act information pamphlet are made available at the Oklahoma Real Estate Commission (OREC), Denver N. Davison Building, 1915 N. Stiles, Suite 200, Oklahoma City, OK 73105, or visit OREC's Web site www.orec.ok.gov.

(OREC—11/17)

[OAR Docket #17-558; filed 6-30-17]

**TITLE 610. STATE REGENTS FOR HIGHER EDUCATION
CHAPTER 25. STUDENT FINANCIAL AID AND SCHOLARSHIPS**

[OAR Docket #17-603]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. Academic Scholars Program
610:25-1-3. General principles for operation of program [AMENDED]
610:25-1-4. Eligibility Requirements and Term of Scholarship Award [AMENDED]

AUTHORITY:

Oklahoma State Regents for Higher Education; 70 O.S. §2401 et seq.; 70 O.S. §3206 (i).

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

October 4, 2016

COMMENT PERIOD:

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PUBLIC HEARING:

None

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February 2, 2017

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EFFECTIVE:

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SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

ACT Test Scores: In recent years, ACT has expanded its options for taking the ACT test beyond the traditional six national Saturday testing dates each year. Other official ACT testing options now include school-level testing administered at a school site during the school day, statewide ACT tests (not used in Oklahoma to date), and international tests. The proposed change would recognize these additional methods for students to obtain ACT scores considered official and valid by ACT. The language specifically excludes "residual" ACT tests administered by an individual college because ACT does not allow residual test scores to be used beyond the campus that administers the test. The language also requires that SAT test scores be considered in a manner comparable to the ACT test scores.

Institutional Nominee Transfers from Two-Year Colleges: The proposed revision would allow Institutional Nominee students attending a two-year college to transfer to a four-year college once they have completed an associate's degree or accumulated at least 48 credit hours. Current policy requires the student to earn at least 48 hours at a two-year college during their first two years of college before transferring. The proposed change addresses those students that enter college with significant college credit already earned through concurrent enrollment or Advanced Placement (AP) credit. Per current policy, the student would still be required to attend at least one full year at the two-year college that initially nominated the student. The proposed change would also be consistent with the existing policy for four-year universities that requires the Institutional Nominee to attend at least one year at the nominating four-year university before transferring to another institution.

CONTACT PERSON:

David B. Harting, Assistant General Counsel, Oklahoma State Regents for Higher Education, (405) 225-9289.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S.,

SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 1. ACADEMIC SCHOLARS PROGRAM

610:25-1-3. General principles for operation of program

- (a) Recipients of award must attend a regionally or State Regents' accredited public, independent or proprietary higher education institution in Oklahoma.
- (b) The program is designed to adhere to the State Regents' Policy on Social Justice by encouraging all potential applicants to the Oklahoma State Regents' Academic Scholars Program to enter national scholarship competition.
- (c) Concurrently enrolled high school students are not eligible for this program.
- (d) Only SAT and ACT test scores reported on an official test report issued by ACT from tests administered on national test dates prior to college entry, excluding concurrently enrolled students and students enrolled for the summer term following high school graduation, will be considered for admission to the program. Scores from ACT residual tests will not be considered. SAT test scores will be considered in a manner comparable to ACT test scores. Qualifying test scores obtained on a national test date after college enrollment are invalid for applying to the program. Partial scores from more than one examination will not be considered.
- (e) A student must enter the program the fall semester immediately after his/her class graduates from high school, except for students admitted under the State Regents' Opportunity Admission Category. The Chancellor may approve exceptions to this requirement for extraordinary circumstances.
- (f) Disability Provision. Provisions contained in this section are consistent with 70 O.S. 1991, Section 2403, as amended, and federal legislation affecting disabled persons. If a person identifies himself or herself as a student with a disability and requests consideration for a scholarship under the Academic Scholars Program by means other than standard testing procedures, the State Regents shall permit the student to be examined under the special testing arrangements provided by either ACT or The College Board provided that he or she meets the qualifications specified by ACT and SAT respectively to be examined. Performance percentile requirements for participation in the Academic Scholars Program remain the same as for other students. Students taking such tests and receiving Academic Scholarship awards will be expected to meet the same retention standards as other students. Special provisions may be considered in determining full-time enrollment for students falling in this category.

610:25-1-4. Eligibility Requirements and Term of Scholarship Award

- (a) There are five avenues by which to qualify for the Academic Scholars Program. Each is defined below:

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- (1) An Individual Applicant Qualified Student, which shall mean a student who is a resident of the State of Oklahoma whose ACT test score or whose Scholastic Aptitude Test score falls within the 99.5 to 100.0 percentile levels as administered in the State of Oklahoma and whose grade-point average and/or class rank is exceptional, as determined by the State Regents,
- (2) A Presidential Scholar, which shall mean a student selected by the Commission on Presidential Scholars pursuant to the Presidential Scholars Program administered by the United States Department of Education,
- (3) A National Merit Scholar, which shall mean a student designated as a National Merit Scholar by the National Merit Scholarship Corporation,
- (4) A National Merit Finalist, which shall mean a student designated as a National Merit Finalist by the National Merit Scholarship Corporation.
- (5) An Institutional Nominee, which shall mean a student nominated by an institution in The Oklahoma State System of Higher Education whose ACT test score or whose Scholastic Aptitude Test score falls within the 95.0 to 99.49 percentile levels, or who shows exceptional academic achievement as evidenced by factors including but not limited to grade point average, class rank, national awards, scholastic achievements, honors, and who shows exceptional promise based on documentation that may include but not be limited to teacher recommendations, extracurricular activities, and evidence of overcoming economic and social obstacles as determined by the State Regents. The State Regents shall ensure that standards of high academic ability are documented. Scholarship awards to institutional nominees become effective when appropriate documentation is verified by the State Regents.

(A) Effective with the Fall 2006 semester, Institutional Nominees are required to meet at least one of the two minimum criteria outlined below to be considered eligible for application as an Institutional Nominee:

- (i) Research universities:
 - (I) ACT: 32 or SAT equivalent
 - (II) GPA 3.9 and either Top 2% Class Rank or rank of first or second in their graduating class
 - (ii) Regional universities:
 - (I) ACT: 30 or SAT equivalent
 - (II) GPA 3.8 and either Top 4% Class Rank or rank of first or second in their graduating class
 - (iii) Two-year colleges:
 - (I) ACT: 29 or SAT equivalent
 - (II) GPA 3.7 and either Top 5% Class Rank or rank of first or second in their graduating class
- (B) Students graduating from high schools that do not provide class rank and home-educated students shall be considered for eligibility as an Institutional nominee based on their ACT or SAT test scores.

- (C) Students are eligible for consideration as an Institutional Nominee no later than the fall semester immediately following the graduation of their high school class. The Chancellor may approve exceptions to this requirement for extraordinary circumstances.
- (D) Institutional Nominees may be Oklahoma residents or nonresidents.
- (E) Students receiving the scholarship as an Institutional Nominee of a two-year college are eligible for transfer to a four-year public or private Oklahoma institution after completion of an associate's degree or the accumulation of at least 48 credit hours within their first two academic years at any combination of two year colleges in the State System. In addition, the Institutional Nominee of a two-year college must attend the nominating institution for the first year.
- (F) Students receiving the scholarship as an Institutional Nominee of a four-year university are eligible for transfer to another Oklahoma institution after one year of attendance at the nominating institution.
- (G) Students who fail to enroll the first semester upon nomination forfeit their scholarship eligibility.
- (H) Institutions may not replace students who forfeit their scholarship or are removed from the program due to failure to meet continuing eligibility requirements with another nominee.

(b) Students receiving the scholarship are eligible for eight semesters of scholarship at Oklahoma colleges and universities. Additional semesters of award, up to ten semesters, are available upon approval by the President or appropriate academic officer of the institution and the Chancellor. Additional semesters are intended only for extraordinary circumstances or for undergraduate academic programs that cannot be completed within eight semesters.

[OAR Docket #17-603; filed 7-10-17]

TITLE 610. STATE REGENTS FOR HIGHER EDUCATION

CHAPTER 25. STUDENT FINANCIAL AID AND SCHOLARSHIPS

[OAR Docket #17-601]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 7. Oklahoma Tuition Aid Grant Program
610:25-7-6. Eligibility; amount of grant; application procedures and deadlines; disbursement of funds [AMENDED]

AUTHORITY:

Oklahoma State Regents for Higher Education; 70 O.S. §3206 (i).

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

October 4, 2016

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None

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February 2, 2017

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September 11, 2017

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

Award Disbursement Policies: Colleges and universities continue to expand their offerings of more flexible non-traditional enrollment options. In addition, many certificate programs at state career technology centers (at which the Oklahoma Tuition Aid Grant - OTAG - is authorized to be used) are also offered in non-traditional enrollment periods based on clock hours rather than college semester credit hours. The proposed changes allow the OTAG award to be disbursed in a manner consistent with the student's actual enrollment period. The OTAG disbursement procedure will follow federal Pell Grant guidelines which are familiar to all student financial aid officers. The proposed change does not change the maximum annual award, but allows the award to be disbursed in a consistent and effective manner.

CONTACT PERSON:

David B. Harting, Assistant General Counsel, Oklahoma State Regents for Higher Education, (405) 225-9289.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 7. OKLAHOMA TUITION AID GRANT PROGRAM

610:25-7-6. Eligibility; amount of grant; application procedures and deadlines; disbursement of funds

(a) *A college tuition aid grant shall be awarded annually to each eligible, qualified full-time or part-time undergraduate or graduate student enrolled in a curriculum leading to a degree or certificate in an institution of collegiate grade or postsecondary institution providing a program of training to prepare students for employment in a recognized occupation in Oklahoma approved or accredited by the Oklahoma State Regents for Higher Education or appropriate postsecondary agency in accordance with the following [70 O.S., § 626.7]:*

(1) **Eligibility.**

(A) Each full-time or part-time resident student's financial eligibility will be based on their Expected Family Contribution (EFC) calculated for federal Title IV student financial aid eligibility. A resident student is one who meets the current Policy on Residence Status of Enrolled Students in the Oklahoma State System of Higher Education. Full-time and part-time status will be defined in accordance with the current definition for full-time or half-time enrollment status for federal Title IV student financial aid eligibility.

(B) *The Oklahoma State Regents for Higher Education shall determine by rules and regulations the maximum number of semesters a student may be eligible for grants. [70 O.S., § 626.7] An otherwise eligible undergraduate student can continue to receive awards as long as they are eligible for funding from the federal Pell grant program. Graduate students can receive a maximum of eight full-time disbursements.*

(C) *No student shall be eligible for grants unless he maintains such minimum standards of academic performance as are required by the institution in which the student is enrolled. [70 O.S., § 626.7] The minimum standards of academic performance shall be those required by the institution for federal Title IV financial aid recipients.*

(D) *Students who are incarcerated are not eligible to receive tuition aid grants. Incarceration will be defined in accordance with the current definition for federal Pell grant eligibility.*

(E) *Students must be enrolled in a postsecondary institution eligible to participate in the federal Title IV student financial aid programs.*

(F) *Students must meet all general eligibility requirements for recipients of federal Title IV student financial aid. The school of attendance will report each student's completed application status through a reporting system provided by the Oklahoma State Regents for Higher Education.*

(G) *In the event a student for any reason ceases to continue to be enrolled during the course of an academic year, the student shall cease to be eligible for tuition aid. [70 O.S., § 626.7]*

(2) **Amount of grant.**

(A) *The amount of tuition aid grant to any student under this act [70 O.S., § 626.1 et seq.] for any semester shall represent a percentage not greater than seventy-five percent (75%) of the previous year's tuition and enrollment fees normally charged to residents of the State of Oklahoma by the institution of attendance. [70 O.S., § 626.7] The tuition and enrollment fees used in calculating the award will be based on standards as follows: full-time undergraduate - 30 credit hours per academic year; part-time undergraduate and graduate - 12 credit hours per academic year; full-time graduate - 18 credit hours per academic year; full-time career technology - at least 900 clock hours; and part-time career technology - at least 450 clock hours. If the Oklahoma State Regents for Higher Education determine that funds are available to offer awards for summer enrollments, institutions will be notified. At the time of the notification, summer award amounts will be announced.*

(B) *The percentage of aid awarded shall be based on a need analysis system that is consistent with federal student financial aid regulations. [70 O.S., § 626.7] The percentage of aid awarded shall be based on the student's Expected Family Contribution*

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(EFC) calculated for federal Title IV student financial aid eligibility. The Oklahoma State Regents for Higher Education will issue an annual award payment schedule identifying the maximum eligible EFC and identifying the percentage of aid to be awarded according to EFC ranges.

(C) *The Oklahoma State Regents for Higher Education shall determine by rules the annual maximum award based on an annual assessment of funds availability. The State Regents shall not increase the annual maximum award amount unless funding is sufficient to serve at least the same number of students as the previous academic year.* [70 O.S., § 626.7]

(D) The minimum amount of grant to be awarded is \$200 per academic year or \$100 per semester.

(E) The award must be included in the student's financial aid package managed by the institution. If the inclusion of the tuition aid grant award results in the student receiving more financial assistance than is needed to meet their cost of education as determined by the institution, the institution will resolve the over-award in accordance with federal Title IV student financial aid regulations. The institution may reduce or revoke the award if necessary to resolve the over-award.

(3) **Application procedures and deadlines.** *The Oklahoma State Regents for Higher Education may adopt rules and regulations, prescribe and provide appropriate forms for application and employ such persons, contract for such services and make such additional expenditures as may be necessary or appropriate for effectuating the provisions of this act.* [70 O.S., § 626.7]

(A) Students will apply for tuition aid grant award consideration by completing the federal student financial aid application. A separate application may be provided for students eligible for state financial aid under 70 O.S., § 3242. The Oklahoma State Regents for Higher Education will receive application data from the federal Title IV student financial aid application system for those students who indicate their legal state of residence is Oklahoma. Applications with at least one eligible Oklahoma institution selected by the student will be processed for tuition aid grant award consideration.

(B) The application receipt deadline will be reflected in the application document provided annually by the federal Title IV student financial aid application system.

(4) **Disbursement of funds.**

(A) Funds will be disbursed to students after the institution confirms enrollment status and eligibility in each the fall and spring semesters. For standard fall and spring semester enrollment, one-half of the award will be disbursed in the fall semester, and one-half of the award will be disbursed in the spring semester. For non-standard enrollment, disbursements will be made consistent with federal Pell Grant regulations.

(B) Funds for eligible students will be delivered to the institution for disbursement to students in accordance with the institution's student financial aid disbursement policies.

(b) The Oklahoma State Regents for Higher Education are hereby authorized to determine priorities for participation in this tuition aid program by full-time, part-time, undergraduate and graduate students based on available state funding. [70 O.S., § 626.8]

[OAR Docket #17-601; filed 7-10-17]

TITLE 610. STATE REGENTS FOR HIGHER EDUCATION CHAPTER 25. STUDENT FINANCIAL AID AND SCHOLARSHIPS

[OAR Docket #17-600]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 23. Oklahoma Higher Learning Access Program
610:25-23-4. Program requirements [AMENDED]

AUTHORITY:

Oklahoma State Regents for Higher Education; 70 O.S. §2601 et seq.; 70 O.S. §3206 (i).

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

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Approved by Governor's declaration on June 13, 2017

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SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

Adding Statistics and Probability Course Option to Math Curriculum Requirements: The core curriculum requirements for Oklahoma's Promise are directly aligned with the core curriculum requirements for college admission as approved by the State Regents. In June 2016, the State Regents approved a modification to the college admission curriculum requirements for mathematics by adding statistics and probability to the list of acceptable courses. The proposed revision makes this same change to the Oklahoma's Promise curriculum requirements for mathematics.

ACT Test Scores: In addition to meeting the other Oklahoma's Promise program requirements, homeschool students and students graduating from non-accredited high schools are also required by state law to score a 22 or higher on the ACT test. In recent years, ACT has expanded its options for taking the ACT test beyond the traditional six national Saturday testing dates each year. Other official ACT testing options now include school-level testing administered at a school site during the school day, statewide ACT tests (not used in Oklahoma to date), and international tests. The proposed change would recognize these additional methods for students to obtain ACT scores considered official and valid by ACT. The language specifically excludes

"residual" ACT tests administered by an individual college because ACT does not allow residual test scores to be used beyond the campus that administers the test. The language also requires that SAT test scores be considered in a manner comparable to the ACT test scores.

CONTACT PERSON:

David B. Harting, Assistant General Counsel, Oklahoma State Regents for Higher Education, (405) 225-9289.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 23. OKLAHOMA HIGHER LEARNING ACCESS PROGRAM

610:25-23-4. Program requirements

- (a) Students shall agree to abide by the following provisions:
 - (1) Attend school regularly and to do homework regularly;
 - (2) Refrain from substance abuse;
 - (3) Refrain from commission of crimes or delinquent acts;
 - (4) Have school work and school records reviewed by mentors designated pursuant to the program;
 - (5) Provide information requested by the Oklahoma State Regents for Higher Education (OSRHE) or the State Board of Education; and
 - (6) Participate in program activities. [70 O.S. § 2605]
- (b) The student's parent(s), custodial parent(s), or guardian(s) shall witness the student's agreement and further agree to:
 - (1) Assist the student in achieving compliance with the agreements;
 - (2) Confer, when requested to do so, with the school contact person, other school personnel, and program mentors;
 - (3) Provide information requested by the OSRHE or the State Board of Education; and
 - (4) Assist the student in completing forms and reports required for program participation, making application to institutions and schools of higher learning, and filing applications for student grants and scholarships. [70 O.S. § 2605]
- (c) Students in the program graduating high school in 2010 and thereafter must complete the following 17-unit core curriculum with a minimum 2.50 grade-point-average (GPA) on a 4.00 grading scale, by the time they graduate from high school. For the purpose of calculating the required core curriculum GPA, core courses in English, lab science, mathematics, history and citizenship skills, foreign or non-English language, computer technology, or "additional" subject areas must be transcribed with a letter grade that has a corresponding numerical value. If the school district assigns a course a grade of "pass" without a numerical value, the OSRHE will assign a letter grade of "D" or the lowest passing grade that the high school assigns to courses. If the required one unit, year, or set

of competencies in fine arts (music, art, or drama) or speech is fulfilled on a pass/fail or competency basis, the course(s) will be accepted and excluded from the required core curriculum GPA calculation.

- (1) Four units, or years, of English (grammar, composition, literature; should include an integrated writing component);
- (2) Three units, or years, of lab science (biology, chemistry, physics, or any lab science certified by the school district; general science with or without a lab may not be used to meet this requirement);
- (3) Three units, or years, of mathematics (Algebra I, Algebra II, geometry, trigonometry, math analysis, pre-calculus, statistics and probability [must have completed geometry and Algebra II], calculus, Advanced Placement Statistics);
- (4) Three units, or years of history and citizenship skills (1 unit of American history and 2 units from the subjects of history, economics, geography, government and/or non-Western culture);
- (5) Two units, or years, of a foreign or non-English language (both units, or years, of the same language), or Two units, or years, of computer technology (courses in programming, hardware, and business computer applications such as word processing, databases, spreadsheets and graphics will qualify; keyboarding and typing classes do not qualify);
- (6) One additional unit, or year, of subjects listed above, or any Advanced Placement course except AP courses in applied fine arts (art history and music theory will count; studio art courses will not count);
- (7) One unit, year, or set of competencies of fine arts (music, art, or drama) or speech.
- (d) The program curricular requirements for English, science, mathematics, history and citizenship skills are identical with the curricular requirements for college admission set by the OSRHE. Any change by the OSRHE to the curricular requirements for college admission shall also apply to the program curricular requirements.
- (e) Advanced students who complete core courses in earlier grades will not be required to take additional courses for purposes of the requirements of this program.
- (f) Strict parameters regulate the substitution of applied courses (OSRHE policy on Institutional Admission and Retention).
- (g) Exceptions to the required core curriculum will be considered according to the following:
 - (1) Students attending schools, or homeschool students participating in other educational programs, which do not offer all the core curriculum courses will be allowed to satisfy the requirements subject to the following provisions:
 - (A) Core curriculum requirements which are also required for regular college admission (OSRHE policy on Institutional Admission and Retention) will be subject to the OSRHE Policy on Remediation and Removal of High School Curricular Deficiencies.
 - (B) Any other core curriculum requirements must be satisfied during the first twenty-four (24)

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hours of college coursework. Any exceptions to the twenty-four (24) hour limitation must be requested in writing and shall be subject to approval by the Chancellor.

- (2) Students who have documented proficiency in a non-English language equivalent to at least two (2) units of high school study may be exempted from the requirement of two (2) units of a foreign or non-English language.
 - (3) Any other requests for exceptions to the core curriculum requirement must be submitted in writing to the Chancellor. Upon approval of the exception, the student may be eligible for program benefits; provided, such approval may require the satisfaction of any core curriculum requirements omitted in high school or other educational program.
- (h) Students must attain a minimum 2.50 cumulative GPA on a 4.00 grading scale for all work attempted in grades nine through twelve.
- (i) Homeschool students and students graduating from a high school not accredited by the State Board of Education must achieve a composite score of 22 or higher on the ACT test or the equivalent SAT test score. Only ACT ~~and SAT~~ test scores reported on an official test report issued by ACT from tests administered on national test dates prior to the student's high school graduation will be considered. Scores from ACT residual tests will not be considered. SAT test scores will be considered in a manner comparable to ACT test scores.

[OAR Docket #17-600; filed 7-10-17]

TITLE 610. STATE REGENTS FOR HIGHER EDUCATION CHAPTER 25. STUDENT FINANCIAL AID AND SCHOLARSHIPS

[OAR Docket #17-602]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 33. Regional University Baccalaureate Scholarship Program

610:25-33-4. Eligibility Requirements [AMENDED]

610:25-33-5. Criteria for Continued Eligibility [AMENDED]

AUTHORITY:

Oklahoma State Regents for Higher Education; 70 O.S. §3206 (i).

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n/a

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n/a

GIST/ANALYSIS:

ACT Test Scores: To be eligible for the Regional University Baccalaureate Scholarship, students must score at least a 30 on the ACT unless they meet other designations. In recent years, ACT has expanded its options for taking the ACT test beyond the traditional six national Saturday testing dates each school year. Other official ACT testing options now include school-level testing administered at a school site during the school day, statewide ACT tests (not used in Oklahoma to date), and international tests. The proposed change recognizes these additional methods for students to obtain ACT scores considered official and valid by ACT. The language specifically excludes "residual" ACT tests administered by an individual college because ACT does not allow residual test scores to be used beyond the campus that administers the test.

Retention/Graduation Grade Point Average (GPA): The proposed changes allow, in addition to the cumulative GPA, the use of the student's retention/graduation GPA for meeting the program's continuing eligibility GPA requirements. The retention/graduation GPA calculation does not include activity courses or courses subject to academic forgiveness provisions authorized by State Regents' policy. State Regents' policy also uses the retention/graduation GPA for compliance with State Regent's system-wide academic enrollment requirements. In addition, on students' transcripts, the retention/graduation GPA is required to be shown but the reporting of the cumulative GPA is optional.

Final Semester Award: Students in the program are limited to eight semesters of scholarship eligibility and must enroll in at least twelve hours per fall or spring semester. The proposed revision would allow students in their final semester of undergraduate enrollment to be eligible for a half-semester award for at least six hours of enrollment. This provision is for students who need less than twelve hours in their final semester to complete their undergraduate degree. The change would prevent the student from having to take unnecessary courses to receive an award and would also prevent the program from having to pay a larger award for unnecessary courses.

CONTACT PERSON:

David B. Harting, Assistant General Counsel, Oklahoma State Regents for Higher Education, (405) 225-9289.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 33. REGIONAL UNIVERSITY BACCALAUREATE SCHOLARSHIP PROGRAM

610:25-33-4. Eligibility Requirements

- (a) Applicants shall be Oklahoma residents.
- (b) Applicants must meet one of the following criteria defined below:
 - (1) An ACT qualified student, which shall mean a student whose ~~American College Testing~~ACT composite score is at least 30 and whose grade point average and class rank are exceptional, as determined by the institution;
 - (2) A National Merit Semifinalist or Commended Student, which shall mean a student designated as a National Merit Semifinalist or National Merit Commended Student by the National Merit Scholarship Corporation;
- (c) Only ACT ~~and SAT~~ test scores from tests administered on national test dates reported on an official test report issued by ACT will be considered for admission to the program. Scores from ACT residual tests will not be considered.

610:25-33-5. Criteria for Continued Eligibility

(a) Participants awarded a scholarship must maintain a cumulative 3.25 cumulative or retention/graduation grade-point-average. A program year is defined as beginning in the fall semester and continuing through the summer term. The cumulative or retention/graduation grade-point-average will be determined at the end of the program year, i.e., between the summer and fall terms.

(b) Scholarship recipients must maintain full-time enrollment each semester. Full-time enrollment shall mean a minimum of 12 hours per semester and 24 hours in the two regular semesters. Students who, due to extraordinary circumstances during the semester, drop below the minimum of 12 hours of initial enrollment, must earn 24 credit hours for the two regular semesters to retain eligibility for the next program year. Students will be eligible for summer awards if they have earned 24 semester credit hours in the preceding two regular semesters. Students who receive part-time awards for summer must enroll in at least 6 credit hours and must complete a total of at least 30 credit hours during the full academic year (fall, spring, summer). Students who receive full-time awards for summer must enroll in at least 12 credit hours and must complete a total of at least 36 credit hours during the full academic year (fall, spring, summer). Hours of enrollment required for summer awards may consist of a combination of summer and intersession enrollment. Part-time awards, for enrollment of 6 to 11 credit hours, made for the summer term will count as one-half of a semester used in the program and will be in the amount of one-half of a semester award. Full time awards, for enrollment of 12 or more credit hours, made for the summer term will count as a full semester used in the program and will be in the amount of one semester award. Students who require less than 12 credit hours for graduation purposes during the last semester of undergraduate enrollment may request payment of their scholarship in the amount of a one-half semester award for at least six hours of enrollment. The term will count as one-half semester used in the program.

(c) A student who fails to meet the continued eligibility requirements will be removed from the program without academic scholarship assistance the following semester. Any semester during which the student does not receive an award due to failure to meet the continuing eligibility requirements is counted as a semester used in the program and is deducted from the eight semesters allotted for the program. A student may be reinstated to the program:

- (1) If the student achieves a 3.25 cumulative or retention/graduation grade-point average at the end of the following fall or spring semester or summer term;
- (2) If the student in the following fall or spring semester remedies the credit-hour deficiency by earning twelve credit hours in addition to the number of hours by which the student is deficient; or if the student earns the deficient credits in the following summer term.

(d) In summary, a student may be reinstated only one time and has one year to remedy the grade-point average or credit-hour deficiency. Maintaining eligibility and familiarity with State Regents' and institutional policy is the responsibility of the student.

(e) Participants may take a leave of absence from the program by petition to the Oklahoma State Regents for Higher Education. Leaves of absence may not be used to remedy grade-point average or credit-hour deficiency.

[OAR Docket #17-602; filed 7-10-17]

**TITLE 612. STATE DEPARTMENT OF REHABILITATION SERVICES
CHAPTER 1. ADMINISTRATIVE OPERATIONS**

[OAR Docket #17-469]

RULEMAKING ACTION:

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RULES:

Subchapter 1. General Provisions

612:1-1-6. Description of forms and instructions issued by the Department for public use [AMENDED]

Subchapter 3. Administrative Components of the Department

612:1-3-2.1. The Chief of Staff of Rehabilitation Services [AMENDED]

612:1-3-10. Final signature authority [AMENDED]

Subchapter 5. Program Divisions Within the Department

612:1-5-1. Overview of the department [AMENDED]

612:1-5-3. Division of ~~Vocational Rehabilitation for the Blind & Visually Impaired~~ Visual Services (~~VRBVI~~VS) [AMENDED]

AUTHORITY:

Commission for Rehabilitation Services; 74 O.S. § 166.1 et seq.; 74 O.S. § 166.2

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n/a

GIST/ANALYSIS:

The majority of the changes throughout Chapter 1 consist of the division name change of Vocational Rehabilitation for the Blind & Visually Impaired (VRBVI) becoming Visual Services (VS). Additional changes include removing specific names of publications, forms and instructions and use general descriptive language.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

Permanent Final Adoptions

SUBCHAPTER 1. GENERAL PROVISIONS

612:1-1-6. Description of forms and instructions issued by the Department for public use

Forms and instructions issued by the Department for public use are:

- (1) ~~"A Personal Directory, Your Rights and Responsibilities as an Applicant or Client"~~ A publication outlining rights and responsibilities of applicants for and clients of Vocational Rehabilitation or Vocational Rehabilitation for the Blind & Visually Impaired Visual Services" is issued for public use as a guide to accessing services from the Department, as a guide to requesting fair hearings, and as a guide to the application and eligibility determination process. The explanations given in this publication repeat Department policy faithfully and accurately.
- (2) The Certification as a Person With A Severe Disability is issued to qualifying individuals to use in applying for State government jobs, and allows for exemption from specific Merit System requirements.
- (3) From time to time, the Department issues public information pamphlets for general distribution. These pamphlets present general overviews of services provided by the Department as a whole, or by Divisions or Units within the Department. These pamphlets are carefully reviewed using the two-person proofreading method to check against the official Code or Register text.

SUBCHAPTER 3. ADMINISTRATIVE COMPONENTS OF THE DEPARTMENT

612:1-3-2.1. The Chief of Staff of Rehabilitation Services

- (a) The Chief of Staff of Rehabilitation Services assists the Director of the Department in fulfilling the chief administrative and executive responsibilities for day-to-day direction of the activities necessary for DRS to attain its mission as established by Title 74, Section 166.1 et seq. of Oklahoma State Statute. The work of the Chief of Staff is overseen by the Director of the Department of Rehabilitation Services. In the Director's absence, the work of the Chief of Staff is overseen by the Commission for Rehabilitation Services.
- (b) To the extent deemed necessary and prudent by the Director, or in the Director's absence, the Chief of Staff supervises the Division Administrators for Vocational Rehabilitation Services, ~~Vocational Rehabilitation for the Blind & Visually Impaired Visual Services~~, Disability Determination, Financial Services Division, Management Services, and the Superintendents of the School for the Blind and the School for the Deaf. To the extent deemed necessary and prudent by the Director, or in the Director's absence, the Chief of Staff also supervises the Communications Director and External Relations Officer, and the Chief Fiscal Officer.
- (c) The Chief of Staff duties include:
 - (1) assuring that all of DRS is working toward its mission and the goals established by the Commission and

the Director through aggressive implementation of the planning and budgeting system;

- (2) serving as staff to the Commission for Rehabilitation Services at the direction of, or in the absence of, the Director, providing necessary input for decision-making and assuring that actions approved by the Commission are carried out;
- (3) developing and maintaining cooperative relationships with lawmakers and other officials, both federal and state, to assure the fulfillment of DRS's mission;
- (4) maximizing all available resources for the delivery of services to the clients DRS is charged to serve;
- (5) serving as a spokesperson for DRS and as an advocate for the clients it serves;
- (6) assuring the coordination of services with other state agencies; and,
- (7) carrying out such other duties and assignments the Director, or in the Director's absence, the Commission deems necessary and prudent to attain the mission of DRS; delegating authority to complete duties assigned, and overseeing the accomplishment of those assigned responsibilities.

612:1-3-10. Final signature authority

The Department of Rehabilitation Services recognizes the importance of efficient processing of resource and operations approval requests. At the same time, the Department must assure sufficient oversight of resource allocation in order to fulfill its obligations as a steward of public funds. The Department has therefore established a signature authority listing to delineate final approval levels for resource and operations approval requests. With regard to signature authority on contracts, all expenditures must be consistent with DRS's budget categories as approved by the Commission. Delegation of final signature authority is limited to the next lower administrative level unless approved in writing by the Director. The administrator is to notify the appropriate administrative programs of delegations. Administrators have authority to approve actions within their areas of responsibility at all administrative levels below their own. The requests listed in (1) through (9) of this Subsection must continue to be reviewed and approved by the appropriate staff before presentation to the individual with final signature authority. There are additional resource and operations approvals unique to each administrative area that are stated in the policies established for that administrative area.

- (1) **Director's signature.** The Director has final signature authority for items listed in (A) through (E) of this Paragraph.
 - (A) Sole source contracts.
 - (B) Initial contracts for \$250,000 or more.
 - (C) Notices of personnel action (may be delegated).
 - (D) Leave without pay requests for 90 days or more.
 - (E) Other actions as required by executive order, statute, etc.

(2) **Chief of Staff.** The Chief of Staff has final signature authority for items listed in (A) through (C) of this Paragraph.

(A) Initial contracts between \$100,000 and \$250,000 on a case by case basis and upon written authority of the Director.

(B) Initial contracts or interagency agreements which obligate the entire Department or more than one division.

(C) New brochures, forms, publications (electronic or printed), and videos produced for more than one division.

(3) **Division Administrator.** Division Administrators have final signature authority for items listed in (A) through (K) of this Paragraph.

(A) Initial contracts for less than \$100,000.

(B) New or revised interagency agreements involving the division.

(C) Administrative purchases costing \$10,000 or more (may be delegated). Computer purchases must be co-signed by the Administrator for Information Services.

(D) Requests for employee in-state travel (may be delegated).

(E) Requests for out-of-state employee travel.

(F) Final decisions for employee grievance resolution, other than discrimination complaints, and for adverse action after review by Human Resources.

(G) Leave without pay requests for less than 90 days.

(H) Brochures, forms, publications (electronic or printed), and videos produced for the division.

(I) Requests for internships or practicums for respective division.

(J) Memos for general distribution to the division.

(K) Grant proposals.

(4) **Executive and MSD Administrators.** Executive and MSD Administrators have final signature authority for items listed in (A) through (F) of this Paragraph.

(A) Office supply orders.

(B) Reorder of existing printed materials.

(C) MSD Unit administrative purchase requisitions under area of responsibility up to \$10,000. Computer purchases must be co-signed by the Administrator for Information Services.

(D) Administrative memos under area of responsibility.

(E) Policy Transmittals by the Administrator for Policy Development and Programs Standards.

(F) Requests for employee in-state travel.

(5) **Field Coordinators and Program Managers in DVR and DVRBVIDVS.** The Field Coordinators or Program Managers in Vocational Rehabilitation Services and ~~Vocational Rehabilitation for the Blind and Visually Impaired~~ Visual Services Divisions have final signature authority for administrative purchases up to \$10,000. Computer purchases must be co-signed by the Administrator for Information Services.

(6) **Program Managers in DVRBVIDVS.** Program Managers have final signature authority for items listed in (A) through (B) of this Paragraph.

(A) Office supply requisitions other than those available on the electronic ordering system.

(B) Reorder of existing printed materials.

(7) **Superintendents at OSB and OSD.** Superintendents have final signature authority for items listed in (A) through (J) of this Paragraph for the respective school.

(A) Initial contracts for less than \$100,000.

(B) Interagency agreements involving only the school.

(C) All administrative and educational purchases. Computer purchases must be co-signed by the Administrator for Information Services.

(D) Requests for all employee travel.

(E) Final decisions for adverse action after review by Human Resources.

(F) Final decisions for grievance resolutions, other than discrimination complaints.

(G) Leave without pay requests for less than 90 days.

(H) Requests for internships or practicums.

(I) Brochures, forms, publications (electronic or printed), and videos produced for the school.

(J) Grant proposals.

(8) **Supervisors at OSB and OSD.** Supervisors at OSB and OSD have final signature authority for items in (A) through (B) of this Paragraph for the respective school.

(A) Office supply orders.

(B) Reorder of existing printed materials.

(9) **Program Managers, Disability Determination Division.** Program Managers at the Disability Determination Division have final signature authority for the following items in (A) through (B) of this Paragraph.

(A) The Program Manager responsible for budgets, contracts, and purchases approves administrative purchases under \$10,000. Computer purchases must be co-signed by the Administrator for Information Services.

(B) Reorder of existing printed materials.

SUBCHAPTER 5. PROGRAM DIVISIONS WITHIN THE DEPARTMENT

612:1-5-1. Overview of the department

The purpose of this Subchapter is to provide an overview of the program divisions within the Department of Rehabilitation Services. Program divisions are established for the following areas: Vocational Rehabilitation Services, ~~Vocational Rehabilitation for the Blind & Visually Impaired~~ Visual Services, Disability Determination, Management Services, The Oklahoma School for the Blind and the Oklahoma School for the Deaf. Each of the Divisions has one or more components.

Permanent Final Adoptions

612:1-5-3. Division of Vocational Rehabilitation for the Blind & Visually Impaired Visual Services (DVRBVIDVS)

The Division of ~~Vocational Rehabilitation for the Blind & Visually Impaired Visual Services~~ provides diagnostic, counseling and guidance, physical restoration, training, and other services to individuals whose major disability is blindness or severe visual impairment. All departmental managers and ~~Vocational Rehabilitation for the Blind & Visually Impaired Visual Services~~ Field Coordinators report directly to the Division Administrator or designee. Rehabilitation teachers for the blind provide in-home training, counseling and instruction in daily-living skills to blind individuals. DRS has field staff assigned to meet the needs in every county of the state, although staff may not be officed in each county. Local office staff report to ~~VRBVIDVS~~ Program Managers, who report to the Field Coordinators. The Oklahoma Library for the Blind and Physically Handicapped provides books and magazines in special media to blind and print-limited Oklahomans. The Division of ~~Vocational Rehabilitation for the Blind & Visually Impaired Visual Services~~ administers the Randolph-Sheppard Business Enterprise Program in Oklahoma, securing suitable locations for vending facilities; designing and installing equipment; recruiting, training, placing and supervising operators for the facilities.

[OAR Docket #17-469; filed 6-20-17]

TITLE 612. STATE DEPARTMENT OF REHABILITATION SERVICES CHAPTER 10. VOCATIONAL REHABILITATION AND VOCATIONAL REHABILITATION FOR THE BLIND & VISUALLY IMPAIRED VISUAL SERVICES

[OAR Docket #17-470]

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RULES:

- Subchapter 1. General Provisions
 - 612:10-1-1. Purpose [AMENDED]
 - 612:10-1-2. Definitions [AMENDED]
 - 612:10-1-3. Basic philosophy of rehabilitation programs [AMENDED]
 - 612:10-1-3.1. Procedural exceptions [AMENDED]
 - 612:10-1-3.2. Pilot projects [AMENDED]
 - 612:10-1-5. Confidentiality [AMENDED]
 - 612:10-1-6. Due process [AMENDED]
 - 612:10-1-7. Purchase of services and goods for individuals with disabilities [AMENDED]
- Subchapter 3. Client Participation in Cost of Services
 - 612:10-3-2. Consideration of comparable services and benefits [AMENDED]
 - 612:10-3-3. Client participation in services cost and financial status determination [AMENDED]
 - 612:10-3-4. Services exempt from client participation in service costs [AMENDED]
- Subchapter 7. Vocational Rehabilitation and ~~Vocational Rehabilitation for the Blind & Visually Impaired Visual Services~~ [AMENDED]
- Part 1. Scope of Vocational Rehabilitation and ~~Vocational Rehabilitation for the Blind & Visually Impaired Visual Services~~ [AMENDED]

- 612:10-7-1. Overview of Vocational Rehabilitation and ~~Vocational Rehabilitation for the Blind & Visually Impaired Visual Services~~ [AMENDED]
- 612:10-7-2. Field staff responsibilities [AMENDED]
- 612:10-7-3. Client responsibilities [AMENDED]
- Part 3. Case Processing Requirements
 - 612:10-7-21.1. Processing incoming referrals [AMENDED]
 - 612:10-7-21.2. Information and referral system [AMENDED]
 - 612:10-7-24.2. Assessment for determining eligibility [AMENDED]
 - 612:10-7-24.3. Trial Work Experience and Extended Evaluation [AMENDED]
 - 612:10-7-25.1. Order of selection [AMENDED]
 - 612:10-7-31. Transfer of cases [AMENDED]
- Part 5. Case Status and Classification System
 - 612:10-7-50. Eligibility Status [AMENDED]
 - 612:10-7-51. Individualized Plan for Employment [AMENDED]
 - 612:10-7-56. Employment [AMENDED]
- Part 9. Actions Requiring Review and Approval
 - 612:10-7-87. Actions requiring supervisor's approval [AMENDED]
- Part 11. Physical and Mental Restoration Services
 - 612:10-7-98. General guidelines for physical and mental restoration services [AMENDED]
- Part 13. Supportive Services
 - 612:10-7-130. Maintenance [AMENDED]
- Part 15. Training
 - 612:10-7-142. General guidelines for training services [AMENDED]
 - 612:10-7-149. College and university training [AMENDED]
 - 612:10-7-150. Continued eligibility for college or university training [AMENDED]
 - 612:10-7-152. Payment of tuition and fees at colleges and universities [AMENDED]
 - 612:10-7-158. Training for individuals in custody of the Department of Corrections [AMENDED]
 - 612:10-7-161. Public and private vocational schools [AMENDED]
 - 612:10-7-162. Textbooks, supplies, training tools and equipment [AMENDED]
 - 612:10-7-170. Work experience, internship and apprenticeship [NEW]
- Part 17. Supportive Employment Services
 - 612:10-7-183. Ongoing support services [AMENDED]
 - 612:10-7-184. Extended services [AMENDED]
- Part 19. Special Services for Individuals who are Blind, Deaf, or have other Severe Disabilities
 - 612:10-7-199. Reader/recording services [AMENDED]
 - 612:10-7-201. Rehabilitation teaching services [AMENDED]
 - 612:10-7-203. Orientation and Mobility (O & M) [AMENDED]
 - 612:10-7-205. Services to persons who are deaf-blind [AMENDED]
 - 612:10-7-206. Assistive technology services for individuals with visual impairments [AMENDED]
- Part 21. Purchase of Equipment, Occupational Licenses and Certifications
 - 612:10-7-216. Tools, occupational equipment, initial stocks and supplies [AMENDED]
- Part 25. Transition from School to Work Program
 - 612:10-7-245. Definitions [AMENDED]
- Subchapter 9. Rehabilitation Teaching Services
 - Part 3. Case Processing and Recording
 - 612:10-9-17. Application Status [AMENDED]
- Subchapter 11. Independent Living Services for Older and Individuals who are Blind
 - Part 1. Scope of Services
 - 612:10-11-7. Administrative review [AMENDED]

AUTHORITY:

Commission for Rehabilitation Services; 74 O.S. § 166.1 et seq.; 74 O.S. § 166.2; 34 CFR 361; 34 CFR 361.5(c); 34 CFR 361.5(19)(v); 34 CFR 361.13(c); 34 CFR 361.74; 29 USC 701 et seq.; 29 USC 705; 29 USC 705(13); 29 USC 721(a)(2);

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GIST/ANALYSIS:

The majority of changes throughout Chapter 10 consist of the division name change of Vocational Rehabilitation for the Blind & Visually Impaired (VRBVI) becoming Visual Services (VS). Additional changes consist of clarifying terms and updating language to reflect current use of terms and removal of antiquated language. The addition of a new policy to authorize DRS to assist clients to participate in work experiences, internships and apprenticeships which are training options encouraged under WIOA. Definition terms revised to implement WIOA changes.

CONTACT PERSON:

Tina Calloway, Administrative Assistant, State Department of Rehabilitation Services, Process Improvement Unit, 3535 N.W. 58th Street, Suite 500, Oklahoma City, OK 73112-4824, (405) 951-3552.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 1. GENERAL PROVISIONS

612:10-1-1. Purpose

The purpose of this Chapter is to set forth rules for the provision of services provided by the Division of Vocational Rehabilitation and the Division of ~~Vocational Rehabilitation for the Blind & Visually Impaired~~ Visual Services.

612:10-1-2. Definitions

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

"Act" means the Rehabilitation Act [29 USC 701 et seq.].

"ADL" Activities of Daily Living often refer to the routine activities carried out for personal hygiene and health (including bathing, dressing, feeding) and for operation of a household.

"Applicant" means an individual who has completed and signed an agency application form or has otherwise requested vocational rehabilitation services; who has provided information necessary to initiate an assessment to determine eligibility and priority for services; and who is available to complete the assessment process.

"Assistive technology" means technology designed to be utilized in an assistive technology device or service.

"Assistive technology device" means any item, piece of equipment, or product system, whether acquired commercially,

modified, or customized, that is used to increase, maintain, or improve functional capabilities of individuals with disabilities.

"Assistive technology service" means any service that directly assists an individual with a disability in the selection, acquisition, or use of an assistive technology device.

"Authorized Representative" means a client's or applicant's parent, guardian, advocate (i.e. Client Assistance Program) or other person designated by the client or applicant as the individual authorized to deal with the Department on behalf of the client or applicant, consistent with provisions of the Act. Authorized representative does not include an employee of the Department of Rehabilitation Services, another state agency, or vendor of the Department unless the person is actually the parent, guardian, or is serving in the capacity of guardian (for example: court appointed).

"Best correction" refers to the use of standard eyeglasses or contact lenses and does not include the use of bioptic telescopic systems or specialized lenses which cannot be worn by the individual on a sustained basis.

"Blind" means persons who are blind within the meaning of the State Law relating to Vocational Rehabilitation. Legal blindness means a visual acuity of 20/200 or less in the better eye with best correction, or a visual field of 20 degrees or less.

"Client/Consumer" means an individual found eligible and receiving services under the Act.

"Clubhouse model" means a psychosocial and vocational approach to work adjustment for people with mental illness. The work-ordered day is a core element of the clubhouse, which focuses on strengths, talents and abilities. Work in the clubhouse helps members develop appropriate social skills and gain self-worth, purpose, and confidence. The clubhouse enables members to return to paid work through Transitional Employment, Supported Employment and independent employment.

"Community rehabilitation program" (CRP) means a program that directly provides or facilitates the provision of vocational rehabilitation services to individuals with disabilities, and provides singly or in combination, services for an individual with a disability to enable the individual to maximize opportunities for employment, including career advancement.

"Comparable services and benefits" means services that are provided or paid for in whole or in part by other Federal, state or local public agencies, health insurance or employee benefits, and are available to the individual at the time needed to further the progress of the individual toward achieving his/her identified employment outcome.

"Compensatory training" means training required before the client can enter a formal training program or employment, such as pre-vocational or personal adjustment training.

"Competitive integrated employment" means ~~work in the competitive labor market that is performed on a full time or part time basis in an integrated setting; and for which the individual is compensated at or above the minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals who do not have disabilities~~ full or part-time work that is compensated at or above minimum wage, offers

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an individual with a disability benefits and opportunities for advancement comparable to those offered to employees in similar positions, and is performed in a setting where the individual with a disability interacts with persons without disabilities to the same extent that employees who are not individuals with disabilities and who are in comparable positions interact with these persons. Specific criteria defining competitive integrated employment are detailed in 34 CFR 361.5(c)(9).

"Consumer Independence Support Services" (CISS) are defined as providing independent living assessment, intensive counseling, community integration, and housing modifications to further assist consumers with severe disabilities in achieving independence.

"Continuity of Services" means once an individual is selected for services in accordance with policy, regardless of the priority category from which the individual was selected, the individual will receive the necessary purchased services, including post-employment services.

"Counselor" means the qualified rehabilitation professional, who is an employee of the designated state unit, and who has primary responsibility for the management of an individual's rehabilitation services case record, including determination of eligibility, service planning and management, counseling and guidance, and determination of successful or unsuccessful rehabilitation. Counselor is equivalent to such terms as ~~VR/VRBVI~~VR/VS Specialist and ~~VR/VRBVI~~VR/VS Coordinator.

"Customized employment" means competitive integrated employment, for an individual with a significant disability, that is based on a determination of the unique strengths, needs and interests of the individual; designed to meet the specific abilities of the individual and the business needs of the employer; and carried out using flexible strategies such as those detailed in 34 CFR 361.5(c)(11).

"Department" unless otherwise indicated in the text, means the Department of Rehabilitation Services as constituted in 74 O.S., Section 166.1 et seq.

"DRS" means the Department of Rehabilitation Services.

"DVR" means the Division of Vocational Rehabilitation.

"~~DVRBVIDVS~~" means the Division of ~~Vocational Rehabilitation for the Blind & Visually Impaired~~Visual Services.

"Eligibility" or "Eligible" means:

(A) when used in relation to an individual's qualification for Vocational Rehabilitation services, a determination that the individual has a physical or mental impairment which for such individual constitutes or results in a substantial impediment to employment; can benefit in terms of an employment outcome from rehabilitation services; and requires vocational rehabilitation services to prepare for, secure, retain, advance in or regain employment;

(B) when used in relation to an individual's qualification for Supported Employment services, a determination that the individual is eligible for Vocational Rehabilitation services; is an individual with the most significant disabilities (priority group one); and

(i) for whom competitive employment has not traditionally occurred; or

(ii) for whom competitive employment has been interrupted or intermittent as a result of a significant disability; and

(iii) who, because of the nature and severity of their disability, need intensive supported employment services, and extended services after the transition from intensive supported employment services, in order to perform such work;

(C) when used in relation to an individual's qualification for Rehabilitation Teaching services, a finding that an individual is legally and/or functionally blind, has a rapidly progressive eye condition; or has a visual impairment that with or without secondary disabilities results in functional visual limitations; the individual has identifiable deficiencies in independent living due to disabilities; and it is expected services will improve the individual's independence in the home and community.

"Employment and Retention" (E&R) means short-term job coach support for individuals with severe disabilities who require assistance preparing for, obtaining, and maintaining employment.

"Employment outcome" means, with respect to an eligible individual, ~~entering or retaining full time or, if appropriate, part time competitive employment in the integrated labor market to the greatest extent practicable; supported employment; or any other type of employment (including self employment, telecommuting, or business ownership) that is consistent with an individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice~~entering, advancing in, or retaining full-time or part-time competitive integrated employment as defined in 34 CFR §361.5(c)(9) (including customized employment, self-employment, telecommuting, or business ownership), or supported employment as defined in 34 CFR §361.5(c)(53), that is consistent with an individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice. (Note: As specified in federal rule, a designated State unit may continue services to individuals with uncompensated employment goals on their approved individualized plans for employment prior to the effective date of the final federal regulations until June 30, 2017, unless a longer period of time is required based on the needs of the individual with the disability, as documented in the individual's service record.)

"Extended employment" means work in a non-integrated or sheltered setting for a public or private nonprofit agency or organization that provides compensation in accordance with the Fair Labor Standards Act and any needed support services to an individual with a disability to enable the individual to continue to train or otherwise prepare for competitive ~~integrated employment, unless the individual through informed choice chooses to remain in extended employment.~~

"Extended period of time" means when appropriate services are provided in a timely and orderly manner, completion of the Individualized Plan for Employment (IPE) will be expected to require a minimum of 6 months.

"Extended services" means ongoing support services provided to individuals with the most significant disabilities after the time-limited vocational rehabilitation services have been completed and job stabilization has been achieved. They consist of specific services, including natural supports, needed to maintain the supported employment placement. Extended services are paid from funding sources other than DRS and are specifically identified in the IPE, except that DRS may provide and pay for extended services for youth with the most significant disabilities for a period not to exceed 4 years.

"Extreme medical risk" means a risk of substantially increasing functional impairment or risk of death if medical services are not provided expeditiously.

"Functional capacities" means a client's assets, strengths, and resources which maintain or increase the individual's ability to work. Functional capacities include mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills.

"Functional limitations" means physical or mental conditions, emergent from a disability, which impair, interfere with, or impede one or more of an individual's functional capacities.

"Higher education" means universities, colleges, community/junior colleges, vocational schools, technical institutes, or hospital schools of nursing.

"Highly challenged" describes a client receiving supported employment services who, due to the nature of the disability, requires a greater level of support from the job coach to achieve and maintain employment.

"Homemaker" means a person whose primary work is performance of duties related to upkeep and maintenance of a home.

"IEP" means Individualized Education Program as required by the Individuals with Disabilities Education Act.

"Independent Living (IL) Core services/Services" is defined as information and referral services; independent living skills training; peer counseling; individual and systems advocacy; and services that facilitate the transition of individuals with significant disabilities from institutions to community-based residences, assist individuals at risk of entering institutions to remain living in the community, and assist the transition to postsecondary life for youth with significant disabilities who were eligible for special education and are no longer in school.

"Independent Living Services" as defined in the Rehabilitation Act, 29 USC Section 705 (17) and (18), include IL core services and counseling, housing procurement and modifications, personal assistance, mobility training, rehabilitation technology, life skills training, interpreters, readers, transportation, community integration, supported living, physical rehabilitation, aids and devices, social and recreational opportunities, and other services that are necessary and not inconsistent with the Act's provisions related to independent living.

"Individual with a disability" means an individual having one or more physical or mental conditions which materially limits, contributes to limiting or, if not corrected, will probably

result in limiting an individual's employment activities or vocational functioning.

"Individual with a severe disability" means with respect to eligibility for the state's Optional Program for Hiring Applicants with Disabilities, an individual who has a physical or mental impairment which seriously limits one or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome.

"Individual with significant disability" means an individual with a significant barrier to employment, as used in the Rehabilitation Act amendments of 1998, and an individual:

(A) who has a physical or mental impairment seriously limiting one or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome;

(B) whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and

(C) who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental illness, intellectual disability, multiple sclerosis, muscular dystrophy, musculoskeletal disorder, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia, other spinal cord conditions, sickle cell anemia, specific learning disability, end-stage renal disease or other disability or combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable substantial functional limitation.

"Individual with the most significant disability" means an individual with the most significant barrier to employment as used in the Rehabilitation Act amendments of 1998, and an individual with physical or mental disabilities:

(A) who has a severe physical or mental disability that seriously limits three or more major life activities in terms of an employment outcome;

(B) whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and

(C) who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental illness, intellectual disability, multiple sclerosis, muscular dystrophy, musculoskeletal disorder, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia, other spinal cord conditions, sickle cell anemia, specific learning disability, end-stage renal disease or other disability or combination of disabilities determined on the basis

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of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable substantial functional limitation.

"Integrated setting" means:

(A) With respect to the provision of services, a setting typically found in the community in which applicants or eligible individuals interact with non-disabled individuals other than non-disabled individuals who are providing services to those applicants or eligible individuals.

(B) With respect to an employment outcome, means a setting typically found in the community in which applicants or eligible individuals interact with non-disabled individuals, other than non-disabled individuals who are providing services to those applicants or eligible individuals, to the same extent that non-disabled individuals in comparable positions interact with other persons.

"Intercurrent (acute) conditions" means an illness or injury occurring during the actual course of an individual's rehabilitation which, if not cared for, will complicate or delay achievement of the client's employment outcome as identified in the client's IPE.

"IPE" means the Individualized Plan for Employment.

"Job Club" is a structured learning experience for a client to build skills in self-assessment, resume development, job search and research strategies, and interview techniques to assist the person to enter a career of their choice.

"Job Coach/Employment Training Specialist" means a qualified individual providing support services to eligible individuals in supported employment and employment and retention programs. Services directly support the eligible individual's work activity including marketing and job development, applied behavioral analysis, job and work site assessment, training and worker assessment, job matching procedures, and teaching job skills.

"Long-term treatment" means medical or psychological treatment that is expected to last more than three months.

"Maintenance" is a service provided to assist with the out-of-ordinary or extra expenses to the individual resulting from and needed to support the individual's participation in diagnostic, evaluative, or other substantial services in the IPE. Activities of Daily Living (ADL) expenses are not eligible for maintenance payments.

"Milestones" means a payment system that reimburses a vendor based on incentives and outcomes. The vendor is paid when the client completes pre-defined checkpoints on the way to a desired employment goal.

"Multiple services" means the counseling and guidance provided as a routine part of case management plus two or more VR services. Comparable benefits and/or services can count toward meeting the definition of multiple services. Services routinely provided as a package do not count as multiple services for the purpose of determining the presence of a significant disability, even if two or more services are included in the package.

"Natural supports" means any assistance, relationships or interactions that allow a person to maintain employment in

ways that correspond to the typical work routines and social interactions of other employees. Natural supports may be developed through relationships with people or put into place by the adaptation of the work environment itself, depending on the support needs of the person and the environment.

"Occupational license" means any license, permit, or other written authority required by a state, city or other governmental unit to be obtained in order to enter an occupation.

"Ongoing support services" means services specified in the IPE according to individual need, which support and maintain an individual with the most severe significant disabilities in supported employment. Sponsored ongoing support services are provided from the time of placement until the individual is stabilized on the job. Ongoing support services are provided by one or more extended services providers, or by natural supports, following transition throughout the individual's term of employment. ~~In transitional employment, the provision of ongoing support services must include continuing sequential job placements until job permanency is achieved.~~

"Other Qualified Rehabilitation Personnel" means qualified rehabilitation personnel who, in addition to rehabilitation counselors, are necessary to facilitate the accomplishment of the employment outcomes and objectives of an individual (Section 100(a)(3)(E) of the Act.) Other qualified rehabilitation personnel include, but are not limited to, rehabilitation teachers of the blind who are certified at the national level ~~as Certified Vision Rehabilitation Therapists (CVRT) or who are CRC eligible (Section 101(a)(7)(B) of the Act). The agency has determined that nationally certified rehabilitation teachers of the blind are necessary for the provision of vocational rehabilitation services and accomplishment of employment outcomes in Homemaker cases and that in their role as Other Qualified Rehabilitation Personnel; nationally certified rehabilitation teachers are approved to manage Homemaker cases through closure.~~

"Package of services" means several services which are usually provided together for the same purpose. The services in a package are usually, but not always, from the same category of services (see definition of multiple services, this section). Examples include, but are not limited to: surgery, anesthesia, and hospitalization; or personal computer, software, and peripheral equipment.

"Personal assistance services" means a range of services provided by one or more persons designed to assist an individual with a disability to perform daily living activities on or off the job that the individual would typically perform without assistance if the individual did not have a disability.

"Physical and mental restoration services" means services which are necessary to correct or substantially modify a physical or mental condition which is stable or slowly progressive, within a reasonable period of time.

"Physical or mental disability" means a physical or mental condition which, if not corrected, materially limits, contributes to limiting or will result in limiting an individual's activities or functioning.

"Pre-employment transition services" means the required activities and authorized activities specified in 34 CFR 361.48(a)(2) and (3).

"**Rehabilitation Act**" means the Rehabilitation Act [29 USC 701 et seq.].

"**Related factors**" means those factors which are not directly attributable to the impediment to employment, but which have impact on the potential for successful rehabilitation. They frequently become evident only from an assessment of the person's social, vocational, educational, and environmental circumstances.

"**Section 504 Plan**" is a plan designed as a protection for students with disabilities who may not be considered eligible for special education under IDEA in compliance with Section 504 of the Rehabilitation Act of 1973 as amended.

"**Small business enterprises**" means a small business operated by blind or other individuals with severe disabilities under the management and supervision of the state DRS. Such businesses include only those selling, manufacturing, processing, servicing, agricultural, and other activities which are suitable and practical for the effective utilization of the skills and aptitudes of individuals who are blind or individuals who have severe disabilities. Small business enterprise provides substantial gainful employment or self-employment commensurate with the time devoted by the operators to the business, the cost of establishing the business and other factors of an economic nature.

"**Stabilization**" means the period of time when job coach support is reduced to the long-term maintenance level while the individual retains employment, and personal satisfaction with the job, as well as employer satisfaction with the person's job performance. Stabilization must include appropriate individualized supports, including a minimum of two employee contacts and one employer contact per month.

"**Substantial impediment to employment**" means that a physical or mental disability (in the light of related medical, psychological, vocational, educational, cultural, social or environmental factors) that impedes an individual's occupational performance, by preventing his/her obtaining, retaining, or preparing for a gainful occupation consistent with his/her capacities and abilities.

"**Supported employment**" (SE) means competitive work in integrated work settings integrated employment, including customized employment, or employment in integrated work settings in which individuals are working on a short-term basis toward competitive work, consistent with the strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individuals, for individuals with the most significant disabilities who meet the eligibility criteria for supported employment as defined in 34 CFR 361.5(c)(53). For purposes of this definition, "short-term basis" shall mean six months or up to 12 months in limited circumstances as described in 34 CFR 361.5(c)(53). ~~This term includes transitional employment for persons who are individuals with the most significant disabilities due to mental illness (see the definition for "transitional employment")~~

"**Transitional employment**" (TE) ~~means, when referring to the Supported Employment Program, a series of temporary job placements in competitive work in integrated settings with ongoing support services for individuals with the most significant disabilities due to mental illness.~~

"**Transition services**" means, for a student or a youth with a disability, a coordinated set of activities designed within an outcome-oriented process that promotes movement from school to post-school activities, including postsecondary education, vocational training, competitive integrated employment, supported employment, continuing and adult education, adult services, independent living, or community participation. Transition services (1) are based upon the individual student's or youth's needs, preferences and interests; (2) include instruction, community experiences, the development of employment and other post-school adult living objectives, and, if appropriate, acquisition of daily living skills and functional vocational evaluation; (3) promote or facilitate the achievement of the employment outcome identified in the student's or youth's individualized plan for employment; and (4) include outreach to and engagement of the parents, or, as appropriate, the representative of such a student or youth with a disability.

"**Transportation**" is a service provided to assist with the costs of travel, including instruction in the use of public transportation vehicles and systems, which result from and are needed to support the individual's participation in diagnostic, evaluative, or other substantial and necessary VR services.

~~"**Unpaid family worker**" means a person who works without pay on a family farm or in a family business, operated by a family member who is related by blood or marriage.~~

"**VR**" means the Division of Vocational Rehabilitation, or the more general term vocational rehabilitation services, depending upon the context.

~~"**VRBVI**" means the Division of Vocational Rehabilitation for the Blind & Visually Impaired~~ Visual Services, depending upon the context.

612:10-1-3. Basic philosophy of rehabilitation programs

(a) **Purpose.** The purpose of programs and services provided by the Division of Vocational Rehabilitation (DVR) and the Division of ~~Vocational Rehabilitation for the Blind & Visually Impaired~~ Visual Services (DV~~RBVIDVS~~VS) is to empower individuals with disabilities to maximize employment, economic self-sufficiency, independence, and inclusion and integration into society through comprehensive programs of vocational rehabilitation. Vocational rehabilitation programs are designed to assess, plan, develop and provide vocational rehabilitation services for individuals with disabilities, consistent with their strengths, resources, priorities, concerns, abilities, capabilities, interests and informed choice, so that they may prepare for and engage in gainful employment (34 CFR 361.1 (b)).

(b) **Basic philosophy.** DVR and ~~DV~~RBVIDVS~~~~ visual vocational rehabilitation programs are carried out in accordance with the principles stated in Section 100 (3) of the Rehabilitation Act including,

(1) Individuals with disabilities, including individuals with the most significant disabilities, are generally presumed to be capable of engaging in gainful employment and the provision of individualized vocational rehabilitation services can improve their ability to become gainfully employed.

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- (2) Individuals with disabilities must be provided the opportunities to obtain gainful employment in integrated settings.
- (3) Individuals with disabilities must have the opportunity to be active and full partners in their vocational rehabilitation process.
- (4) Qualified vocational rehabilitation counselors and other qualified and specialized rehabilitation personnel are necessary to facilitate the accomplishment of the employment outcomes and objectives of an individual.

612:10-1-3.1. Procedural exceptions

Procedures set forth in this Chapter are not intended to reflect every situation that might confront DVR or ~~DVR-BVIDVS~~ staff or to replace the staff's use of good judgment. In individual cases an exception from basic procedures may be requested. Authority to approve certain deviations from standard procedure rests with the division administrator. Authority to approve certain procedural exceptions has been delegated to program managers and field coordinators. Only those exceptions stated in rule may be applied to rules.

612:10-1-3.2. Pilot projects

The purpose of pilot projects is to allow the Divisions of Vocational Rehabilitation and ~~Vocational Rehabilitation for the Blind & Visually Impaired~~ Visual Services to design and evaluate service delivery innovations on a scale that will provide for an effective trial without being disruptive to the entire organization. Such pilot projects might include trials of innovative policies, standards, and/or procedures.

- (1) **Authorization of pilot projects.** The Division Administrator may approve applications for pilot projects after review and approval of the pilot by the ~~DVR/DVR-BVIDVS~~ Management Team. Approval of an application for a pilot project by the Division Administrator will constitute authority to implement the pilot project for a length of time to be specified by the Division Administrator. The Division Administrator can terminate the pilot project at any time prior to the specified project duration. The pilot project may not be extended beyond the originally approved time period.
- (2) **Effect of DRS policy on pilot projects.** The Director of the Department of Rehabilitation Services may waive the applicability of specified departmental policies when necessary to implement a meaningful trial of the approved pilot project. The waiver will apply only to the pilot project specified by the Director, and will be effective only for the duration of the pilot project. The waiver will end immediately upon termination or completion of the model project.

612:10-1-5. Confidentiality

(a) **General guidelines.** All client or applicant information acquired will remain the property of DRS. All casework materials are to be maintained in the appropriate case record. The terms "release of information", "release of personal information", and similar terms refer to providing access to the

record, or providing copies, summaries, descriptions, or other reproductions of the actual case record materials and not to the materials themselves. All applicants, clients, or client representatives will be informed of the Department's policies on confidentiality of personal information. This information will only be used and released for purposes directly related to the administration of the Vocational Rehabilitation and ~~Vocational Rehabilitation for the Blind & Visually Impaired~~ Visual Services programs. Information containing identifiable personal information will not be shared with advisory or other bodies who do not have official responsibility for the administration of these programs. In the administration of the program, the DVR and ~~DVR-BVIDVS~~ units may obtain personal information from service providers and cooperating agencies under assurances the information will not be further divulged. Use and release of personal information will conform to applicable state and federal laws and regulations. Questions regarding release of information are to be directed to the Department's general counsel. Staff are to consult the general counsel before providing trial testimony, depositions, or a sworn affidavit concerning consumer information. Moreover, if served with a subpoena for the release of client information, staff should notify the general counsel immediately. In a legal proceeding, client information can only be released without the client's consent in response to a court order. A subpoena by itself is not sufficient to authorize disclosure of client information.

(b) **Written release required.** Release of personal information must be by written consent of the individual or authorized representative. If requested in writing by an applicant or eligible individual, DRS will make all requested information in that individual's record of services available to the individual in a timely manner except as provided in subsection (c). The Department's Authorization for Release of Information form may be used when the client requests that personal information be released by DRS to a third party and may also be used to request confidential information from other sources. Other release forms are acceptable, as long as they provide the required information. Written authorization for release of information must include:

- (1) the nature of the information to be released;
- (2) designation of the parties to whom the information is to be released;
- (3) the specific purpose for which the released information may be used;
- (4) designation of the agency or person authorized to disclose the information; and
- (5) dates of initiation and termination of consent.

(c) **Release of information to the individual.** The individual, or the individual's representative, will be given access to the relevant case record, or provided copies of requested information upon providing a written authorization for release of information, except as in (1) through (3) of this Subsection.

- (1) Psychological, psychiatric, mental health and substance abuse treatment records and information from psychological, psychiatric, mental health and substance abuse treatment practitioners may only be obtained provided the requirements of Section 1-109 of Title 43A of the Oklahoma Statutes are met. Under these circumstances,

refer the individual, or the individual's representative, to the treating health professional.

(2) When a DRS professional staff person believes medical or other information not covered in (1) of this Subsection may be harmful to the individual, the information may not be released directly to the individual but must be provided to the individual through a third party chosen by the individual, which may include, among others, an advocate, a family member, or a qualified medical or mental health professional, unless a representative has been appointed by a court to represent the individual, in which case the information must be released to the court-appointed representative.

(3) Information obtained from another organization or agency may be released only through that agency, or under the conditions established by the outside agency, organization or providers. For example, information from the Veteran's Administration and Social Security Administration may not be released. Refer the individual requesting such information to the source from which the information was obtained.

(d) **Request for information correction.** An individual who believes that information in the individual's case record is inaccurate or misleading may request that the information be amended. Even if the information is not amended, the request for amendment must be documented in the case record.

(e) **Release of information to other programs or authorities.** Paragraphs (1) through (4) of this Subsection provide the rules governing release of personal information to other programs or authorities.

(1) Upon receiving the informed written consent of the individual, or the individual's representative, information may be released to another agency or organization. Only that information that would be released to the involved individual, or the individual's representative will be released, and only to the extent that the other program or organization demonstrates that the information requested is necessary for its program.

(2) Personal information will be released if required by Federal law or regulations.

(3) Personal information will be released in response to investigations in connection with law enforcement, fraud, or abuse, unless expressly prohibited by Federal or State laws or regulations, and in response to an order issued by a judge, magistrate, or other authorized judicial officer.

(4) Personal information may be released in order to protect the individual or others if the individual poses a threat to his or her safety or to the safety of others.

(f) **Release of information for audit, evaluation or research.** Personal information may be released to an organization, agency, or individual engaged in audit, evaluation, or research, only:

(1) for the purposes directly connected with the administration of the DVR or ~~DVRBVIDVS~~ program;

(2) for purposes which would significantly improve the quality of life for persons with disabilities; and

(3) if the organization, agency or individual assures:

(A) The information will be used only for the purpose it is being provided;

(B) The information will be released only to persons officially connected with the audit, evaluation or research;

(C) The information will not be released to the individual;

(D) The information will be managed in a manner to safeguard confidentiality; and

(E) The final product will not reveal any personal identifying information without the informed written consent of the involved individual or the individual's representative. [34CFR361.38]

612:10-1-6. Due process

(a) **Notification of rights to due process.** Any applicant or client of DVR or ~~DVRBVIDVS~~ dissatisfied with a determination that affects the provision of vocational rehabilitation services may request a timely review of the determination. Each applicant or client, or as appropriate, the individual's authorized representative will be informed of:

(1) the right to get decisions regarding the individual's case reviewed by an impartial hearing officer;

(2) the right to pursue mediation on decisions regarding the individual's case;

(3) the names and addresses of individuals with whom requests for mediation or due process hearings may be filed;

(4) the manner in which a mediator or impartial hearing officer may be selected; and

(5) the availability of assistance from the client assistance program.

(b) **When notification of rights to due process is required.** The notifications specified in (a) shall be provided in writing, and in appropriate accessible format:

(1) at the time an individual applies for VR services;

(2) at the time an individual is assigned to the State's order of selection;

(3) at the time the Individualized Plan for Employment is developed; and

(4) upon reduction, suspension, or cessation of VR services for the individual.

(c) **Client Assistance Program (CAP).** The purpose of the Client Assistance Program (CAP) as described in this Section is to provide assistance with informing and advising clients and applicants of all available benefits under the Rehabilitation Act. When requested by clients and applicants, CAP will assist them in their relationships with projects, programs, and Community Rehabilitation Programs providing services to them under the Act.

(1) The Oklahoma CAP has the authority to pursue legal, administrative and other appropriate remedies to ensure the protection of the rights of individuals with disabilities who are receiving treatment, services or rehabilitation under the Act within the State.

(2) Vocational Rehabilitation agencies are required by Federal statute to advise all clients and applicants of the existence of CAP, the services provided by the program,

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and how to contact the program. A brochure is provided to each individual at the time of application and development of the IPE.

(3) Counselors must assure clients and applicants have access to CAP without fear of reprisal and are not pressured against or otherwise discouraged from using CAP services.

(4) The CAP staff members will provide the following services:

(A) Helping clients or applicants to understand rehabilitation service programs under the Act;

(B) Advising clients or applicants of benefits available to them through rehabilitation programs authorized under the Act and their rights and responsibilities in connection with those benefits;

(C) Otherwise assisting clients and applicants in their relationships with projects, programs, and Community Rehabilitation Programs providing rehabilitation services under the Act;

(D) Helping clients or applicants by pursuing or assisting them in pursuing legal, administrative, and other available remedies when necessary to ensure the protection of their rights under the Act;

(E) Advising State and other agencies of identified problem areas in the delivery of rehabilitation services to individuals with disabilities and suggesting methods and means of improving agency performance; and

(F) Providing information to the public concerning the CAP and Title I of the ADA.

(5) Clients may be referred to CAP by any one of the following:

(A) The client's counselor;

(B) Other DRS representative;

(C) Office of Handicapped Concerns' Hotline;

(D) Self;

(E) Any other interested party.

(6) Every client or applicant has the right to protection of information provided by him/her from unauthorized or indiscriminate disclosure. DVR and ~~DVRBVIDVS~~ will provide CAP officials information regarding an individual's case in accordance with 612:10-1-5 and applicable Federal law and regulations.

(7) The CAP staff will make periodic field visits to facilitate CAP's availability to clients or applicants who cannot travel to Oklahoma City.

(d) **Supervisory review.** DVR and ~~DVRBVIDVS~~ use a supervisory review process to resolve disagreements as close to the field service delivery level as possible. The objective of the supervisory review process is a timely resolution of disagreements, and is not to be used to delay or deny a fair hearing before a hearing officer or the services of an impartial mediator. The supervisory review of a counselor determination starts the 60 day time period established under (f)(5) of this Section. The request for a fair hearing is submitted at this time in accordance with (f)(2) of this Section.

(1) The supervisory review is usually conducted by the program manager. If the program manager was involved

in the disputed determination, the field coordinator conducts the administrative review. If the field coordinator was involved in the disputed determination, the division administrator conducts the administrative review.

(2) The decision that results from the administrative review will be stated in a letter to the individual, or to the individual's representative, with copies to the case record, the program manager, and the hearings coordinator. The letter will identify the individual, case number, caseload, and office location. The body of the letter will state the reason for the administrative review and the decision resulting from that review. If the administrative review resolves the disagreement, the Withdrawal of Request for Hearing form must be submitted with the copy of the letter that is sent to the hearings coordinator.

(e) **Mediation.** Whenever a fair hearing is requested under this Section, mediation shall be offered as an option to resolve a disputed decision. DRS uses the voluntary mediation services of the Oklahoma Supreme Court. The supervisor will arrange for a mediator with the Early Settlement Center that is most convenient to the consumer upon receipt of a request for mediation. DRS will bear the cost of the mediation. The mediation session will be scheduled in a timely manner. An agreement reached by the parties to the dispute in the mediation will be set forth in writing. Discussions that occur during the mediation process will be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding. Should the dispute be resolved through mediation, a withdrawal of request for hearing must be submitted to the hearings coordinator. The parties to the mediation may be required to sign a confidentiality pledge prior to commencement of the process. Nothing in this Subsection shall be construed to preclude the parties from informally resolving the dispute. The Departmental representative attending the mediation must be the individual who has final decision making authority for the question in dispute. The mediation:

(1) must be entered into voluntarily by all parties;

(2) is not used to deny or delay the hearing or any other right; and

(3) Is conducted by a qualified and impartial mediator.

(f) **Fair hearing process.** The fair hearing process will be conducted in accordance with (1) through (10) of this Subsection.

(1) **Services under IPE to continue.** No services being provided under the IPE shall be stopped, delayed, or reduced by the Department pending a final resolution of a requested hearing unless so requested by the individual or individual's authorized representative; or the service was obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the individual with disabilities.

(2) **Request for a fair hearing.** The individual has 30 calendar days following the date on the notice of the adverse decision to request a fair hearing.

(A) The individual requesting a fair hearing, may submit it to the local office, or may send it directly to the hearings coordinator in State Office. DVR and

~~DVRBVIDVS~~ staff will assist the individual in completing this form and with preparation of evidence from the case record in conformance with 612:10-1-5, if so requested.

(B) DVR and ~~DVRBVIDVS~~ staff will immediately notify their supervisor of the request for a fair hearing so that the administrative review can be started by the appropriate staff person. The completed Hearing Summary form, a copy of the notice of the adverse decision, and all supporting materials to be used in the hearing must be sent to the hearings coordinator as soon as possible. If a request for a fair hearing is submitted to the local office, staff will immediately forward it with the other materials.

(C) Prior to the actual fair hearing, the hearings coordinator will provide copies of materials the agency will use in the fair hearing to the individual and/or the individual's representative in conformance with 612:10-1-5.

(3) **Withdrawal of request for a fair hearing.** The individual, or the individual's representative, may submit a withdrawal of request for hearing any time following the submission of a request for a fair hearing up to the time the hearing is actually held. If the issue is resolved prior to the fair hearing, the individual, or the individual's representative, must submit a Withdrawal of Request for Hearing to end the fair hearing process.

(4) **Selection of impartial hearing officer.** The hearings coordinator will select an impartial hearing officer from a list of qualified impartial hearing officers maintained and identified by the State unit. Once selected, the impartial hearing officer will assume responsibility for arranging and conducting the fair hearing with the assistance of agency staff as necessary. The hearings coordinator will be apprised of events in the hearing process, and will be provided copies of all correspondence.

(A) Selections will be made randomly; or by agreement between the director of the designated State unit and the applicant or eligible individual or, as appropriate, the individual's representative; from the list of available impartial hearing officers. The hearings coordinator will forward all relevant materials to the assigned impartial hearing officer.

(B) The impartial hearing officer will send written notice of the fair hearing to all parties involved. The written notice of the fair hearing will include the name, address, and a brief vita of the impartial hearing officer.

(C) The individual may request a different impartial hearing officer based upon presented evidence that a conflict of interest exists consistent with Section 7 (16) of the Rehabilitation Act and 34 CFR 361.5(b)(25). A request for a different impartial hearing officer must be made within five days of receiving the fair hearing notice.

(5) **Scheduling of the fair hearing.** The fair hearing must be held within 60 calendar days from the date the request for a fair hearing is received, unless the issue is

resolved prior to the 60th day or the parties agree to a specific extension of time. The administrative review must be conducted and concluded within the same 60 days. Delays or continuances will not be given for the purpose of extending the provision of services. Any agreement to an extension of time must be formalized in writing.

(6) **Consumer's participation in hearing.** At a fair hearing, the individual, or the individual's representative, is afforded the opportunity to:

(A) present additional evidence, information, and witnesses to the impartial hearing officer;

(B) be represented by counsel or other advocate selected by the applicant or eligible individual; and

(C) examine all witnesses and other relevant sources of information and evidence.

(7) **Agency staff attendance.** Professional staff involved in the disputed determination will appear at the hearing to provide appropriate information and evidence and testimony. Other staff will appear as directed.

(8) **Order of proceedings in the fair hearing.** The Impartial Hearing Officer will conduct the fair hearing in accordance with State laws regarding conduct of individual proceedings before an agency, and applicable Federal laws and regulations. Although the order of proceedings is at the discretion of the Hearing Officer, generally, the fair hearing follows this order of proceedings:

(A) presentation, arguments, and disposition of all preliminary motions and matters;

(B) opening statements;

(C) information and evidence presented by the agency;

(D) evidence presented by the grievant;

(E) rebuttal by either or both sides;

(F) closing statements by the grievant;

(G) closing statements by the agency; and

(H) rebuttal by grievant.

(9) **Decision.** The hearing officer makes a decision based on the provisions of the approved State Plan, the Act, Federal vocational rehabilitation regulations, and State regulations and policies that are consistent with Federal requirements and on whether or not the counselor properly applied rules. The hearing officer does not have the authority to rule upon the legality of DRS rules that are consistent with Federal requirements. A decision made after a fair hearing shall be final, unless a party to the fair hearing requests a review under Paragraph (10) of this Subsection. The hearing officer provides the individual, or the individual's representative, and the hearings coordinator a full written report of the findings and grounds for the decision within 30 days of the completion of the hearing. The hearings coordinator will immediately forward the decision to the Director of DRS. The impartial hearing officer may make one of several decisions, which include, but are not limited to:

(A) finding in favor of the grievant;

(B) upholding the determination or action of the agency;

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(C) accepting a withdrawal of the appeal confirmed in writing signed by the grievant, or the grievant's representative; or

(D) accepting a settlement of the issues agreed to by the grievant and the agency which must include a written withdrawal of request for a hearing.

(10) Review of impartial hearing officer's decision.

Any party involved in a fair hearing may request an impartial review of the impartial hearing officer's decision within 20 calendar days of that decision. This review will be conducted by the Governor or the Governor's designee to whom DRS is assigned. The review will be conducted in accordance with the standards in (A) through (E) of this paragraph:

(A) The Governor or the Governor's designee will not delegate responsibility for this review to any officer or employee of DRS.

(B) The Governor or the Governor's designee will provide an opportunity for the submission of additional evidence and information relevant to a final decision concerning the matter under review.

(C) The Governor or the Governor's designee will make a final decision within 30 days of the request for administrative review. The decision will be provided to all parties, and/or to the parties' authorized representatives, in writing. The written decision will include a full report of the findings, and the grounds for the decision.

(D) The Governor or the Governor's designee cannot overturn or modify a decision, or part of a decision, made by an impartial hearing officer that supports the position of the individual unless the Governor or the Governor's designee concludes, based upon clear and convincing evidence, that the decision of the hearing officer is clearly erroneous on the basis of being contrary to the approved State plan, the Act, Federal vocational rehabilitation regulations, or State regulations and policies that are consistent with Federal requirements. The Governor or the Governor's designee will apply the standards presented in (i) through (iii) of this Subparagraph when conducting the review of the hearing officer's decision.

(i) The hearing officer's decision shall not be arbitrary, capricious, an abuse of discretion, or otherwise unreasonable.

(ii) The hearing officer's decision shall be supported by substantial findings of fact.

(iii) In reaching the initial decision, the impartial hearing officer shall correctly apply Federal and State law, regulation, agency policy, and the approved State Plan as they pertain to the specific issue in question.

(E) A decision made under this Paragraph shall be final unless a party involved in the hearing brings a civil action.

(g) **Civil proceedings.** Any party aggrieved by a final decision of an impartial hearing officer, or by the Governor or

the Governor's designee, may bring a civil action for review of the decision. The action may be brought in any State court of competent jurisdiction or in a district court of the United States of competent jurisdiction without regard to the amount in controversy. If a party brings a civil action, the final decision of the impartial hearing officer, or of the Governor or the Governor's designee, shall be implemented pending review by the court.

In any action brought under this Subsection, the court:

(1) shall receive the records relating to the hearing, and the records relating to any review conducted under (f)(10), if applicable;

(2) shall hear additional evidence at the request of a party to the action; and

(3) basing the decision of the court on the preponderance of the evidence, shall grant such relief as the court determines to be appropriate. [29 USC 722]

(h) **Standards for impartial hearing officers.** In addition to qualifications required in a contract with the Department, an impartial hearing officer must meet the standards set forth in (1) through (6) of this Subsection:

(1) cannot be an employee of a public agency (other than an administrative law judge, hearing examiner, or employee of an institution of higher learning);

(2) cannot be a member of the Oklahoma Rehabilitation Council;

(3) has not been involved previously in the vocational rehabilitation of the applicant or eligible individual;

(4) must have knowledge of the delivery of vocational rehabilitation services, the State plan required under Section 101 of the Act, and the Federal and State rules governing the provision of such services and training with respect to the performance of official duties;

(5) must have no personal, professional or financial interest that would be in conflict with the objectivity of the impartial hearing officer; and

(6) must have successfully completed impartial hearing officer training presented by DRS.

(i) **Standards for impartial mediators.** In addition to qualifications required in a contract with the Department, an impartial mediator:

(1) will be trained and certified or licensed in effective mediation techniques;

(2) will not be an employee of a public agency (other than an Administrative Law Judge, hearing examiner, employee of a State Office of Mediators, or employee of an institution of higher education);

(3) will not be a member of the Oklahoma Rehabilitation Council;

(4) must be knowledgeable in laws and regulations relating to the provision of VR services;

(5) has not been involved previously in the vocational rehabilitation of the applicant or eligible individual; and

(6) must have no personal, professional or financial interest that would be in conflict with the impartiality of the mediator.

612:10-1-7. Purchase of services and goods for individuals with disabilities

(a) All Department authorizations are made in compliance with the state purchasing policy under legal authority of the Director or by an employee to whom the Director has delegated such authority. Services, other than diagnosis, must be in an approved Individualized Plan for Employment prior to authorization. All authorizations are to be issued prior to or simultaneously with the provision of the services. Verbal authorizations may be made when needed to ensure effective delivery of services. Verbal authorization must be followed immediately by the actual authorization. Separate authorizations for each fiscal year are required when a planned service extends beyond a single fiscal year. Rehabilitation professionals may not authorize fees for services in excess of those established by the Department unless approved by the Division Administrator. A prior written purchasing agreement is required before authorization can be made to any medical vendor or post-secondary school. Other nonmedical vendors will not require a prior written purchasing agreement unless stated otherwise in the DRS policy manual section(s) for that service. When a vendor has a prior written purchasing agreement with the Department, and required approvals have been obtained, authorization may be issued for consumer services directly to that vendor. All other consumer services will be purchased pursuant to the rules in (g) and (h) of this Section. However, a requisition may be submitted to the DRS Purchasing Section if, in the judgment of the responsible rehabilitation professional, the best interests of the consumer and/or the agency would be served by having the Purchasing Section handle the procurement. In either case, once items have been received and checked against the authorization, the appropriate DVR or ~~DVRBVIDVS~~ staff, in accordance with (g) and (h) of this Section, approves the claim, then forwards it to the DRS Financial Services Division. When a vendor does not abide by the authorization or written purchasing agreement or bills and accepts fees from the client in addition to those agreed upon, the rehabilitation professional will bring this to the immediate attention of the supervisor for action by the administration. The vendor will not be used for further rehabilitation services until agreement to discontinue the objectionable practice is reached.

(b) Since the Department is a state-federal agency, it does not pay sales, excise, or transportation taxes.

(c) All claims for medical and/or nonmedical client services must be filed on claim forms approved by the Department. When the provision of an authorization is fulfilled, payment for the authorized client services constitutes payment in full. The client will not have any financial liability other than the amount required of clients who must participate in the cost of the service provided. The individual is liable for services he/she arranged which were not planned and initiated under the auspices of DRS. When DVR and ~~DVRBVIDVS~~ funds are used to supplement third party medical resources, participation cannot exceed the difference between the third-party payment and the Department's established schedule.

(d) The client must transfer, assign, or authorize payments to the Department of any and all claims against Health Insurance

or Liability Insurance companies or other third parties, to the full extent of all payments for medical services made by the Department.

(e) The Department retains right and title to any tools, equipment, durable medical equipment, or other goods costing \$500 or more purchased with DVR and ~~DVRBVIDVS~~ funds, until and unless such goods are released to the client. Upon delivery of any such goods to the client, a Receipt for Equipment and Title Agreement must be completed and approved.

(1) **Completion of Program:** Any tools, equipment or durable medical goods purchased for training or occupational purposes remain with the client after completion of the program of services if they can be used in the client's chosen vocation. If the client fails to complete the program of service, the counselor will make effort to reclaim the goods to transfer to another client.

(2) **Disposition at closure:** Case recording must reflect the disposition at the time of closure of tools, equipment, and goods provided the client. All occupational tools, equipment, and durable medical goods remain the property of the agency until released. If the client is not using the items, the counselor will pick them up if an economical savings to the agency will result, and if the transfer will not endanger the health or safety of the client.

(3) **Title Release:** Title on any tools, equipment or durable medical equipment purchased with DRS funds for training or occupational purposes will not be released to the client until the counselor has determined the client is using the items as planned.

(f) When the rehabilitation professional determines an authorization or portion of an authorization will not be utilized, procedures to cancel the remaining services will be completed. Before the case is closed, all unliquidated authorizations must be canceled or accounted for to determine if a claim will be made against any outstanding authorization.

(g) Purchasing consumer goods or services, other than direct client payments, when there is no prior written purchasing agreement is basically a three step process. These steps include specifying the requirements for the goods or services, authorizing for the purchase, and receiving delivery of the goods or services. For audit purposes, no one person can perform more than one of these steps. A different person is required for:

- (1) identifying the requirement for the purchase;
- (2) placing the order; and
- (3) accepting the material or service.

(h) When a prior written purchasing agreement for consumer goods or services, other than direct client payments, is not required, and the service or package of services to be obtained will cost the amount of the DCAM authority order limit or less, the rehabilitation professional and client will jointly choose an appropriate vendor. The rehabilitation professional will then authorize for the planned services to the chosen vendor. When a prior written purchasing agreement for consumer services, other than direct client payments, is not required, and the service or package of services will cost more than the DCAM authority order limit, the rehabilitation professional will follow rules in (1) through (7) of this Subsection.

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- (1) The rehabilitation professional will obtain specialist recommendations for purchase requirements and approvals in accordance with agency policy.
- (2) The participation of the client, or the client's authorized representative, will be obtained in deciding upon at least three vendors to be contacted by the rehabilitation professional to obtain bids for the goods or services. The rehabilitation professional will review available vendor information with the client, or client's authorized representative, to jointly determine which vendor(s) can best meet the needs of the client in terms of product and service function, quality, and vendor accessibility.
- (3) At least three vendors offering the goods or services will be contacted to obtain bids. To expedite planning and service delivery, bids may be obtained verbally. Upon request, contacted vendors will be afforded at least 24 hours in which to prepare and submit the verbal bid. The rehabilitation professional will ensure that all bids are submitted in writing for the same or comparable items, and will document the bids received by using the Vendor Bid Documentation Form.
- (4) The rehabilitation professional will issue the appropriate authorization and claim to the vendor submitting the lowest and best bid. If the rehabilitation professional managing the case is also the recognized specialist who identified the purchase requirements, then the supervisor will issue the appropriate authorization. Authorization may be issued to a vendor not submitting the lowest bid only with strong documentation that the selected vendor can best meet the needs of the client. When the bid is in excess of \$5,000.00 the successful bidder will sign a non-collusion statement (to be sent with the claim), which will be maintained in the case service record.
- (5) In the case of a vehicle modification or housing modification, upon completion of the authorized services, the counselor will contact the AT Specialist to schedule inspection of the work in accordance with 612:10-7-220 and 612:10-11-38. The AT Specialist will complete the "Assistive Technology Inspection Report" verifying the modification conforms to acceptable standards and the work is satisfactory.
- (6) Upon delivery of the goods or services in accordance with the IPE and authorization, a rehabilitation staff person other than the specialist who specified the purchase requirements and the rehabilitation professional who authorized the purchase will accept delivery, verify that goods received match the vendor invoice, sign the appropriate claim form, sign and attach the invoice and forward them to the DRS Financial Services Division.
- (7) Upon delivery of any goods costing \$500 or more to the client, a Receipt for Equipment and Title Agreement must be completed and approved.
- (8) Itemized documentation will be in the case record on all orders costing less than \$500 and the client will acknowledge their receipt. (For example, signing and dating the packaging slip, vendor's invoice, or typed list of goods.)

- (9) Returned or repossessed items must be documented on for "Receipt for Equipment and Title Agreement" and the final disposition noted in Case Narrative entry.
- (i) Program Managers will review case records when submitted for approvals to ensure that purchases are being awarded in a manner that ensures competition and client participation within the scope of DRS and applicable fiscal rules. At least once each fiscal year a random selection of case records will be reviewed by the DRS Central/Departmental Services Unit to monitor compliance with DRS and applicable fiscal rules. If a Program Manager has reason to believe that a rehabilitation professional is not making a good faith effort to award purchases in a competitive manner and in accordance with agency policy, a fiscal audit of the entire caseload will be requested to determine the appropriate action to take.
- (j) Pursuant to 74 O.S. 85.44A, any goods or services required under a court order shall be purchased in accordance with DRS fiscal rules.

SUBCHAPTER 3. CLIENT PARTICIPATION IN COST OF SERVICES

612:10-3-2. Consideration of comparable services and benefits

- (a) Prior to providing any VR service to an eligible individual, except those services specified in Paragraph (1), the VR counselor will determine whether comparable services and benefits are available under any other program unless any of the conditions in Paragraph (2) apply to the individual.
 - (1) The VR services listed in (A) through (F) are to be provided without first determining the availability of comparable services and benefits. However, comparable services and benefits may be used for these VR services if the comparable services and benefits are readily available at the time the VR services are needed. VR services exempt from a required search for comparable services and benefits are:
 - (A) information and referral services to eligible individuals not in an open priority group under the order of selection;
 - (B) assessment for determining eligibility and vocational rehabilitation needs by qualified personnel, including, if appropriate, an assessment by personnel skilled in rehabilitation technology;
 - (C) counseling and guidance, including information and support services to assist an individual in exercising informed choice;
 - (D) referral and other services to secure needed services from other agencies through cooperative agreements;
 - (E) job-related services, including job search and placement assistance, job retention services, follow-up services, and follow-along services; and
 - (F) rehabilitation technology, including telecommunications, sensory, and other technological aids and devices.

(2) Determining whether comparable benefits and services are available will not be required prior to providing any VR services if that determination would interrupt or delay:

- (A) the progress of the individual toward achieving the employment outcome identified in the IPE;
- (B) an immediate job placement; or
- (C) the provision of such services to any individual at extreme medical risk.

(b) Counselors will advise clients of available benefits, help in completing the application for such benefits when needed, and refer clients to the appropriate contact person. Each client is required to apply for such benefits. DVR and ~~DVRBVIDVS~~ will not participate in the cost of services for any client who fails to apply for and accept available comparable benefits.

(c) Whether or not the client must participate in the cost of VR services has absolutely no effect upon the required search for, or use of, available comparable benefits. Available comparable benefits cannot be used in place of client resources when the client is required to participate in the cost of VR services.

(d) Awards and scholarships based upon merit will not be counted as comparable benefits.

(e) A student loan is not a comparable benefit. Failure to apply for a student loan which must be repaid will not be cause to withhold participation by DVR or ~~DVRBVIDVS~~. Clients who have defaulted on a student loan will not be assisted with post-secondary training until the client has cleared the default or has made arrangement with the lender on the terms of payment. Documentation of the arrangement made must be in the case record before post-secondary training services are provided when it is known a client has defaulted on a loan. The counselor will inform such clients of organizations which can help resolve debt problems, such as credit counseling services and legal aid.

(f) Clients are expected to provide the counselor a copy of the award letter(s) or other written notice of comparable benefits received from other sources, and it is expected the comparable services and benefits available to the client will be used to defray all or part of the cost of the individual's IPE.

(g) The client's IPE will be reviewed and amended by the client and VR counselor whenever comparable services or benefits that were not accounted for in the original plan become available to the client.

(h) Cooperative agreements between DRS and other service providers may affect how comparable services and benefits available from such service providers will be applied in an IPE. Cooperative agreements entered into by DRS with other service providers will include:

- (1) provisions for determining and stating the financial responsibility of each agency in providing services;
- (2) conditions, terms, and procedures for DRS to be reimbursed by other agencies for providing covered services;
- (3) procedures for resolving interagency disputes under the agreement; and
- (4) coordination of agency procedures for timely VR services delivery.

612:10-3-3. Client participation in services cost and financial status determination

(a) DVR and ~~DVRBVIDVS~~ require the client to participate in the cost of some vocational rehabilitation services if the client and/or client's family income exceeds the established basic living requirement for the applicable family size. Any client who has been determined eligible for Social Security benefits under Title II or XVI of the Social Security Act is exempt from client participation in service costs.

(b) Before an individual can be provided services other than those listed in DRS policy, the counselor must evaluate the client's financial situation to determine if the client must participate in the cost of services, and if so, the amount of such participation. Any client whose available family income exceeds the applicable basic living requirements is required to apply the monthly surplus to the cost of services during each 30 day period services are provided. DVR and ~~DVRBVIDVS~~ funds will not be used to purchase services based on client's financial status when there is any refusal on client's behalf to participate in the cost of services. However, the client can be provided services not based on financial status. Any client who does not have a surplus is not required to participate in the cost of services. Financial status does not exempt the client from required use of comparable benefits. If a payment is required of the client, it will be made to the vendor.

(c) The counselor will re-evaluate the client's financial situation at least annually and any time there is a change in the financial situation of the client or family. The amount of client participation in cost is based upon the most recent determination of client's financial status at the time the IPE or amendment is written, and is stated in the IPE or amendment.

(d) The client's financial status must be verified when an IPE includes services which require client participation in cost of services. Information used to verify the client's financial status includes such documents as income tax returns, bank statements, pay stubs, canceled checks, payment receipts, and/or payroll documents. It is the client's responsibility to provide the documents needed for verification of financial status information for the family. If the client refuses to provide the requested verification, DVR and ~~DVRBVIDVS~~ resources will not be used to defray the cost of services which require client participation in cost of services.

612:10-3-4. Services exempt from client participation in service costs

(a) DVR and ~~DVRBVIDVS~~ clients who have income and assets above the basic living requirements will be required to apply surplus resources to the cost of rehabilitation services except for the following services which do not require a determination of financial status:

- (1) services provided to assess eligibility and rehabilitation needs (services which would require the individual's participation in cost under an IPE will also require the individual's participation in cost during an evaluation of the individual's ability to benefit from VR services);
- (2) counseling, guidance, referral, and other services provided directly by DVR and ~~DVRBVIDVS~~ staff;

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- (3) on-the-job training, work experiences, internships and apprenticeships;
 - (4) personal or work-adjustment training;
 - (5) reader services;
 - (6) interpreter services;
 - (7) personal assistance services;
 - (8) job-related services including job search and placement, job retention services, follow-up services and follow-along services;
 - (9) compensatory training;
 - (10) job coaching services (i.e., supported employment, employment and retention, transitional employment); or
 - (11) any auxiliary aid or service that an individual with a disability require under Section 504 of the Rehabilitation Act or the Americans with Disabilities Act, or regulations implementing those laws, in order for the individual to participate in the VR program; and
 - (12) library services.
- (b) Recipients of Social Security benefits under Titles II (federal old age, survivors, and disability insurance benefits) or XVI (SSI) of the Social Security Act do not have to participate financially in the cost of their rehabilitation program.

SUBCHAPTER 7. VOCATIONAL REHABILITATION AND VOCATIONAL REHABILITATION FOR THE BLIND & VISUALLY IMPAIRED VISUAL SERVICES

PART 1. SCOPE OF VOCATIONAL REHABILITATION AND VOCATIONAL REHABILITATION FOR THE BLIND & VISUALLY IMPAIRED VISUAL SERVICES

612:10-7-1. Overview of Vocational Rehabilitation and Vocational Rehabilitation for the Blind & Visually Impaired Visual Services

- (a) Vocational rehabilitation services are provided by the Division of Vocational Rehabilitation and the Division of Vocational Rehabilitation for the Blind & Visually Impaired Visual Services to help eligible individuals achieve employment outcomes that are consistent with the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of each eligible individual. ~~To the maximum extent appropriate,~~ VR services for individuals are meant to result in competitive employment in an integrated setting. Vocational rehabilitation services include services for individuals and services to groups of individuals.
- (b) Vocational rehabilitation services for an individual are prescribed in an Individualized Plan for Employment (IPE) that is based on an assessment of the individual's rehabilitation needs, guidance provided by a qualified vocational rehabilitation professional and the individual's informed choice with regard to employment goal, services and service providers. Services may include but are not limited to:

- (1) an assessment for determining eligibility and vocational rehabilitation needs by qualified personnel, including, if appropriate, an assessment by personnel skilled in rehabilitation technology;
- (2) counseling and guidance, including information and support services to assist an individual in exercising informed choice;
- (3) referral and other services to secure needed services from other agencies through cooperative agreements if such services are not available from DVR or ~~DVR-BVIDVS~~;
- (4) job-related services, including job search and placement assistance, customized employment services, services leading to self-employment, job retention services, ongoing services, and extended services;
- (5) vocational and other training services, including the provision of personal and vocational adjustment services, books, tools, and other training materials;
- (6) to the extent that financial support is not readily available from a source (such as health insurance or comparable services and benefits) other than DVR or ~~DVR-BVIDVS~~, diagnosis and treatment of physical and mental impairments;
- (7) maintenance for additional costs incurred while participating in an assessment for determining eligibility and vocational rehabilitation needs or while receiving services under an Individualized Plan for Employment;
- (8) transportation, including training in the use of public transportation vehicles and systems, that is provided in connection with the provision of any other service described in this section and needed by the individual to participate in rehabilitation services or to achieve an employment outcome;
- (9) on-the-job or other related personal assistance services provided while an individual is receiving other services described in this section;
- (10) interpreter services provided by qualified personnel for individuals who are deaf or hard of hearing, and reader services for individuals who are determined to be blind;
- (11) rehabilitation teaching services, and orientation and mobility services, for individuals who are blind;
- (12) occupational licenses, tools, equipment, and initial stocks and supplies;
- (13) technical assistance and other consultation services to conduct market analyses, develop business plans, and otherwise provide resources, to the extent such resources are authorized to be provided through the statewide workforce investment system, to eligible individuals who are pursuing self-employment or telecommuting or establishing a small business operation as an employment outcome;
- (14) rehabilitation technology, including rehabilitation engineering, assistive technology devices and assistive technology services;
- (15) transition services for students with disabilities, that facilitate the achievement of the employment outcome identified in the Individualized Plan for Employment, and pre-employment transition services as described in 34 CFR 361.48(a) and 29 USC 733;

- (16) supported employment services for individuals with the most significant disabilities that need ongoing support services from a job coach to obtain and maintain employment;
 - (17) employment and retention services for individuals with significant disabilities who require short term job coach support to obtain and maintain a successful employment outcome;
 - (18) transitional employment services for individuals with the most significant disabilities due to mental illness who have little or no successful work history and need work adjustment/trial work experience;
 - (19) ~~job placement services for individuals with disabilities who are job ready, including customized employment services~~ work experiences, internships, and apprenticeships;
 - (20) services to the family of an individual with a disability necessary to assist the individual to achieve an employment outcome; and
 - (21) specific post-employment services necessary to assist an individual with a disability to, retain, regain, or advance in employment.
- (c) Vocational rehabilitation services for groups of individuals with disabilities are described in 34 CFR 361.49 and include:
- (1) In the case of any type of small business operated by individuals with significant disabilities the operation of which can be improved by management services and supervision provided by DVR or ~~DVRBVIDVS~~, the provision of such services and supervision, along or together with the acquisition by DVR or ~~DVRBVIDVS~~ of vending facilities or other equipment and initial stocks and supplies;
 - (2) Transition services to youth and students with disabilities who may not have applied or been determined eligible for vocational rehabilitation services, that involve collaboration of a vocational rehabilitation counselor with education agencies, programs serving individuals with developmental disabilities, businesses, workforce programs, independent living centers, housing and transportation authorities and related entities. Such services are to benefit a group of youth or students with disabilities and may not be individualized services related to an individual plan for employment. Services may include group tours of training programs and businesses, career fairs, interview practice, resume writing, and other group activities that support future employability.
 - (3) The use of telecommunications systems (including telephone, television, video description services, tactile-vibratory devices, satellite, radio, and other similar systems) that have the potential for substantially improving delivery methods of activities described in this section and developing appropriate programming to meet the particular needs of individuals with disabilities;
 - (4) Special services to provide access to information for individuals who are blind, visually impaired, deaf, hard of hearing or deaf-blind including:
 - (A) the use of telecommunications, Braille, sound recordings, or other appropriate media;
 - (B) captioned television, films, or video cassettes for individuals who are deaf or hard of hearing;
 - (C) tactile materials for individuals who are deaf-blind; and
 - (D) other special services that provide information through tactile, vibratory, auditory, and visual media.
 - (5) Technical assistance to businesses that are seeking to employ individuals with disabilities.
 - (6) Consultative and technical assistance services to assist educational agencies in planning for the transition of students with disabilities from school to post-school activities, including employment.
 - (7) The establishment, development or improvement of assistive technology demonstration, loan, reutilization or financing programs in coordination with activities authorized under the Assistive Technology Act of 1998.
 - (8) The establishment, development or improvement of a community rehabilitation program that is used to provide vocational rehabilitation services that promote integration into the community and prepare individuals with disabilities for competitive integrated employment.

612:10-7-2. Field staff responsibilities

- (a) The counselor is responsible for contacting each referral within 30 days of receipt of the referral information. The counselor is responsible for completing a contact by telephone or in person. The counselor is responsible for providing interpreter services to applicants who are deaf or non-English speaking.
- (b) The rehabilitation counselor is responsible for the determination of an individual's eligibility to receive services from DVR or ~~DVRBVIDVS~~. In cases where the counselor has difficulty in making an eligibility determination, the counselor will consult with the supervisor. For further clarification, the case will be reviewed by the field coordinator for a decision. Individuals who are legally blind are to be referred to the appropriate rehabilitation teacher for determination of eligibility for the rehabilitation teaching program.
- (c) The counselor's primary vocational rehabilitation service is counseling and guidance with job placement. Additional services must be justified as necessary to compensate for, correct or circumvent an impediment to employment. Every IPE must include a plan of counseling and guidance services. Regular documentation of counseling sessions will be included in every DVR and ~~DVRBVIDVS~~ case.
- (d) The rehabilitation counselor is to ensure that the client is a full participant in the decisions that are made concerning his or her vocational rehabilitation. This responsibility is carried out by providing the individual with as much relevant information as is available so that the individual, and/or the individual's authorized representative, can exercise informed choice consistent with the Department's policies. The minimum information concerning service choice to be supplied includes:
 - (1) service cost;
 - (2) available service providers;
 - (3) service accessibility;

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- (4) expected duration of services;
 - (5) consumer satisfaction with the services in question, to the extent that such information is available;
 - (6) qualifications of potential service providers;
 - (7) the types of services offered by the potential service providers;
 - (8) the degree to which services are provided in integrated settings; and
 - (9) outcomes achieved by individuals working with the service provider, to the extent such information is available.
- (e) The individual will be notified in writing of any adverse determination made by professional staff concerning that individual's case. This notification will be made in a timely manner, and in a manner that supports the individual's right to due process.
- (f) The counselor will complete a financial status determination form prior to the provision of any service (other than exempt services listed in 612:10-3-4) to determine if the client will be required to participate in the cost of services.
- (g) The counselor will inform each individual of his or her rights and responsibilities as an applicant or client of DVR and ~~DVRBVIDVS~~. Cross reference 612:10-7-3
- (h) The Department of Rehabilitation Services (DRS) has an obligation under state and federal law to provide services in a fair and impartial manner. State Ethics Commission Rules state that the proper operation of state government requires that the state employee be independent and impartial; that state employees not use state office to obtain private benefits; that a state employee must avoid action which creates the appearance of using state office to obtain a private or inappropriate benefit; and that state employees exercise their powers without prejudice or favoritism.
- (i) The counselor is limited in determining eligibility for services for friends or relatives. At the time of application or referral, if in the counselor's judgment, the individual is familiar to the point of friendship, the counselor must immediately disclose this relationship to their supervisor in writing and obtain approval before determining eligibility. If the applicant is related by blood or marriage, the counselor must immediately refer the case to another counselor, if available. If no other counselor is available, the counselor must notify their supervisor immediately for appropriate case assignment. The counselor should also disclose the potential conflict of interest to the applicant and explain the reason for the potential delay of eligibility determination. The counselor must not only be impartial in the determination of eligibility but also act so that there can be no question of impartiality. The technician must also disclose to the counselor any relationship with the applicant that might create a conflict of interest. The counselor will then contact the Program Manager to see if the case can be worked without partiality or transferred to another counselor.

612:10-7-3. Client responsibilities

To make the rehabilitation effort a success, the individual and agency's staff must work together to reach chosen goals. This shared responsibility requires that the client or applicant for services accept the basic responsibilities in (1) through

(12) of this Subsection. Other specific client responsibilities are stated in relevant manual sections. It is the counselor's responsibility to fully and appropriately inform the client of client responsibilities.

- (1) Provide information and be available to complete the assessment process to find out if you are eligible for services.
- (2) Be on time and keep appointments with ~~DVR/DVRBVIDVS~~ staff, doctors and others. Call in advance or as soon as possible, if you cannot come to an appointment.
- (3) Follow the advice of doctors and other medical professionals.
- (4) Participate with your ~~DVR/DVRBVIDVS~~ counselor in developing the Individualized Plan for Employment, (IPE) including participating in assessments needed to determine your needs and strengths.
- (5) Provide enrollment documents to home/supervisor counselor before the college or university's designated "Drop and Add" deadline so an authorization can be issued, if your IPE includes educational and training services.
- (6) Attend education or training classes on a regular basis and make at least passing grades, if your IPE includes these services.
- (7) Review your IPE with your counselor at least once a year and participate in making revisions to the plan when needed.
- (8) Maintain satisfactory progress toward completing the IPE.
- (9) Abstain from abuse of drugs and/or alcohol. Individuals who abuse drugs and/or alcohol while receiving services will be referred to the Oklahoma Department of Mental Health and Substance Abuse Services (ODMH-SAS) and/or other appropriate agencies for purposes of seeking treatment. All case services will be suspended. If the client refuses or fails to cooperate with seeking treatment, or is not available to pursue a DRS program, this will be considered as reasonable cause for case closure.
- (10) Keep the appropriate professional informed of changes in the individual's address, financial status, or other program-related changes.
- (11) Apply for and make appropriate use of any comparable benefits and services for which the client is eligible to defray in whole or in part the cost of services in the individual's IPE and provide verification of financial aid award status to counselor.
- (12) Work with the counselor to obtain or keep suitable gainful employment or appropriate independent living outcomes as services are being completed.

PART 3. CASE PROCESSING REQUIREMENTS

612:10-7-21.1. Processing incoming referrals

- (a) **Processing incoming referrals.** All referrals to DVR and ~~DVRBVIDVS~~ will be contacted by the VR counselor and appropriate action taken within 30 days, after receipt of the

referral information. The counselor is responsible for completing a contact by telephone or in person. The counselor is responsible for providing interpreter services to referrals who are deaf or non-English speaking. In situations where the individual cannot be personally contacted, correspondence will be mailed to the individual for informational purposes.

(b) **Referrals to rehabilitation teachers.** All individuals who are legally blind, whether being served by a DVR counselor or a ~~DVRBVIDVS~~ counselor, will be referred to a rehabilitation teacher. Rehabilitation teachers may also receive counselor referrals and provide services for individuals who are not legally blind but have functional limitations due to vision loss and have potential to benefit from rehabilitation teaching services.

612:10-7-21.2. Information and referral system

(a) DVR and ~~DVRBVIDVS~~ staff will ensure that individuals with disabilities, including eligible individuals who do not meet order of selection criteria when the agency is operating under an order of selection, are provided accurate vocational rehabilitation information and guidance, using appropriate modes of communication. This information and guidance will be used to assist the individual in preparing for, securing, retaining, or regaining employment.

(b) Staff will ensure that individuals with disabilities are appropriately referred to Federal and State programs, including other components of the workforce investment system. An appropriate referral shall:

- (1) be to the Federal or State program(s) best suited to address the specific employment needs of the individual; and
- (2) include, for each involved program, provision to the individual of:
 - (A) a notice of the referral from DVR or ~~DVRBVIDVS~~ to the agency responsible for the program;
 - (B) information identifying a specific point of contact within the agency responsible for the program; and
 - (C) information and advice regarding the most suitable services to assist the individual.

612:10-7-24.2. Assessment for determining eligibility

(a) To determine whether an individual is eligible for vocational rehabilitation services:

- (1) the counselor will use to the maximum extent possible and appropriate existing data including counselor observations, education records, information provided by the individual or the individual's family, and determinations made by officials of other agencies; and
- (2) to the extent necessary provide appropriate assessments, including provision of goods and services during the assessment, to obtain additional documentation necessary to make the determination of eligibility and priority group assignment. The counselor will carefully evaluate the need to provide assistive technology devices and services or worksite assessments.

(b) The counselor will determine whether an individual is eligible for vocational rehabilitation services within a reasonable period of time, not to exceed 60 days after the individual has submitted an application for services. This time period may be extended only when unforeseen and exceptional circumstances beyond the control of the Department preclude completing the determination of eligibility within the 60 days and the individual agrees a specific extension of time is warranted as documented on the Need for Extension of Time to Determine Eligibility form; or a trial work period or an extended evaluation is needed to determine the individual's ability to benefit from VR services.

(c) Documentation that the individual has a disability which constitutes or results in an impediment to employment must come from qualified professionals.

(d) Applicants Eligibility determinations will be expedited for applicants who have been determined eligible for vocational rehabilitation services by an American Indian Vocational Rehabilitation Services (AIVRS) Program program are deemed to be eligible for services through DRS. After making the determination of eligibility the VR counselor may authorize assessments and services needed to further document eligibility, assign priority group and develop the IPE, making maximum use of diagnostic documentation and other data provided by the American Indian VR program. Counselors will work cooperatively with the applicable American Indian VR Program to obtain pertinent diagnostic and other documentation, and utilize such documentation, as appropriate, in making eligibility decisions that are prompt or, whenever feasible, immediate.

(e) A qualified rehabilitation professional may proceed with a determination of eligibility if there is an obvious and/or observable disability that results in an impediment to employment. The VR specialist will document observations pertaining to the applicant's disability. After making the determination of eligibility the VR specialist may authorize any assessments and services necessary to further document eligibility, establish priority group placement and determine rehabilitation needs for development of the Individualized Plan for Employment.

(f) Diagnosis and evaluation are to be provided only for determination of eligibility for VR services, priority group placement, and determination of VR service needs. DVR and ~~DVRBVIDVS~~ funds are not to be used to assist an individual in establishing eligibility for other programs.

(g) When necessary, diagnostic evaluations may be purchased at any time during the life of the case.

(h) If an individual is determined eligible, the VR counselor will notify the individual in writing. If the individual is determined to be ineligible, the counselor will notify the applicant and provide information on further options in accordance with DRS policy on ineligibility decisions.

(i) **Eligibility for supported employment.** The counselor may not find an individual ineligible for supported employment services because a resource for providing extended services cannot be identified. In this instance, the counselor will:

- (1) accept the individual as eligible for VR services;

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- (2) plan VR services as appropriate, including the expected availability of extended services; and
- (3) seek out and/or help in developing the needed extended services resource.

612:10-7-24.3. Trial Work Experience and Extended Evaluation

(a) Use of trial work experience and extended evaluation.

It shall be presumed that an individual can benefit in terms of an employment outcome from vocational rehabilitation services unless clear and convincing evidence demonstrates that the individual is incapable of benefiting in terms of an employment outcome due to the severity of the individual's disability. In making such demonstration, the VR Counselor will explore the individual's capabilities to perform in work settings through the use of trial work experiences with appropriate supports, except under limited circumstances when an individual cannot take advantage of such experiences and extended evaluation may be utilized.

(b) **Trial work.** The trial work experience shall be provided in the most integrated setting possible, consistent with the individual's informed choice and rehabilitation needs, and shall be of sufficient variety and duration to determine the eligibility of the individual or to determine the existence of clear and convincing evidence that the individual is incapable of benefiting from VR services in terms of an employment outcome. Cases may not remain in this status more than 18 months. An assessment of the individual's progress is required as frequently as necessary but at least once every 90 days. The assessment will include periodic reports from the institution, facility or person providing the services to determine the results of the provision of such services and to ascertain whether the individual may be determined to be eligible or ineligible. The assessment summary narrative will be recorded in the case file.

(c) **Extended evaluation.** Extended evaluation is available for individuals with the most significant disabilities who cannot take advantage of trial work experiences or if the options for trial work experiences have been exhausted before DVR or ~~DVRBVIDVS~~ is able to conclude whether the applicant is able to benefit from vocational rehabilitation services or incapable of benefiting from VR services in terms of an employment outcome due to the severity of the disability. Trial work experiences remain the first option by which to assess an individual's ability to benefit from VR service. Extended evaluation is not meant to be a routine alternative to trial work experiences, but is to be used only as a last resort and under limited circumstances. An individual may be determined unable to take advantage of a trial work experience if there is a need for substantial restoration services prior to entering a work environment. Extended evaluation involves the development of a written plan which provides only those services necessary to make a determination of eligibility.

(d) **Case recording requirements.** The counselor will document the case record according to the criteria and recording standards in (1) - (5) of this Subsection.

(1) **Justification that a trial work experience or an extended evaluation is required.** It is presumed that an individual can benefit in terms of an employment outcome

from vocational rehabilitation services unless clear and convincing evidence demonstrates otherwise. The use of trial work experiences or extended evaluations is to be limited solely to those extraordinary situations in which the preponderance of evidence obtained in the normal manner is sufficient to challenge the presumption of benefit due to the severity of the disability. Documentation and case recording must clearly support the determination that this preponderance of evidence exists, and that trial work experience is necessary to make the eligibility determination.

(2) **Written plan for trial work experiences or extended evaluations.** Services related to the trial work experience or extended evaluation will be planned by the counselor and individual, or the individual's authorized representative. The trial work experience or extended evaluation plan will describe the services necessary to obtain clear and convincing evidence concerning the presumption of benefit.

(3) **Termination of trial work experience or extended evaluation - eligible.** When an individual is determined to be eligible for services, the case is processed in accordance with DRS policy.

(4) **Termination of trial work experience or extended evaluation - ineligible.** If the trial work experience or extended evaluation provides clear and convincing evidence that the individual cannot benefit from vocational rehabilitation services in terms of an employment outcome due to the severity of the disability, the case may be closed as ineligible in accordance with DRS policy. In addition to explaining the individual's right to a review of the determination and the availability of the Client Assistance Program, the counselor will make referrals to other agencies, facilities, or programs as may be appropriate.

(5) **Amendments.** An amendment to the plan is made stating all new decisions, facts, and planned services not already covered in the original trial work experience or extended evaluation plan.

612:10-7-25.1. Order of selection

(a) **Need for order of selection.** The Department, in consultation with the Oklahoma Rehabilitation Council, has determined, due to budgetary constraints or other reasoned limitations, that it cannot serve all individuals who are determined eligible for DVR and ~~DVRBVIDVS~~ services. The Department consults with the Oklahoma Rehabilitation Council regarding the:

- (1) need to establish an order of selection, including any re-evaluation of the need;
- (2) priority categories of the particular order of selection;
- (3) criteria for determining individuals with the most significant disabilities; and
- (4) administration of the order of selection.

(b) **Priority groups.** It is the policy of DRS to provide vocational rehabilitation services to eligible individuals under an order of selection. Under the order of selection, the Department has established three priority groups on the basis of serving first those with the most significant disabilities.

Every individual determined to be eligible for DVR and ~~DVR-BVIDVS~~ services is placed in the appropriate priority group based upon the documentation used to determine eligibility and/or vocational rehabilitation needs. Selection and placement in a priority group is based solely upon the significance of the eligible individual's disability, and is not based upon the type of disability, geographical area in which the individual lives, projected type of vocational outcome, age, sex, race, color, creed, religion, or national origin of the individual. The priority groups are:

- (1) **Priority Group 1.** Eligible individuals with the most significant barrier to employment. A most significant barrier is one that includes a mental or physical disability resulting in serious limitations in three or more functional capacities and can be expected to require multiple services over an extended period of time.
- (2) **Priority Group 2.** Eligible individuals with significant barriers resulting in serious limitations in at least one, but not more than, two functional capacities and can be expected to require multiple services over an extended period of time.
- (3) **Priority Group 3.** Eligible individuals with disabilities not meeting the definition of individual with a significant barrier.

(c) **Implementation.** Prior to the start of each fiscal quarter, or when circumstances require, the DRS Director will determine in which priority groups new Individualized Plans for Employment will be written and initiated. The Director may restrict the writing and initiation of new Individualized Plans for Employment within a priority group to cases having eligibility dates falling on or before a specified date providing that all consumers in higher priority groups are being served. Considerations in making this determination will include, but not be limited to, the projected outcomes, service goals, expenditures, and resources available for each priority group. Projected costs and resources for each priority group will be based upon costs of current Individualized Plans for Employment, anticipated referrals, availability of financial resources, and adequacy of staffing levels. The Director will implement actions under the order of selection through written notice to DVR and ~~DVRBVIDVS~~ staff. The written notice will specify the implementation date of the action and direct DVR and ~~DVRBVIDVS~~ staff on how to handle cases by priority group and application date. DVR and ~~DVRBVIDVS~~ staff will inform each eligible individual on their caseloads:

- (1) of the priority groups in the order of selection;
- (2) of the individual's assignment to a priority group; and
- (3) of the individual's right to appeal that assignment.

(d) **Closing and opening priority groups.** When all or part of a priority group is closed, designated cases within that priority group without a written IPE will be placed on a waiting list after the individual has been determined to be eligible. No IPE will be written for cases on the waiting list. Staff will continue to take applications, diagnose and evaluate all applicants to determine eligibility and vocational rehabilitation needs, find the individual eligible when documentation supports such a decision, then place each eligible individual's case in the

appropriate priority group. If an eligible individual is placed in a closed priority group, his or her case will go on the waiting list and no IPE will be written or initiated. The DRS Director will notify DVR and ~~DVRBVIDVS~~ staff in writing when all or part of a closed priority group is opened. When this directive includes new applicants who are found eligible, individuals already on the waiting list within that same priority group will be given priority over new applicants. When all or part of closed priority groups are opened, staff will contact individuals on the waiting list to develop and implement their Individualized Plans for Employment using the priorities in Paragraphs (1) - (3) of this Subsection:

- (1) contact individuals within the highest open priority group first, Most Significant being the highest of all priority groups;
- (2) within each opened priority group, staff will contact individuals on the waiting list in order of application date, earliest application date first; then
- (3) staff will contact individuals whose cases will remain on the waiting list to explain how their cases will be handled.

(e) **Continuity of services.** Any individual with an IPE that existed prior to the date all or part of that individual's priority group was closed will continue to receive services as planned. Such an IPE may be amended if the changes are necessary for the individual to continue progress toward achieving an appropriate employment outcome, or are otherwise necessary within policy. Persons requiring post employment services will also be provided the necessary services regardless of priority group assignment.

(f) **Information and referral services.** Information and referral services will remain available to eligible individuals who are not in an open priority group. These individuals will be given information and guidance, using appropriate modes of communication, to assist such individuals in preparing for, securing, retaining or regaining employment, and will be appropriately referred to Federal and State programs (other than the vocational rehabilitation program) including other components of the statewide workforce investment system in the state. No IPE will be written to provide such services to these individuals.

612:10-7-31. Transfer of cases

(a) **Transfer of cases between caseloads.** When it has been determined an individual has moved from one counselor's area to another, the individual could be served more appropriately under another DVR or ~~DVRBVIDVS~~ program, or in the supervisor's opinion, transfer is in the best interest of the individual, the case will be transferred.

(b) **Transfer of cases between programs.** Prior to transferring a case between DVR and ~~DVRBVIDVS~~, the transferring counselor must obtain the required specialist information to support the change of primary disability.

PART 5. CASE STATUS AND CLASSIFICATION SYSTEM

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612:10-7-50. Eligibility Status

(a) **Use of Eligibility Status.** An active case is defined as one which has been accepted as meeting the basic eligibility requirements. An applicant who has been determined eligible for vocational rehabilitation will be placed in Eligibility Status for completion of a comprehensive assessment to determine employment goal and rehabilitation needs and for development of the Individualized Plan for Employment (IPE). An individual who is placed in an order of selection priority group that is not currently being served will be placed on a waiting list and held there pending further directives from the Director concerning opening or closing of priority groups.

(b) **Case recording requirements.** The counselor records activities during this period by individual entry or by summary recording at regular intervals in case narratives. Copies of pertinent case information will be shared with all DVR or ~~DVRBVIDVS~~ professionals involved in the case. During eligibility status and throughout the life of the case, ~~DVRBVIDVS~~ counselors and rehabilitation teachers will share pertinent information related to a case they jointly serve. Pertinent case information will also be shared with contracted vendors, when appropriate, with a release signed by the client. If an IPE cannot be developed during this period, the client's case is closed with a full explanation to the client and documentation as to the reason for closing the case. This documentation will be completed on a closure letter and a copy given to the client.

612:10-7-51. Individualized Plan for Employment

(a) **Options for developing the Individualized Plan for Employment (IPE).** The VR counselor will provide the eligible individual, or the individual's authorized representative, in writing and in appropriate mode of communication, with information on the individual's options for developing the IPE.

(1) The required information will include the following:

(A) information on the availability of assistance, to the extent determined to be appropriate by the eligible individual, or authorized representative, from a qualified VR counselor in developing all or part of the IPE, and the availability of technical assistance for this purpose;

(B) a description of the required content of the IPE;

(C) as appropriate:

(i) an explanation of agency requirements for client participation in cost of services;

(ii) additional information requested by the individual or authorized representative;

(iii) information on the availability of assistance in completing ~~DVR/DVRBVIDVR/DVS~~ forms required in developing the IPE;

(iv) For cases involving Mental Disorders and Obesity, treatment must be incorporated as a service in the IPE, in accordance with DRS policy.

(D) a copy of a DRS publication addressing client's rights and responsibilities.

(2) For cases in an open priority group, the IPE must be completed and signed as soon as possible, consistent with the needs of the individual, but not more than 90 calendar

days following the eligibility determination, unless the individual or the authorized representative and the VR or ~~VRBVIDVS~~ counselor jointly agree to an extension of time of a specific duration. The 90-day time frame for development of the IPE will be applied from the date a closed priority group is reopened.

(b) **Vocational objective.** The primary purpose in providing vocational rehabilitation services is to assist an eligible individual obtain appropriate competitive employment in an integrated setting consistent with the individual's informed choice. The choice of a vocational objective for an individual receiving vocational rehabilitation services must be based primarily upon the individual's strengths, resources, priorities, concerns, abilities, interests and capabilities, consistent with the general goal of competitive integrated employment.

(1) **Informed choice.** The vocational objective is to be chosen with the full participation of the client. The client's interests and informed choice determine his or her vocational goal to the extent these factors are consistent with the client's strengths, resources, priorities, concerns, abilities, interests and capabilities.

(2) **External conditions.** Factors such as the local labor market or local economy must also be taken into consideration. However, in most cases these factors cannot be used as the only basis upon which to determine whether a vocational objective is appropriate.

~~(c) **Non-competitive vocational objectives.** The primary mission of DVR and ~~DVRBVIDVS~~ is to help eligible individuals achieve competitive employment in an integrated work setting. Therefore, careful consideration and planning are required when services are to be provided to achieve a long term goal of non-competitive employment.~~

~~(1) **Homemaker.** A homemaker is defined as a person whose primary work is performance of duties related to the upkeep and maintenance of a home. This work takes place in the individual's own home, without remuneration.~~

~~(A) The IPE can have a vocational objective of homemaker only when services will directly and substantially improve the individual's ability to perform the primary homemaking work activities for their home.~~

~~(B) Self-care activities are not sufficient to meet the definition of gainful occupation.~~

~~(C) A vocational objective of homemaker can be established for only one person within the same household.~~

~~(2) **Unpaid family worker.** A vocational objective of unpaid family worker is appropriate when services will enable the individual to perform work without pay on a family farm or in a family business operated by one or more members of the client's family. The record must document how the services will substantially improve the productivity of the client and his/her contribution to the family farm or business.~~

~~(d) **General requirements for the Individualized Plan for Employment.**~~

~~(1) The IPE documents the client's chosen employment goal, and the planning of vocational rehabilitation services~~

which are necessary to achieve a successful employment outcome. The client will be a full participant in the development of the IPE or any amendments consistent with Federal and State regulations, laws, and statutes. The eligible individual must be given the opportunity to exercise informed choice in selecting an employment outcome, the specific VR services to be provided under the plan, the service providers, and the methods for service delivery. For cases in an open priority group, the IPE must be agreed to and signed by the eligible individual or authorized representative, approved by a VR counselor and, as appropriate, other administrators employed by DVR or ~~DVRBVIDVS~~ within 90 days of determination of eligibility, unless the individual or the authorized representative of the individual and the VR or ~~VRBVIYS~~ counselor jointly agree to an extension of time of a specific duration. To the maximum extent possible, the IPE is to be provided in the native language or mode of communication of the individual or, as appropriate, of a parent, family member, guardian, advocate, or authorized representative. It is also required the client receive a copy of the plan and any subsequent amendments.

(2) The IPE is subject to continuous development and change. Substantial changes to the IPE are documented as amendments. A substantial change is broadly defined as any change in the employment objective, or in service needs or available resources not accounted for in the original IPE or existing amendment(s). The amount of any client participation in the cost of a service will be based upon the determination of client's financial status completed at the time the relevant IPE or amendment is written, and is to be stated in the IPE or amendment. If services based upon financial status are included in the original IPE and/or in the amendment, a new Financial Status Determination form will be completed when the IPE is amended. A copy of any Amendment to an Individualized Plan for Employment will be given to the client, or client's authorized representative, as appropriate.

(3) Diagnosis related to eligibility or the IPE can be provided at any time it is necessary during the life of the case.

(4) An IPE is not considered in effect until all required approvals have been obtained in accordance with Department policy.

(5) Plan reviews are comprehensive reviews of the entire IPE. A plan review can be done at any time, but must be done at least annually. The client must be given the opportunity to review the plan and, if necessary, participate in its redevelopment and agree to its terms. A financial status determination will be completed at the time of plan review when the IPE includes services based upon client's financial status.

(ed) Content of the Individualized Plan for Employment. The Individualized Plan for Employment must include:

(1) a description of the specific employment outcome that is chosen by the client consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice ~~of the~~

~~client, and to the maximum extent appropriate, results in competitive employment in an integrated setting, and the estimated timeframe for the achievement of the employment outcome consistent with the general goal of competitive integrated employment (except that in the case of a student or a youth with a disability, the description may be a description of the individual's projected post-school employment outcome), and the estimated timeframe for the achievement of the employment outcome;~~

- (2) a description of the specific VR services that are:
 - (A) needed to achieve the employment outcome including as appropriate, the provision of assistive technology services and devices, and personal assistance services, including training in the management of such services;
 - (B) provided in the most integrated setting that is appropriate for the service involved and is consistent with the informed choice of the client; and
 - (C) timelines for the achievement of the employment outcome and for the initiation of services.
- (3) a description of the service provider chosen by the client or authorized representative, and the methods of services delivery;
- (4) a description of the criteria that will be used to evaluate progress toward achieving the employment outcome;
- (5) the terms and conditions of the IPE including as appropriate:
 - (A) the responsibilities of DVR or ~~DVRBVIDVS~~;
 - (B) the responsibilities of the client, including:
 - (i) the client's responsibilities for the employment outcome;
 - (ii) the client's participation in paying the cost of VR services; and
 - (iii) the client's responsibility to apply for, accept, and use comparable services and benefits to defray in whole or in part the cost of VR services.
- (6) for an IPE that includes supported employment services, information identifying:
 - (A) the extended services needed by the client; and
 - (B) the source of the extended services, including natural supports, or an explanation concluding there is a reasonable expectation a source will become available; and
 - (C) the weekly work goal.
- (7) if it appears they will be necessary, a statement of needed post-employment services.

612:10-7-56. Employment

(a) **Use of Employment status.** A case is placed in this status when the client begins employment. The client must be followed in employment for a minimum of 90 days ~~after the completion of services and~~ prior to being closed to ensure the adequacy of the employment in relation to the needs and limitations of the client.

(b) **Supported employment.** Cases are placed into employment status after the requirements have been met for completion of the "Stabilization" Milestone, and the client is

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ready to begin the final milestone, "Successful Rehabilitation". During this milestone, the provider must continue ongoing supports for a minimum of 90 days before the case can be closed.

(c) **Employment and Retention.** Cases are placed into employment status when the individual has completed the fifth day of work ("Job Placement" Milestone), or after completion of "Four Weeks Job Support" Milestone if short term job coach training or support is needed. The client must be followed in employment for a minimum of 90 days prior to being closed.

(d) **Case recording requirements.** ~~At the time planned services are completed and~~ After the client has entered employment, it is the client's responsibility to provide the counselor with employment and salary information. When an individual is placed in employed status, case recording will document:

- (1) Beginning date of employment;
- (2) Name and address of the employer;
- (3) Client's wages or salary;
- (4) Suitability of the employment; and
- (5) How the job was obtained. If the information is obtained from a source other than the client, the source of the information will be identified.

(e) **Contact.** When a client is placed in employed status, contact is maintained and documented until it is determined the employment is satisfactory and the case can be closed. This determination that the employment outcome is satisfactory will be made with the full participation of the client.

PART 11. PHYSICAL AND MENTAL RESTORATION SERVICES

612:10-7-98. General guidelines for physical and mental restoration services

(a) To the extent that assistance is not readily available from a source other than DVR or ~~DVRBVIDVS~~, diagnosis and treatment of physical and mental impairments may be provided to assist the individual with a disability in preparing for, securing, retaining or regaining employment. Physical or mental restoration services are provided only when the condition is stable, or slowly progressive. A slowly progressive condition is one in which the client's functional capacity is not expected to diminish so rapidly as to prevent successful completion of vocational rehabilitation services, and/or employment for a reasonable period of time. The individual is liable for services he or she arranged which were not planned and initiated under the auspices of DVR and ~~DVRBVIDVS~~. DVR and ~~DVRBVIDVS~~ will not pay for hospitalization or treatment occurring prior to initiation of an Individualized Plan for Employment (IPE). DVR and ~~DVRBVIDVS~~ will not pay for emergency hospitalization or treatment needed at the time of referral. However, diagnostic examinations or information may be paid from DVR and ~~DVRBVIDVS~~ funds for use in eligibility determination, priority group placement, or determination of vocational rehabilitation needs. Physical and/or mental restoration services will be purchased only from licensed or board certified health professionals unless otherwise specified in DRS policy. Payment will be made in accordance with the established fee schedule of the Department.

(b) Temporary conditions with sudden onset do not fall within the definition of impairment for eligibility purposes. Emergency treatment of remediable conditions will not be purchased by DVR and ~~DVRBVIDVS~~ except under intercurrent illness policy. When the staff is in doubt as to the effect of such a condition upon the outcome of the IPE objectives, a medical consultation may be requested.

(c) DVR and ~~DVRBVIDVS~~ do not provide long-term or ongoing physical or psychological treatment. DVR and ~~DVRBVIDVS~~ funds cannot be used to initiate treatment that is reasonably anticipated to last more than three months unless supervisory approval has been obtained for a three month extension. Additional three month extensions may be approved if the client maintains reasonable progress toward achieving the vocational goal. Persons needing long-term or ongoing treatment are to be referred to other medical assistance sources if available.

(d) Payment from DVR and ~~DVRBVIDVS~~ funds may be planned and authorized only after applicable third party pay sources provide verification of the expense they will cover, and not cover, associated with the physical or mental restoration services in question. When DVR and ~~DVRBVIDVS~~ funds are used to supplement a third party pay source, planned services and the authorization will be limited to those expenses that fall within the scope of the program and that do not exceed the difference between what the third party pay source will pay and the Department's established payment schedule.

PART 9. ACTIONS REQUIRING REVIEW AND APPROVAL

612:10-7-87. Actions requiring supervisor's approval

Actions requiring supervisory approval include:

- (1) All actions of a newly employed counselor/teacher.
- (2) All IPE's or amendments when the total of the planned DVR and ~~DVRBVIDVS~~ expenditures for the entire case exceed \$25,000.
- (3) All case closures in which an IPE was developed and services initiated.
- (4) Transfer of cases from one counselor/teacher caseload to another outside the sending supervisor's unit (signed by the supervisor of the sending counselor or teacher).
- (5) All IPE's which include purchase of physical or mental restoration services, prescription drugs or prescribed medical supplies lasting more than three months.
- (6) Small Business plans with a cost to the agency in excess of \$10,000.00.
- (7) Vehicle or home modifications over the DCAM authority order limit and housing modifications involving structural modifications.
- (8) Vehicle repairs that exceed \$1,000.00 for the life of a case.
- (9) Dental services with a projected cost over \$5,000.00.

- (e) Individuals with chronic disabilities that can be removed with little or no residual limitations will not be eligible for purchase of services other than those related to the required treatment.
- (f) Physical and mental restoration services may include but are not limited to:
- (1) Braces and orthotic devices.
 - (2) Chiropractic services. A chiropractor providing treatment must be duly licensed to practice his profession in Oklahoma, have a current provider/vendor agreement with DRS, and following evaluation of the client's needs, must provide a treatment plan with goals, time frames and the estimated number of treatments required to meet the goals. Treatment may not be extended beyond three months unless progress toward treatment goals can be determined.
 - (3) Dental services. Dental services may be provided to treat or correct dental conditions that constitute an impediment to employment or participation in the rehabilitation process, produce health problems or aggravate an existing disability. Dental services with a projected cost over \$5,000.00 require review by the DRS dental consultant and supervisory approval.
 - (4) Dialysis and treatment for end-stage-renal-disease. DVR and ~~DVRBVIDVS~~ may assist with the cost of Medicare deductible, co-insurance, and services not covered by Medicare if documentation states other resources are not available and the client is actively participating in an IPE with treatment as part of the plan. Requests for kidney transplants must be approved by the medical consultant.
 - (5) Prescription drugs and prescribed medical supplies. Prescription drugs and/or prescribed medical supplies may be purchased when required for proper diagnosis, for post-operative treatment, or to stabilize a documented disability. The need for the drugs and/or medical supplies must be documented in a physician's report. Payment will be made for generic type drugs unless the physician specifically requests a brand name drug.
 - (6) Hearing aids and audiological services.
 - (7) Hospitalization when recommended by a physician and the client is to receive medical treatment or surgery. Hospitalization may also be authorized for diagnostic services upon recommendation of a physician.
 - (8) Treatment for intercurrent illness. Intercurrent illness is an illness or injury which occurs during the course of an individual's vocational rehabilitation and, if not treated, will complicate or significantly delay achievement of the client's employment outcome. DVR and ~~DVRBVIDVS~~ will purchase treatment for intercurrent illness or injuries if the client is not covered by health insurance or eligible for comparable services and benefits, or when the provision of services through comparable services and benefits would significantly interrupt or delay treatment for an individual at extreme medical risk, jeopardize a job placement or impair the individual's progress in achieving the planned employment outcome.
 - (9) Laboratory work and x-rays if required by the physician to complete his examination or in conjunction with diagnosis or treatment.
 - (10) Low vision services.
 - (11) Medical examinations, when necessary to determine eligibility, achieve a goal in the IPE or when related to an intercurrent illness.
 - (12) Nursing services can be provided for a client who is convalescing from physical restoration services if recommended by the doctor of treatment. Either Registered Nurses or Licensed Practical Nurses may be used to provide this service when a current medical vendor agreement is on file with the Department. Volunteers may be used if less technical care is needed and if approved by the client's physician.
 - (13) Physical and occupational therapy may be provided on either an in-hospital or outpatient basis if recommended by the attending physician.
 - (14) Post-operative care of cataract patients.
 - (15) Prosthetic eyes, glasses and other optical aids.
 - (A) Glasses and other visual aids and services may be prescribed or provided by either an ophthalmologist or an optometrist. Other optical aids recommended by optical aid clinics are purchased upon the recommendation of the specialist(s) in one or more such clinics. Prosthetic eyes are provided, upon the recommendation of an ophthalmologist.
 - (B) Lenses and frames for glasses purchased by DRS will be authorized at fee schedule prices. The vendor may add a service charge not to exceed the established fee. An additional code and fee may be added for tinting if it has been prescribed by the physician or optometrist that performed the eye examination with written medical/vocational justification.
 - (C) The fee that has been established for frames will only cover the cost of plain sturdy frames. Clients do not have the option of selecting more expensive frames and paying the difference between the vendor's price and the amount authorized. If the vendor accepts payment from the client or a representative of the client and also files a claim with the Department for the same services, a violation of the Provider Agreement has occurred and the vendor would be subject to sanctions.
 - (D) If a client selects special frames and has sufficient resources to purchase them, the frames should not be included on the authorization and the client would be responsible for the entire cost of the frames.
 - (16) Prosthetic limbs.
 - (A) Prosthetic limbs may be provided if the prosthesis is recommended by a physician. The client who has successfully worn a prosthesis will not be required to see an orthopedist or physiatrist, or attend an amputee clinic unless some other disorder is apparent.
 - (B) An individual who has never worn a prosthesis must be seen by a physician before the prosthesis is provided. The client must agree to training in its use. Gait training is considered Personal Adjustment

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Training and does not require client participation in cost. However, physical therapists providing the training are recognized as medical vendors and require authorizations completed on a Medical Service Authorization.

(C) Persons with multiple amputations must have the special examination and training.

(D) The counselor may authorize for a prescribed standard prosthesis without further review. The choice of prosthesis must be closely related to its intended use in a work setting, or in relation to reasonable independent living goals. Non-standard prostheses (i.e., myoelectric) will not be purchased with DRS funds unless medically justified and/or required for a specific employment, or independent living, outcome. When a prosthesis other than a standard prosthesis is prescribed the counselor will request a consultation from the appropriate medical consultant. Justification for the non-standard prosthesis must be documented in the case record.

(17) Psychiatric and psychological treatment.

(A) Psychotherapy may be provided for emotional conditions which may be expected to respond within a reasonable period of time. Psychotherapy can be provided only by the sources in (1) - (5) of this Subsection.

(i) Psychiatrists certified by the American Board of Psychiatry and Neurology or completed the required training and are "Board Qualified", or who have spent a major portion of their time in a particular specialty for at least two years and are recognized as specialists in the local community (same criteria as applied to other medical specialists).

(ii) Licensed Doctors of Medicine or Doctors of Osteopathy who have received specific training for and are experienced in performing mental health therapeutic, diagnostic, or counseling functions.

(iii) Psychologists with a doctorate in clinical or counseling psychology who hold a valid license to practice psychology.

(iv) Psychologists with a doctorate in clinical or counseling psychology who are employed by governmental agencies exempt from the licensing law.

(v) Other licensed clinicians or those employed by governmental agencies who have received administrative approval to provide this treatment service.

(B) Upon receipt of a written report from the therapist, the supervisor may approve additional three-month periods of therapy. Clients needing long-term or ongoing psychiatric or psychological treatment will be referred to the appropriate community mental health center.

(C) Personal Adjustment Counseling may be provided for those persons with emotional conditions who may benefit from counseling to bring about a

more adequate social adjustment, alleviate superficial anxiety, and to create more effective interpersonal relationships. Personal Adjustment Counseling may be provided by: those individuals listed in (17) (A) of this Subsection.

(18) Speech therapy/training as recommended in a speech evaluation. Speech therapy, although provided by recognized speech therapists, is considered Personal Adjustment training and is not based on financial status. The providers of speech therapy are classified as medical vendors.

(19) Surgery and medical treatment.

(A) Surgery and complex or unusual medical treatment may be provided when recommended by a specialist. Medical consultant approval will be obtained prior to planning and authorizing a diagnostic procedure which could lead to immediate surgical treatment. The medical consultant will give conditional approval for the possible surgery if deemed necessary. Normal post-operative care is an integral part of the surgery; therefore, no post-operative charges are to be paid above the approved surgical fee.

(B) Specified outpatient surgical services are approved for payment when provided in qualified outpatient surgical facilities. Qualified facilities include Medicare certified free standing ambulatory surgical centers, Medicare certified hospitals offering outpatient surgical services, and hospitals which have an agreement with DRS.

(C) The counselor will advise the client he/she may be liable for any balance due when payment by private insurance exceeds the Department allowable rate.

(20) Weight loss treatment. A weight loss plan or treatment are included as a service in the IPE for individuals who are eligible on the basis of obesity. A licensed dietician or a physician skilled in weight reduction must monitor any treatment program authorized by the agency. Surgery for weight loss is not provided unless medically recommended as treatment for morbid obesity, a second confirming medical opinion is obtained, the surgery is approved by the DRS medical consultant and supervisory approval is obtained. Before approving DRS provision of surgery for treatment of morbid obesity, the supervisor shall consider the individual's past experience with standard weight loss protocols, and medical and behavioral factors that may impact the individual's ability to obtain long-term benefit from the surgery.

(21) Wheelchairs and other durable medical equipment when prescribed by a physician or recommended by an occupational therapist, physical therapist, assistive technology specialist or person with equivalent qualifications. Power mobility devices may be purchased for individuals when necessary to assist the client in achieving IPE goals.

(A) The client, and/or client's authorized representative, will participate in choosing from which vendor the wheelchair or durable medical equipment will be purchased. Wheelchairs and other durable medical

equipment will be authorized at the agency approved fee.

(B) The client, or client's family or authorized representative as appropriate, is responsible for maintaining wheelchairs or other durable medical equipment in good working order. DVR and ~~DVRBVIDVS~~ will pay for repairs to wheelchairs or other durable medical equipment during the life of the case unless there is clear evidence the equipment has been damaged due to client abuse or neglect. An agency-purchased wheelchair will be returned to the agency if the client becomes unable to use it.

(C) Wheelchair rental may be authorized for a period not to exceed six months when necessary to assist the client with mobility. An exception can be made if it is documented that rental is more cost effective than purchase.

PART 13. SUPPORTIVE SERVICES

612:10-7-130. Maintenance

(a) **General guidelines.** Maintenance is a supportive service provided to assist with the out-of-ordinary or extra expenses to the individual resulting from and needed to support the individual's participation in diagnostic, evaluative, or other substantial services in the IPE. Maintenance, including payments, may not exceed the cost of documented expenses to the individual resulting from service provision. Authorizations for maintenance will not be issued to pay the cost, or part of the cost, for any other service or expense.

(b) **Provision of maintenance.** To receive maintenance, an individual must be either an eligible DVR or ~~DVRBVIDVS~~ client or an applicant for vocational rehabilitation services undergoing diagnostic evaluation and testing. For an accepted client, maintenance must be a supportive service related to outcomes listed in the Individualized Plan for Employment. The costs of the maintenance may not exceed the amount of increased expenses that the IPE causes for the individual or his/her family. The provision of maintenance as a supportive service is not synonymous with general assistance payments. It is not intended to pay for those living costs that exist irrespective of the individual's status as a DVR and ~~DVRBVIDVS~~ client. Maintenance payments must be carefully tied to the achievement of specific VR outcomes which must be stated and documented in the case record and the IPE to justify such payments. Maintenance cannot substitute for or supplement income assistance payments.

(1) **Maintenance for diagnostic and evaluation services.** Maintenance payments for individuals receiving diagnostic or evaluation services may be authorized for overnight care, short-term lodging and/or meals.

(2) **Maintenance for physical restoration services.** Maintenance for physical restoration services is paid to the client until he/she is able to work. The client must be in his/her own home and the covered period of convalescence is to be 60 days or less. For convalescent periods in excess of 60 days, the counselor will refer the client to

other sources for assistance (public assistance, SSI). In no instance will medical maintenance be paid while the client is hospitalized.

(3) **Maintenance for training.** Maintenance can be authorized for full time vocational school students or college students. Maintenance can be authorized for a client granted an exception to the full-time attendance requirement under 612:10-7-150(a).

(4) **Maintenance for job search services.** Maintenance for job search services requires an IPE with major services directed toward the goal of employment.

(5) **Maintenance for job relocation.** Maintenance may be paid to a client for assistance in relocating to a new job site. Maintenance services for this purpose must be identified on the IPE.

(c) **Clothing expenses.** Clothing and/or uniforms can be purchased when needed to begin training or enter employment. Everyday clothing needs of the client are considered as part of the basic living requirements. Any clothing purchased for the client must be:

- (1) required by the training facility;
- (2) necessary to participate in job search or begin employment; or
- (3) necessary to begin a training program that requires clothing standards beyond the client's means.

(d) **Day care expenses.** Day care expenses will be paid for from DVR and ~~DVRBVIDVS~~ funds only when necessary to participate in the IPE, and it is fully documented that no other resources are available for this service, including family members and friends.

PART 15. TRAINING

612:10-7-142. General guidelines for training services

(a) **Types of training.** Training provided by DVR and ~~DVRBVIDVS~~ may include:

(1) **Vocational.** Vocational training provides the knowledge and skills necessary for performing the tasks involved in an occupation. Such knowledge and skills may be acquired through training from an institution, on-the-job, by tutors or through a combination of these methods. Vocational training may be provided for any occupation.

(2) **Prevocational.** Prevocational training includes any form of academic or basic training provided for the preparatory skills needed for entrance into a vocational training program or employment. Prevocational training is initiated to enhance occupational knowledge or skills or to remove an educational deficiency interfering with employment.

(3) **Personal or work adjustment.** Personal or work adjustment training includes any training given for one or a combination of the reasons given in (A) - (D) of this paragraph.

(A) To assist the individual in developing personal habits, attitudes, and skills enabling the individual to function effectively in spite of disability.

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- (B) To develop or increase work tolerance prior to engaging in prevocational or vocational training or in employment.
 - (C) To develop work habits and to orient the individual to the world of work.
 - (D) To provide skills or techniques enabling the individual to compensate for a disability such as the loss of a body part or the loss of a sensory function.
- (b) Training may be provided for clients who:
 - (1) are mentally, physically and/or emotionally capable of pursuing a course of training to completion;
 - (2) require training to achieve an employment outcome or other goals established in the Individual Plan for Employment (IPE); and
 - (3) are determined to have a reasonable opportunity for obtaining employment in the chosen vocation.
 - (c) Decisions related to training are based on the individual needs and informed choices of the client as identified in the IPE.
 - (d) DVR and ~~DVRBVIDVS~~ will only pay tuition and fees for courses which count toward requirements consistent with the vocational goal of the IPE. Training of DVR and ~~DVRBVIDVS~~ clients is provided by colleges, universities, private business and trade schools, state supported vocational schools, employers in the form of on-the-job training, sheltered workshops, and other approved training facilities with valid contracts.
 - (e) Federal regulations require a search for comparable services and benefits with the results documented before payment can be made for training in the following institutions: colleges, universities, community/junior colleges, public or private vocational/technical schools, or hospital schools of nursing. PELL grants and other available Federal/State student aid (excluding merit awards) must be applied to tuition, fees and all other educational expenses as a first dollar source prior to consideration of the expenditure of DRS funds.
 - (f) Training costs will not be authorized beyond the first DVR and ~~DVRBVIDVS~~ sponsored enrollment until proof of the availability of comparable benefits is received by the counselor.
 - (g) Once training has begun, the client is expected to progress toward the vocational objective at a steady rate. This requires the client to attend training on a regular basis, and maintain a full-time load unless an exception is granted by the counselor due to severity of disability, scheduling problems or other valid reasons. Training progress reports or other methods of reporting (i.e., grade reports, transcripts) are utilized to document training progress. Sporadic attendance and reduced training loads causing a delay in the completion of training must be reviewed by the counselor. The client is responsible for advising the counselor of problems encountered during the training program.
 - (h) All types of institutional, technical, personal adjustment or employment training are purchased by an authorization issued by the counselor.

612:10-7-149. College and university training

- (a) Training for rehabilitation clients is provided in those colleges and universities which are accredited by the appropriate accrediting agency, whose credits will be given full recognition by other accredited colleges and universities, and which are under contract. Private and denominational colleges and universities may be used for the training of DRS clients, provided they are accredited and under contract.
- (b) Clients approved for college or university training must exhibit the ability to do college work. The counselor will have evidence in the case file indicating the client's ability to do college work before a program is developed calling for training at the college or university level.
- (c) For DVR and ~~DVRBVIDVS~~ clients pursuing a college or university degree, the Department will sponsor only the number of semester hours or remaining hours required for a specific degree. Exceptions may be approved by the counselor.
- (d) Previously completed credit hours which are applicable to the degree requirements will be incorporated in the development of the IPE. When a client changes majors, DVR and ~~DVRBVIDVS~~ funding will be limited to the number of credit hours needed for the new major minus the number of DVR and ~~DVRBVIDVS~~ funded credit hours lost due to the change in majors, unless the change in majors results from circumstances beyond the client's control.

612:10-7-150. Continued eligibility for college or university training

- (a) **Requirements for continued eligibility.** DVR or ~~DVRBVIDVS~~ clients in college or university training will be expected to attend classes regularly and make continuous progress toward graduation. To continue assistance with college or university training, the client must maintain a cumulative 2.0 grade-point average (GPA), based on a four point (4.0) scale. The client must carry the minimum number of semester hours determined to be full time at the school attended. Exceptions may be granted by the counselor, based on severity of disability, scheduling problems, or other valid reasons. When a client fails to meet the requirements for continued sponsorship the guidelines in (1) - (5) of this Subsection are to be followed:
 - (1) Payment of training services based on client's financial status will not be provided if the client's grades fall below 1.5 cumulative GPA.
 - (2) Training services may be paid for a client having a cumulative GPA between 1.5 and 1.9 for the first semester that grades fall below 2.0 cumulative GPA. Subsequent enrollments can only be paid if the student's cumulative GPA shows progress.
 - (3) A client failing to meet the grade point requirement may continue to receive services not based on financial status.
 - (4) A client failing to meet grade point requirements may be approved by the counselor if there are extenuating circumstances beyond the client's control.
 - (5) A client failing to meet grade point requirements will be contacted as soon as appropriate to complete a

program review to determine if a change in services, vocational goal, or objectives is needed. A client failing to meet chosen goals will not have his/her case closed until the counselor has provided counseling and guidance and determined that a change in the IPE is inappropriate. The counselor should investigate the need for further vocational and/or educational evaluation to explore alternative employment goals.

(b) **Withdrawals and failures.** Clients who withdraw or fail courses paid by DVR and ~~DVRBVIDVS~~ will be required to pay for a like number of hours during the following enrollment period subject to the guidelines in (a) of this Section.

612:10-7-152. Payment of tuition and fees at colleges and universities

(a) **Public institutions of higher learning.** Tuition and fees for DVR and ~~DVRBVIDVS~~ clients attending public colleges and universities will be paid at the rate set for resident students by the Oklahoma Regents for Higher Education and within limits prescribed by the Legislature. DVR and ~~DVRBVIDVS~~ will pay those fees charged to all students and special fees associated with required courses in the student's major field of study. After the completion of the first semester, a grade report, proof of enrollment, and an itemized invoice are required documentation to support the authorization for tuition and fees. It is the responsibility of the client to provide this support documentation. The client may provide this documentation electronically or as a printed document in the standard format used by the school.

(b) **Private institutions of higher learning.** Tuition and fees for students in attendance at accredited private or denominational schools will be paid at the same rate as that paid at state-supported colleges or universities of equal rank. After the completion of the first semester, a grade report, proof of enrollment, and an itemized invoice are required documentation to support the authorization for tuition and fees. It is the responsibility of the client to provide this support documentation. The client may provide this documentation electronically or as a printed document in the standard format used by the school.

(c) **Federal/State student aid.** Pell Grant and all other Federal/State aid (excluding merit awards) must be applied to tuition, fees and all other educational expenses as a first dollar source prior to the consideration of the expenditure of DRS funds regardless of whether the student is attending a public or private institution of higher education.

(d) **Cost documentation.** Each client is responsible for providing the counselor a copy of the college or university's current semester costs before the designated "Drop and Add" date.

612:10-7-158. Training for individuals in custody of the Department of Corrections

DVR and ~~DVRBVIDVS~~ funds are not used to defray the cost of training for individuals in the custody of the Department of Corrections. This does not apply to individuals who meet the criteria set forth within a joint memorandum of understanding between DRS and the Department of Corrections.

612:10-7-161. Public and private vocational schools

(a) Client training may be purchased from public or private vocational schools that have a valid purchasing agreement with DRS, after use of available comparable benefits such as PELL grants and other federal/state student aid (excluding merit awards).

(b) Privately-owned vocational schools must be accredited or licensed through the appropriate state board, if applicable, before a purchasing agreement with DRS can be finalized. Tuition at privately owned vocational schools will be paid at rates approved by the Oklahoma Commission for Rehabilitation Services sitting as the Rates and Standards Committee. The authorized rate will remain constant during the contract period.

(c) Continued eligibility of a client in training at a vocational school will be based on the client's performance in respect to grades, progress and attendance. The minimum standards used by the training facility for satisfactory progress in respect to grades and attendance will be utilized by DVR and ~~DVRBVIDVS~~ staff in determining the progress of the client.

(1) DVR and ~~DVRBVIDVS~~ sponsored clients attending vocational technical schools who withdraw or fail course work will be required to pay for like credit or clock hours during the following enrollment period.

(2) A client who fails to meet agency sponsorship guidelines for training at vocational technical schools may continue to receive services not requiring client participation in cost of services.

(3) A client failing to meet agency sponsorship guidelines may be approved by the counselor if there are extenuating circumstances.

(4) A client failing to meet agency sponsorship guidelines will be contacted as soon as appropriate to complete a program review to determine if a change in services, vocational goal or objective is needed. A client failing to meet chosen goals will not have her/his case closed until the counselor has provided counseling and guidance and has determined that a change in the IPE is inappropriate. The counselor should investigate the need for further vocational and/or educational evaluation to explore alternative employment goals.

612:10-7-162. Textbooks, supplies, training tools and equipment

(a) For clients attending training, an allowance may be provided to cover the actual cost of required books, supplies, training tools and equipment, after available comparable benefits have been applied. When an allowance is provided, the client will be required to furnish documentation of the costs of required books, supplies, tools or equipment. The counselor will work with the client in obtaining and utilizing comparable benefits including the PELL grant and planning for the use of other resources to help meet this expense. The textbook allowance will be adjusted the following semester for clients who fail or withdraw from courses paid by DVR or ~~DVRBVIDVS~~. Only textbooks for the current semester's enrollment will be provided.

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(b) Training tools and equipment costing more than \$500 will be purchased directly from the vendor in accordance with DRS policy.

(c) The client, or client's family or authorized representative as appropriate, is responsible for maintaining supplies and training tools in good working order. DVR and ~~DVRBVIDVS~~ will pay for repairs to supplies and training tools purchased with DVR and ~~DVRBVIDVS~~ funds during the life of the case unless there is clear evidence the supplies or training tools have been damaged due to client abuse or neglect.

(d) Gun "kits", but not operable firearms, used as training tools may be purchased for students in gun-smithing school only.

(e) The Department retains title to any tools costing \$500 or more purchased for training purposes until title is released by an authorized agent of the Department. The counselor will complete the Receipt for Equipment and Title Agreement, and obtain necessary signatures, before releasing such tools to the client. Any tools purchased for training purposes remain with the client while he/she is in training and after the completion of the training if they can be used in the client's chosen vocation. If the client drops out of training, DRS at its discretion may take steps to repossess the tools to transfer to another client.

(f) Case recording must reflect the disposition of tools and materials provided the client before the case is closed.

(g) Computers and related high tech equipment necessary for the client to participate in a training program or required by the training entity may be purchased as a client service in accordance with agency policy. The cost of computers and related equipment will not be included in an allowance for textbooks and supplies.

612:10-7-170. Work experience, internship and apprenticeship

(a) Work experience, internship and apprenticeship opportunities are types of training that may be provided or arranged to help clients gain experience in the world of work, improve job readiness, develop a work record to advance future employment, make or refine vocational goal decisions, develop career/discipline familiarity, obtain specific skills related to a career choice, or prepare for a specific occupation.

(b) Work experiences, internships and apprenticeships may be arranged with public or private organizations or employers.

(c) To the extent that costs of providing work experiences, internships or apprenticeships are not met by employers or through comparable benefits, DRS may provide these types of training through agreement or contracted with the employer or organization, in accordance with agency procedures for purchase of services. Work experiences, internships and apprenticeships do not require client participation in cost of services.

(d) Work experiences and internships or any combination of such experiences provided for a client by DRS may be of any duration not to exceed six months except with supervisory approval.

PART 17. SUPPORTIVE EMPLOYMENT SERVICES

612:10-7-183. Ongoing support services

The individual will be provided needed and appropriate ongoing support services such as job site training, transportation, service to family members, or any service necessary to achieve and maintain the supported employment placement throughout the term of employment. DVR and ~~DVRBVIDVS~~ sponsored support services are provided from the time of placement until the individual is stabilized on the job (completion of "Stabilization Milestone") by the service provider.

612:10-7-184. Extended services

Extended services are a continuation of ongoing support services provided to individuals in Supported Employment at completion of stabilization, during the "Successful Rehabilitation" Milestone and beyond case closure. Such services consist of the provision of specific services, including natural supports, needed to maintain the supported employment placement. Extended services are specifically identified in the IPE. Except as provided by federal law with regard to youth with the most significant disabilities, extended ~~Extended~~ services are paid from funding sources other than DVR and ~~DVRBVIDVS~~ ~~and are specifically identified in the IPE.~~ An individual may not be found ineligible for supported employment services because the resource for providing extended services cannot be identified.

PART 19. SPECIAL SERVICES FOR INDIVIDUALS WHO ARE BLIND, DEAF, OR HAVE OTHER SEVERE DISABILITIES

612:10-7-199. Reader/recording services

(a) Reader services may be purchased for individuals who are blind, visually impaired or have difficulty reading standard print books/materials due to any other disability. Reader services are exempt from client participation in cost of service. Hours of reader service purchased shall be based upon the client's needs with respect to reading of textbooks, training materials or other printed materials used in the rehabilitation process.

(b) Payment for reader services will be based on the Federal Minimum Wage, unless the counselor justifies use of a higher basis for readers of specialty subjects (e.g., law, science, technology, professions). Reader services may not be paid in advance. Payment is authorized directly to the client in the same manner as maintenance or transportation and may be included on the same authorization with either or both of these other services.

(c) Individuals who have difficulty reading or using standard print materials will be referred to existing resources for recorded, large print, Braille and digital books and materials. Any required fee or materials cost for a recorded/digital textbook service may be paid through DVR and ~~DVRBVIDVS~~ funds and is not based on financial status determination.

612:10-7-201. Rehabilitation teaching services

Rehabilitation teachers provide counseling and instruction to aid clients in adjusting to blindness. All clients who are legally blind or have a rapidly progressive eye condition are to be referred to a rehabilitation teacher. Exceptions are allowed in instances where rehabilitation teaching services have been provided and the client appears to be functioning independently, or when physical restoration services are planned which will likely restore the client's functioning to a level which would remove the need for rehabilitation teaching. Rehabilitation teachers employed by the Division of ~~Vocational Rehabilitation for the Blind & Visually Impaired~~ Visual Services may serve clients who are legally blind jointly with the DRS counselor.

612:10-7-203. Orientation and Mobility (O & M)

DVR and ~~DVRBVIDVS~~ clients who are legally blind can receive direct instruction from O & M specialists employed by the Department. O & M specialists assist these clients to adjust to their surroundings.

612:10-7-205. Services to persons who are deaf-blind

(a) **Overview of services.** Because of the overwhelming impact upon the individual with a combination disability of deafness and blindness, a multiple disciplinary approach is needed to adequately serve these individuals. Unique problems in mobility and communication can cause severe social, recreational, academic deprivation and long term prevocational training may be necessary. Persons who are deaf-blind are capable of competitive employment and the counselor will carefully evaluate expected employment outcomes.

(b) **Deaf-Blindness Specialist.** To promote and coordinate appropriate services for persons with dual losses of vision and hearing, the Division of ~~Vocational Rehabilitation for the Blind & Visually Impaired~~ Visual Services employs a Deaf-Blindness Specialist. This specialist works with counselors, rehabilitation teachers and others who provide services directly to clients who are deaf-blind. A major role served by this specialist is coordinating services and ensuring dialogue among schools, programs, agencies and organizations serving the deaf and blind.

612:10-7-206. Assistive technology services for individuals with visual impairments

The need for assistive technology devices and services is to be addressed in the client's Individualized Plan for Employment. Counselors and rehabilitation teachers may refer clients with visual disabilities to the Division of ~~Vocational Rehabilitation for the Blind & Visually Impaired~~ Visual Services assistive technology laboratory for blindness and low vision which may provide or procure:

- (1) assistive technology evaluations;
- (2) recommendation of assistive technology devices and services to meet individual needs;
- (3) training in use of technology and devices, referral to training sources and information on training options;

- (4) information on technologies and devices to meet specific individual needs;
- (5) technical assistance for installation and operation of select applications and devices; and
- (6) demonstration and loan of adaptive aids, devices, electronic and computer technologies and other assistive technology products.

PART 21. PURCHASE OF EQUIPMENT, OCCUPATIONAL LICENSES AND CERTIFICATIONS

612:10-7-216. Tools, occupational equipment, initial stocks and supplies

(a) Tools, occupational equipment and supplies will be provided to eligible clients to the extent necessary to achieve their vocational goal providing the client has adequate resources available for the proper maintenance and upkeep of such tools and equipment. The client, or client's family or authorized representative as appropriate, is responsible for maintaining tools, occupational equipment, initial stocks, and supplies in good working order. DVR and ~~DVRBVIDVS~~ will not pay for repairs to tools, occupational equipment, initial stocks and supplies purchased with DVR and ~~DVRBVIDVS~~ funds once title has been released to the client. DVR and ~~DVRBVIDVS~~ will not pay for repairs before title is released when there is clear evidence that the damage resulted from abuse or neglect.

(b) The client will retain possession and control of articles while engaging in the job or occupation for which articles were provided, or when title is released to client. Occupational tools, occupational equipment, and initial stocks and supplies are defined as follows:

- (1) Occupational tools are considered to be those minimum tools required for a designated trade, necessary to the employment of the individual, and not furnished by the employer. DRS will NOT purchase operable firearms even if required for employment. Counselor will assist consumer in finding resources to help in this purchase if necessary.
- (2) Occupational equipment is equipment required to meet the minimum needs of an individual in starting and conducting a business of his or her own.
- (3) Initial stocks and supplies are those materials and merchandise necessary for the client to become operational in a business.

(c) Purchase of occupational tools, equipment and initial stocks and supplies will be made in accordance with 612:10-1-7. If the client is required to participate in cost of services, the payment will be made to the nonmedical vendor. When the equipment is received and/or installed, the appropriate rehabilitation professional completes the Receipt for Equipment and Title Agreement. If the purchase total is \$5,000 or more, the rehabilitation professional then signs the vendor's invoice and routes it to DRS state office.

(d) Used tools or equipment may be purchased when it is evident considerable savings may be affected. Used equipment or tools are to be appraised piece-by-piece by at least three shop

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owners or managers in the same type of work, and who are not acquainted with the vendor.

(e) If the counselor, after a thorough check of the tools or equipment, finds they are not being used for the purpose for which they were purchased, the counselor is to repossess the tools or equipment by executing the Release or Receipt of Equipment form.

PART 25. TRANSITION FROM SCHOOL TO WORK PROGRAM

612:10-7-245. Definitions

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

"FLSA" means the Fair Labor Standards Act which sets forth labor standards and protections as enforced by the U.S. Department of Labor.

"IDEA" means the Individuals with Disabilities Education Act, P.L. 101-476 which ensures the rights and protections of children with disabilities and their parents being served by public education agencies through special education services and on an individualized education program (IEP).

"IEP" means Individualized Education Program. This is an educational document developed on an annual basis that documents the educational and transition goals students are working toward each year in grades PK-12.

"LEA" means Local Educational Agency, or local school district.

"SDE" means State Department of Education.

"SECTION 504 Plan" is a plan designed as a protection for students with disabilities who may not be considered eligible for special education under the IDEA in compliance with Section 504 of the Rehabilitation Act of 1973 as amended.

"Teacher coordinator" means a teacher employed by a school who is released as part of her work day and responsible for working with ~~DVR/DVRBVID~~DVR/DVS counselors and students eligible for the Transition from School to Work Program.

"Work Adjustment Training (WAT)" is provided on a work site, in a school, or in an approved Community Rehabilitation Program having valid contracts with DRS. WAT may also include (but is not limited to) activities aimed toward work tolerance, development of personal habits, attitudes, and work habits necessary to orient the individual to the world of work. High school students eligible for this service must be at least 16 years of age and may not participate for more than 18 months unless determined necessary by the counselor and client.

"School Work Study (SWS)" allows students with disabilities to work on the school campus. The students are supervised or closely monitored by school personnel, and the school pays the students a stipend with DRS making reimbursement to the school for that payment. The stipend is not a wage/salary. The school maintains liability for the students while working on campus.

"Trial Work/Extended Evaluation" has the meaning given these terms in DRS policy and federal law/rules.

"Work Site Learning (WSL)" allows students with disabilities to work in the community. The students are supervised or closely monitored by school personnel, and the school pays the students a stipend with DRS making reimbursement to the school for that payment. The stipend is not a wage/salary. The school maintains liability for the students while working off campus.

"Employer Work Study (EWS)" allows students with disabilities employment experience in part-time jobs in the community with the employers paying the wages/salary(ies). In this instance, the students are employees of the community employers, and DRS does not reimburse the employers for the wages/salary(ies).

SUBCHAPTER 9. REHABILITATION TEACHING SERVICES

PART 3. CASE PROCESSING AND RECORDING

612:10-9-17. Application Status

(a) A case is placed in Application Status when the individual submits an application with DVR or ~~DVRBVID~~DVS in accordance with agency policy.

(b) A decision of eligibility or ineligibility must be made within 60 days of the completed application unless unforeseen and exceptional circumstances beyond the control of the Department indicate the need for an extension as documented on the Need for Extension of Time to Determine Eligibility form. The consumer must agree an extension of time is warranted after full consultation.

(c) The rehabilitation teacher will conduct an initial interview and document it in a narrative summary. The consumer and/or representative will be given an explanation of consumer rights and responsibilities and information about the Client Assistance Program and mediation procedures in a medium which is understandable to the individual and in their preferred medium. The teacher will document this in the case record. The consumer will be offered the opportunity to register to vote at time of application and/or time of address change.

SUBCHAPTER 11. INDEPENDENT LIVING SERVICES FOR OLDER AND INDIVIDUALS WHO ARE BLIND

PART 1. SCOPE OF SERVICES

612:10-11-7. Administrative review

Any individual who is an applicant or client of OB services must be advised of his/her right to request a timely review or a re-determination of any action taken by DRS staff. The review will be conducted by the Administrator for ~~Vocational Rehabilitation for the Blind & Visually Impaired~~Visual Services or

his/her designee, who shall respond to the applicant or client in writing with the findings and conclusions of the review.

[OAR Docket #17-470; filed 6-20-17]

**TITLE 612. STATE DEPARTMENT OF REHABILITATION SERVICES
CHAPTER 15. OKLAHOMA LIBRARY FOR THE BLIND AND PHYSICALLY HANDICAPPED (OLBPH)**

[OAR Docket #17-471]

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Subchapter 1. General Provisions

612:15-1-3. Library functions and legal basis [AMENDED]

Subchapter 5. Library Loan Policy

612:15-5-2. Suspension procedures [AMENDED]

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 1. GENERAL PROVISIONS

612:15-1-3. Library functions and legal basis

(a) The Oklahoma Library for the Blind and Physically Handicapped (OLBPH), operated by the Division of ~~Vocational Rehabilitation for the Blind & Visually Impaired~~ Visual Services within the Department of Rehabilitation Services, is the regional library for Oklahoma as part of the national network of libraries of the Library of Congress National Library Service (NLS) for the Blind and Physically Handicapped.

(b) On March 3, 1931, the Pratt-Smoot bill authorized the Library of Congress to arrange with other libraries to serve as local or regional centers to circulate books to blind or visually-impaired users. By the end of fiscal 1966, Congress passed Public Law 89-522 extending the service to library users who could not read standard print because of physical disability, which can include certain reading disabilities. State law (7 O.S. Section 8 and 74 O.S. 166.4(B)(3)(b) and 166.5) establish that the Section of Services to the Blind (~~Vocational Rehabilitation for the Blind & Visually Impaired~~ Visual Services) of the Commission for Rehabilitation Services has the authority and duty to provide special library services to blind and visually impaired citizens.

(c) Functions of the Library include but are not limited to:

- (1) Loan of books and periodicals in accessible formats for eligible adults and children with visual, physical or learning disabilities that prevent effective use of standard print materials;
- (2) Production of recorded and Braille materials on request and on a limited basis, subject to availability of resources. Fees may be established to cover the cost of production. Services provided by OLBPH as part of the National Library Service will be given priority over requests for production of reading materials in alternate formats;
- (3) Acquisition, housing and circulation of Braille textbooks and other accessible instructional materials for students with print disabilities in grades pre-K through 12;
- (4) Improving access to print information for Oklahomans with print disabilities by providing, through contract or directly, services that supply audio or electronic access to newspapers, books, works by Oklahoma authors, educational programming, local and state activities, and information on resources.
- (5) Recruitment and training of volunteers to support library functions.

SUBCHAPTER 5. LIBRARY LOAN POLICY

612:15-5-2. Suspension procedures

In the event any of the rules in this Chapter are violated repeatedly, the borrower's service may be suspended for a period of time after being given a written warning and an opportunity to reply. If after reinstatement of services, abuse continues, service may be suspended again. In the event of suspension, these steps will be taken:

- (1) The library will first discuss the problem noted with the patron by telephone or in person, then will send

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a warning letter summarizing the discussion, the problem and, provide an opportunity for the patron to reply.

(2) If service abuse reoccurs, a second written communication is sent to the patron citing the earlier warning letter, listing incidents of abuse, giving the patron an opportunity to reply by a certain date, and suspending the service for a stated period up to six months. A specific date for resumption of service is included. Service will be suspended only after a review by and upon the concurrence of both the administrative librarian and the Director of ~~Vocational Rehabilitation for the Blind & Visually Impaired~~ Visual Services.

(3) When the service is resumed, a letter will be sent to the borrower notifying him/her of the resumption of the service and reminding the patron that further reoccurrences will result in another suspension of service as it relates to the documented abuse.

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TITLE 612. STATE DEPARTMENT OF REHABILITATION SERVICES CHAPTER 20. SPECIAL SCHOOLS

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Subchapter 3. General Operating Procedures for the Schools
Part 1. General Educational Policies
612:20-3-5. Departmental resources [AMENDED]

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 3. GENERAL OPERATING PROCEDURES FOR THE SCHOOLS

PART 1. GENERAL EDUCATIONAL POLICIES

612:20-3-5. Departmental resources

(a) **In-service training.** State Office staff are available as resource persons through the Staff Development Unit. They are charged by the director with the responsibility of assisting the superintendents with the development of a meaningful, ongoing in-service training program patterned to serve the individual needs of each school and embodying the Department's school goals.

(b) **Rehabilitative and Vocational Rehabilitation for the Blind & Visually Impaired Visual Services Division.** Coordination of efforts to make a smooth transition from secondary school to employment or further training will be facilitated by VR counselors trained to work with the blind and deaf. The Department of Rehabilitation Services will encourage and support efforts to enhance communication and cooperation between school and rehabilitation personnel.

[OAR Docket #17-472; filed 6-20-17]

TITLE 612. STATE DEPARTMENT OF REHABILITATION SERVICES CHAPTER 25. BUSINESS ENTERPRISE PROGRAM

[OAR Docket #17-473]

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Subchapter 2. General Provisions
612:25-2-5. Definitions [AMENDED]
Subchapter 4. The State Licensing Agency
Part 1. Organization and General Operation Standards
612:25-4-1. Organization of the State Licensing Agency [AMENDED]
Part 3. Business Enterprise Program Training
612:25-4-14. Training for new or potential licensed managers [AMENDED]
Part 11. Business Enterprise Program Auditing and Due Process [AMENDED]
612:25-4-73. Due Process [AMENDED]

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CONTACT PERSON:

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SUBCHAPTER 2. GENERAL PROVISIONS

612:25-2-5. Definitions

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

"Act" means the Randolph-Sheppard Vending Facility Act (Public Law 74-732), as Amended by Public Law 83-565 and Pub Law 93-516, 20 U.S.C., Ch. 6A, Sec. 107.

"Active participation" means a process of good faith negotiations involving the Elected Committee of Licensed Managers and the State Licensing Agency. The Committee must be given the opportunity to have meaningful input into the decision-making process in the formulation of program policies which govern the duties, supervision, transfer, promotion and financial participation of licensed managers. The SLA is charged with the ultimate responsibility for the administration and operation of all aspects of the Business Enterprise Program.

"Annual Evaluation" means an evaluation conducted on a yearly basis of a manager. This evaluation will be performed at the end of each calendar year.

"BEP" means the Business Enterprise Program of the State Licensing Agency which provides self-employment opportunities for qualified persons who are blind.

"BEP Operations Coordinator" means the person who has responsibility for the operation of the Business Enterprise Program in the State.

"Blind person" means a person who, after examination by a physician skilled in the diseases of the eye or by an

optometrist, whichever the person shall select, has been determined to have (1) not more than 20/200 central visual acuity in the better eye with correcting lenses, or (2) an equally disabling loss of the visual field as evidenced by a limitation to the field of vision in the better eye to such a degree that its widest diameter subtends an angle of no greater than 20 degrees.

"Board" or "Commission" means the governing body for the State Licensing Agency.

"Business Consultant (BC)" means an individual who provides consultative and management services to those business enterprises and licensed managers of the State to which the consultant is assigned.

"Business Enterprise" means an approved business administered by the State Licensing Agency. See definition of "Vending Facility."

"Business Enterprise Program (BEP)" means the Business Enterprise Program services available to establish business enterprises for persons who are blind.

"Cafeteria facility" means a food dispensing business enterprise capable of providing a broad variety of prepared foods and beverages (including hot meals) primarily through the use of a line where customers serve themselves from displayed selections. A cafeteria may be fully automatic or provide limited waiter or waitress service. Table and/or booth seating facilities are always provided.

"Client or Consumer" means any person who has made application for the State Licensing Agency's services and has been determined by the State Licensing Agency to be eligible for services.

"Commissioner" means the Commissioner of the Rehabilitation Services Administration (RSA) who exercises approval authority for the Federal government under the Randolph-Sheppard Act.

"Committee" means the Elected Committee of Licensed Managers.

"Contract" means a written agreement between the State Licensing Agency and officials in control of Federal or other property to establish a business enterprise.

"Contract labor" means a person or company that performs duties or services not a part of the regular duties of the business enterprise.

"Counselor" means Division of Vocational Rehabilitation or Division of Vocational Rehabilitation for the Blind & Visually Impaired Visual Services counselors assigned to the State Licensing Agency's program of vocational rehabilitation.

"Director" or "Executive Director" means the chief administrator of the State Licensing Agency.

"Displaced licensed manager" means a licensed manager who has been displaced from his or her business enterprise through no fault of his or her own.

"Dry/Wet facility" means any business enterprises providing manual dispensing of prepackaged articles, refreshments, and services.

"Elected Committee of Licensed Managers (ECM)" means the committee elected biennially by licensed managers in accordance with 34 CFR 395.14.

"Emergency" means an unforeseen circumstance that calls for immediate action. When a piece of equipment is out

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of order it is not normally considered an emergency unless it will harm/destroy lives, other equipment or property.

"Employee" means an individual who receives compensation for services rendered to a licensed manager.

"Equipment, expendable" means items having a relatively small cost per item and having a relatively short life expectancy.

"Equipment, non-expendable" means all necessary equipment which requires a relatively high capital outlay and has a normal life expectancy of several years.

"Federal property" means any building, land or other real property owned, leased, or occupied by any department, agency, or instrumentality of the United States (including the Department of Defense and the United States Postal Service), or any other instrumentality wholly owned by the United States.

"Federal regulations" means the regulations issued pursuant to the Randolph-Sheppard Act.

"Grantor" means a Federal, State, County, Parish, city government, private corporation, company, partnership or individual, who grants a permit or enters into an agreement with the State Licensing Agency to operate a business enterprise on its/their property.

"Grantor's agreement" means a written document between a Grantor and the State Licensing Agency which sets forth the terms, conditions and responsibilities of all parties to the agreement for the operation of a business enterprise on private and/or public property.

"Gross receipts" means all revenue from a business enterprise, including sales tax.

"Inactive Licensee" means a licensed individual who is not currently working in the Business Enterprise Program.

"Initial stock and supplies" means those resalable items or supplies necessary for the opening and operation of a specific type of business enterprise.

"Interim manager" means a licensed manager appointed to manage a business enterprise on a temporary basis.

"License" means a written instrument issued by the State Licensing Agency to a person who is blind, authorizing such person to manage a business enterprise.

"Licensed employee" means a licensed individual who is currently working for a licensed manager.

"Licensed Manager (LM)" means a licensed individual who has signed an agreement with the State Licensing Agency to manage a Randolph-Sheppard business enterprise under the supervision of the State Licensing Agency.

"Licensee" means a person who is blind and holds a valid BEP license.

"Licensing agency" means the State Licensing Agency (SLA), which has been designated by the Commissioner, pursuant to the Act, to issue licenses to persons who are blind for the management of business enterprises.

"Management services" means inspection, quality control, consultation, accounting, regulating, in-service training, and other related services provided on a systematic basis to support and improve business enterprises operated by licensed managers.

"Manager's agreement" means an agreement between a licensed manager and the State Licensing Agency, establishing basic terms and conditions for management of a business enterprise.

"Mail" is a method of distributing information that includes, but is not limited to, the U.S. Postal System, email, fax, or Federal Express.

"Net earnings" or "Net profits" means gross profit after deducting operating expenses and set-aside collected.

"Net proceeds" means the amount remaining from the sale of articles or services of business enterprises and any vending machine income or other income accruing to licensed managers after deducting the cost of such sales and other authorized expenses excluding set-aside charges required to be paid by the licensed managers.

"Net sales" means the sum total of sales, excluding sales tax.

"Nominee" means a nonprofit agency or organization designated by the State Licensing Agency through a written agreement to act as its agent in the provision of services to licensed managers under the State's Business Enterprise Program.

"Other income" means money received by a licensed manager from sources other than over the counter and machine sales.

"Other property" means property which is not Federal property and on which business enterprises are established or operated by the use of any funds derived in whole or in part, directly or indirectly, from the operation of vending facilities on any Federal property.

"Performance Evaluation" means an evaluation conducted to determine if a manager is eligible to apply for a facility or to be awarded a permanent BEP license.

"Permanent BEP License" means a license issued on a permanent basis to a BEP manager who has successfully completed all probationary requirements.

"Permit" means the official approval given a State Licensing Agency by a department, agency, or instrumentality in control of the maintenance, operation and protection of Federal property or person in control of other property where the State Licensing Agency is authorized to establish a business enterprise.

"Probationary BEP License" means a license issued to an individual on their first day as manager of an Oklahoma BEP facility.

"Probationary Licensee" means a person who has received a certificate of completion of the Business Enterprise Program training and has not completed their six (6) month probationary period.

"Purveyor" means an approved source of supply for food, beverages, supplies, or services.

"Randolph-Sheppard Act" means Public Law 74-732 as amended by Public Law 83-565, Public Law 93-516, and Public Law 95-602, 20 U.S.C. Chapter 6A, Section 107.

"Retained vending machine income" means vending machine income disbursed by a property managing department, agency or instrumentality of the United States, or

received from vending machines on State or other property in excess of the amounts eligible to accrue to licensed managers.

"Routine preventive maintenance" means the regular care, upkeep, and cleaning of equipment used in a business enterprise.

"Rules and regulations" means the instrument written by the State Licensing Agency and approved by the Secretary of Education setting forth the conduct and operation of the Business Enterprise Program. A copy of the document granting approval of the rules and regulations from RSA, will be mailed to each licensed manager.

"Saleable stock/merchandise" means products comprising the merchandise available for sale to the public and determined by the SLA to be from an approved source in the original container, in date, consistent with the needs of the customers for a particular business enterprise.

"Satellite business enterprise" means a business enterprise assigned to a licensed manager on a temporary basis.

"Satisfactory site" means an area determined by the BEP Operations Coordinator to have sufficient space, electrical and plumbing outlets, and other such accommodations as prescribed by the Act, for the location and operation of a business enterprise in accordance with applicable health laws and building codes.

"Secretary" means the United States Secretary of Education.

"Set-aside funds" means funds which accrue to a State Licensing Agency from an assessment against the net proceeds of each business enterprise in the State's business enterprise Program and any income from vending machines on Federal property which accrues to the SLA.

"Snack bar business enterprise" means a business enterprise engaged in selling limited lines of refreshment and prepared food items necessary for a light meal service.

"State Licensing Agency (SLA)" means the State agency that issues licenses to persons who are blind for the operation of business enterprises on public and/or private property.

"State property" means lands, buildings, and/or equipment owned, leased, or otherwise controlled by the State.

"Statewide average manager earnings" means the average annual manager earnings (after set-aside) as calculated each year for the RSA-15 Report.

"Trainee" means a qualified client of the Division of ~~Vocational Rehabilitation for the Blind & Visually Impaired~~ Visual Services, who when referred to the Business Enterprise Program, is placed in training to prepare for licensing under the rules and regulations of the State Licensing Agency.

"Training program" means the program of study and/or on-the-job training provided to prospective and/or experienced licensed managers.

"Vending facility" means automatic vending machines, cafeterias, snack bars, cart service, shelters, counters, and such other appropriate auxiliary equipment which may be operated by licensed managers and which is necessary for the sale of newspapers, periodicals, confections, tobacco products, foods, beverages, and other articles or services dispensed automatically or manually and prepared on or off the premises

in accordance with all applicable health laws and including the vending or exchange of chances for any lottery authorized by State Law and conducted by an agency of a State within such State. [CFR 34, Part 395.1(X)]

"Vending machine" means any machine, operated using currency or other medium of exchange, which dispenses articles or services, except any machine operated by the United States Postal Service for the sale of postage stamps or other postal products and services. Machines providing services of a recreational nature and telephones shall not be considered to be vending machines.

"Vending machine facility" means an automated business enterprise which dispenses a variety of food and refreshment items and services from vending machines. Included in this category would be interstate highway locations and vending machine routes.

"Vocational Rehabilitation for the Blind & Visually Impaired Services" means those services as defined in the Rehabilitation Act. [29 USC 701 et seq.]

"Volunteer" means an individual who works in a business enterprise and receives no compensation.

SUBCHAPTER 4. THE STATE LICENSING AGENCY

PART 1. ORGANIZATION AND GENERAL OPERATION STANDARDS

612:25-4-1. Organization of the State Licensing Agency

(a) **Governing board.** The Oklahoma Department of Rehabilitation Services (DRS) is the designated State Licensing Agency (SLA) for administration of Oklahoma's vending facility program for the blind under the Randolph-Sheppard Act. The governing board of the SLA is the Oklahoma Commission for Rehabilitation Services. The Director of DRS reports directly to the Commission.

(b) **Business Enterprise Program administration.** The Business Enterprise Program (BEP) is located in the Division of ~~Vocational Rehabilitation for the Blind & Visually Impaired~~ Visual Services of DRS, and is administered by the Business Enterprise Program Operations Coordinator who reports to the ~~Vocational Rehabilitation for the Blind & Visually Impaired~~ Visual Services Division Administrator.

(c) **BEP staff.** The SLA, with consultation from the Elected Committee of Licensed Managers, determines staffing requirements for administration of the BEP and provision of services to achieve the mission, goals and objectives of the Program.

(d) **Licensed managers.** The individual enterprises established by the Business Enterprise Program are managed by licensed managers. Licensed managers are subject to the policies and procedures of the Business Enterprise Program, but are not employees of the program, the SLA, or the State of Oklahoma. They do, however, have a contractual relationship with the SLA and are required to manage the business enterprise in accordance with established rules and regulations.

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PART 3. BUSINESS ENTERPRISE PROGRAM TRAINING

612:25-4-14. Training for new or potential licensed managers

(a) **Overview of Licensed Manager Training.** The Business Enterprise Program (BEP) provides individuals who are blind with training that leads to potential employment as a Licensed Manager of a vending facility or related business in the Business Enterprise Program. The training program includes but is not limited to training in laws and regulations affecting the Business Enterprise Program, state and federal tax reporting, food service operations, sanitation, inventory control, money management, staffing of personnel, safety procedures, business management principles and techniques, and preparation of reports required by the State Licensing Agency. The licensed manager training program will be based on a curriculum developed and periodically reviewed through consultation with appropriate business representatives, trainers, BEP experts, and the Elected Committee of Licensed Managers. Additional training required by the licensed manager trainee to adjust to blindness, learn assistive technology skills or improve the trainee's opportunity to succeed as a licensed manager may be arranged through coordination with the DRS Division of Vocational Rehabilitation for the Blind & Visually Impaired/Visual Services and DRS Division of Vocational Rehabilitation.

(b) **Application process.** Applications for BEP training shall include the following information which shall be obtained from the individual's counselor:

- (1) current eye examination, documenting blindness;
- (2) documentation for United States citizenship;
- (3) documentation the client is at least 18 years of age; and
- (4) completion of any rehabilitation training prerequisites established by the BEP in consultation with the ECM to better optimize the successful employment outcome;

(c) **Acceptance for training.** Applicant qualifications will be reviewed by BEP staff who will report any training-related recommendations to the individual's ~~DVR-BVI/DVRDVS/DVR~~ counselor and BEP operations coordinator. An individual's application must be approved by the BEP operations coordinator prior to acceptance into the training program.

(d) **Notice regarding criminal background record.** Before entering training, BEP applicants will be informed that a criminal background investigation will be performed and may prevent their being licensed to manage some BEP facilities.

(e) **Duration of training.** To be eligible for licensure as a BEP facility manager an individual must complete the full BEP manager training program, unless the BEP operations coordinator, in consultation with the Chair of the Elected Committee of Licensed Managers, determines an exception is justifiable.

(f) **Completion of training.** Each trainee who completes the BEP manager training program is issued a certificate certifying that the trainee has met all the training criteria to be a licensed manager in the Business Enterprise Program.

Upon assuming management of their first facility, a certified graduate shall be issued a temporary license and begin a six (6) month probationary period. During this period, the probationary manager will receive benefits afforded all other managers, along with accruing seniority. Upon completion of their probationary period, the BEP Operations Coordinator, in consultation with the ECM Chair, will review their progress and if determined appropriate will issue their permanent BEP Manager License.

(g) **Failure to complete training.** If it appears that a trainee will not be able to successfully complete training, the BEP operations coordinator, in consultation with the ECM Chair, will review the individual's training record before making a decision to terminate training. The BEP operations coordinator will notify the trainee and their ~~DVR-BVI/DVS~~ or DVR counselor of any BEP decision to terminate training.

(h) **Post-training interview.** Upon completion of a new manager's probationary period, they will be interviewed by a representative of the Elected Committee of Licensed Managers, normally the chairperson, to evaluate the effectiveness of the training program. The interviewer formulates recommendations and comments regarding the training program and provides them to the BEP Operations Coordinator.

(i) **Acceptance of out-of-state licenses.** The BEP Operations Coordinator will evaluate the skills and knowledge of BEP applicants who were licensed managers in other states. Training will be provided to correct any noted deficiencies and acquaint the applicant with Oklahoma's program. After qualifications are met, the applicant is issued a training completion certificate.

(j) **Seniority.** Seniority in the Oklahoma Business Enterprise Program will only accrue when managing an Oklahoma BEP facility.

PART 11. BUSINESS ENTERPRISE PROGRAM AUDITING AND DUE PROCESS

612:25-4-73. Due process

(a) **Due process overview.** The SLA provides procedures for fair hearings of licensed managers' grievances. These procedures provide each licensed manager the opportunity to seek remediation of dissatisfaction with any SLA action arising from the operation of the BEP.

(b) **Informal administrative review.** It is the policy of the SLA to resolve complaints in an expeditious and facilitative manner. These resolutions shall be accomplished through the informal administrative review process whenever possible. A licensed manager has the right to request a full evidentiary hearing at any time within established due process time lines. These timelines are identified later in this policy.

(1) Informal administrative reviews are conducted by the SLA staff person closest to the problem who was not involved in the action resulting in the complaint, and who can resolve the complaint in the most expeditious manner.

(2) The informal administrative review is to be completed within 30 calendar days of receipt of the complaint to the appropriate SLA staff person.

(3) The results of the informal administrative review are to be reported in writing within 15 calendar days to the BEP Operations Coordinator, with a copy going to the licensed manager affected.

(c) **Full evidentiary hearings.** Licensed managers have the right to a full evidentiary hearing to resolve dissatisfaction with any SLA action arising from the operation or administration of the Business Enterprise Program.

(1) If the complaint cannot be resolved with an informal administrative review, or in the absence of an informal administrative review, the licensed manager may request a full evidentiary hearing. The request for a full evidentiary hearing must be made to the BEP Operations Coordinator in writing within 30 calendar days from the date the licensed manager receives the notification of adverse action, or the written report of the informal administrative review. The request for a full evidentiary hearing is to be sent by certified mail. Upon receipt, the BEP Operations Coordinator will immediately forward the request to the ~~Vocational Rehabilitation for the Blind & Visually Impaired~~ Visual Services Division Administrator. The Licensed Manager submitting the request for full evidentiary hearing will be notified of the date it was forwarded.

(2) The licensed manager may be represented in the evidentiary hearing by legal counsel, or other representation of the licensed manager's choice, and at the licensed manager's expense.

(3) Reasonable accommodations will be arranged by the SLA upon the request of the licensed manager.

(4) The hearing will be scheduled by the SLA for a time and place convenient and accessible to the licensed manager and the SLA staff involved in the hearing. The licensed manager will be notified of the place and time of the hearing and the right to be represented by legal or other counsel in writing.

(5) The hearing will be conducted by an impartial and qualified official with no involvement or vested interest in the SLA, action at issue, or with the operation of the affected business enterprise. The presiding officer will conduct the hearing in accordance with State and/or Federal laws and rules governing the conduct of such proceedings. In any case, the hearing will be conducted in a manner that avoids delay, maintains order, and provides for a full recording and reporting of the proceedings so that a full and true disclosure of the facts and issues occurs.

(6) The hearing officer's determination will be based upon the facts as presented by both parties and upon applicable law and the existing rules of the SLA. The hearing officer does not have the power to rule upon the legality or construction of the rules themselves. The officer's decision will determine the relevant issues and facts to be ruled upon.

(7) The hearing officer shall make a written report of the evidence presented, the laws and rules used in determining a resolution, and the resolution itself. This report shall be issued to the BEP Operations Coordinator and the licensed manager, or his/her authorized representative

within 15 calendar days of the conclusion of the full evidentiary hearing.

(8) The hearing officer's report shall be issued to the Director of the SLA within 15 calendar days of the conclusion of the full evidentiary hearing. The SLA Director issues his or her final written decision to the BEP Operations Coordinator and the licensed manager within 30 calendar days of the date on which he or she receives the hearing officer's report.

(9) If the licensed manager is dissatisfied with the decision, she or he may request that the Secretary (USDE) convene an arbitration panel.

[OAR Docket #17-473; filed 6-20-17]

**TITLE 690. BOARD OF EXAMINERS FOR SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY
CHAPTER 10. LICENSURE AND FEES**

[OAR Docket #17-531]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 3. Licensure of Speech-Language Pathologists and Audiologists
 - 690:10-3-5. Supervised clinical practicum requirement [AMENDED]
 - 690:10-3-6. Clinical ~~experience~~ fellowship requirement [AMENDED]
 - 690:10-3-7. Examination requirement and exceptions [AMENDED]
 - 690:10-3-8. Continuing education (CE) for speech-language pathologists, audiologists, and speech-language pathology assistants [AMENDED]
- Subchapter 5. Licensure of Speech-Language Pathology Clinical ~~Experience-Interns-Fellows~~ Completing Post-Graduate Clinical ~~Experience-Fellowship~~
 - 690:10-5-1. License to practice as a speech-language pathology clinical ~~experience-intern-fellow~~ [AMENDED]
 - 690:10-5-3. Representation of clinical ~~experience-intern-fellow~~ as independent practitioner [AMENDED]
 - 690:10-5-4. Application form for clinical ~~experience-interns/fellows~~ [AMENDED]
 - 690: 10-5-5. Authorization period and extensions for clinical ~~experience-interns/fellows~~ [AMENDED]
 - 690: 10-5-6. Requirements for supervision of clinical ~~experience-interns/fellows~~ [AMENDED]
 - 690:10-5-7. Notification of Board decision [AMENDED]
 - 690:10-5-8. Direct supervision required [AMENDED]
- Subchapter 7. Licensure of Speech-Language Pathology Assistants and Audiology Assistants
 - 690:10-7-1. Practice as an assistant [AMENDED]
 - 690:10-7-3. Supervision required [AMENDED]
 - 690:10-7-9. Academic Requirements [AMENDED]
- Subchapter 9. Fees
 - 690:10-9-2. License renewal fee [AMENDED]
 - 690:10-9-7. Inactive status fee [AMENDED]

AUTHORITY:

59 O.S., 2011 § 1613; Board of Examiners for Speech-Language Pathology and Audiology.

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Permanent Final Adoptions

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September 11, 2017

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n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The proposed amendments to Chapter 10 change the phrase "clinical experience intern" to "clinical fellow," and the phrase "clinical experience" to "clinical fellowship" throughout Subchapters 3 and 5. Rule 10-3-8 is amended to clarify the prorated amount of continuing education required by licensees.

Rules 10-5-6 and 10-7-3 are amended to clarify the supervision training requirement. In section 10-5-8, "audiologist" is removed from the section because an audiologist does not supervise a clinical fellow.

Rule 10-7-3 is also amended to add new language about documenting supervision. Rule 10-7-9 is amended to change the academic requirements for speech-language pathology assistants. Rule 10-9-2 is amended to change the application requirements for persons whose licenses have permanently expired.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 3. LICENSURE OF SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS

690:10-3-5. Supervised clinical practicum requirement

(a) Speech-language pathology applicants must submit evidence of satisfactory completion of four hundred (400) clock hours of supervised clinical practicum, of which at least 375 must be in direct client/patient contact and 25 in clinical observation that are provided by the educational institution or by one of its cooperating programs. At least 325 of the 400 clock hours must be completed while the applicant is engaged in graduate study in a program accredited in speech language pathology by the Council on Academic Accreditation in Audiology and Speech-Language Pathology. Each ~~Speech Language Pathology~~ speech-language pathology applicant seeking licensure from a non-accredited program shall submit a bona fide official academic transcript(s) and verification of clinical practicum hours.

(b) With the exception of post-masters professional degree (Au.D) applicants and applicants with a Ph.D. with a major emphasis in audiology, audiology applicants must demonstrate completion of a minimum of (1820) supervised clinical hours in audiology through clinical practicum, clinical rotations, or externships during their professional or graduate doctoral

degree program. Audiology applicants with a post-masters distance education professional degree (Au.D.) and applicants with a Ph.D. with a major emphasis in audiology must provide evidence of a minimum of (350) supervised clinical hours obtained in audiology through clinical rotations, or externships during their masters or Ph.D. degree program. In addition, audiology applicants with a post-masters distance education professional degree (Au.D.) or a Ph.D. with a major emphasis in audiology must provide evidence of a completed clinical experience of no less than nine (9) months of successful full-time, paid clinical experience in audiology, obtained under the supervision of one or more independent practitioners licensed under the Speech-Language Pathology and Audiology Licensing Act, 59 O.S. 1601, et. seq., as amended or of one or more persons whose education and experience are the equivalent of an independent practitioner. The supervisor of clinical experience must be eligible for licensure as an audiologist. This supervision must entail the personal and direct involvement of the supervisor in any and all ways that will permit him to evaluate the applicant's performance in professional clinical employment and must include direct observation. The applicant and his supervisor must list and describe the methods of supervision employed. Specific information should be given regarding the professional activity supervised, the number of supervisory contacts per month, and the length of each supervisory contact. The supervisor shall base his total evaluation on no less than thirty-six (36) supervisory visits. This experience must follow completion of the requirements of 690:10-3-3 and 690:10-3-6. "Full-time" is defined as at least thirty (30) hours per week; the nine (9) months of full time paid experience must be obtained within a period of twenty-four consecutive months. This requirement may also be fulfilled by eighteen (18) months of half time paid experience of at least fifteen (15) hours per week which must be completed within a period of thirty-six (36) consecutive months. All clinical practicum, clinical rotations or externships adduced to satisfy this requirement must have been obtained under the supervision of an individual eligible for licensure as a speech-language pathologist or audiologist under the Speech-Language Pathology and Audiology Licensing Act, 59 O.S. 1601, et. seq., as amended, and this Chapter. The supervisor of clinical practicum, clinical rotations or externships must be eligible for licensure in the professional area (speech-language pathology or audiology) in which the supervision is provided.

690:10-3-6. Clinical experience fellowship requirement

(a) Clinical experience fellowship form.

(1) Each speech-language pathology applicant shall submit evidence (Clinical ~~Experience Fellowship~~ experience fellowship Form) of no less than nine (9) months of successful, full time, paid, ~~clinical experience fellowship in the area for which a license is required,~~ clinical experience fellowship obtained under the supervision of one or more practitioners who meet the requirements for supervision of clinical ~~experience interns~~ experience fellows set forth in subchapter five of this chapter. This supervision must entail the personal and direct involvement of the supervisor in any and all ways that will permit the supervisor

to evaluate the applicant's performance in professional clinical employment and must include direct observation. The applicant and the supervisor must list and describe the methods of supervision employed. Specific information should be given regarding the professional activity supervised, the number of supervisory contacts per month, and the length of each supervisory contact. The supervisor shall base the total evaluation on no less than thirty-six (36) supervisory visits. This ~~experience~~fellowship must follow completion of the requirements of 690:10-3-3 and 690:10-3-6. "Full-time" is defined as at least thirty (30) hours per week; the nine (9) months of full time paid ~~experience~~fellowship must be obtained within a period of twenty-four consecutive months. This requirement may also be fulfilled by eighteen (18) months of half time paid ~~experience~~fellowship of at least fifteen (15) hours per week, which must be completed within a period of thirty-six (36) consecutive months.

(2) With the exception of audiology applicants with a post-masters distance education professional degree (Au.D.) or applicants with a Ph.D. with a major emphasis in audiology, each audiology applicant will be required to present to the Board a copy of an Au.D. degree diploma, or its equivalent, from an accredited academic institution in order to demonstrate completion of the clinical rotation or externship requirement.

(b) **Waiver of clinical ~~experience~~fellowship requirement.** The Board ~~shall~~shall waive the clinical ~~experience~~fellowship requirement and grant a license to any applicant who holds the Certificate of Clinical Competence of the American Speech-Language-Hearing Association or its current equivalent in the area for which he is applying for licensure, provided that the current requirements for such certification are equivalent to or greater than those for licensure under the Speech-Language-Pathology and Audiology Licensing Act, 59 O.S. 1601 et. Seq., as amended. The current requirements for the Certificate of Clinical Competence of the American Speech-Language-Hearing Association are deemed the equivalent of those for licensure under the Act. Evidence of such certification shall be received by the Board directly from the American Speech-Language-Hearing Association. All fees associated with obtaining such evidence shall be borne by the applicant.

690:10-3-7. Examination requirement and exceptions

(a) **Examination.** All applicants for licensure as a speech-language pathologist and/or audiologist must present evidence of successful completion of the examination approved by the Board. The examination must be passed within two (2) years after board approval of the applicant's first application for a ~~clinical experience intern~~license as a clinical fellow. Failure to pass the examination within this time period shall result in revocation of authorization to practice as a clinical ~~experience intern~~fellow under supervision as defined in Subchapter 5 of this Chapter.

(1) The Board designates as its approved examinations the most current versions of the Educational Testing Service (ETS) Praxis II Audiology Exam and the Praxis II Speech-Language Pathology Exam, or any other national examination recognized by the Board to have similar standards equal to or higher than the ETS Praxis II exams. It shall be the responsibility of the applicant to assure that the testing vendor forwards the examination score to the Board.

(2) An applicant who fails an examination may retake it upon payment of another examination fee to the testing vendor and at any time the testing vendor regularly administers the ETS Praxis II Audiology and Speech-Language Pathology exams. Arrangements and fees are the responsibility of the applicant.

(3) Exceptions to the two year requirement may be granted by the Board under extenuating circumstances.

(b) **Waiver of examination.** The Board shall waive the examination and grant a license to any applicant who holds the Certificate of Competence of the American Speech-Language-Hearing Association or its current equivalent in the area for which he is applying for licensure, provided that the current requirements for such certification are equivalent to or greater than those for licensure under the Speech-Language Pathology and Audiology Licensing Act, 59 O.S. 1601, et. seq., as amended. The current requirements for the Certificate of Clinical Competence of the American Speech-Language-Hearing Association are deemed the equivalent of those for licensure under the Act. Evidence of such certification shall be received by the Board directly from the American Speech-Language-Hearing Association. All fees associated with obtaining such evidence shall be borne by the applicant.

(c) **Reciprocity.** The Board may issue a license without examination to a person who holds a current license in another state or country in speech-language pathology or audiology according to the following conditions:

(1) the other state or country maintains a system and standard of qualifications and examinations for speech-language pathologists and audiologists which meet or exceed the current requirements for licensure in Oklahoma;

(2) payment of the Board's current fee for licensure; and

(3) submission of evidence satisfactory to the Board of proof of licensure in good-standing in another state or country.

(d) The Board shall expedite the process of licensure by reciprocity for applicants whose spouse is an active duty member of the armed forces of the United States if:

(1) the military service member is on active duty within Oklahoma or claims permanent residency within Oklahoma for the six (6) months prior to assignment to active duty or during the period of the active duty and

(2) the applicant left employment in another state to accompany the military service member spouse to Oklahoma.

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690:10-3-8. Continuing education (CE) for speech-language pathologists, audiologists, and speech - language pathology assistants

(a) **Purpose.** The purpose of continuing education requirements for speech-language pathologists and audiologists is to assure that licensees update and advance their skills such that the public shall benefit from the most current and effective standards of professional practice. To further the goal of public benefit, all speech-language pathologists and audiologists are encouraged to fulfill a portion of their ~~Continuing Education~~ continuing education requirements in the area of ethics, professional conduct, and related legal issues.

(b) **Clock hours required for license renewal.** A licensee must obtain a minimum of twenty (20) clock hours of acceptable continuing education, including at least three clock hours of professional ethics in a two-year period. The continuing education period begins in January of every odd-numbered year. A speech-language pathologist or audiologist obtaining initial licensure during a two-year period shall have his or her continuing education requirement prorated to 2.5 clock hours per ~~full quarter~~ every full three month quarter remaining in ~~that~~ the two-year period. If ~~the pro-rated hours are~~ total of pro-rated hours is less than five clock hours, the requirement for at least three clock hours of ethics does not apply.

(c) **Approval of continuing education activities required.** Continuing education hours may be granted for acceptable educational activities which are approved by the Board, or by a committee appointed by the Board. No hours will be granted for any activities or categories of activities that have not been approved. A provider of educational activities may apply to the Board for pre-approval of an activity. The provider shall be responsible for compliance with the standards for approval of the activity, verification of participation, and for the provision of the necessary verification of attendance forms to all participants. This verification of attendance form shall include: The participant's name, the presenter's name and credentials, the presentation topic, the program sponsor or agency, the location of the presentation, the dates of presentation, and the total number of clock hours attended. A list of preapproved activities is available on the website or by contacting the board office. Any activity not included on this list will require approval by the Board for credit.

(d) **Exceptions to the requirements.** Exceptions to the pre-approval requirement may be granted at the discretion of the Board for programs presented by recognized sponsors whose programs have been pre-approved by the Board. The university academic semester hour is equivalent to fifteen (15) clock hours, and shall be verified by the presentation of an official academic transcript showing course or audit credits. The licensee is ultimately responsible for providing all information necessary for the Board to make a final determination concerning the acceptability of any requested continuing education hours.

(e) **Fee for approval.** Providers of continuing education programs may be charged a fee for approval of their program. This fee shall be set by the Board.

(f) **Kinds of educational activities for which credit may be received.** Continuing education hours may be earned through formal organized learning experiences, scientific publications, attendance at regularly scheduled meetings of international, national, regional, or state professional associations, or through presentations to appropriate groups not related to the speech-language pathologist's or audiologist's regular employment.

(g) **Hours allowed.** Continuing education activities, whether received or presented by the speech-language pathologist or audiologist, must be targeted toward a professional audience. In those instances when the speech-language pathologist or audiologist is teaching in programs such as institutes, university or college courses, seminars, workshops, and conferences which have been granted approval by the Board, three (3) clock hours will be given for each one (1) hour that is taught, provided that such teaching is not part of the speech-language pathologists or audiologists regular employment. Publication in a ~~professionally~~ professionally related format approved by the Board shall be equal to up to twenty (20) clock hours. Completion of select job-required activities such as CPR training, etc. can be counted once in the two-year period for a maximum of 20% of the total required hours. Other activities may be credited as authorized and disseminated separately by the Board.

(h) **Petition for extension.** A speech-language pathologist or audiologist who fails to comply with the required twenty (20) hours of continuing education in the two year continuing education period ending December 31 may, by submitting an individual review fee of fifty (\$50.00), petition the Board for a ninety (90) day extension. Failure to meet this deadline may result in disciplinary action. The petition for extension shall be filed prior to the expiration of the continuing education period.

(i) **Petition for hardship relief.** A speech-language pathologist or audiologist may petition the Board for partial or complete relief of the continuing education requirements upon the showing of incapacitation or serious illness of licensee or licensee's immediate family member, or licensee's absence from the United States for a period of at least eighteen (18) months during the continuing education period, or the licensee is a member of the armed forces on full-time active duty during the continuing education period. The petition for hardship relief should be filed prior to the expiration of the continuing education period, and will be accepted no later than February 1st of the year following the audit period.

(1) Individuals with medical disabilities must provide evidence that documents the inability to work in the professions, such as a letter from a doctor or a Social Security Administration determination letter. Individuals with medical disabilities will be required to sign an affidavit confirming that they are not providing or supervising the provision of clinical services. In addition, individuals with temporary medical disabilities will be required to affirm every two years that they continue to be classified as medically disabled.

(2) Members of the armed forces on full-time active duty will be required to provide a copy of their deployment orders and a signed affidavit stating they will not practice

during their deployment. They will be assigned a new 2-year maintenance interval that will start on January 1 of the year following their return. If licensees are deployed for the purpose of providing clinical services or supervising the provision of clinical services, an exemption will be considered on a case-by-case basis.

(j) **Audits of continuing education.** The Board will conduct audits every two years (every even year) of licensee compliance with continuing education requirements.

- (1) A minimum of 3% of licensees will be audited.
- (2) Those audited will be required to submit verification of completion for each continuing education activity completed within the audited period. The verification shall be signed by the course provider and shall include the title of the activity, the course description, the number of contact hours and a contact for verification of participation. An official continuing education transcript from a Board approved provider is acceptable verification. The verification must be submitted within thirty (30) days of receipt of notification of selection for audit. Failure to submit verification as required shall be considered non-compliance with the continuing education requirements, and the licensee shall be subject to the provisions of paragraph four of this subsection.
- (3) Licensees will maintain all original documentation of attendance, course agendas and/or other supporting documentation. The Board may request copies of such documentation as is necessary to determine if an activity will be accepted for continuing education credit. The Board will destroy all such copies following the audit.
- (4) Licensees found to be non-compliant with the continuing education requirement shall have ninety (90) calendar days from receipt of notification of continuing education deficiency to complete the following:
 - (A) obtain ~~Continuing Education~~continuing education hours sufficient to meet this requirement;
 - (B) submit verifications of completion to the Board;
 - (C) pay a penalty fee equal to half of the licensure renewal fee. This fee is in addition to any fees for late license renewal. Such hours may not be counted toward fulfillment of future ~~Continuing Education~~continuing education requirements. Failure to comply with the provisions of the paragraph within the ninety (90) calendar day period may result in disciplinary action.

**SUBCHAPTER 5. LICENSURE OF
SPEECH-LANGUAGE PATHOLOGY
CLINICAL EXPERIENCE INTERNSFELLOWS
COMPLETING POST-GRADUATE CLINICAL
EXPERIENCE FELLOWSHIP**

690:10-5-1. License to practice as a speech-language pathology clinical ~~experience intern~~ fellow

Persons in the process of fulfilling the supervised clinical experience required by paragraph 3 of Subsection A of Section 1605 of the Speech-Language Pathology and Audiology Licensing Act, as amended, for licensure as a speech-language pathologist must practice as a clinical ~~experience intern~~fellow under the supervision of a licensed speech-language pathologist. Upon completion of the clinical ~~experience~~fellowship requirement, the applicant may apply for ~~full~~independent licensure and pay the required fee.

690:10-5-3. Representation of clinical ~~experience intern~~ fellow as independent practitioner

A licensed clinical ~~experience intern~~ fellow shall not state, imply or otherwise represent that he or she is authorized to practice independently without the supervision of a licensed speech-language pathologist. Preparation or distribution of announcements of practice, independent telephone listings, internet or social media advertisements or other such notices or representations which indicate or imply that the clinical ~~experience intern~~fellow is an independently licensed speech-language pathologist shall be considered unprofessional conduct, and will result in discipline as authorized by the Speech-Pathology and Audiology Licensing Act.

690:10-5-4. Application form for clinical ~~experience interns~~ fellows

Application for authorization to practice as a clinical ~~experience intern~~fellow under supervision shall be made in the same manner and on the same forms that are used to apply for licensure as a speech-language pathologist ~~and/or audiologist~~. A notarized letter of agreement shall be provided with each application. The letter of agreement must be signed by both the applicant and the proposed supervisor, and must be submitted with the application. Said notarized letter of agreement shall explicitly indicate that the supervisor agrees to supervise the clinical ~~experience intern's~~fellow's practice of speech-language pathology ~~or audiology~~ and that the supervisor accepts complete and full responsibility for the clinical ~~experience intern's~~fellow's activities and services.

690:10-5-5. Authorization period and extensions for clinical ~~experience interns~~ fellows

Authorization for practice as a clinical ~~experience intern~~fellow under this Subchapter shall be for a period of one (1) calendar year from the date of approval by the Board of the application for practice under supervision. A full one (1) year extension of this authorization shall be considered only on written request of the clinical ~~experience intern~~fellow and such request must be received prior to the end of the one (1) year period of previous authorization. Failure to apply for extension shall result in an automatic revocation of authorization to practice. Such revocation shall not jeopardize later application for authorization. If, during the completion of the clinical ~~experience year~~fellowship, it is necessary for a change of supervisors

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to occur, it is the responsibility of the applicant to notify the Board of the change and to submit revised paperwork.

690:10-5-6. Requirements for supervision of clinical ~~experience-interns~~ fellows

(a) Clinical ~~experience-interns~~ fellows must be supervised by a speech-language pathologist who has been licensed for a minimum of two years. Licensure as a clinical ~~experience-intern~~ fellow does not count toward the two-year license requirement.

(b) Each supervising speech-language pathologist shall accept no more than two clinical ~~experience-interns~~ fellows. Each supervisor holding licenses in both speech-language pathology and audiology is restricted to no more than two persons to supervise, in aggregate.

(c) Beginning January 2017, the supervising speech-language pathologist must have successfully completed at least six hours of Board approved training in clinical supervision. At least ~~three~~ three hours must include instruction in the knowledge and skills areas necessary for clinical ~~experience-fellow~~ supervisors as identified by the American Speech-Language Hearing Association (ASHA), other organizations, or entities the Board deems acceptable.

(d) A speech-language pathologist who has completed six hours of training is eligible to supervise both clinical fellows and speech-language pathology assistants, provided that the six hour training includes three hours specific to supervision of clinical fellows and three hours specific to supervision of assistants.

690:10-5-7. Notification of Board decision

The applicant and supervisor shall be notified by mail of the decision of the Board with respect to an application filed under this Subchapter. Any Board decision concerning a clinical ~~experience-intern~~ fellow shall also be communicated by mail to the individual and his supervisor.

690:10-5-8. Direct supervision required

The applicant must practice in a setting which permits direct supervision by the supervising speech-language pathologist ~~or audiologist~~. The supervising speech-language pathologist ~~and audiologist~~ must engage in no fewer than thirty-six (36) supervisory activities during the clinical ~~experience-fellowship~~. This supervision must include at least eighteen (18) on-site observations of direct client contact at the clinical ~~experience-intern's~~ fellow's work site (one (1) hour equals one (1) on-site observation; a maximum of six (6) on-site observations may be accrued in one (1) day.) "On-site" is defined as physical presence at the clinical ~~experience-intern's~~ fellow's work site. At least six (6) observations must be accrued during each third of the clinical ~~experience-fellowship~~. These on-site observations must be of the clinical ~~experience-intern~~ fellow providing screening, evaluation assessment, habilitation, and rehabilitation. In addition, the supervision must include at least eighteen (18) other monitoring activities. At least six (6) other monitoring activities must be completed during each of the three segments of the clinical

~~experience-fellowship~~. These other monitoring activities may be executed by correspondence, review of video tapes and/or audio tapes, evaluation of written reports, phone conferences and/or other telepractice activities with the clinical ~~experience-intern~~ fellow, and evaluations by professional colleagues.

SUBCHAPTER 7. LICENSURE OF SPEECH-LANGUAGE PATHOLOGY ASSISTANTS AND AUDIOLOGY ASSISTANTS

690:10-7-1. Practice as an assistant

(a) Any person not eligible for licensure as a speech-language pathologist or clinical ~~experience-intern~~ fellow, who assists in the practice of speech-language pathology, unless exempt pursuant to Section 1604 of this Act, must be licensed by the Board as a speech-language pathology assistant. Licensure to practice as a speech-language pathology assistant may be granted to applicants who meet the qualifications set forth in the law and rules of the Board. Nothing in this section shall be construed to prevent a practitioner from employing any individual in non-clinical capacities.

(b) The Board shall consider on an individual basis the request of each applicant for a speech-language pathology assistant license. Before granting a license the Board will consider the applicant's academic training and clinical experience, specific duties and responsibilities, and amount and nature of the applicant's supervision. The Board retains the power to determine whether or not an applicant meets the requirements.

(c) Beginning January 1, 2015, any person not eligible for licensure as an audiologist, who assists a licensed audiologist in the practice of audiology, unless exempt pursuant to Section 1604 of this Act, must be authorized by the Board as an audiology assistant. To be eligible for authorization, applicants must meet the qualifications set forth in the law and rules of the Board. Before granting an authorization, the Board will consider the applicant's specific duties and responsibilities, and amount and nature of the applicant's supervision. The Board retains the power to determine whether or not an applicant meets the qualifications for authorization.

690:10-7-3. Supervision required

(a) The speech-language pathology assistant must be supervised by a speech-language pathologist who has been licensed for two years. Each supervisor shall accept no more than two assistants. Licensure as a clinical ~~experience-intern~~ fellow does not count toward the two-year license requirement. Each practitioner licensed in both speech-language pathology and audiology is likewise restricted to two assistants in aggregate. Further, the total number of licensees supervised by a single supervisor shall not exceed two.

(b) Beginning January 2017, the supervising speech-language pathologist must have successfully completed at least six hours of Board approved training in clinical supervision. Three hours must include instruction in the knowledge and skills areas necessary for speech-language pathology assistant's supervisors as identified by the American Speech-Language

Hearing Association (ASHA), other organization or entity the Board deems acceptable. A speech-language pathologist who has completed six hours of training is eligible to supervise both clinical fellows and speech-language pathology assistants, provided that the six hour training includes three hours specific to supervision of clinical fellows and three hours specific to supervision of assistants.

(c) A speech-language pathology assistant shall practice under a minimum of 30% supervision weekly, of which 20% is direct and 10% is indirect for the first 90 workdays. After successful completion of the first 90 workdays, a minimum of 10% of direct supervision is required with 20% indirect supervision. The supervising speech-language pathologist must be available by electronic means at all times when the speech-language pathology assistant is performing clinical activities. The supervision must be documented ~~in the client/patient record~~ and on a supervision log signed by the supervisor and the assistant. Direct supervision must also be documented on the client/patient session note. Records of supervision are subject to inspection by the Board.

(1) Direct supervision: in-view observation and guidance by a speech-language pathologist while the speech-language pathology assistant is providing an assigned clinical service to a patient. While directly supervising, the speech-language pathologist may not perform any clinical services unrelated to the client/patient receiving services from the speech-language pathology assistant.

(2) Indirect supervision means the supervising speech-language pathologist is engaged in supervisory activities other than direct supervision, observation and guidance of the assistant while the assistant is providing an assigned clinical service to a patient. Indirect supervision activities performed by the supervising speech-language pathologist may include but are not limited to demonstration, record review, review and evaluation of audio or videotaped sessions, and interactive television and supervising conferences that may be conducted by telephone, email or live webcam.

(d) The supervising speech-language pathologist is responsible for exercising his or her professional judgment to determine the appropriate level of supervision at or above the required minimum necessary to ensure that each client/patient receives competent services. The supervising speech-language pathologist should consider:

- (1) the individual speech-language pathology assistant's knowledge, experience and competence;
- (2) the treatment setting;
- (3) the client/patient's diagnosis/prognosis; and
- (4) the nature of the assigned clinical service.

(e) For audiology assistants, direct supervision is required when the assistant is performing activities involving direct patient care. Direct supervision requires the supervising audiologist to be present on-site for supervision and guidance of the assistant. Indirect supervision of the audiology assistant is permissible when the audiology assistant is performing duties or activities that do not involve direct patient care. Indirect

supervision requires the supervising audiologist to be available for instruction or guidance but does not require the supervising audiologist to be present on-site. The audiology assistant must be supervised by an audiologist who has been licensed for two years. Each supervisor shall accept no more than two assistants.

690:10-7-9. Academic Requirements

(a) Academic requirements for speech-language pathology assistants.

(1) Each speech-language pathology assistant applicant shall hold not less than an associate's degree, or its equivalent, with a major emphasis in speech-language pathology from an accredited academic institution.

(2) Each speech-language pathology assistant applicant shall submit a bona fide official transcript(s) and verification of academic preparation and clinical experience reflecting a minimum of eighteen (18) semester credit hours in general education, a minimum of twenty (20) semester credit hours in technical content, a minimum of twenty five (25) hours of observation which precede a minimum of 100 clock hours of supervised clinical experience.

(A) General education. The general education component typically includes, but is not limited to, course work in oral and written communication, mathematics, computer applications, social sciences and natural sciences.

(B) Technical content. The technical content component must include, but is not limited to the following areas:

- (i) Normal processes of communication.
- (ii) Overview of communication disorders.
- (iii) Instruction in assistant-level service delivery practices.
- (iv) Instruction in work-place behaviors.
- (v) Cultural and linguistic factors in communication.
- (vi) Observation experiences include direct on-site observation of a licensed speech-language pathologist. Additional observation experiences may include on-site, video or digital observation of a ~~fully~~ licensed speech-language pathologist.

(C) Clinical experience. Applicants must complete 100 clock hours of clinical experience supervised by a speech-language pathologist. The clinical experience requirement must be completed through an accredited academic institution with a Board approved degree program.

(b) **Academic requirements for audiology assistants.** Each audiology assistant applicant shall hold not less than a high school diploma or its equivalent.

SUBCHAPTER 9. FEES

Permanent Final Adoptions

690:10-9-2. License renewal fee

(a) The license renewal fee shall be eighty-five dollars (\$85.00) each calendar year. The renewal fee is due on or before December 31st of each year. Failure of any licensed person to pay the renewal fee before the first day of January does not deprive the licensee of the right to renew the license, but the fee paid for renewal postmarked after December 31st shall be increased by 50% for each month or fraction thereof that the payment is delayed, up to a maximum of three times the renewal fee (\$255.00). Failure to pay the renewal fee by January 1st, however, shall render the license invalid until renewed. Renewal of an invalid license within the first year will result in an automatic audit of that licensee's ~~Continuing Education~~ continuing education activities for the preceding continuing education two-year reporting period. Failure to renew a license within the twelve month period following expiration, without otherwise placing the license(s) in question on inactive status (see 690:10-9-6), will render the license permanently invalid, requiring reapplication for licensure based on meeting all current requirements for licensure in the applicant's area of specialization, ~~including completion of another clinical experience year and retaking the exam~~. The applicant whose license has been expired for less than five years may petition the Board to waive the clinical ~~experience-fellowship~~ requirement and/or the examination requirement. If the license has been expired for a period of five (5) years or more, the licensee shall be required to demonstrate competence to practice by completion of one of the following requirements within the last two (2) years prior to submission of the application for relicensing:

- (1) retake and pass the exam required for licensure;
- (2) show proof of licensure and at least 520 hours of practice in another state;
- (3) show proof of at least 520 hours of practice in a setting exempt from licensure pursuant to 59 O.S. § 1604;
- (4) show proof of completion of an additional twenty hours of Continuing Education.

(b) Any licensee whose license is active and in good standing; is a member of the Armed Forces of the United States; and is on active duty at the time of renewal is exempt from payment of the renewal fee. Upon receipt of notice of assignment to active duty from the licensee, the Board shall automatically renew the license without fee each year thereafter of active duty military service, and for up to one year after the date of discharge from active duty.

690:10-9-7. Inactive status fee

(a) A one-time fee of twenty five dollars (\$25.00) shall be charged a licensed speech-language pathologist, audiologist or speech-language pathology assistant to place the license on inactive status, provided that, prior to expiration of the license, the licensee makes written application to the Board for such status. Thereafter, the licensee may reactivate the license upon payment of a reactivation fee equal to one and one-half (1 1/2) times the current license renewal fee. A licensee must be in compliance with ~~Continuing Education~~ continuing education requirements to be placed on inactive status, and must maintain compliance while inactive. During the period of time the

license is on inactive status, the licensee shall not engage in the practice of speech-language pathology or audiology in the State of Oklahoma, unless the licensee is exempt from licensure pursuant to 59 O.S. § 1604. A license may be maintained in inactive status for no longer than ten years.

(b) To reactivate a license on inactive status, the licensee must make written application to the Board, pay a reactivation fee equal to one and one-half (1 1/2) times the current license renewal fee, and provide proof of compliance with ~~Continuing Education~~ continuing education requirements during the time the license was inactive.

(c) In addition to the requirements in subsection (b) of this rule, if the license has been on inactive status for a period of five (5) years or more, the licensee shall be required to demonstrate competence to practice by completion of one of the following requirements within the last two (2) years prior to submission of the application for reactivation:

- (1) retake and pass the exam required for licensure;
- (2) show proof of licensure and at least 520 hours of practice in another state;
- (3) show proof of at least 520 hours of practice in a setting exempt from licensure pursuant to 59 O.S. § 1604;
- (4) show proof of completion of an additional twenty hours of ~~Continuing Education~~ continuing education

[OAR Docket #17-531; filed 6-28-17]

TITLE 710. OKLAHOMA TAX COMMISSION CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #17-517]

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RULES:

Subchapter 3. Public Policy
Part 1. General Provisions
710:1-3-2 [AMENDED]
Part 7. Taxpayer Payments
710:1-3-48 [AMENDED]
Part 11. Public Records
710:1-3-71 [AMENDED]
Subchapter 5. Practice and Procedure
Part 3. Description of Administrative Review and Hearings
710:1-5-13 [AMENDED]
Part 8. Settlement of Tax Liability
710:1-5-89 [AMENDED]

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n/a

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These sections have been amended to correct scrivener's errors, update email addresses and statutory citations and to reference additional forms of payment accepted by the Tax Commission.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 3. PUBLIC POLICY

PART 1. GENERAL PROVISIONS

710:1-3-2. Required forms and where available

(a) The Oklahoma Tax Commission utilizes a wide variety of forms in the administration of the tax laws. The forms are subject to frequent change because of changes in the law and for administrative reasons. The Commission attempts to make a wide distribution of the commonly used forms needed by taxpayers for ~~which~~whom there is a current, valid mailing address available, such as: Sales Tax permit holders, businesses registered under Income Tax Withholding provisions, and business entities licensed under Franchise Tax provisions.

(b) Current Oklahoma Income Tax forms are available from Taxpayer Assistance Division, at the main offices of the Oklahoma Tax Commission, 2501 North Lincoln Boulevard, Oklahoma City and may be accessed through the Tax Commission website at ~~http://www.oktax.state.ok.us~~ www.tax.ok.gov.

(c) The Commission maintains a Forms Catalog containing sample taxpayer forms required by the Oklahoma Tax Commission in the administration of the various tax levies. The Forms Catalog may be viewed in the Communications Division, M. C. Connors Building, 2501 North Lincoln Boulevard, Oklahoma City, Oklahoma, during normal business hours}.

PART 7. TAXPAYER PAYMENTS

710:1-3-48. Payment of taxes by credit card

(a) "Nationally recognized" credit card means any instrument or device, whether known as a credit card, credit plate, charge plate or by any other name, issued with or without fee by an issuer for the use of the cardholder in obtaining goods,

services or anything else of value on credit which is accepted by over one thousand merchants in this state. The Oklahoma Tax Commission shall determine which nationally recognized credit cards will be accepted for payment of taxes. Currently Discover, American Express, Visa and MasterCard are accepted.

(b) Implementation of payment by credit card will be phased in over a period of time as determined by the Commission.

(1) Initially, payment of taxes by credit card will only be allowed at the current designated receiving points or by designated agents.

(2) When tax return forms are modified to include credit card information in a designated area on the form, payment by this method will be accepted when the tax return document is submitted.

(c) The Tax Commission will verify that sufficient credit is available before acceptance of credit card to insure that no loss of state revenue will occur by the use of such card.

(1) If a taxpayer is at a designated receiving point and credit is not available, the taxpayer then has the opportunity to pay by other methods accepted by the Commission.

(2) If the taxpayer mails ~~in~~ the credit card information with their return and credit is not available, the return will be handled as a document with no remittance and a bill will be forthcoming.

(d) The Tax Commission may add an amount equal to the amount of the service charge incurred, not to exceed four percent (4%) of the amount of such payment as a service charge for the acceptance of such credit card.

(e) Credit card payments should not be mixed with other type payments, i.e. checks, cash.

(f) The Commission will contract a third party to process credit card transactions who will place monies received into the Commission's account with the State Treasurers Office and report such payments to the Commission.

(g) Taxpayers wishing to pay by credit cards must be willing to submit normally required credit card information to the Commission. This includes, but is not limited to: card type (VISA, etc.), card number, card expiration date, and card holder name as shown. The Commission assumes no liability for unauthorized use of this information.

PART 11. PUBLIC RECORDS

710:1-3-71. Rules of the Oklahoma Tax Commission

(a) **Rules described.** "Rules" of the Oklahoma Tax Commission are formal statements of policy which set out procedures to be followed in the administration of various tax levies and fees. Rules describe broad interpretations of the tax laws, often prescribe forms, and may set out informal and formal procedures for filing, remitting, registering and objecting to the various taxing provisions. Rules may also prescribe procedures for the granting, denial, suspension, renewal, or revocation of various permits and licenses administered by the Commission. Rules are subject to the provisions of Article I of the Oklahoma Administrative Procedures Act (APA), 75 O.S. §§ 250-308.2, and must be promulgated under the terms

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of the APA before they are considered effective. Rules which have been promulgated have the full force and effect of law and continue in effect until amended or revoked under APA provisions.

(b) **Availability.** Current Rules, both permanent and emergency, of the Oklahoma Tax Commission are available on the Oklahoma Tax Commission website at ~~http://www.ok-tax.state.ok.us~~www.tax.ok.gov or from Taxpayer Assistance Division, M. C. Connors Building, 2501 North Lincoln Boulevard, Oklahoma City, Oklahoma, during normal business hours.

SUBCHAPTER 5. PRACTICE AND PROCEDURE

PART 3. DESCRIPTION OF ADMINISTRATIVE REVIEW AND HEARINGS

710:1-5-13. Settlement of claims or protests

Settlement of **disputed, unliquidated** tax claims or assessments is within the discretionary authority of the Oklahoma Tax Commission pursuant to the provisions of 68 O.S. § 219. Request for settlement or offer of settlement proposal should be made to the taxing division which initiated the disputed assessment. Settlements of final liabilities pursuant to 68 O.S. ~~Supp. 2002~~, § 219.1 are governed by the provisions of Part 8 of this Subchapter.

PART 8. SETTLEMENT OF TAX LIABILITY

710:1-5-89. Payment

(a) No payment is required to be paid when the Settlement Agreement Application is submitted to the Commission.

(b) Full payment of the amount offered in settlement of the tax liability must be made within thirty (30) days from date of notification that the proposed Settlement Agreement has been accepted. Payment of the accepted settlement amount by cash, cashier's check, money order, or charged to an approved credit card must be made by the payment due date indicated on the acceptance notice. [See: ~~www://oktax.state.ok.us/oktax/gn-payopt.html~~ https://www.ok.gov/tax/Online_Services/Payment_Options/index.html or Call: 1-800-2PAY-TAX]

(c) Any payment made with the application will not be returned to Applicant, even if the Settlement Agreement is declined or withdrawn. The retained payment will be applied to Applicant's outstanding tax liability in accordance with Section 710:1-3-46 of this Chapter.

(d) In appropriate circumstances, the Commission may consider proposed Settlement Agreements that provide for payments to be made over a period of time based on future income.

(e) The Settlement Agreement becomes void if taxpayer defaults on payment under the agreement.

(f) The Settlement Agreement becomes void if the agreement was obtained by fraud or misrepresentation of a material fact.

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TITLE 710. OKLAHOMA TAX COMMISSION CHAPTER 10. AD VALOREM

[OAR Docket #17-518]

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Subchapter 1. General Provisions

710:10-1-3 [AMENDED]

710:10-1-4 [AMENDED]

Subchapter 2. Business Personal Property Valuation Schedules

710:10-2-1 [AMENDED]

710:10-2-5 [AMENDED]

Subchapter 3. Equalization Study

Part 1. General Provisions

710:10-3-1 [AMENDED]

710:10-3-18 [AMENDED]

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Part 3. Data Collection

710:10-3-27 [AMENDED]

Part 5. Authorities and Methodology

710:10-3-61 [REVOKED]

Subchapter 5. Homestead Exemption

710:10-5-1 [AMENDED]

710:10-5-2 [AMENDED]

710:10-5-3 [AMENDED]

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710:10-5-8 [REVOKED]

710:10-5-9 [REVOKED]

710:10-5-10 [AMENDED]

710:10-5-11 [AMENDED]

710:10-5-12 [AMENDED]

710:10-5-13 [AMENDED]

Subchapter 6. Storm Shelter Exemption

710:10-6-1 [AMENDED]

710:10-6-6 [AMENDED]

710:10-6-8 [AMENDED]

710:10-6-9 [AMENDED]

Subchapter 7. Manufacturing Facilities

710:10-7-2.2 [AMENDED]

710:10-7-4 [AMENDED]

710:10-7-5 [AMENDED]

710:10-7-11 [AMENDED]

Subchapter 8. Exemption for Certain Oil and Gas Property upon Which Oklahoma Gross Production Tax is Paid

710:10-8-1 [AMENDED]

710:10-8-2 [AMENDED]

Subchapter 9. Manufactured Homes

710:10-9-1 [AMENDED]

710:10-9-3 [AMENDED]

710:10-9-7 [AMENDED]

710:10-9-14 [AMENDED]

710:10-9-20 [AMENDED]

710:10-9-26 [AMENDED]

Subchapter 10. Visual Inspection Plan

Part 1. General Provisions

710:10-10-1 [AMENDED]

Part 3. Planning and Organization

710:10-10-10 [AMENDED]

710:10-10-12 [AMENDED]

Part 5. Direction and Guidance

710:10-10-27 [AMENDED]

710:10-10-28 [AMENDED]
 Part 7. Controls and Evaluation
 710:10-10-44 [AMENDED]
 Subchapter 11. Reimbursements and Assistance to Counties
 710:10-11-12 [AMENDED]
 Subchapter 13. Valuation Exclusion for Desulphurization Equipment
 710:10-13-3 [AMENDED]
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Subchapter 1 *General Provisions* has been AMENDED to implement the provisions of HB 2349 which removed veterans' disability income from the calculation of gross household income for purposes of qualification for the additional homestead exemption and senior valuation limitation and provide procedures and form information for additional homestead exemption qualification. This Subchapter was also AMENDED to update and add statutory citations, improve readability and strike unnecessary language. [68:2890]

Subchapter 2. *Business Personal Property Valuation Schedules* has been AMENDED to provide current information to obtain access to the Business Personal Property Valuation Schedule and to provide notice of participation in surveys to be conducted by the Ad Valorem Division. This Subchapter has also been revised to correct statutory citations and improve readability.

Subchapter 3. *Equalization Study* has been AMENDED to correct terminology in addition to correcting citations to case law and the Oklahoma Constitution. The Subchapter has also been revised to update information to include orthophotographic aerials instead of Soil Conservation Service or Farm Service aerials for a source of additional data for use classifications for purposes of the agricultural equalization portion of the equalization study and to revoke outdated provisions relating to the presumption of selective reappraisal and the methodology utilized for the equalization study of a county using selective reappraisal.

Subchapter 5. *Homestead Exemption* has been revised by updating statutory citations and striking redundant or other unnecessary language covered in statute.

Subchapter 6. *Storm Shelter Exemption* has been AMENDED to improve readability, add current form information for filing the exemption and update statutory citations.

Subchapter 7. *Manufacturing Facilities* has been AMENDED to provide for the provisions of Section 3 of Senate Bill 1282 which modifies the definition of investment costs for purposes of qualification for the five year manufacturing exemption and Senate Bill 498 [2015] and to strike the qualification requirements for wind electric power generation facilities consistent with Senate Bill 498 [2015]. [68:2902]

Subchapter 8. *Exemption for Certain Oil and Gas Property Upon Which Oklahoma Gross Production Tax is Paid* has been AMENDED to correct statutory citations and implement the provisions of SB 166 [2013] which included certain commercial disposal system equipment in the ad valorem exemption for property utilized in the production of oil or gas for which gross production taxes are paid. [68:2353]

Subchapter 9. *Manufactured Homes* has been AMENDED to update statutory citations.

Subchapter 10. *Visual Inspection Plan* has been AMENDED to clarify existing rule provisions and update statutory citations in addition to the state standards for purposes of the mapping program conducted by the Ad Valorem Division.

Subchapter 11. *Reimbursements and Assistance to Counties* has been AMENDED to correct wording of existing language.

Subchapter 13. *Valuation Exclusion for Desulphurization Equipment* has been AMENDED to update statutory citations.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 1. GENERAL PROVISIONS

710:10-1-3. Procedures for implementation of the ad valorem valuation limitation

(a) **Application of limitation for counties in compliance January 1, 2013 and subsequently.** Pursuant to Article X, Section 8B of the Oklahoma Constitution and ~~Title~~ 68 O.S. §2817.1, on and after January 1, 2013, the fair cash value of any parcel of locally assessed real property which constitutes homestead property or agricultural land shall not increase by more than 3% in any taxable year. The fair cash value of all other locally assessed real property shall not increase by more than 5%. The limitation on valuation increases set forth in this subsection do not apply in any year when the title of the property is transferred, changed, or conveyed to another person, or if improvements are made to the property unless subject to provisions of subsection (j) of this Section. [See: 68 O.S. § 2802.1] The limitation shall apply January 1, 2013, to all counties in compliance with applicable laws and administrative regulations governing valuation of locally assessed real property. For those counties out of compliance as of January 1, 2013, the limitation shall apply January 1 of the year following the date on which the county was deemed to be in compliance. Once a county is in compliance on or after January 1, 2013 the limitation shall not be removed, even if a county is deemed to be out of compliance.

(b) **Implementation of limitation.** The county assessor will implement the limitation by annually comparing the fair cash value with the constitutionally-limited value. County assessors should continue to determine fair cash value on an annual basis. The limitation does not accumulate. In the event that a final fair cash value of a property changes as the result of a protest with the county assessor, County Board of Equalization, applicable court action, or action by the County Board of Tax Roll Corrections, the applicable valuation limitation shall apply to that property's final taxable value, as determined using accepted appraisal methodology for subsequent years.

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(c) **Rights of taxpayers.** Taxpayers shall continue to have all rights of protest with respect to the valuation and assessment of property as currently specified by statute. If the taxpayer demonstrates to the satisfaction of the county assessor or county board of equalization that the fair cash value is below the constitutionally-limited value, it is appropriate for the county assessor to lower the property to that value. The limitation would then be applied annually to that value if all other conditions of the limitation on increases of fair cash value in Article 10, Section 8B, Oklahoma Constitution, are met.

(d) **Review of valuation for error.** The county assessor should review the valuation of the property for clerical errors, incorrect physical characteristics, or other material error affecting valuation in order to protect the taxpayer. This review should **not** include a revaluation of the property because it is below fair cash value.

(e) **Duration of limitation.** The annual valuation limitation is valid on the property as long as title to the property is not transferred, changed, or conveyed. [See: Article 10, Section 8B, Oklahoma Constitution & 68 O.S. §§ 2802.1 & 2817.1]

(f) **Physical improvements on limited property.** In the event that physical improvements are made to the limited property, the improvement shall be valued in the same manner as the improvements are presently valued. Examples of physical improvements may include, but are not limited to, a room addition, additional square footage, a garage, out buildings, enclosed garage, or similar improvements. This additional valuation shall be added to the limited value of the property before the construction occurred. For example, if the improvements added \$5,000 in fair cash value to the property, it would be increased by that amount. The property may increase up to the applicable valuation limitation in addition to the increased amount added by the improvement. The new total value continues to be limited as long as the title of the property remains the same. Physical additions or changes that are considered normal maintenance such as certain normal repairs, minor re-modeling, roof repair or installation, minor energy efficiency improvements, or retro fit improvements such as wheelchair ramps providing access to the property are not generally considered physical improvements affecting the limited value. [See: 68 O.S. §§ 2802.1, 2817.1]

(g) **Effect of conveyance of property.** If title to the property is transferred or conveyed, the parcel of real property shall be assessed at fair cash value as set forth by Section 8 of Article X of the Oklahoma Constitution. This valuation is to be based upon current market value standards rather than simply placing the property on at its sale price, and it is the responsibility of the county assessor to value the property at fair cash value consistent with applicable statutes and ad valorem rules. Any sale occurring during the course of a given calendar year shall be valued at fair cash value as specified by statute for the following tax year. The county assessor shall continue to be responsible for making valuation changes to surrounding properties based on current sales information of comparable property within the constitutional limitations specified for non-sold properties. [See: 68 O.S. § 2802.1]

(h) **Omitted property.** While accomplishing statutorily mandated duties, the county assessor or a deputy will discover

unassessed improvements on real property. A house and outbuildings, for example, could be on the assessment rolls, but a detached garage, second dwelling, or barn, previously unassessed, could be discovered. This additional property must be treated as if it were new construction and the county assessor should proceed to establish the fair cash value of the discovered property. It should be added to the assessment rolls, and proper notice provided. The original property will still be subject to the applicable valuation limitation, but the additional structure will **not** be subject to the valuation limitation, **for that year only**. This additional property was not on the assessment rolls before, and is to be placed on the assessment rolls at fair cash value.

(i) **Clerical errors.** When a property has been incorrectly entered on the assessment rolls as a result of clerical or data entry error, any error should be corrected. Clerical errors, however, are **not** to be used for general revaluation of the property, except that when the error results in a substantial impact on the value of the property, it should be corrected when discovered and proper notice provided to the taxpayer. For example, a residence that has been incorrectly entered as 1,000 square feet, instead of 2,000 feet, **because of a clerical error** should be corrected. The clerical error must be a mistake of fact, and the change must reflect the actual physical characteristics of the property itself. Clerical errors of this nature are not subject to the applicable valuation limitation.

(j) **Adjustment of damaged properties.** In valuing property damaged by natural causes, flood, storms, fires, or other disasters, the county assessor shall adjust the value of such properties. When the damage has been repaired, or the property fully restored to its previous usage, the improvements made must be disregarded for purposes of determining the maximum amount of fair cash value subject to ad valorem taxation pursuant to Section 8B of Article 10 of the Oklahoma Constitution unless the improvements increase the square footage. The valuation limitation outlined in subsection (a) of this Section applies to the restoration of the damaged property to the extent the square footage is the same as the original property. However, the limitation does **not** apply to any improvements constituting increases in square footage to the original property. [See: 68 O.S. §§ 2802.1, and 2817.1]

710:10-1-4. Limitation of the fair cash value on homestead property of qualified owners; ~~implementation of Article 10, Section 8C of the Oklahoma Constitution and additional homestead exemption~~

(a) The procedures and requirements set out in this Section shall be used to implement the limitation of the valuation on homestead property of qualified owners for ad valorem purposes and the additional homestead exemption:

(b) For purposes of qualifying for the senior valuation limitation and/or the additional homestead exemption "gross household income" means the gross amount of income of every type, regardless of the source, received by all persons occupying the same household, whether such income was taxable or nontaxable for federal or state income tax purposes.

including pensions, annuities, federal Social Security, unemployment payments, public assistance payments, alimony, support money, workers' compensation, loss-of-time insurance payments, capital gains and any other type of income received, and excluding gifts. The term "gross household income" shall not include any veterans' disability compensation payments.

~~(4c)~~ **General provisions.** "Senior valuation limitation" means the implementation of Oklahoma Constitution, Article 10, Section 8C, which directed county assessors to limit the fair cash value of the homestead property of any qualified person who has made proper application. The applicant's property must be a valid homestead property, with proper evidence of a homestead or an application made in 1997 or subsequent years. As with any homestead, the general statutes for homestead qualification apply to the limitation. Only one homestead, and by extension, only one limitation is permitted in any one year. The limitation applies only to the occupied homestead property and may not be applied to non-homestead property. [See: 68 O.S.2001, §§ 2888, 2889, 2890, 2893]

~~(21)~~ **Relationship to exemptions and other programs.**

The senior valuation limitation is available to qualified owners in addition to participation in the circuit breaker and additional homestead exemption. ~~{See: 68 O.S. § 2802, for definitions of "circuit breaker" and "additional homestead exemption".}~~ Availability of the senior valuation limitation is not dependent upon the county's compliance status with the State Board of Equalization.

~~(32)~~ **Qualified owner.** The taxpayer must be at least 65 the year before the senior valuation limitation is approved, and the applicant's total household annual income for the previous year must not exceed the amount as provided in the Oklahoma Constitution, Article 10, Section 8C. The income threshold for the gross household income from all sources for an individual head of household under this Section shall not exceed the amount determined by the United States Department of Housing and Urban Development to be the estimated median income for the preceding year for the county or metropolitan statistical area which includes such county. The Tax Commission shall provide this information to each county assessor each year, as soon as it is available.

~~(43)~~ **Application; qualification; duties of assessor; right of appeal.** In order to be eligible for the senior valuation limitation, the individual must apply at the county assessor's office by completing form OTC Form 994 (Revised-04), Application for Property Valuation Limitation and Additional Homestead Exemption. The application must be made between January 1 and March 15. ~~However, the time within which to apply for additional homestead exemption may be extended thirty (30) days, if a Notice of Change in Assessed Value (OTC Form 926 R 87) is sent, as stipulated in 68 O.S. § 2890(C).~~ The limitation will be in ~~affected~~ effect for the tax year in which the application is made and approved, based on the current year valuation.

(A) For the limitation to be valid, form OTC Form 994 (Revised-04), Application for Property Valuation Limitation and Additional Homestead Exemption, must be completed in its entirety as to income, age, ownership, and other information.

(B) The county assessor has the right and duty to review the information provided, ask any necessary questions, request documentation of age, income, or other information.

(C) The county assessor shall deny any application that is inaccurate, incomplete, inadequately documented, or otherwise invalid pursuant to this Section.

(D) The county assessor may request assistance from the Oklahoma Tax Commission in determination of income qualifications under 68 O.S.2001, § 2890.

(E) The taxpayer may appeal any denial of a senior valuation limitation application by the county assessor to the county board of equalization in the same manner as an appeal of the denial of a homestead exemption.

~~(54)~~ **Review of valuation for error.** The county assessor should review the valuation of the property for clerical errors, incorrect physical characteristics, or other material error affecting valuation in order to protect the taxpayer. This review shall not include a revaluation of the property solely because it may be below fair cash value.

~~(65)~~ **Physical improvements to property.** If a physical improvement is made to the property, such as a room addition, additional square footage, garage, out buildings, enclosed garage, or similar improvement, the improvement shall be valued in the same manner as these improvements are presently valued. This additional valuation shall be added to the limited value of the property before the construction occurred. If improvements are added to the property, the fair cash value shall be increased by the amount attributable to the addition. The new total value is then limited again, so long as the owner and property remain qualified. Physical additions or changes that are considered normal maintenance, such as normal repairs, minor re-modeling, roof repair or insulation, minor energy efficiency improvements, or retro fit improvements such as wheelchair ramps to provide access to the property, are not generally considered physical improvements affecting the valuation limitation.

~~(76)~~ **Duration of, and conditions which terminate the limitation.** The senior valuation limitation is valid on the property as long as the taxpayer owns and occupies the property and title to the property is not transferred, changed, or otherwise modified. If the taxpayer fails to own and occupy the property or if title to the property is transferred, changed, or conveyed to another person, the senior valuation limitation shall expire. It is then the responsibility of the county assessor to value the property at fair cash value consistent with constitutional provisions, statutes and applicable rules. If the person's gross household income from all sources exceeds the amount provided in the Oklahoma Constitution, Article 10, Section 8C, the

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senior valuation limitation shall expire and the value of the property shall be subject to the three percent limitation increase for that year.

(87) Instances in which tax amount may increase, despite limitation. The senior valuation limitation applies to the valuation, ~~but it does not limit all taxes, however; The tax amount could increase tax increases may occur under the three specific situations outlined as follows:~~

- (A) If an additional millage such as a bond issue or other levy is added;
- (B) If judgment is rendered against the county and a judicial order directs an additional levy; or,
- (C) If the county voters adopt a measure increasing the assessment percentage within the county under the authority of Section 8, Article 10, of the Oklahoma Constitution.

(8) Additional homestead exemption. "Additional homestead exemption" means an exemption in addition to the amount of the homestead exemption authorized and allowed in Section 2889 of this Title 68, to the extent of One Thousand Dollars (\$1,000.00) of the assessed valuation on each homestead of heads of households whose gross household income from all sources for the preceding calendar year did not exceed Twenty Thousand Dollars (\$20,000.00).

(A) To qualify for the additional homestead exemption, the individual must apply at the county assessor's office by completing form OTC 994, Application for Property Valuation Limitation and Additional Homestead Exemption.

(B) The application must be made on or before March 15 or within thirty (30) days of taxpayer's receipt of a County Assessor Notice of Increase in Valuation of Real Property form (OTC 926) whichever is later. [68 O.S. § 2890(C)].

SUBCHAPTER 2. BUSINESS PERSONAL PROPERTY VALUATION SCHEDULES

710:10-2-1. General provisions

(a) **Purpose.** The provisions of this Subchapter have been adopted, pursuant to 68 O.S. ~~2001~~,—§ 2875(D)(4), to provide information regarding the schedules of values of personal property given to county assessors to assist in the assessment of personal property.

(b) **Schedules of values.** Schedules of values are intended only to provide the user with an approximation of value for the personality "typical" for the class, not an absolute value.

(c) **Schedules of trending and depreciation.** Trending schedules are used to adjust historical cost to a current estimated replacement cost new. Depreciation schedules are used to estimate normal depreciation as applied to replacement cost new to estimate current value of the asset. The factors or percentages used are taken from *Marshall and Swift Valuation Service*, a national valuation service contracted by the Division to provide values and schedules of trending and depreciation

for real and personal property. This service is updated on a monthly basis.

(d) **Caveat.** Nothing in this Subchapter, nor any other guidelines, procedures, or rates provided to assessors by the Oklahoma Tax Commission Ad Valorem Division ("**Division**") is intended to relieve property owners or assessing officials of their obligations by law to report, value, or assess personal property at its fair cash value. Though the schedule of values referred to in this Subchapter are typical values for business personal property, actual value of any particular asset may be affected by conditions or use.

(e) **Disclosure.** A copy of the "Business Personal Property Valuation Schedule" ~~provided to the county assessors~~ may be obtained ~~upon written request to the Ad Valorem Division of the Oklahoma Tax Commission, 2501 N. Lincoln, Oklahoma City, OK 73194~~ by accessing the Tax Commission website at www.tax.ok.gov.

(f) **Surveys.** Individuals and organizations who wish to participate in surveys conducted by the Ad Valorem Division may notify the Division ~~in writing at 2501 N. Lincoln, Oklahoma City, OK, 73194~~ or by ~~emailing email at: cheath@ok-tax.state.ok.us~~ ~~jbittner@tax.ok.gov~~.

710:10-2-5. Petroleum related equipment

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

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

(c) **Sources.** ~~Sources utilized to determine the values~~ Values of petroleum related equipment are determined from the following sources:

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

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

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

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

(5) For natural gas in storage, value is determined by reference to the *New York Mercantile Exchange (NYMEX)*,

which provides average cost of natural gas purchased from the storage facility, including data on well head gas purchase price, pipeline transportation, and storage fees.

(6) For gas compressors, meters, pipeline costs, and related equipment, values are determined from surveys of Oklahoma companies, research of records filed in the various counties, and other available sources. Such values may be adjusted using *Marshall and Swift Valuation Service* tables as provided in *OAC 710:10-2-1(c)*.

SUBCHAPTER 3. EQUALIZATION STUDY

PART 1. GENERAL PROVISIONS

710:10-3-1. Purpose of the equalization study

(a) The equalization study set forth in this Subchapter is mandated by law pursuant to 68 O.S. ~~1992~~, §2865(a) of the Ad Valorem Tax Code. The purpose of this study is to collect and analyze data for the purpose of formulating recommendations to be presented to the State Board of Equalization. The State Board of Equalization may use the recommendations of the Oklahoma Tax Commission for the equalization and adjustment of the valuation of the real property within and among the several counties pursuant to Article 10, Section 21 of the Oklahoma Constitution and 68 O.S. §2865 of the Ad Valorem Tax Code. See also: **Board of County Commissioners of Canadian County v. State Board of Equalization**, 363 P.2d 242 (Okla. 1961); **In Re McNeal's Appeal**, 35 Okl. 17, 128 P. 285 (1912).

(b) The purpose of the equalization study among the counties is to ~~insure~~ensure the legal level of assessment of each county is at the level ordered by the State Board of Equalization. Should the State Board of Equalization determine that new legal levels of assessments be mandated, the purpose of this study among the counties will be to ~~insure~~ensure that each county maintains the constitutionally-mandated assessment level.

(c) The purpose of the equalization study within each county is to ~~insure~~ensure that all classes of real property are valued uniformly and assessed at one ratio. **Cantrell v. Sanders**, 610 P.2d 227 (Okla. 1980).

(d) The purpose of the equalization study is also to notify the State Board of Equalization as to any inequities that exist within any class or classes of real property within a county or among the several counties. 68 O.S. §2864.

(e) The purpose of such equalization study is to conduct a comprehensive review of the assessments in each county assessor's office. This equalization study shall be the basis for the Oklahoma Tax Commission findings and recommendations presented to the State Board of Equalization under its responsibilities defined by 68 O.S. § 2865.

(f) The provisions of this Subchapter are not to be construed to limit the constitutional and statutory authority of the State Board of Equalization to equalize within and among the counties, nor the statutory authority of the Oklahoma Tax Commission to make recommendations to the State Board of

Equalization under the provisions of Section 2865, Title 68, Oklahoma Statutes.

710:10-3-18. Equalization study finding; submission to State Board of Equalization

(a) **Compliance with equalization study requirements.** Upon completion of the equalization study, the Oklahoma Tax Commission Ad Valorem Division shall report median audited assessment percentages for each property classification. Counties found to be within the Constitutional assessment percentage range of 11 to 13.5 percent, with all three classes of real property within the deviation range of 1.5 percent from the highest to the lowest ratio, shall be certified to the State Board, as being in compliance with equalization audit requirements.

(1) **Class deviations.** All counties must have all three classes of real property within the deviation range of 1.5 percent range, from the highest to the lowest ratio, in order to be in compliance, regardless of overall median ratio. [See: Art. 10, ~~Section 8A2~~Section 8(A)(2), Okla. Const.]

(2) **Annual valuation.** The county must annually value all taxable real and personal property within the county, as required by 68 O.S. §§ 2817; 2829; and 2830, regardless of overall median ratio.

(3) **Constitutional compliance.** The county must be in compliance with Article 10, Section 8, of the Oklahoma Constitution, concerning assessment percentage limitation for real and personal property; with Section 8B, concerning the applicable valuation limitation on increases in fair cash value; and Section 8C, concerning limitations on fair cash value on certain homestead property, regardless of the overall median ratio.

(b) **Categories of ~~non-compliance~~—noncompliance.** As specified in 68 O.S. §2830, the findings of the equalization study shall constitute the monitoring responsibilities specified in that statute. For purposes of that statute, the following three categories specified are defined:

(1) **Category One ~~non-compliance~~—noncompliance.** If a county is found out of compliance on its annual equalization study in December, the county would be classed in Category One ~~non-compliance~~noncompliance. The county would have until the following June 15 meeting of the State Board of Equalization to correct the deficiencies noted in the equalization study. [See: 68 O.S. § 2830]

(2) **Category Two ~~non-compliance~~—noncompliance.** If the county did not correct the problems noted in the equalization study by the June 15 date, this will be noted in the Oklahoma Tax Commission's report to the State Board of Equalization with a recommendation to re-classify the county to Category Two ~~non-compliance~~noncompliance. At the next State Board of Equalization meeting in December, if all compliance criteria have been achieved, the State Board of Equalization would determine the county in compliance. If the county was found not in compliance at the December meeting, the county would then have until the following June 15 meeting to achieve compliance. If compliance was not achieved, the State Board of Equalization would have the option not to certify the county abstract until all compliance criteria had been achieved

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and to reclassify the county Category Three ~~non-compliance~~noncompliance.

(3) **Category Three ~~non-compliance~~noncompliance.** If a county which has been previously classified Category Two and has failed to meet compliance criteria set forth by the State Board, the county would be classified Category Three ~~non-compliance~~noncompliance. The State Board of Equalization may elect not to certify the abstract.

(c) **Right of appeal.** Under 68 O.S. § 2882, a district attorney, acting under the direction of the board of county commissioners, can appeal a decision of the State Board of Equalization. Pursuant to 68 O.S. § 2883, a county assessor may appeal the decision of the Oklahoma Tax Commission of Category Two or Three ~~non-compliance~~noncompliance.

710:10-3-20. Classes of Property

(a) For the purpose of the equalization study in this Subchapter, the stratum of real property will be ~~sub-divided~~subdivided into the following strata (use classification):

- (1) Residential
- (2) Commercial - Industrial
- (3) Agricultural. [See: **Techniques, Guidelines and Definitions for Determining Use Value of Real Property for Ad Valorem Tax Purposes.** (Adopted by the State Board of Equalization on July 21, 1981)]

(b) The State Board of Equalization may further stratify the classes of property for the purpose of equalization pursuant to Article 10, § 21 of the Oklahoma Constitution.

(c) The Oklahoma Tax Commission may recommend further stratification pursuant to 68 O.S. § 2865.

(d) This Section is not to be construed to limit the constitutional and statutory authority of the State Board of Equalization to equalize within and between the counties, or the statutory authority of the Oklahoma Tax Commission to make recommendations to the State Board of Equalization as to the stratification or consolidation of classes of property for the purposes of equalization. [See: **Poulos v. State Board of Equalization, 646 P. 2d 1269 (Okla. 1982)**]; ~~Supra;~~ **Cantrell v. Sanders, Supra**; ~~Supra~~; **Board of Commissioners of Canadian County v. State Board of Equalization**; ~~supra~~; **Shell Petroleum Corporation v. State Board of Equalization, 170 Okl. 581, 41 P.2d 106(1935)**; **In Re McNeal's Appeal, supra**; Also: Werner W. Doering, "Property Tax Equalization and Conventional Measures of Assessment Performance," **Analyzing Assessment Equity, (IAAO, 1977) PP. 23-45.**]

PART 3. DATA COLLECTION

710:10-3-27. Agriculture data collection and assessment data collection

(a) The Oklahoma Tax Commission staff will proceed to determine the samples to be used in the agricultural equalization portion of the equalization study.

(b) Following the gathering of agricultural samples to be used in the study, the Oklahoma Tax Commission will prepare appraisals in accordance with the State Board of Equalization

approved agricultural use value methodology. Appraisals will be made on at least one taxable parcel of unimproved agricultural land in each full township on a random basis in each county, if available. This is subject to the guidelines on adequate sampling set out in 710:10-3-30.

(1) For purposes of the equalization study, an unimproved sample parcel of at least forty (40) acres is required in each full township.

(2) A physical inspection by the analyst is required to determine the use classification of the land as follows: **[See: Techniques, Guidelines and Definitions for Determining Use Value of Real Property for Ad Valorem Tax Purposes.** (As AMENDED by the State Board of Equalization on December 1, 1987)]

- (A) Cropland;
- (B) Improved pasture;
- (C) Native pasture;
- (D) Timber/waste; or
- (E) Other categories specified by the State Board of Equalization.

(c) A determination of the agricultural use classification other than physical inspection shall be made only with the written permission of the supervisor or the Director of Ad Valorem and with just cause.

(d) The use of ~~Soil Conservation Service or Farm Service~~orthophotographic aerials for use classifications as a source of additional data is permitted and encouraged, but a physical inspection will also be performed unless otherwise specified in writing by the Director of the Ad Valorem Division.

(e) The Oklahoma Tax Commission staff will use only the approved Oklahoma Tax Commission and State Board of Equalization agricultural use value methodology for the appraisal of each classification of agricultural land.

PART 5. AUTHORITIES AND METHODOLOGY

710:10-3-61. Selective reappraisal of properties sold; investigation; alternate methodology [REVOKED]

~~(a) A presumption of selective reappraisal will exist if the following conditions exist:~~

~~(1) A comparison of assessments of properties sold with assessments of properties not sold reveals a consistently higher valuation and assessment on the sold properties.~~

~~(2) A comparison of new construction properties with properties not sold reveals a consistently higher valuation and assessment on the new construction properties.~~

~~(3) Extraordinarily low coefficients of dispersion in a county where little or no annual adjustments are made or the reassessment program is less than aggressive. [See: IAAO Standard on Assessment Ratio Studies: Latest edition.]~~

~~(b) The following methodology will be used for the equalization study of a county using selective reappraisal.~~

(1) The county assessor of that county will be given a written notification by the Oklahoma Tax Commission, by the third Monday in October, of intent to use an alternate methodology in the determination of an equalization ratio within the county because of selective reappraisal.

(2) The assessment ratio study will be conducted by the use of the current year sales and the previous year assessments.

(3) The methodology set out in this Section will not be the exclusive method of adjusting the equalization ratio. Any method, such as the use of an appraisal ratio study, that is reasonable and calculated to reflect the true market value of the taxable real property in that county may be utilized.

(e) The State Board of Equalization shall be notified of the special equalization ratio determined pursuant to this Section, and it will be noted in the recommendations by the Oklahoma Tax Commission to the Board.

SUBCHAPTER 5. HOMESTEAD EXEMPTION

710:10-5-1. Status as of January first governs; exception

(a) In order to obtain a homestead exemption, the applicant must be the record actual owner of the property on January 1st and must actually be residing there. If the evidence of title is not executed on or before January 1st and filed of record in the office of the County Clerk on or before February 1st, no exemption can be allowed, even though the person may have owned the property and may have been residing there for a number of years. [See: Op. Att'y Gen. issued 02-20-50; 68 O.S.4991, § 2888]

(b) A natural person actually owning, residing and domiciled in the residence on January 1st shall be deemed to be the record owner of the property on January 1st, if the deed or other evidence of ownership, executed on or before January 1st, is of record in the office of the County Clerk on February 1. [See: 68 O.S.4991, § 2888]

710:10-5-2. Homestead exemption available to natural persons, citizens; marital status irrelevant

The homestead exemption should be granted to any natural person who is a citizen of the State of Oklahoma, provided other requirements of the Act are satisfied. It is not necessary for a man to be married or be the head of a family. The exemption may be allowed to a single person. [See: 68 O.S.4991, § 2888; Op. Att'y Gen. issued 02-09-37]

710:10-5-3. What constitutes residence and domicile; temporary absence

(a) **Legislative definition.** A homestead, under the Oklahoma Constitutional definition for exemption from execution for debt, is not the same as the homestead under the Homestead Tax Exemption Act. Under the Homestead Constitutional Amendment, the Legislature was specifically authorized

to define a homestead for tax exemption purposes. Pursuant to this authority, the Legislature requires that the applicant be residing on the property before a homestead exemption can be allowed. [See: **Board of Equalization of Oklahoma County v. Bonner**, 185 Okla. 431.]

(b) **Legal residence.** A person's legal residence must be that of the place for which a homestead exemption is sought and ~~he~~the person must actually be residing there, as of January 1st, the assessment date. In most cases, a person cannot obtain the exemption if ~~his~~ the home was rented on January 1st. The one exception is that a person in the Armed Services in the time of war, or during a National Emergency, or his family, is not required to be residing on the property and may even rent the property and still receive the exemption, if properly claimed.

(eb) **Effect of absence.** Temporary absence for the purpose of making a visit or ~~temporary absence~~ for other purposes, where the home is not rented and the owner intends to return to the home within a reasonable length of time and does not establish what could properly be considered to be a permanent residence elsewhere, will not serve to deprive the owner of a homestead exemption. For example, a school teacher may own a home and maintain it for her mother and herself, although for nine months of the year, she is absent from the home, teaching, provided the home is not rented or closed during her absence and she returns during vacation months. In such a case, she is entitled to homestead exemption. In any case where a person is absent from his home and rents his home during his absence, and if the home is rented on the first day of January, the applicant cannot obtain an exemption. [See: Op. Att'y Gen. issued 03-17-54]

710:10-5-4. Restrictions as to homestead acreage, valuation, and location

(a) ~~Homestead size and value; one exemption allowed. The Homestead Exemption Act specifically restricts a rural homestead to 160 acres of land and improvements thereon; and an urban homestead to one acre and the improvements thereon. It further provides that homesteads assessed at \$1,000.00 or less shall be completely exempt, and that homesteads assessed at more than \$1,000.00 shall be exempt up to that amount of the assessed valuation.~~ There can be only one homestead exemption allowed to one homestead or one piece of property, and only one exemption can be allowed to any single person of legal age, married couple and their minor child or children, or the minor child or children or a deceased person, whether residing together or separated, or surviving spouse. [See: 68 O.S.4997, §§ 2888, 2889]

(b) **Urban homestead defined.** "Urban homestead" as used herein shall mean and include any homestead located within any city or town whether incorporated or unincorporated, or located within a platted subdivision or addition, whether such subdivision or addition be a part of a city or town. In no case shall an urban homestead exceed in area one (1) acre. Under the Act, any Any platted subdivision or addition, whether a part of an incorporated city or town, or part of a township, is defined as an urban homestead and the one acre restriction applies. If a person owns a five acre tract in a subdivision platted in tracts of that size, he cannot

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obtain the homestead exemption on more than one acre and the improvements. The exemption as applied to urban homesteads is confined to the lot or lots upon which the residence and other outbuildings necessary or convenient for the family use are located. ~~This shall not be construed as meaning that an exemption cannot be allowed in any instance to a vacant lot.~~ The exemption may be allowed to a vacant lot where such vacant lot adjoins or is contiguous to the lot or lots upon which the improvements are actually situated, but it must be in one tract, except that an alley between two lots does not deprive a person of the exemption of the lot across the alley, or to a lot in another block across the street from the house, if the barn or other outbuildings are located upon such lot. In no case can the exemption be granted on a vacant lot which does not adjoin or is not contiguous to the lot or lots upon which the improvements are actually situated. [See: 68 O.S.1997, § 2888]

(c) **Rural homestead defined and Landland included in rural homestead.** "Rural homestead" as used herein shall mean and include any homestead located outside a city or town or outside any platted subdivision or addition. Land included in rural homesteads must be "about and contiguous or adjacent to" the land upon which the house is located. ~~This shall not be construed as meaning that the land must be in one tract.~~ Land across a section line from the house may be included as a part of the homestead. Two tracts of land in one section which do not join, may also, in some cases, be included as a part of the homestead. Under the Act, it is impossible to definitely lay down a rule as to what land can be included. ~~However, the best rule to follow is to allow the~~The homestead exemption is allowed on any land close enough to the tract upon which the house is located to be considered to be, and actually is, one farm. [See: 68 O.S.1997, § 2888]

(d) **Contiguous property.** The Act contemplates that the homestead selection will be in one contiguous area and not separated by property belonging to someone else. [See: Op. Att'y Gen. issued 05-14-37]

710:10-5-8. Keeping of roomers or boarders [REVOKED]

~~The law specifically provides that the keeping of boarders or roomers in a building maintained otherwise exclusively as a home, will not be considered a commercial purpose under the Homestead Act. It also states that the renting of not exceed three bedrooms is not to be considered business or commercial use, or affect the homestead exemption. Construing these, a person may rent not to exceed three bedrooms without affecting his right to the full exemption, but in case more than three bedrooms are rented, it becomes a duplex or rooming house, and the exempt portion is to be determined by taking the proportion of rooms occupied by the owner to the total number of rooms of the house. The question naturally arises as to what should be done if two or three rooms are rented and one or more of them used for purposes other than a bedroom. The use of one room for purposes other than that of a bedroom is material and that the effect of such renting would be to make a duplex out of a single family residence. In other words, a person may rent two rooms of a six room house for light housekeeping; one room being the bedroom and the other, being the dining room~~

~~and kitchen. This then becomes a separate living unit and cannot be claimed as a part of the homestead. If a six room house were divided into two equal apartments, one of them occupied by the owner, and the other rented, the effect would be to make a single family residence into a duplex and in that case, the owner could not obtain an exemption on more than fifty percent of the assessed valuation. [See: 68 O.S.1997, §§ 2888, 2896]~~

710:10-5-9. Homesteads used partially for business or commercial purposes; allocation of value and exemption [REVOKED]

(a) ~~Business or commercial use.~~ Duplexes, apartment houses, rooming houses, and other property used partially for business or commercial purposes are well covered in the Act and require little explanation. It is necessary in all such cases to arrive at separate values on that part used for business or commercial purposes, and that part used as a home. In case of duplexes, apartment houses and rooming houses, an allocation can usually be made on the basis of the proportion of the number of rooms used for the home and the number rented or for rent. If the property is used partially for business or commercial purposes, it is necessary to use judgment, making best estimate of the value of that part used as a home and that part used for other purposes. [See: 68 O.S.1991, § 2896]

(b) **Business or commercial use of rural homestead.** The location and use of a part of a building or buildings for business or commercial purposes on a rural homestead does not prevent the exemption of the full 160 acres, but on urban homesteads, the same proportionate allocation of value must be made of the land that is made of the improvements. On rural homesteads, the owner is entitled to the full exemption, up to 160 acres, provided he lives on the property, although he may rent or lease the land to others. [See: Op. Att'y Gen. issued 03-17-54]

710:10-5-10. Filing an application

(a) **Application restriction.** In order for any person to obtain an exemption on his homestead an application must be filed with the County Assessor on ~~forms prescribed by the Tax Commission on form OTC 921,~~ on or before March 15th of that year. However, the time within which to apply for the homestead exemption may be extended by thirty (30) days from receipt by the taxpayer of a Notice of Change of Assessed Value (OTC Form 926 R-87) County Assessor Notice of Increase in Valuation of Real Property form (OTC 926) by the taxpayer. Applications may be accepted by the county assessor throughout the year, however, applications filed after March 15, or after 30 days from receipt of a Notice of Change of Assessed Value County Assessor Notice of Increase in Valuation of Real Property, whichever is later, will not be effective until the following year.

(b) **Who may sign application.** The application shall be signed by the owner of the property, or in case of minors or incompetents, by the guardian. Either husband or wife may sign an application if joint title is held by both parties. Similarly, an adult child may sign for the parents, if title to the property is jointly held between them. Other agents for taxpayers may

not sign an application for an exemption, unless the owner is currently a member of the Armed Services of the United States, during time of war or a national emergency. Persons sixty-five (65) years of age or older, as of March 15, who have previously qualified for the additional homestead exemption or the limitation of fair cash value of homestead property, shall **not** be required to make an annual application, provided all qualifications are maintained. [See: 68 O.S. § 2892]

710:10-5-11. What levies exempt

Homesteads are not exempt from levies for interest and sinking fund requirements, for bonded indebtedness incurred prior to the effective date of the Act. They are exempt from all General Fund levies, including the additional millage voted by school districts. [See: 68 O.S. ~~1994~~, § 2889]

710:10-5-12. Exemption limited to natural persons

A homestead exemption cannot be granted on a home if the title is in the name of a corporation, since a corporation is not a **natural person**, as required by the Act. [See: 68 O.S. ~~1997~~, § 2888]

710:10-5-13. Parents and children as co-owners

A parent or parents may be granted a full homestead exemption if the parents reside on and own the homestead property in joint tenancy with one or more of their children, whether parents are residing together or separated, provided the joint tenancy instrument is recorded in the County Clerk's office. [See: 68 O.S. ~~1997~~, § 2888]

SUBCHAPTER 6. STORM SHELTER EXEMPTION

710:10-6-1. Purpose

The provisions of this Subchapter have been adopted for the purpose of compliance with the Administrative Procedures Act, 75 O.S. ~~1994~~, § 250 et seq., and to facilitate the administration of the exemption from the ad valorem taxation for storm shelters approved by popular vote on November 5, 2002 (Laws 2002, H.J.Res.No. 1001; State Question 696).

710:10-6-6. Exemption not restricted to homestead property

~~As stipulated in Article 10, Section 6, of the Oklahoma Constitution, any~~ A storm shelter located in a residential or commercial property ~~where a storm shelter is located~~ may qualify for the exemption. Article 10, Section 6, of the Oklahoma Constitution.

710:10-6-8. Filing an application

(a) **Application by taxpayer.** Unless the exempt storm shelter property has been identified and designated by the county assessor, an application to obtain a storm shelter exemption must be filed with the county assessor on ~~forms~~form

~~OTC 905 prescribed by the Oklahoma Tax Commission.~~ Such an application may be filed at any time. However, the county assessor shall, if the applicant qualifies, grant an exemption for a storm shelter for the current tax year only if the application is filed on or before March 15 of the current tax year. An application filed after March 15 of the current tax year will only entitle the applicant, if otherwise qualified, to an exemption for storm shelter property beginning the following tax year. There ~~will be~~ is no requirement for annual reapplication once the exemption is granted.

(b) **Assessor may identify exempt storm shelter property.** If the county assessor identifies a storm shelter that, in the assessor's opinion, qualifies for the exemption, the assessor may designate the shelter on the permanent property record in the assessor's office. In this case, there will be no requirement for the property owner to make application for the exemption. The exemption will be subject to all other requirements set out in this Subchapter.

710:10-6-9. County assessor to make determination of status

(a) The county assessor shall examine each application and shall determine if the storm shelter meets the requirements set out by law. In determining if the application is to be approved, the assessor may, if necessary, make inspections, make a written request for additional information, or examine any person under oath, as provided by law.

(b) The assessor shall complete the assessor's portion of the application and shall deliver all applications, whether approved or rejected, to the County Board of Equalization on or before the fourth Monday in April, for the Board's review.

(c) If the county assessor finds an application for exemption should not be allowed by reason of non-conformity with the law, the applicant shall be notified of the disapproval and advised of the appeal process. [See: 68 O.S. ~~Supp. 2001~~, §§ 2893-2895]

SUBCHAPTER 7. MANUFACTURING FACILITIES

710:10-7-2.2. Exemption requirements for qualified manufacturing and research and development facilities established, expanded or acquired

(a) **Definitions.** The following words and terms, when used in this Section shall have the following meanings unless the context clearly indicates otherwise:

(1) **Manufacturing facilities** means manufacturing facilities as defined in 68 O.S. § 2902(B)(1).

(2) **Facility or facilities** means and includes the land, building, structures, improvements, machinery, fixtures, equipment and other personal property used directly and exclusively in the manufacturing process. 68 O.S. § 2902(B)(2).

(3) **Research & development** means activities directly related to and conducted for the purpose of discovering,

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enhancing, increasing or improving future or existing products or processes or productivity. 68 O.S. § 2902(B)(3).

(4) **Base payroll** means total payroll for the calendar year the construction, acquisition, or expansion assets are first placed in service and the subsequent four (4) calendar years of eligibility.

(5) **Initial payroll** means payroll for the calendar year immediately preceding the initial construction, acquisition or expansion. In the event initial payroll is not comprised of a complete year's payroll, the amounts reported must be computed to arrive at an annual figure.

(b) **Qualification or statutory requirements.** Except as otherwise provided in (6) and (7) of this subsection, facilities must meet the requirements mandated by statute and summarized in (1) through (5) of this subsection:

(1) Facilities must satisfy the requirement of being new, expanded, or acquired.

(2) The investment cost of the construction, acquisition or expansion of the manufacturing facility must be Two Hundred Fifty Thousand Dollars (\$250,000.00) or more within the calendar year in which the construction, acquisition or expansion occurred. Investment Cost shall not include the cost of direct replacement, ~~refurbish~~refurbishment, repair or maintenance of existing machinery or equipment, except that "investment cost" shall include capital expenditures for direct replacement, refurbishment, repair or maintenance of existing machinery or equipment that qualifies for depreciation and/or amortization pursuant to the Internal Revenue Code of 1986, as AMENDED, and such expenditures shall be eligible as part of an "expansion" that otherwise qualifies under this section.

(3) Base payroll for the calendar year the assets are placed in service must be increased over initial payroll by at least Two Hundred Fifty Thousand Dollars (\$250,000.00) if the facility is located in a county with a population of less than seventy-five thousand (75,000) persons according to the most recent federal decennial census or by at least One Million Dollars (\$1,000,000.00) if the facility is located in a county with a population of seventy-five thousand (75,000) or more, according to the most recent federal decennial census. For the subsequent four years of eligibility, base payroll must be maintained in an amount equal to, or greater than, the base payroll amount established for the calendar year the assets are first placed in service.

(A) To determine initial and base payroll, the Tax Commission must verify all payroll information through the Oklahoma Employment Security Commission (OESC) utilizing OESC reports filed with the OESC for the applicable calendar year years. [See: 68 O.S. § 2902(C)(4)].

(B) The amount of increased payroll shall include payroll for full-time-equivalent employees in this state who are employed by an entity other than the facility which has qualified to receive an exemption pursuant to the provisions of this Section and who are

leased or otherwise provided to the facility, if such employment did not exist in this state prior to the start of initial construction or expansion of the facility.

(C) A manufacturing facility shall have the option of excluding certain components from its payroll. Manufacturing facilities electing to exclude either of the options in (i) or (ii) of this subparagraph, shall document the election by an attached addendum to the application at time of filing which states in detail any payroll exclusions. (See: 68 O.S. § 2902(C)(4))

(i) Payments to sole proprietors, members of partnerships, members of a limited liability company who own at least ten percent (10%) of the capital of the limited liability company, or stockholder employees of a corporation who own at least ten percent (10%) of the stock in the corporation may be excluded from payroll.

(ii) Nonrecurring bonuses, exercise of stock option or stock rights, or other nonrecurring, extraordinary items included in total payroll numbers as reported by the OESC may be excluded from payroll. Nonrecurring bonuses shall not include additional wages or other compensation paid on the basis of length of service.

(D) A manufacturing concern which does not meet the amount of increased payroll shall submit to the Tax Commission, with the initial application year of exemption, an affidavit, signed by an officer. The signed affidavit must state that from the start of initial construction, acquisition, or expansion, to the completion of said construction, acquisition, or expansion, or for three (3) years, whichever occurs first, the establishment or expansion of the facility will result in a net increase of the required base payroll. When the increased payroll requirement is met, the affidavit will be considered satisfied and no longer in effect.

(4) The facility will offer within one hundred eighty (180) days of the date of employment, a basic health benefit plan to the full-time employees of the facility. [See: 68 O.S. § 2902(C)(4)(b)] Calculation of the number of employees shall be made in the same manner as required pursuant to 68 O.S. § 2357.4 for an investment tax credit.

(5) A manufacturing facility requesting an exemption must hold title to real or personal property, or have an equity interest in real or personal property.

(6) ~~Entities engaged in the generation of electric power by means of wind, as described in the North American Industry Classification System No. 221119, if there is a net increase in payroll at the facility of at least Two Hundred Fifty Thousand Dollars (\$250,000.00), or a net increase of Two Million Dollars (\$2,000,000.00) or more in capital improvements while maintaining or increasing payroll, and all other requirements of this Section are met.—~~Effective January 1, 2017, an entity engaged in the generation of electric power by means of wind, as described in the North American Industry Classification System No. 221119, shall not be defined as a qualifying

manufacturing concern for purposes of the exemption authorized pursuant to Section 6B of Article X of the Oklahoma Constitution or qualify as a manufacturing facility as defined in this Section. While facilities which qualified for exemption pursuant to the filing of an exemption application before 2018 will be allowed to claim the exemption for any periods remaining in the five years provided all qualification requirements are met, no initial application for exemption shall be filed by or accepted from an entity engaged in electric power generation by means of wind on or after January 1, 2018.

(7) For applications received after November 1, 2007, establishments primarily engaged in distribution as defined under industry Numbers 49311, 49312, 49313 and 49319 and Industry Sector Number 42 of the NAICS Manual latest revision, must meet all criteria required by statute and outlined in (4) and (5) of this subsection and the following subparagraphs:

- (A) Initial capital investment of at least Five Million Dollars (\$5,000,000.00);
- (B) Employment of at least one hundred (100) FTE as certified by OESC;
- (C) Wages and salaries equal to or exceeding one hundred seventy-five percent (175%) of the federally mandated minimum wage; and
- (D) Commencement of construction on or after November 1, 2007, to be completed within three (3) years from the date of commencement of construction. [See: 68 O.S. § 2902(B)(1)(e)].

(c) **Review of facility eligibility.** To confirm eligibility, the Tax Commission may request any information from the applicant or require verification of any information as needed.

(d) **Requirements for acquired existing facility.** An acquired existing facility must be unoccupied for a period of twelve (12) months prior to acquisition for initial qualification. [See: Art. 10, Section 6B, Okla. Const. and 68 O.S. § 2902(A)].

(e) **Transfer of exemption.** If the ownership of a qualified facility currently enrolled in the exemption program changes during the five-year exemption period, the exemption shall continue in effect for the balance of the five-year period, so long as all other qualifications are maintained.

710:10-7-4. Qualifying manufacturing concerns exempt; forms

Qualifying manufacturing concerns as defined by law shall be exempt from the levy of any ad valorem taxes upon new, expanded or acquired manufacturing facilities for a period of five (5) years. Exemptions will be allowed only upon approved application filed with the county assessor for each year the exemption is requested on forms prescribed by the Oklahoma Tax Commission. The application shall be fully completed, sworn to and signed by the applicant, if an individual, or by a duly authorized officer or general partner or authorized agent of entities applying for the exemption. Authorized agents must file a Power of Attorney, OTC Form BT 129, with the initial and each annual application. Form BT 129 is available telephonically at (405) 521-3160 or online

at www.tax.ok.gov. Any additional information requested in writing by the county assessor, the County Board of Equalization, or the Oklahoma Tax Commission shall be furnished in a sworn and signed statement.

710:10-7-5. Date of qualification; application for exemption

(a) The period of exemption granted to qualifying manufacturing concerns shall be computed from the assessment date immediately following the initial qualifying use of the property in the manufacturing process and subject to the statutory requirements for qualification in place at the time of the initial qualifying use. Applicants may claim any remaining eligibility not to exceed five years from the initial qualifying use.

(b) When completion of a facility or facilities will occur after January 1 of a given year, a facility may apply to claim the ad valorem tax exemption for that year. If the facility is found to be qualified, the exemption shall be available for the entire year and shall apply to the ad valorem valuation as of January 1st of that given year.

(c) Qualifying manufacturing concerns owning facilities engaged in manufacturing in Oklahoma on the first day of January may file an application for ad valorem manufacturing exemption on or before March 15, or as otherwise provided by law. Approved applications signed by the county assessor and the county board of equalization shall be filed by the county assessor with the Oklahoma Tax Commission no later than June 15 of the **TAX YEAR** in which the facility desires to take the exemption. Incomplete applications and applications filed after said date will be declared null and void by the Commission. [See: 68 O.S. § 2902(F); Article 10 § 22A Okla. Const.]

710:10-7-11. County assessor to make initial determination of status; examination and valuation of the facility; notice upon rejection

(a) The county assessor shall examine each application for the manufacturing exemption from ad valorem taxation and shall determine whether the facility is exempt under the law. In determining whether the exemption application is to be approved, the assessor shall, if necessary, make inspections, make a written request for additional information, or examine any person under oath as provided by law.

(b) The assessor shall complete the assessor's portion of each application, whether approved or rejected, and shall consecutively number each ~~completed application received, whether approved or rejected,~~ retain a copy of each application, and shall deliver the original application, whether approved or rejected, to the County Board of Equalization, on or before the fourth Monday in April each year for its review. After the County Board of Equalization has approved or rejected the application, the original application shall be forwarded to the Oklahoma Tax Commission Ad Valorem Division by June 15th of the current year.

(c) If the manufacturer's application is approved, the assessor shall mark the Notice of Approval or Disapproval (OTC Form 900 XMA-B) "**APPROVED**" and notify the applicant

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at the address shown on the application. It shall then be the duty of the Oklahoma Tax Commission to make a physical inspection of each facility approved for the exemption, determine the fair cash value of the real property, if necessary, and the personal property separately, and to determine the assessed value of each by applying the assessor's assessment percentage to that value. The Tax Commission shall then notify the county assessor of the valuation.

(d) If the county assessor finds that the exemption should not be allowed by reason of not being in conformity to the law, he shall mark the Notice of Approval or Disapproval (OTC Form 900 XMA-B) "**DISAPPROVED**", stating the reason for the disapproval, and shall notify the applicant at the address shown in the application. The notice shall be mailed on or before the fourth Monday in April. The assessor shall then immediately proceed to value and assess the property, as provided by law.

SUBCHAPTER 8. EXEMPTION FOR CERTAIN OIL AND GAS PROPERTY UPON WHICH OKLAHOMA GROSS PRODUCTION TAX IS PAID

710:10-8-1. General provisions

The provisions of this Subchapter have been adopted for the purpose of compliance with the Administrative Procedures Act, 75 O.S. § 250 et seq., and to establish guidelines, as authorized by 68 O.S. § 1001.1, for the determination of properties exempt from ad valorem taxes under the terms of 68 O.S. §§~~1001(R) and (S)~~1001(S) and (T) by payment of the "*in lieu*" gross production tax.

710:10-8-2. Exempt properties

(a) The following property shall be eligible for exemption from ad valorem taxation pursuant to the provisions paragraphs ~~(R) and (S)~~ and (T) of Section 1001 of Title 68:

- (1) Wellhead equipment, including compression equipment that is used for injection purposes on enhanced oil and gas recovery projects or compression equipment actually used in the process of bringing oil or gas, or both, to the surface;
- (2) Pumping units and any other devices designed to raise hydrocarbons to the surface;
- (3) Tubing, casing and other downhole equipment;
- (4) Lease production tanks, including flow tanks and water tanks;
- (5) Production units, separators, heaters, treaters, and any other devices designed to remove water and contamination from the hydrocarbons which are located upstream from lease production tanks, custody transfer points, or where production is commingled with that of other leases;
- (6) Flow lines going from the wellhead to production units, separators, heaters, treaters, and lease production tanks, including flow tanks and water tanks;
- (7) Residue lines used to return processed gas to the lease for use in powering production equipment or for injection purposes. If the lines transport gas which is sold

or used for any other purpose, only that percentage of the value of the lines that equals the percentage of the volume of gas used to power production equipment or for injection shall qualify for the exemption;

(8) Lease production meters;

(9) Miscellaneous production equipment, including but not limited to valves, piping, and electrical accessories; and,

(10) Disposal systems which are not for commercial purposes and wellbore and non-recoverable down-hole material, including casing, actually used in the commercial disposal of waste materials produced with oil and gas. The value of property in a disposal system used for both commercial and non-commercial purposes shall be exempted on a pro rata basis according to its use.

(b) Items enumerated in (a) of this Section are not intended to be exclusive or exhaustive.

SUBCHAPTER 9. MANUFACTURED HOMES

710:10-9-1. Listing and assessment of manufactured homes for ad valorem taxes

(a) **Manufactured homes subject to ad valorem taxation.**

On the first day of January of each year, the county assessor of the county in which a manufactured home is located shall list, assess and tax such manufactured homes as required by the Ad Valorem Tax Code as it pertains to real and personal property. [See: 68 O.S. §§2811-2813] If a manufactured home is permanently affixed to the real estate, the original document of title may be surrendered to the Oklahoma Tax Commission for cancellation, in accordance with 47 O.S. ~~Supp. 2002~~, § 1110, provided there is no outstanding lien recorded on the title. Thereafter, these homes will be assessed as other real property improvements.

(b) **New manufactured homes sold and properly registered between December 1st and January 31st.** New manufactured homes which are sold and properly registered between December 1st and January 31st pursuant to this subsection shall be exempt from ad valorem taxes for the assessment period beginning January 1st. [See: 710:10-9-4 for proper listing and assessment of used manufactured homes held for resale.]

(c) **New manufactured homes.** The purchaser of a new manufactured home will not be subject to ad valorem taxes until January 1st of the following year, if the new manufactured home is properly registered, titled, and tagged, as required by law.

(d) **Information required.** Data elements required for listing a manufactured home with a **completed certified** OTC Form 936 (Manufactured Home Certificate 936) consist of:

- (1) Receipt or Release for taxes paid;
- (2) Type of manufactured home transaction;
- (3) Date to be moved;
- (4) Name of current manufactured home owner(s);
- (5) Seller's current mailing address;
- (6) Seller's new mailing address;
- (7) Name of manufactured home buyer;

- (8) Buyer's current mailing address;
- (9) Buyer's new mailing address;
- (10) Information describing where manufactured home is being **moved from**, such as:
 - (A) Landowner's or park's name,
 - (B) City,
 - (C) County, and
 - (D) Legal description, or
 - (E) Situs description;
- (11) Current physical address;
- (12) Real property account number or personal property account number;
- (13) Information describing where manufactured home is being **moved to**, such as:
 - (A) Landowner's or park's name,
 - (B) City,
 - (C) County, and
 - (D) Legal description, or
 - (E) Situs description;
- (14) New physical address;
- (15) School district;
- (16) Certificate of Title information, consisting of:
 - (A) Vehicle identification number (VIN);
 - (B) Year of manufacture;
 - (C) Size;
 - (D) Make;
 - (E) Title number;
 - (F) Body type;
 - (G) Model;
 - (H) Agent number;
 - (I) Factory delivered price;
 - (J) Total delivered price.
- (17) Fair cash value;
- (18) Total current estimated taxes due;
- (19) Taxes due from prior years, if unpaid;
- (20) Total of prior years' taxes due, if unpaid;
- (21) Signature of applicant and date;
- (22) Certification by assessor's office, evidenced by signature and date;
- (23) Certification by treasurer's office that all current and prior years' taxes have been paid, evidenced by signature, date, and a statement substantially as follows: **"THIS DOCUMENT SHALL NOT BE CERTIFIED BY THE TREASURER'S SIGNATURE UNLESS ALL SPACES HAVE BEEN COMPLETED WITH THE INFORMATION REQUESTED"**
- (24) Column for remarks;
- (25) Instructions as to who receives colored copies of the Manufactured Home Certificate 936:
 - (A) The white copy is retained by the assessor issuing the certificate;
 - (B) The yellow copy is forwarded to the county assessor of the county receiving the Manufactured Home Certificate 936;
 - (C) The pink copy is retained by the homeowner or applicant;
 - (D) The blue copy is retained by the county treasurer signing the certificate;

- (26) Legal certification of the Manufactured Home Certificate 936 requires the **signatures of the assessor and treasurer**;
- (27) Other information necessary for CAMA valuation;
- (28) Such other information as may be required by the Oklahoma Tax Commission.

710:10-9-3. Transfer of manufactured home with real property

When ownership of the manufactured home is transferred with the land upon which it is located with real property, the registration and certificate of title will be transferred in the new ownership as follows:

- (1) The new owner will obtain a "Manufactured Home Certificate 936" (OTC Form 936) from the county assessor's office; and
- (2) The new owner will present the "Manufactured Home Certificate 936" (OTC Form 936) to the Oklahoma Tax Commission or a motor license agent (tag agent) who will prepare the registration and certificate of title pursuant to the rules and regulations of the Motor Vehicle Division of the Oklahoma Tax Commission. A registration would not be issued unless the initial registration fee was never collected.
- (3) All taxes due, as required by this Subchapter and the statutes of Oklahoma, including the current year's ad valorem taxes, will be collected before issuance of the "Manufactured Home Certificate 936" (OTC Form 936). However, there will be no excise tax due on the change in registration and certificate of title.
- (4) If the manufactured home owner has surrendered the title in accordance with 47 O.S. ~~Supp.2002~~, § 1110, no title work or OTC Form 936 will be required, provided the home is not being moved.

710:10-9-7. Moving manufactured homes

- (a) **License plates.** Except as described in subsection (b), a current manufactured home license plate, in the form of a permanent metal or temporary dealer plate, is to be displayed at all times when upon a public roadway. [See: 47 O.S. ~~Supp.2002~~, § 1113(E)] An "M" tag is issued to manufactured home dealers and can only be used for the purchase and delivery of manufactured homes for the dealer's place of business. A "K" tag is an "in-transit" license plate issued to transporters and can be used only for transporting a new manufactured home or in the case of manufactured homes coming into Oklahoma from another state. Neither an "M" tag, nor a "K" tag may be used to transport a repossessed manufactured home, which requires use of a repossession affidavit.
- (b) **Permit to transport or move; exceptions to payment of ad valorem tax paid in advance.** The Department of Public Safety shall **not** issue a permit to any person to transport or move a manufactured home without evidence of a current calendar year registration and decal on that manufactured home, except:
 - (1) To the holder of a dealer's license plate ("M" tag) issued by the Oklahoma Tax Commission;

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(2) To the holder of a transporter's in-transit license plate ("K" tag) issued by the Oklahoma Tax Commission;

(3) In the case of a manufactured home which is in the state of Oklahoma for less than sixty (60) days and the tax receipts of the state in which residency is claimed are provided; or,

(4) When a properly-completed repossession affidavit, issued pursuant to the terms of Sections 1110 and 1126 of Title 47, has been obtained for use in moving a repossessed manufactured home to a secure location. [See: 47 O.S. ~~Supp.2002~~, § 1113(E)]

(c) **Ad valorem taxes.** Issuance of a permit to transport a manufactured home does not relieve the holder of a perfected security interest of the ultimate responsibility for the payment of ad valorem taxes in the county of origin. The repossession lender must obtain a Repossession Affidavit (OTC Form 737) before hiring a manufactured home transporter and has thirty (30) days from the date shown on the repossession affidavit to obtain an OTC Form 936 and pay any fees or taxes which may be due.

(d) **Required documentation.** In all instances other than those described in (1) through (4) of subsection (b), the Department of Public Safety will require that the following documentation be presented:

- (1) A current registration and current year decal; or,
- (2) A current OTC Form 936 may also be used, providing the current year decal is affixed. [See: 68 O.S.1997, § 2813]

710:10-9-14. Registration of new or used non-registered manufactured homes; payment of taxes; failure to show proof of registration

(a) **Who shall register.** The following shall apply for registration and obtaining an original certificate of title with the Oklahoma Tax Commission or a motor license agent (tag agent):

(1) **New manufactured home.** A person that purchases a new manufactured home which acquires taxable situs in this state;

(2) **Used manufactured home.** A person that purchases a used manufactured home which acquires taxable situs in this state;

(3) **Manufactured home which obtains taxable situs.** A nonresident owner of a manufactured home which obtains taxable situs by the presence of the manufactured home in this state in excess of sixty (60) days.

(b) **Registration of new manufactured homes.** Proper registration of a manufactured home is described as follows:

(1) A person lawfully filing an application for registration and original certificate of title for a manufactured home shall be required to make payment of the following:

- (A) License fee; and,
- (B) Excise tax, if applicable. Used manufactured homes entering Oklahoma and owned over sixty (60) days are exempt from payment of the excise tax.

(2) The Oklahoma Tax Commission or motor license agent (tag agent) shall, upon the proper application and

payment of required fees, issue to the owner of the manufactured home the following:

- (A) A certificate of original title;
- (B) A manufactured home registration receipt;
- (C) A manufactured home registration decal;
- (D) A manufactured home license plate; and
- (E) An excise tax receipt, if applicable.

(c) **Payment of excise tax in lieu of ad valorem tax.** The owner of a manufactured home that pays the fees set out in (b)(1) of this Section as evidenced by the presentation of the documents set out in (b)(2) of this Section will not be required to pay ad valorem taxes for the year of registration of the manufactured home. The manufactured home shall be valued and assessed for ad valorem taxes as provided by the Ad Valorem Tax Code on January 1st of the year following registration. [See: 68 O.S.1997, § 2813]

(d) **Failure to register and pay excise tax as required by the Motor Vehicle Code.** The owner of a manufactured home which fails to register a manufactured home and pay the fees and excise tax required by the Motor Vehicle Code shall have his manufactured home listed and assessed as omitted property and entered upon the assessment and tax rolls for prior years not to exceed three (3) years. The subsequent registration of a manufactured home by the owner, as required by the Motor Vehicle Code, after the county assessor lists and assesses the manufactured home as omitted property, as required by the Ad Valorem Tax Code, does not entitle the owner to a one (1) year refund on the ad valorem taxes. **The duties mandated by the Motor Vehicle Code and the Ad Valorem Tax Code are mandatory and mutually exclusive.** That is, they operate independently of each other, which ~~requires~~require that both the proper late registration fees be paid and also the ad valorem taxes be paid.

(e) **Proof of registration; loss of registration and title; refusal to furnish proof of registration.**

(1) **Proof of registration.** The county assessor of the county where a manufactured home is located shall require proof of the following to assure proper payment of ad valorem taxes and fees:

- (A) Proof of proper registration;
- (B) Proof of payment of excise taxes, if applicable; and,
- (C) Proof of payment of ad valorem taxes (OTC Form 936).

(2) **Loss of registration and certificate of title.** The procedure outlined in this paragraph will be utilized when an owner of a manufactured home seeks to render it as personal property or the county assessor discovers it while listing and assessing property and the owner is unable to locate or find the registration and certificate of title.

(A) The county assessor is required to list and assess all taxable property located in the county on an annual basis. The lack of registration papers does not relieve the assessor of that duty.

(B) The county assessor shall proceed to place the manufactured home on the assessment and tax rolls as omitted property unless:

(i) The county assessor ascertains the manufactured home is on the assessment and tax rolls of the county;

(ii) The owner of a manufactured home presents the county assessor a Manufactured Home Certificate 936 (OTC Form 936) - RECEIPT OF TAXES PAID - from another county showing that no taxes are due for current or prior years. Thereafter, the county assessor will value the manufactured home as of January 1st of the subsequent year if its taxable situs is still within the county.

(iii) The owner of a manufactured home presents the county assessor a Manufactured Home Certificate 936 (OTC Form 936) - RELEASE OF TAXES PAID - from another county for the current year. Thereafter, the county assessor will value the manufactured home as of January 1st of the subsequent year if its taxable situs is still within the county.

(C) The county assessor shall refer those owners of manufactured homes who have failed to present their registrations and certificates of title to either the local motor vehicle agent (tag agent) or the Oklahoma Tax Commission upon a determination of their taxable situs and assessment pursuant to (B) of this paragraph. If the title has been lost, the owner must apply for a duplicate title. A new registration will not be issued by the local motor vehicle agent (tag agent).

(3) **Failure to present proof of registration.** Any person owning a manufactured home and failing to present satisfactory proof of registration of such manufactured home or who fails to make payment of ad valorem taxes upon demand by the county assessor of the county in which the manufactured home is located, upon conviction, shall be guilty of a misdemeanor.

710:10-9-20. Repossession of manufactured home where ad valorem taxes due

(a) Repossession of a manufactured home listed, valued and assessed as real estate.

(1) The reposessor of a manufactured home will have thirty (30) days from the date of the repossession affidavit to comply with the terms of this subsection. [See: 68 O.S. 4997, §2813]

(2) The requirements of a reposessor of a manufactured home listed, valued and assessed as real estate are as follows:

- (A) The reposessor must be a holder of a perfected security interest on the manufactured home;
- (B) The reposessor or his agent must be lawfully repossessing a manufactured home;
- (C) The manufactured home must be valued and assessed as real estate on the assessment rolls.

(3) Procedures for issuance of an OTC Form 936 as a **receipt** for taxes paid are as follows:

(A) The county assessor will determine the assessment of the manufactured home apart from the real property and the other improvements thereon;

(B) The county assessor will determine the amount of taxes due upon the manufactured home apart from the real property and the other improvements thereon;

(C) The county assessor will determine the valuation and assessment of the manufactured home for any prior years omitted and calculate the taxes due on the manufactured home for those prior years;

(D) The county assessor will complete the required Manufactured Home Certificate 936 (OTC Form 936) and forward to the county treasurer;

(E) The county treasurer will add any delinquent taxes due on the manufactured home as described in Section 710:10-9-23;

(F) The county treasurer, upon the collection of all taxes due on the manufactured home, will sign the Manufactured Home Certificate 936 (OTC Form 936);

(G) The county assessor will assure that the applicant's signature (or written authorization to sign) is affixed to the Manufactured Home Certificate 936 (OTC Form 936);

(H) Only the completed Manufactured Home Certificate 936 (OTC Form 936) shall constitute the **receipt** for taxes paid.

(b) Repossession of a manufactured home valued and assessed as personal property.

(1) The requirements for obtaining an OTC Form 936 as a **receipt** for taxes paid on a repossessed manufactured home valued and assessed as personal property are set out in paragraphs (A) through (C) of this subsection. The reposessor of a manufactured home will have thirty (30) days from the date of the repossession affidavit to comply with the terms of this subsection.

(A) The reposessor must be a holder of a perfected security interest on the manufactured home;

(B) The reposessor or the agent must be lawfully repossessing a manufactured home; or

(C) The manufactured home is valued and assessed as personal property and currently on the personal property assessment rolls.

(2) Procedures for issuance of an OTC Form 936 as a **receipt** for taxes paid are as follows:

(A) The county assessor will determine current valuation and assessment of the manufactured home;

(B) The county assessor will determine the taxes due for the current year;

(C) The county assessor will determine the valuation and assessment of the manufactured home for any prior years omitted and calculate the taxes due for those prior years;

(D) The county assessor will complete the required Manufactured Home Certificate 936 (OTC Form 936) and forward to the county treasurer;

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(E) The county treasurer will add any delinquent taxes due on the manufactured home as described in 710:10-9-23;

(F) The county treasurer, upon the collection of all taxes due on the manufactured home, will sign the Manufactured Home Certificate 936 (OTC Form 936);

(G) The county assessor will assure that the applicant's signature (or written authorization to sign) is affixed to the Manufactured Home Certificate 936 (OTC Form 936);

(H) Only the completed Manufactured Home Certificate 936 (OTC Form 936) shall constitute the receipt for taxes paid.

710:10-9-26. Unclaimed warrants on tax refunds

(a) The funds held by the county treasurer as a refund of taxes on a manufactured home will be governed by the Uniform Unclaimed Property Act. [See: 60 O.S. §651 et seq.]

(b) A tax refund unclaimed for three (3) years comes within the Unclaimed Property Act which states the following: *Intangible property held for the owner by a court, state or other government, governmental subdivision or agency, public corporation, or public authority which remains unclaimed by the owner for more than one (1) year after becoming payable or distributable is presumed abandoned.* [60 O.S. ~~4994~~, §657]

SUBCHAPTER 10. VISUAL INSPECTION PLAN

PART 1. GENERAL PROVISIONS

710:10-10-1. Purpose

(a) Pursuant to 68 O.S. ~~4994~~, §2820(C), each county assessor shall develop a detailed visual inspection plan and conduct a continuing comprehensive program within their respective counties, and shall leave in place an on-going system which will effectively maintain property valuations in future years.

(b) Each county assessor shall submit a visual inspection plan, which conforms to the requirements described in 68 O.S. ~~4994~~, §2820(C) and the provisions of this Subchapter, to the Ad Valorem Division of the Oklahoma Tax Commission by the first working day in October preceding the January 1 beginning of a new four-year cycle. The county shall keep a copy of the approved visual inspection plan and any amendment(s) on file for the current four year-cycle and shall retain the plan for five years after the last year of this cycle.

(c) Following Tax Commission approval of the county visual inspection plan, the county assessor shall timely submit a copy of the approved visual inspection plan to each school superintendent within the county.

PART 3. PLANNING AND ORGANIZATION

710:10-10-10. Administrative

(a) Submission of a list of detailed administrative objectives shall be required as an essential component of the visual inspection plan.

(b) Each county assessor in the state shall annually prepare an assessment roll, which shall be generated by the counties in a format prescribed by the Oklahoma Tax Commission pursuant to title 68 O.S. ~~4994~~, §2842.

(c) The Oklahoma Tax Commission shall provide a standard visual inspection template which may be utilized by all counties.

710:10-10-12. Mapping

(a) The Mapping Program shall include a comprehensive, continuous cadastral mapping schedule that shall be based upon use of State standards (68 O.S. ~~4994~~, §2821) summarized in (1) through (12) of this subsection:

(1) Boundaries of all parcels, whether the parcels are taxable or nontaxable.

(2) Parcel dimensions and/or acreage.

(3) Lot and block number and, if scale permits, names and boundaries of subdivisions and plats.

(4) Boundaries of political subdivisions, i.e., county, city, town.

(5) Boundaries of geographic subdivisions, i.e., section, township and range, government lot boundaries and numbers, land districts, land lots and numbers.

(6) Location and names of roads, streets, highways, alleys, railroads, rivers, lakes and other such features.

(7) ~~Map parcel~~ Parcel identification number (MPIN).

(8) Map reference information, including map ~~date~~ number, title block, revision block, legend, ~~map key and~~ north arrow, and keys to adjoining maps.

(9) Map scale.

(10) Data concerning soil type and soil use.

(11) On-going collection, maintenance and inventory for the mapping program.

(12) Use of the most recent aerial photographs furnished by the State of Oklahoma or obtained from other sources, provided that they comply with established mapping standards.

(b) The above information shall be used as a minimum with other supplemental information that may also be included on cadastral maps. If additional information is to be added to maps, the additional time necessary to add these features should be included in the required comprehensive mapping schedule.

PART 5. DIRECTION AND GUIDANCE

710:10-10-27. Agricultural property

(a) All agricultural properties shall be inspected and appraised from schedules and guidelines as set out in 68 O.S. ~~Supp. 1996~~, §2817(C) and shall be listed in the visual inspection plan. A sketch of the dwelling and the outbuildings shall be drawn, showing all structures and buildings in proper size and location including dimensions and suitable symbols

used to identify each building. All farm and urban dwellings with other improvements shall be described and valued in the same manner. The object being to establish a fair, equitable, and realistic value by comparison with other like properties, and to maintain the same level of market values placed on all other classes of property within the county.

(b) The use value of agricultural land shall be based on the income capitalization approach using cash rent. The rental income shall be calculated using the direct capitalization method based upon factors including; soil type, soil productivity and use categories, using the same methodology that Center for Local government Technology (CLGT) prescribes.

(c) Agricultural land shall be valued according to the specifications set forth by 68 O.S. ~~1991~~, §2817(C). The agricultural "per point system" mandated for use by the State shall be adjusted annually as determined necessary and applied to all agricultural parcels within the county. Each soil type shall be identified for every agricultural parcel using the latest published soil survey of the county from the U.S. ~~Soil~~ Natural Resources Conservation Service (~~SCS~~) (NRCS). The acreage of each soil type shall be calculated and its usage determined both by physical inspection and by using the most recent aerial photographs available. A detailed report indicating each soil type, its usage, number of acres of each soil type, value per acre of each soil type and total calculated value of each soil type and total value of the land shall be provided on each defined agricultural parcel within the county.

(d) A methodology was adopted by the State Board of Equalization that gives 75 percent weight to the rental value of agricultural land and 25 percent weight to the sales value of land.

710:10-10-28. Notification of valuation changes; hearings

(a) Information and procedures related to valuation changes shall be included in the visual inspection plan. Notices shall then be mailed to all property owners having an increase in valuation. The notice shall include the fair cash value, taxable value, assessed value and the assessment percentage for the current and previous year. [See: 68 O.S. ~~Supp. 1997~~, § 2876]

(b) The taxpayer shall have ~~twenty~~ (20)thirty (30) calendar days from the date the notice was mailed to file a written complaint with the county assessor. A taxpayer may even file a complaint if the valuation of property has not increased or has decreased from the previous year if the complaint is filed on or before the first Monday in May, as required by 68 O.S. ~~1991~~, §2876(E).

(c) Staff members in each county shall conduct informal hearings to resolve any errors in appraisal or assessment. ~~Taxpayers still desiring to appeal an assessed value will be given the opportunity to be heard by the~~ Informal decisions by the assessor may be appealed to the County Board of Equalization within ten (10) working days of the date the decision is mailed.

PART 7. CONTROLS AND EVALUATION

710:10-10-44. Computer-assisted mass appraisal

(a) Data related to computer-assisted mass appraisal shall be listed and described in the visual inspection plan. The counties shall use computer-assisted mass appraisal (C.A.M.A.) to value all properties and the depreciation. The C.A.M.A. system provides the county with C.A.M.A. support and provides cost, market, and income valuation support. The C.A.M.A. system is capable of valuing residential, commercial, industrial, agricultural and special purpose real estate. The visual inspection plan shall have quality assurance, performance analysis and data accuracy control for the data entry.

(b) The records control section shall check all property record cards for missing data and similar errors. All incomplete or incorrect record cards shall be returned to the field division for correction. Random reinspection of all properties shall be conducted by personnel to check on the accuracy of the data collection.

(c) The operation of the data system shall be the responsibility of the in-house personnel who shall not only receive, store, and dispense the data, but shall also review it for accuracy and be responsible for monitoring all data used in the program. A ~~tape~~ back-up of C.A.M.A. shall be done daily.

(d) The counties shall have the capability of valuing all taxable property annually.

(e) There shall be no modifications in the state provided CAMA ~~system(s)~~ system(s) ~~or software programs~~ without approval from the Ad Valorem Division.

SUBCHAPTER 11. REIMBURSEMENTS AND ASSISTANCE TO COUNTIES

710:10-11-12. Review and monitoring of funds

The Commission retains discretion to review and monitor the counties that have received funds from the Commission to ~~insure~~ ensure that the funds are being accounted for and spent in compliance with all applicable statutes and these rules. The Commission retains discretion to require reimbursements from the counties or to make other appropriate adjustments to future disbursements to the counties, if the Commission determines that such funds have not been accounted for or spent in compliance with the applicable statutes or rules, or in compliance with the plan that had been submitted to the Commission.

SUBCHAPTER 13. VALUATION EXCLUSION FOR DESULPHURIZATION EQUIPMENT

710:10-13-3. Strict compliance

All persons claiming, utilizing, or administering the valuation method detailed in 68 O.S. ~~Supp. 2003~~, § 2817.3 shall strictly comply with the law and this subchapter, under penalty of law, to the end that the objectives of the law be accomplished.

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710:10-13-8. Exclusion of valuation for qualified assets

Qualified assets, as defined in 68 O.S. ~~Supp. 2003~~, § 2817.3, shall not be included in the valuation used in determining the fair market value of oil refineries if such property would qualify as exempt property pursuant to 68 O.S. ~~Supp. 2003~~, § 2902, whether or not an application for such exemption is made by an otherwise qualifying manufacturing concern owning the property described by 68 O.S. ~~Supp. 2003~~, § 2817.3. The County Assessor shall indicate on the permanent property record the amount of any valuation exclusion and any other information that the Assessor deems necessary.

[OAR Docket #17-518; filed 6-26-17]

TITLE 710. OKLAHOMA TAX COMMISSION CHAPTER 20. ALCOHOL, MIXED BEVERAGES AND LOW-POINT BEER

[OAR Docket #17-519]

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Subchapter 5. Mixed Beverages
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These sections have been amended to clarify policy, improve readability, remove obsolete language, update statutory citation, and ensure accurate internal cross-references.

CONTACT PERSON:

Lisa R. Haws, Tax Policy Analyst, Tax Policy and Research Division, Oklahoma Tax Commission, 2501 North Lincoln Boulevard, Oklahoma City, Ok 73194, 405-521-3133.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 5. MIXED BEVERAGES

710:20-5-2. Designation of agent of the Oklahoma Tax Commission

~~(a)~~ The Director of the Taxpayer Assistance Division is hereby designated as the agent, servant and employee of the Oklahoma Tax Commission for the following purposes:

- (1) Issuance of mixed beverage tax permits;
- (2) Cancellation of mixed beverage tax permits upon delinquency in reporting or paying the gross receipts tax or sales tax;
- (3) Temporary suspension of mixed beverage tax permits upon revocation or suspension of the mixed beverage, caterer, hotel beverage, public event, or special events licenses issued by the ABLE Commission;
- (4) Establishing amounts of required bonds; and,
- (5) Seizure of containers or cases of alcoholic beverages declared to be contraband.

~~(b) The Director shall report to the Commission, at least on a quarterly basis, all actions taken pursuant to the delegation in~~

~~(a) of this Section. [See: 37 O.S. §§577-578, 582]~~

710:20-5-8. Liability and audit of mixed beverage tax permit holder for gross receipts tax upon sale, preparation or service of all alcoholic beverages purchased or received

(a) **Liability in general.** Every mixed beverage tax permit holder or any other person transacting business subject to the gross receipts tax shall be liable for the tax upon the gross receipts from such beverages (on the basis of the number of drinks available for sale, preparation, or service from the total alcoholic beverages received). Each permit holder or other person shall be liable for the gross receipts tax upon any and all disposition by his agents or employees or any other persons on the premises of the mixed beverage tax permit holders or other person, except upon seizure or other disposition of the alcoholic beverage by employees of the ABLE Commission, Tax Commission, or other law enforcement agencies in the execution of their official duties. [See: 37 O.S. §576]

(b) **Audit procedures.**

- (1) Upon audit of the books and records of a mixed beverage establishment for Gross Receipts Tax, it shall be assumed that spirits have been dispensed at the average rate of one and one-half fluid ounce, except for drinks with recipes calling for more than one type of spirit or for double portions of spirits, or upon reasonable evidence of a different rate of use.
- (2) Wines will be presumed to have been dispensed at the average rate of six ounces (6 oz.) per serving. The Tax Commission may use an average rate greater or less than those set out in this Rule upon reasonable evidence of a different rate of use.
- (3) An audit may be conducted to determine if the correct amount of tax payable has been collected. The taxpayer will be deemed in compliance if the audit reveals that the amount of tax collected is:

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

[OAR Docket #17-520]

(A) For spirits, within Eighty-four percent to One Hundred Sixteen percent (84-116%) of the amount of tax payable.

(B) For wine, within Ninety percent to One Hundred Ten percent (90-110%) of the amount of tax payable.

(C) For beer sold at draft and not in original packages, within Eighty-six percent to One Hundred Fourteen percent (86-114%) of the amount of tax payable.

(D) For beer in original packages, within Ninety-five percent to One Hundred Five percent (95-105%) of the amount of tax payable. [See: 37 O.S.Supp.2001, § 579]

(4) In addition, a deduction may be allowed from the gross receipts tax liability determined by an audit or other investigation of the books and records of a mixed beverage tax permit holder, for alcoholic beverages that are:

(A) consumed in food as verified by the audit;

(B) destroyed due to breakage for which the permit holder has retained the container; or that portion thereof that has the unbroken seal; or for partial bottles destroyed by breakage for which the permit holder has completed a breakage affidavit listing the date of the occurrence, the brand and type of liquor, the size bottle, the approximate amount left in the bottle by 1/10ths, and the cause of the breakage. The affidavit shall be signed by the permit holder and two witnesses;

(C) stolen or destroyed by a disaster such as a fire or flood, provided that reasonable evidence is provided to support a claim. Reasonable evidence might include a copy of a police or sheriff's crime report; or an insurance claim detailing the inventory destroyed by brand, size, and type of liquor;

(D) not consumed, and exist or existed, at the close of a taxable period in question, provided that the amount and nature of the unconsumed inventory has been verified by agents of the Tax Commission, ABLE Commission, or verified by invoice to a mixed beverage permittee or wholesaler approved to purchase the inventory by the ABLE Commission. Partially filled bottles which are not included in a transferred inventory should be verified by a Tax Commission or ABLE Commission agent or agents.

(5) If an establishment was selling alcoholic beverages prior to the starting date of the audit period being used by the Commission in its audit, the establishment shall be required to furnish the Commission with a beginning inventory of all liquor, wine, and strong beer on hand if an ending inventory is offered for audit purposes. When the permittee is unable or unwilling to furnish such an inventory, then no beginning or ending inventories shall be considered for the audit period used and the audit will be conducted solely on the taxpayer's purchases made during the audit period.

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GIST/ANALYSIS:

This section has been amended to clarify existing policy.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 1. GENERAL PROVISIONS

710:22-1-15. Military personnel

All active duty military personnel U.S. Armed Forces service members or their spouses who are residents of Oklahoma, or stationed in Oklahoma, are eligible for an Armed Forces boat or outboard motor registration rate, as set forth by statute. A properly completed U.S. Armed Forces Affidavit (OTC Form 779) is required.

[OAR Docket #17-520; filed 6-26-17]

Permanent Final Adoptions

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

[OAR Docket #17-521]

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710:25-1-4 [AMENDED]
710:25-1-10 [AMENDED]

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GIST/ANALYSIS:

Section 710:25-1-4 has been amended to implement the provisions of Section 1 of HB 2932 (2016) which authorized the OTC to refuse to issue a coin-op decal to any person delinquent in payment of decal fees; provided, that a notice of intent to refuse the issuance of the decal was furnished.

Section 710:25-1-10 has been amended consistent with the provision of Sections 2 and 3 of HB 2932 (2016) which reduce the delinquency penalty for certain coin-op devices and place restrictions and notice requirements relating to the seizure by the OTC of devices for which the applicable fee has not been paid.

CONTACT PERSON:

Lisa R. Haws, Tax Policy Analyst, Tax Policy and Research Division, Oklahoma Tax Commission, 2501 North Lincoln Boulevard, Oklahoma City, Ok 73194, 405-521-3133.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

710:25-1-4. Who must purchase decals

For purposes of this Chapter, "person" means any individual, partnership, limited liability company, association or corporation. Every person who owns and has available to the public for operation or who permits to be operated in his place of business a coin-operated device shall purchase a decal for each device and shall at the same time pay the Commission the associated annual fee. The Commission may refuse to issue a decal to any person delinquent in payment of decal fees; provided, that notice of its intent to refuse the issuance

of the decal as required in 710:25-1-10 was furnished. [See: 68 O.S. §§1501, 1503]

710:25-1-10. Penalties for operations without decal; forfeiture

(a) Any owner who places a coin-operated vending device in operation and any person who permits a device to be ~~placed~~located in his place of business without a decal affixed shall be liable for the fee on the device at the full annual rate and shall be liable ~~to a penalty of One Hundred Dollars (\$100.00)~~ for a penalty dependent upon the type of device as follows:

(1) For any coin-operated music device, coin-operated amusement device, or coin-operated vending device requiring a coin or thing of value of twenty-five cents (\$0.25) or more, a One Hundred Dollar (\$100.00) penalty.

(2) For any other coin-operated device, a Ten Dollar (\$10.00) penalty.

(b) The Tax Commission shall notify any owner or person of the assessment of penalty and provide the owner or person thirty (30) days to remit the penalty. The Commission shall not refuse to issue a decal under 710:25-1-4 until after the expiration of the thirty (30) days provided in this subsection.

(c) A device left without the decal affixed, including all cash in the receptacle, may be sealed until released by the Commission or seized by an authorized agent of the Commission, or any sheriff, constable or other peace officer of the State and upon seizure, the machine, together with the cash, if any contained in the receptacle of such device, will be delivered to the Commission. No device shall be seized less than fifteen (15) days after the sealing of the device and notice being placed on the device informing the owner that the device is subject to seizure if the applicable fees are not paid and decal affixed. [See: 68 O.S. §§1506, 1507]

[OAR Docket #17-521; filed 6-26-17]

TITLE 710. OKLAHOMA TAX COMMISSION CHAPTER 45. GROSS PRODUCTION

[OAR Docket #17-522]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 3. Payment; Remittance; Refunds
710:45-3-11 [AMENDED]
Subchapter 9. Exemptions and Exclusions
Part 1. General Provisions
710:45-9-2 [AMENDED]
Part 5. Horizontally Drilled Production Wells
710:45-9-24 [AMENDED]
Part 17. Economically At-Risk Leases
710:45-9-80 [AMENDED]
710:45-9-81 [AMENDED]
710:45-9-82 [AMENDED]
710:45-9-83 [AMENDED]
710:45-9-84 [AMENDED]
Subchapter 11. Transporters
710:45-11-2 [AMENDED]

710:45-11-8 [AMENDED]
 Subchapter 13. Refiners and Processors
 710:45-13-1 [AMENDED]
 Subchapter 15. Reclaimers and Reclaiming Operations
 710:45-15-2 [AMENDED]
 710:45-15-6 [AMENDED]

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68 O.S. §§ 203; 1001(M); 1001.3a; and 1013; Oklahoma Tax Commission

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Sections 710:45-9-81, 710:45-9-82, 710:45-9-83 and 710:45-9-84 have been amended to implement the provisions of Senate Bill 1577 (2016) which amends the definition of "economically at-risk oil or gas lease" and limits the amount of authorized refunds for each calendar year (2015 through 2020) to \$12,500,000.00. [68:1001.3a]

Sections 710:45-11-8 and 710:45-15-6 have been amended to implement the provisions of House Bill 2774 (2016) by removing the mandate that railroad companies, pipeline and transportation companies are required to report to the Tax Commission all information related to the transportation of crude oil or gas subject to gross production tax; however, if requested by the Tax Commission, they must provide this information. [68:1005]

Sections 710:45-3-11, 710:45-9-2, 710:45-9-24, 710:45-9-80, 710:45-11-2, 710:45-13-1, and 710:45-15-2 have been amended along with other sections that may be amended to clarify policy, improve readability, correct scrivener's errors, remove obsolete language, update statutory citation, and ensure accurate internal cross-references.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 3. PAYMENT; REMITTANCE; REFUNDS

710:45-3-11. Minimum requirements for making claims for rebates, refunds, or credits

(a) **General provisions.** Adjustments to Gross Production Taxes previously paid may be made by filing a claim for refund or by claiming credit on a subsequent return. In either case, the claim must include the information and conform to the procedures described in this Section. All claims for refund or credits taken remain subject to audit.

(b) **Rebates.** Claims for rebates, authorized by 68 O.S. Sections 1001(E) through (J), and from Section ~~1001.3~~1001.3a, must be filed following the specific procedures applicable to each statutory incentive and be supported by the documentation required by statute and the applicable Tax Commission rules set out in Subchapter 9, Parts 5 through 19 of this Chapter.

- (1) For claims related to horizontally drilled wells, see Part 5 of Subchapter 9.
- (2) For claims related to incremental production from production enhancement projects, see Part 9 of Subchapter 9.
- (3) For claims related to reestablished production from an inactive well, see Part 11 of Subchapter 9.
- (4) For claims related to deep wells, see Part 13 of Subchapter 9.
- (5) For claims related to new discovery wells, see Part 15 of Subchapter 9.
- (6) For claims related to economically at-risk oil leases, see Part 17 of Subchapter 9.
- (7) For claims related to three-dimensional seismic shoots, see Part 19 of Subchapter 9.

(c) **Frac oil exclusion.** Procedures to be followed in computing, documenting, and claiming the exclusion for frac oil used in qualified well completions may be found in Part 3 of Subchapter 9 of this Chapter.

(d) **Claims for refund.** Claims for refunds of Gross Production Tax must include the information and conform to the procedures described in this subsection.

(1) **Claims filed within twelve months of production.** Claims for refund of gross production tax which are filed within the twelve-month period immediately following the month of production to which the claim pertains, must include:

- (A) A letter stating the reason for the request, amount requested, by Gross Production Tax and Petroleum Excise Tax, the period of time covered, and the Oklahoma Tax Commission's assigned production unit numbers; and,
- (B) Amended reports (Type 3) for each month, county, and product code. The amended report must note the "As Paid" volumes, values, and taxes; followed by entries reflecting "Should Have Paid" volumes, values, and taxes; and page totals must accurately support the amount of the refund request.

(2) **Claims not filed within twelve months of production.** Claims for refund of gross production tax **not** postmarked within the twelve-month period immediately

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following the month of production to which the claim pertains, must include:

- (A) A letter stating the reason for the request, amount requested, by Gross Production Tax and Petroleum Excise Tax, the period of time covered, and the Oklahoma Tax Commission's assigned production unit numbers;
 - (B) Original source documents, provided to the operator, which may include, but not be limited to: run, settlement, purchase, sales, or metered volume statements, frac affidavits, frac invoices, check stubs, worksheets, pricing bulletins, and any information necessary to verify an exemption, such as BLM lease numbers. Original and all correcting statements pursuant to the claim for refund must be submitted;
 - (C) Amended reports (Type 3) for each month, county, and product code, reversing the "**As Paid**" volumes, values, and taxes, then entering the "**Should Have Paid**" volumes, values, and taxes. Page totals must reflect the amount of the refund request; and,
 - (D) All supporting documentation required by statute or Commission rules.
- (e) **Claims for credit.** For claims pertaining to production months July 2002 and later, credits may be applied to the current month's tax liability, provided that:
- (1) Amended reports (Type 3) for each month, county and product code are filed. The amended reports must note the "**As Paid**" volumes, values, and taxes; followed by entries reflecting "**Should Have Paid**" volumes, values and taxes; and page totals must accurately support the amount of the credit requested. The amended reports must be submitted along with the current production month's Gross Production Tax Report.
 - (2) The prior month's adjustments do not exceed the current production month's liability;
 - (3) Magnetic media submissions conform to established magnetic media guidelines; and,
 - (4) Supporting documents are retained and available for submission upon request of the Oklahoma Tax Commission.
- (f) **Exceptions and limitations.** Neither the refund procedures described subsection (d), nor the expedited filing procedures for claiming a credit described in subsection (e) may be used for claiming an abatement or frac oil exclusion, nor for any claims for refund submitted by a non-remitting party.

SUBCHAPTER 9. EXEMPTIONS AND EXCLUSIONS

PART 1. GENERAL PROVISIONS

710:45-9-2. Election of exemptions

(a) **Election of exemptions generally.** Persons entitled to exemption based upon production from qualifying oil, gas, or

oil and gas wells shall be entitled only to the exemption granted pursuant to:

- (1) Incremental production from enhanced recovery projects, as authorized by 68 O.S.~~Supp-2000~~, § 1001(D) and Part 7 of this Subchapter; **or**,
 - (2) Horizontally drilled production wells, as authorized by 68 O.S.~~Supp-2000~~, § 1001(E) and Part 5 of this Subchapter; **or**,
 - (3) Reestablished production from inactive wells, as authorized by 68 O.S.~~Supp-2000~~, § 1001(F) and Part 11 of this Subchapter; **or**,
 - (4) Production enhancement projects, as authorized by 68 O.S.~~Supp-2000~~, § 1001(G) and Part 9 of this Subchapter; **or**,
 - (5) Production from deep wells, as authorized by 68 O.S.~~Supp-2000~~, § 1001(H) and Part 13 of this Subchapter; **or**,
 - (6) Production from new discovery wells, as authorized by 68 O.S.~~Supp-2000~~, § 1001(I) and Part 15 of this Subchapter.
 - (7) Production from wells located within the boundaries of three-dimensional seismic shoot, as authorized by 68 O.S. § 1001(J) and Part 19 of this Subchapter.
- (b) **Special provision.** Expiration of an exemption available for production from a qualifying well pursuant to one of Subsections (a)(2) through ~~(a)(6)~~(a)(7) of this Section does not prohibit any person from qualifying for the exemption provided for in Subsection (a)(1).

PART 5. HORIZONTALLY DRILLED PRODUCTION WELLS

710:45-9-24. Time periods for exemption from gross production tax levied on horizontally drilled producing wells

- (a) **General provisions.** The exemption for horizontally drilled wells qualified pursuant to this Part shall be determined from the project beginning date until project payback is achieved, and are limited in duration to the time periods set out in this Section.
- (b) **Twenty-four (24) month exemptions.** For production described in this subsection, duration of the exemption may not exceed a period of twenty-four (24) months commencing with the date of initial production from the horizontally drilled well.
 - (1) **Production prior to July 1, 1994.** Any incremental production which results from a horizontally drilled well producing prior to July 1, 1994.
 - (2) **Production prior to July 1, 2002, which commenced after July 1, 1995.** Any horizontally drilled well producing prior to July 1, 2002, which production commenced after July 1, 1995.
- (c) **Forty-eight (48) month exemption.** For a horizontally drilled well producing prior to July 1, 2015, which production commenced after July 1, 2002, the duration of the exemption may not exceed a period of forty-eight (48) months commencing with the date of initial production from the horizontally drilled well. [See: 68 O.S.~~Supp-2002~~, § 1001(E)(1)]

PART 17. ECONOMICALLY AT-RISK LEASES

710:45-9-80. Scope of Part 17

Exemption from the levy of Gross Production Tax on economically at risk leases set out in 68 O.S. ~~Supp. 1999, Section 1001.3~~ 1001.3a shall be determined according to the provisions of this Part. [See: 68 O.S. ~~Supp. 1999, Section 1001.3(F)~~ 1001.3a]

710:45-9-81. Definitions

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

"Economically at risk oil or gas lease" means prior to calendar year 2015, any lease operated at a net loss or a net profit which is less than the total gross production tax remitted for such lease during the previous tax reporting year. Beginning with calendar year 2015, and each year thereafter, economically at-risk lease means any oil or gas lease with one or more producing wells with an average production volume per well of ten (10) barrels of oil or sixty (60) MCF of natural gas per day or less. The "average production volume" shall be determined based upon the Oklahoma Corporation Commission well classification, wherein only the primary product shall be used to determine the "average production volume." For example, only production from wells classified as oil wells shall be considered to determine average daily production of oil and no production of natural gas from these oil wells shall be used to determine if the lease meets the definition. The lease in its entirety must be operated at a net loss or at a net profit which is less than the total gross production tax remitted for all products for such lease during the qualifying calendar year.

"Lease" means a spaced unit, a separately metered formation within the spaced unit, or each tract within a Corporation Commission approved unitization, or a lease which, for tax reporting purposes, has been assigned a production unit number. A lease may contain one or more wells which have identical interest and payout.

710:45-9-82. Exemption period

The exemption for economically at risk oil and gas leases is limited to calendar years 2005 through 2020, with each year being claimed separately. No claims for rebates regarding the economically at risk leases shall be permitted after December 31, 2015 for production periods occurring between calendar years 2005 through 2013. No claims for rebates regarding the economically at risk leases for production periods occurring between calendar years 2014 through ~~2020~~ 2015 shall be claimed or paid more than eighteen (18) months after the date that the refund is first available. Claims for rebates regarding economically at risk leases for production periods ending on or before December 31, 2015 shall not be claimed until after July 1 of the year following the year of production. Claims for rebates regarding economically at risk leases for production periods occurring in calendar years 2016 through 2020 shall be claimed prior to July 1 of the year following the year of

production. Any claims for refunds received on or after July 1 of each year will not be accepted by the Tax Commission.

710:45-9-83. Certification

(a) **General provisions.** This Section establishes criteria for determining whether an operator of an economically at risk oil lease has met the required conditions to apply for an exemption from gross production tax levied on such and establishes a procedure for the issuance of the refund.

(b) **Application to Oklahoma Tax Commission; determination; approval.** Any operator who desires to make application to have a lease certified as being economically at risk shall complete the appropriate OTC Form in its entirety and file it with the Commission. The application must be ~~notarized and~~ properly signed by the operator.

(c) **Formula used to determine if lease is economically at risk.** The application sets out the formula used to determine if a lease is economically at risk. This entails subtracting from the gross revenue from each lease for the previous calendar year, any severance taxes, royalty payments, and lease operating expenses, including expendable workover and recompletion costs for the previous calendar year, and overhead costs up to the maximum overhead percentage allowed by the Council of Petroleum Accountants Societies (COPAS). For purposes of this calculation, depreciation, depletion, and intangible drilling costs shall **not** be included in lease operating expenses.

(d) **Commission may require additional information.** For audit purposes, the Commission may require additional information, such as copies of the ~~operators~~ operator's Federal Income Tax Return, joint interest billings, or other documentation regarding lease production or expenses.

~~(e) Letter of determination issued by Commission. Within sixty days from the date the application is filed, the Commission shall make its determination and shall issue, either an approval letter or denial letter, to the lease operator. If the exemption is denied, an explanation for the denial will be provided. The applicant may file an appeal under provisions of 68 O.S. §227, 228 and the Rules of this Commission.~~

710:45-9-84. Refund procedure

(a) **Issuance of refund.** Upon certification by the Commission, a refund of the gross production taxes paid in the previous calendar year for the lease shall be issued after July 1 of the subsequent year, to the well operator or a designee.

(b) **Limitation of refund.** For oil and natural gas produced from qualifying economically at risk leases in calendar years 2015 through 2020, the total amount of refunds to be paid, as provided for in 68 O.S. § 1001.3a, shall not exceed Twelve Million Five Hundred Thousand Dollars (\$12,500,000.00) for all products combined. If the amount of claims exceeds Twelve Million Five Hundred Thousand Dollars (\$12,500,000.00), the Tax Commission shall determine the percentage of the refund which establishes the proportionate share of the refund that may be claimed by any taxpayer of a qualifying lease, so that the maximum amount authorized is not exceeded.

(c) **Assignment of a designee.** If the refund is to be issued to a party other than the recognized operator, a notarized affidavit,

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signed by the operator must be submitted to the Commission authorizing the designee to receive the refund.

SUBCHAPTER 11. TRANSPORTERS

710:45-11-2. Transporter license and permits

The ~~Taxpayer~~ ~~Assistance~~ Compliance Division of the Oklahoma Tax Commission is authorized to issue and renew non-transferrable licenses and vehicle permits, upon license and permit forms approved by the Commission, to transporters, other than railroad or pipeline transporters, of any product subject to the Oklahoma Gross Production Tax, upon receipt of the following:

- (1) A properly completed Application for Transporters License upon a form approved by the Oklahoma Tax Commission;
- (2) Completed and duly executed Gross Production Tax Bond in the amount of One Thousand Dollars (\$1,000.00), which has been approved by the Commission; and
- (3) Payment of a fee in the amount of One Hundred Fifty Dollars (\$150.00) for each license issued, renewed or reinstated and the first vehicle permit, and Five Dollars (\$5.00) for each additional vehicle permit. [See: 68 O.S. § 1013]

710:45-11-8. Required transporter reports

~~(a)~~ Every person or firm who transports any oil, gas or other liquid hydrocarbon or any deleterious substance as defined by 52 O.S. §139 shall maintain a log on OTC Form 323A of all loads transported and shall keep such log for a period of three years from the date of transportation. Each person or firm required to be licensed hereunder shall complete file with the Tax Commission, each month under oath, OTC Form 323A listing each load of products regulated by 68 O.S. §1013 transported during the preceding month. Such report shall be submitted to the Tax Commission upon request of the Tax Commission. Such report shall be due the first day of the month following the month of business being reported and shall be delinquent if not filed on or before the 10th day of the month following the month it becomes due.

~~(b) Transporters who transport lease purchase oil where the transporter is the tax remitter of record with the Tax Commission shall report the transportation of that oil on OTC Form 300R-7-81.~~

SUBCHAPTER 13. REFINERS AND PROCESSORS

710:45-13-1. Refiner or processor license

(a) The Director of the ~~Registration~~ Compliance Division of the Oklahoma Tax Commission, or a designee, is authorized to issue non-transferrable licenses, upon the license form approved by the Commission, to refiners, or other processors of

any product subject to the Oklahoma Gross Production Tax, upon receipt of the following:

- (1) Completed and duly executed Request for Assignment of Oklahoma Tax Commission Production Unit Number, OTC Form 320, from the applicant; and,
 - (2) Completed and duly executed Application for Refiner's License to Process Petroleum Oil or Casinghead Gas, OTC Form 309, in triplicate, from the applicant; and,
 - (3) Completed and duly executed Gross Production Tax Bond from the applicant, which has been approved by the Commission.
- (b) Any refiner-applicant, who has established that it has tangible assets in this state of sufficient value to protect the State against loss of Gross Production, Petroleum Excise or Conservation Excise Taxes, may obtain a refiner's license without bond. [See: 68 O.S. §1015]

SUBCHAPTER 15. RECLAIMERS AND RECLAIMING OPERATIONS

710:45-15-2. Reclaimer licenses

The ~~Taxpayer~~ ~~Assistance~~ Compliance Division of the Oklahoma Tax Commission is authorized to issue and renew non-transferrable licenses, upon license forms approved by the Commission, to reclaimers of products subject to the Oklahoma Gross Production Tax, upon receipt of the following:

- (1) A properly completed Application for Reclaimers License upon a form approved by the Oklahoma Tax Commission.
- (2) A surety bond or other security approved by the Tax Commission, as guaranty for payment of all taxes, penalties and interest. Security shall be in the amount of Ten Thousand Dollars (\$10,000.00) or three months tax liability, whichever is greater, for each license issued, except when issued for a salt water disposal well. Security for each license issued for a salt water disposal well shall be in the amount of \$2,500 or three months tax liability, whichever is greater. A person or firm having five or more licenses shall be required to post security in the total amount of fifty thousand dollars (\$50,000.00) or three months tax liability, whichever is greater; except that for persons or firms having five or more licenses for salt water disposal facilities, the security requirement shall be a total of ten thousand dollars (\$10,000.00) or three months tax liability, whichever is greater.
- (3) A One Hundred Fifty Dollar (\$150.00) three-year license fee for each new, renewed, or reinstated license. [See: 68 O.S. §1015.1]

710:45-15-6. Reports and payment; due dates for reclaimers

The operators of reclaiming plants, including disposal facilities, shall be required to remit the Gross Production and Petroleum Excise Taxes on all oil coming into their possession except where such taxes have previously been paid or when it can be shown that such oil was not subject to tax for reason

of being exempt by law or having been produced in another state. Taxes shall be due on oil purchased by a reclaimer on the first day of the month following the month of purchase. Taxes shall be due on oil recovered from water at a disposal facility the first day of the month following the month it was sold by the reclaimer who recovered it. The tax shall become delinquent if not received by the Tax Commission on or before the twenty-fifth (25th) day of the second month in which it became due. Reclaimer's Monthly Gross Production Tax Report, ~~and the Reclaimers and Transporters Monthly Reports of Oil Transported and Stored are is~~ due on the same date as the tax and shall be delinquent if not received by the twenty-fifth (25th) day of the second month following the month in which ~~they become it becomes~~ due. ~~Reports~~The report shall be made on OTC Form ~~323 323R 7 81 and OTC Form 323A 7 81~~.

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**TITLE 710. OKLAHOMA TAX
COMMISSION
CHAPTER 50. INCOME**

[OAR Docket #17-523]

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- Subchapter 1. General Provisions
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- Subchapter 3. Returns and Reports
 - Part 1. General Information
710:50-3-3 [AMENDED]
710:50-3-4 [AMENDED]
710:50-3-8 [AMENDED]
710:50-3-9 [NEW]
 - Part 5. Filing Status; Elections; Accounting Periods and Methods
710:50-3-35 [AMENDED]
710:50-3-45 [AMENDED]
 - Part 7. Other Required Reporting
710:50-3-54 [AMENDED]
- Subchapter 9. Refunds
710:50-9-3 [AMENDED]
710:50-9-4 [REVOKED]
710:50-9-8 [AMENDED]
710:50-9-10 [AMENDED]
- Subchapter 13. Estimated Tax
710:50-13-6 [AMENDED]
- Subchapter 15. Oklahoma Taxable Income
 - Part 3. Exemptions
710:50-15-30 [AMENDED]
 - Part 5. Other Adjustments to Income
710:50-15-50 [AMENDED]
710:50-15-62 [AMENDED]
 - Part 7. Credits against Tax
710:50-15-71 [AMENDED]
710:50-15-74 [AMENDED]
710:50-15-76 [AMENDED]
710:50-15-83 [AMENDED]
710:50-15-90 [AMENDED]
710:50-15-103 [AMENDED]
710:50-15-104 [AMENDED]

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- Part 5. Other Adjustments to Income
710:50-15-50 [AMENDED]
- Part 7. Credits against Tax
710:50-15-74 [AMENDED]
710:50-15-76 [AMENDED]
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710:50-15-103 [AMENDED]
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GIST/ANALYSIS:

Section 710:50-1-3 has been revoked to reflect current agency practices and procedures.

Sections 710:50-3-3 and 710:50-3-4 have been amended due to the change in due dates for Oklahoma corporate and partnership income tax returns in House Bill 2775. [68:216]

Section 710:50-3-8 has been amended and new Section 710:50-3-9 has been added. If a taxpayer receives a credit under I.R.C. § 1341(a)(5) on its federal income tax return for the year in which the repayment was made, Oklahoma will recognize a recomputation of federal adjusted gross income for the year(s) the income was initially received under claim of right. [OTC Order No. 94-02-24-010]

Sections 710:50-3-35 and 710:50-15-50 have been amended to implement the provisions of Senate Bill 1606 which requires state and local income taxes or sales taxes included in itemized deductions be added back to calculate Oklahoma taxable income (by subtracting them from itemized deductions) effective for tax year 2016. [68:2358]

Section 710:50-3-45 has been amended to clarify policy regarding electronic signature methods on an electronically-filed Oklahoma income tax return. [68:2368]

Section 710:50-9-3 has been amended to implement the provisions of House Bill 2775 which require the Tax Commission to pay interest on refunds claimed on returns filed electronically if those refunds are not paid within forty-five (45) days. [68:217]

Section 710:50-9-10 has been amended to comply with the current statutory law regarding the expiration of checkoff programs. [68:2368.18]

Section 710:50-13-6 has been amended to clarify policy regarding a taxpayer's request of a refund after the taxpayer has elected to have an overpayment credited to the following year's Oklahoma estimated income tax. [68:2385.9, 2385.17]

Section 710:50-15-71 has been amended to clarify policy on the proration of the credit. [68:2357]

Section 710:50-15-74 has been amended to implement the provisions of Senate Bill 1582 which relates to the Investment/New Jobs Income Tax Credit, by limiting the amount of credit for various periods by implementing a

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\$25,000,000 annual cap for tax years beginning on or after January 1, 2016 and ending on or before December 31, 2018. [68:2357.4]

Section 710:50-15-76 has been amended to implement the provisions of Senate Bill 1614 which relates to the Coal Credit, by limiting this credit to seventy-five percent 75% of the amount allowed under current law, effective January 1, 2016. [68:2357.11]

Section 710:50-15-90 has been amended to implement the provisions of Senate Bill 1604 which relates to the Oklahoma Earned Income Credit, by eliminating the refundable aspect of this credit beginning with tax year 2016. [68:2357.43]

Section 710:50-15-103 has been amended to implement the provisions of House Bill 3204, which relates to the Credit for Railroad Modernization, by reducing this credit by twenty-five percent (25%) for tax years beginning on or after January 1, 2016. [68:2357.104]

Section 710:50-15-104 has been amended to implement the provisions of Senate Bill 1603, which relates to Credit for the Construction of Energy Efficient Homes, by eliminating this credit for any period on or after July 1, 2016. [68:2357.46]

Sections 710:50-3-54, 710:50-9-4, 710:50-9-8, 710:50-15-30, 710:50-15-62 and 710:50-15-83 have been amended to clarify policy, improve readability, correct scrivener's errors, remove obsolete language, update statutory citation, and ensure accurate internal cross-references.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 1. GENERAL PROVISIONS

710:50-1-3. Taxpayer assistance [REVOKED]

~~The Tax Commission will assist taxpayers in completing their Oklahoma returns at the Tax Commission office. Taxpayers must provide a properly completed Federal return when requesting this assistance. The Tax Commission will answer specific questions on the phone, but will not assist in the completion of a tax return over the telephone due to limited phones and resources.~~

SUBCHAPTER 3. RETURNS AND REPORTS

PART 1. GENERAL INFORMATION

710:50-3-3. Due dates; timely filing of returns

(a) Income Tax Returns of individuals are due on the 15th day of the fourth month following the close of the taxable year unless the returns are filed electronically. If the individual income tax returns are filed electronically, the returns are due on the 20th day of the fourth month following the close of the taxable year. This change to the due date will be effective for tax year 2007 returns and subsequent tax years.

(b) If the Internal Revenue Code provides for a later due date for returns of individual filers, the Oklahoma income tax returns may be filed by the later due date and will be considered

timely filed. This change to the due date will be effective for tax year 2007 returns and subsequent tax years.

~~(c) Income Tax Returns of corporations are due on the 15th day of the third month following the close of the taxable year.~~

~~(d) To be considered timely filed, Income Tax Returns are to be filed with and received by the Oklahoma Tax Commission at 2501 Lincoln Blvd., Oklahoma City, Ok. 73194-0009 on or before the statutory filing date. However, dates placed on returns by the Oklahoma Tax Commission corresponding to postmarks that indicate timely mailing will be accepted as timely filed. In the case of electronically filed returns, any payment of taxes due on the 20th day of the fourth month following the close of the taxable year must also be remitted electronically in order to be considered timely paid. If balances due on electronically filed returns are not remitted to the Oklahoma Tax Commission electronically, penalty and interest will accrue from the 15th day of the fourth month following the close of the taxable year~~

710:50-3-4. Extension of time for filing returns

~~(a) A valid extension of time in which to file a Federal Income Tax Return automatically extends the due date of the Oklahoma Income Tax Return, unless an Oklahoma liability is owed. A copy of the Federal extension must be attached to the Oklahoma Return. If the due date for filing the Federal Return is not extended or if an Oklahoma liability is owed, an extension of time to file the Oklahoma Return may be granted only by OTC Form 504. Ninety percent (90%) of the tax liability must be paid by the original due date for the return to avoid penalty charges for late payment. Interest will be charged from the original due date of the return.~~

~~(b) A corporate extension may exceed, upon written request, the approved Federal extension by one month.~~

710:50-3-8. Adjustments by the Internal Revenue Service

(a) If any taxpayer's Federal Income Tax Return is adjusted, an Amended Oklahoma Income Tax Return must be filed within one year. All supporting documentation must be enclosed with an Oklahoma Amended Income Tax Return for the tax year involved. Upon request, the taxpayer must furnish a complete copy of the Federal Income Tax Return, including all schedules, to enable the Tax Commission to determine the correct Oklahoma tax. A recomputation of taxable income under I.R.C. § 1341(a)(5)(B) shall constitute an adjustment to taxable income for the year the income was initially received.

(b) The Commission has two (2) years from the date the return or notice was filed to make an assessment or refund and not thereafter, unless a waiver is agreed to and signed by the Commission and the taxpayer.

(c) In the event of failure by a taxpayer to comply with the requirement set out in (a) of this Section, the statute of limitations is tolled until the Amended Oklahoma Income Tax Return is actually furnished.

(d) When the Internal Revenue Service changes the Federal Income Tax Return by issuing its final determination, the Tax Commission shall have the authority to audit each and every item of income, deduction, credit or any other matter related to

the return, where such items or matters relate to allocation or apportionment between the State of Oklahoma and some other state or the federal government, even if such items or matters were not affected by revisions made in such final determination. Where such items or matters do not relate to allocation or apportionment between the State of Oklahoma and some other state or the federal government, the Tax Commission shall be bound by the revisions made in such final determination. [See: 68 O.S. § 2375]

710:50-3-9. Amended Oklahoma return under federal claim of right adjustment

- (a) Section 1341 of the Internal Revenue Code allows taxpayers who make repayments of income which were received under claim of right in a prior year to take a federal deduction or claim a federal tax credit for the taxable year in which the repayment was made. The Oklahoma Income Tax Code contains no parallel claim of right provision which would allow a credit or deduction in the year of repayment. [See OTC Order No. 89-11-14-10 (Precedential) and OTC Order No. 91-02-22-013 (Precedential).]
- (b) If a taxpayer receives a credit under I.R.C. § 1341(a)(5) on its federal income tax return for the year in which the repayment was made, Oklahoma will recognize a recomputation of federal adjusted gross income for the year(s) the income was initially received under claim of right. This recomputation allows the taxpayer to amend its Oklahoma return(s) for the year(s) the income was initially received to exclude from federal adjusted gross income the amount of income repaid. Taxpayer must attach to its amended return(s) a claim of right worksheet showing the recomputation of adjusted gross income for the year(s) in which the income was initially received. [See OTC Order No. 94-02-24-010.]
- (c) When a taxpayer's federal taxable income is recomputed for a prior year as described in (b) of this Section, an amended Oklahoma income tax return for the year(s) in which the income was initially received must be filed within one (1) year from the date the federal return claiming the Section 1341 credit was filed.

PART 5. FILING STATUS; ELECTIONS; ACCOUNTING PERIODS AND METHODS

710:50-3-35. Filing status and elections

For the purpose of determining any income tax liability, a taxpayer's filing status, and any elections, such as itemized deductions (subject to the limitations in *OAC 710:50-15-50*), shall be the same as on the Federal Income Tax Return. In cases where no return has been filed, any information made available by the I.R.S., whether a Revenue Agents Report (R.A.R.), or other related return information, shall constitute the filing status and elections for the purpose of the determination, assessment, and collection of any Oklahoma Income Tax liability.

710:50-3-45. Verification of signatures on electronically-filed returns

- (a) **General provisions.** Section 2368(H) of the Oklahoma Statutes requires that any return must be verified by a written declaration that it is made under penalties of perjury and further, authorizes the Tax Commission to promulgate rules to provide procedures for verification of signatures on returns which are filed electronically.
- (b) **Authentication.** ~~For purposes of authenticating a signature for electronic filing, entry of the Taxpayer's Personal Identification Number (PIN) or use of an electronic signature pad (as authorized by the Internal Revenue Service) in the electronic filing process operated by the Internal Revenue Service shall serve as an "electronic signature" to sufficiently identify and link the taxpayer to a particular return, pursuant to the Oklahoma Income Tax Code. Entry of the taxpayer's PIN or use of an electronic signature pad as signature will only be allowed on a joint federal/state return or a linked electronically-filed return. Use of a PIN and will not be allowed on a state-only or unlinked return.~~ For Oklahoma income tax purposes, the Tax Commission will permit a taxpayer to sign any electronically-filed return pursuant to the Oklahoma Income Tax Code using any electronic signature method authorized by the Internal Revenue Service (IRS). Use of an electronic signature pad as signature will only be allowed on a joint federal/state return or a linked electronically-filed return. Use of a PIN and will not be allowed on a state-only or unlinked return.
- (c) **Verification.** For purposes of verifying the information provided by a taxpayer filing electronically, as required by Section 2368(H) of the Oklahoma Income Tax Code, completion of the electronic filing process operated by the Internal Revenue Service, including entry of the Taxpayer's PIN or use of an electronic signature pad shall serve as verification of the information provided by the taxpayer during the transmission.

PART 7. OTHER REQUIRED REPORTING

710:50-3-54. Income tax withholding for pass-through entities

- (a) **General provisions.** Generally, any pass-through entity that makes a distribution to a non-resident member is required to deduct and withhold Oklahoma income tax from distributions of taxable income being made with respect to Oklahoma source income.
- (b) **Definitions.** The following words and terms, when used in this Section, shall have the following meaning, unless the context clearly indicates otherwise:
 - (1) **"Member"** means:
 - (A) A shareholder of an S-Corporation;
 - (B) A partner in a general partnership;
 - (C) A partner in a limited partnership;
 - (D) A partner in a limited liability partnership;
 - (E) A member of a limited liability company; or,
 - (F) A beneficiary of a trust.
 - (2) **"Non-resident"** means an individual who is not a resident of, or domiciled in, this state; a business entity which does not have a commercial domicile in this state; or a trust which is not organized in this state.
 - (3) **"Pass-through entity"** means:

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- (A) A corporation that is treated as an S-Corporation under the Internal Revenue Code;
 - (B) A general partnership;
 - (C) A limited partnership;
 - (D) A limited liability partnership;
 - (E) A trust; or,
 - (F) A limited liability company that is not taxed as a corporation for federal income tax purposes. [68 O.S. § 2385.29]
- (4) **"Pass-through entity"** does not include an entity which is disregarded for income tax purposes under the Internal Revenue Code.
- (c) **S-Corporations; general, limited, or limited liability partnerships; limited liability companies.** In the case of S-Corporations; general, limited, or limited liability partnerships; and limited liability companies, withholding of five percent (5%) is required on the Oklahoma portion of the taxable income distributed to each non-resident member. In the case of S-Corporations paying the tax on behalf of non-resident shareholders (68 O.S. § 2365) or partnerships filing composite returns on behalf of non-resident partners, the non-resident members withholding can be claimed on the return filed by the S-Corporation or the partnership.
- (d) **Trusts.** For trusts, withholding of five percent (5%) is required on the Oklahoma portion of the taxable income distributed to each beneficiary of the trust.
- (e) **Non-resident members not subject to withholding.** The following persons and organizations are not subject to required withholding by a pass-through entity:
- (1) Persons, other than individuals, who are exempt from federal income tax;
 - (2) Organizations granted an exemption under Section 501(c)(3) of the Internal Revenue Code;
 - (3) Insurance companies subject to the Oklahoma Gross ~~Premiums~~Premium Income Tax and therefore exempt from Oklahoma income tax pursuant to 68 O.S. §~~2359(e)~~2359(C); and
 - (4) Non-resident members who have submitted an affidavit (OTC Form OW-15) to the pass-through entity and which pass-through entity has submitted the affidavit information on behalf of the member to the Tax Commission. In the affidavit, the non-resident member agrees to be subject to the personal jurisdiction of the Tax Commission in the courts of this state for the purpose of determining and collecting any Oklahoma taxes, including estimated tax payments, together with any related interest and penalties. See (k) of this Section for the procedure to be followed in filing the affidavit.
 - (A) For non-resident partners included in a composite partnership return under *OAC* 710:50-19-1 and filing OTC Form OW-15, the inclusion of the partners' income within the composite partnership return will satisfy the requirements contained in the affidavit.
 - (B) For non-resident shareholders filing OTC Form OW-15, and electing not to file Oklahoma income tax returns under 68 O.S. § 2365, inclusion of

the non-resident shareholder's income in the Subchapter S corporate income tax return will satisfy the requirements contained in the affidavit.

(C) For non-resident beneficiaries included in a trust return and filing OTC Form OW-15, the inclusion of the beneficiary's income within the trust return will satisfy the requirements contained in the affidavit.

- (f) **When pass-through entities are not required to withhold.** Withholding is not required in the following instances:
- (1) When an entity is not required to file a federal income tax return, or properly elects out of such duty;
 - (2) When a pass-through entity is making distributions of income not subject to Oklahoma income tax;
 - (3) When a pass-through entity has withheld tax on royalty interest income pursuant to 68 O.S. § 2385.25 et seq.;
 - (4) ~~When a pass-through entity is making distributions subject to the withholding requirements for non-resident attorneys set out in 5 O.S. Supp. 2004, § 1.6 and Commission rule 710:95-13-1, and the pass-through entity is withholding accordingly;~~
 - (5) When a pass-through entity is making distributions to another pass-through entity. Provided however, the exception set out in this paragraph does not relieve the lower-tiered pass-through entity from the duty to withhold on distributions it makes which are not otherwise exempt;
 - (6) When a pass-through entity is a publicly traded partnership, as defined by Section 7704(b) of the Internal Revenue Code, and is treated as a partnership for purposes of the Internal Revenue Code. Provided the publicly traded partnership has agreed to file an annual information return reporting the name, address, taxpayer identification number, and other information requested by the Tax Commission of each unit-holder with an income in the state in excess of Five Hundred Dollars (\$500.00); or,
 - (7) When a distribution made by a pass-through entity has been determined to be not subject to the provisions of this Section by the Commission.
- (g) **Due dates for payment of pass-through entity withholding.** Pass-through entities that withhold income tax on distributions of taxable income to non-resident members are required to remit the amount of tax withheld from each non-resident member on or before the due date of the pass-through entity's income tax return, including extensions. Any pass-through entity that can reasonably expect the total amount of income tax withheld from all non-resident members to exceed Five Hundred Dollars (\$500.00) for the taxable year **must** make quarterly estimated tax payments. OTC Form OW-9-EW is to be used to remit the quarterly estimated tax payments. The required estimated tax payments are due on or before the last day of the month after the end of the calendar quarter and must be made in equal quarterly installments. The total of the required quarterly estimated tax payments is the lesser of seventy percent (70%) of the withholding tax that must be withheld for the current taxable year, or one hundred percent (100%) of the withholding tax withheld for the previous taxable year. Any pass-through entity that can reasonably expect the total amount of tax withheld from all non-resident

members to be less than Five Hundred Dollars (\$500.00) for the taxable year may, *at their option*, make quarterly estimated tax payments.

(h) **Required reports.** The pass-through entity is required to provide non-resident members and the Oklahoma Tax Commission an annual written statement showing the name of the pass-through entity, to whom the distribution was paid, the amount of taxable income distributed, and the amount of Oklahoma income tax withheld. Further, the statement must also furnish the non-resident member's name, address, and social security number or Federal Employer Identification Number. To accomplish this:

(1) Each pass-through entity must provide non-resident members with Oklahoma Tax Commission Form 500-B, (OTC Form 500-B), on or before the due date of the pass-through entity's income tax return, including extensions. Copies of OTC Form 500-B, along with OTC Form 501, must be sent to the Oklahoma Tax Commission by the same date.

(2) Each pass-through entity must file with the Oklahoma Tax Commission the appropriate income tax withholding return (OTC Form WTP10003) on or before the due date of the pass-through entity's income tax return, including extensions.

(3) Each non-resident member must enclose a copy of OTC Form 500-B to the Oklahoma income tax return as verification for this withholding.

(i) **Non-resident members entitled to credit, or refund, from Oklahoma income taxes paid.** Any non-resident member from whom an amount is withheld pursuant to the provisions of this Section, and who files an Oklahoma income tax return is entitled to a credit for the amount withheld. If the amount withheld is greater than the tax due, the non-resident member will be entitled to a refund of the amount of the overpayment.

(j) **Pass-through entities must register.** Pass-through entities that make distributions subject to Oklahoma withholding must register with the Oklahoma Tax Commission.

(k) **Affidavit filing procedures.** Non-resident members who elect to file an affidavit (OTC Form OW-15) agreeing to be subject to the personal jurisdiction of the Tax Commission in the courts of this state for the purpose of determining and collecting any Oklahoma taxes, including estimated tax payments, and any related interest and penalties, must remit the affidavit to the appropriate pass-through entity. The pass-through entity is to retain the affidavit and file the following information with the Oklahoma Tax Commission by the due date of the required annual tax return of the pass-through entity.

(1) **Content.** The name, address, and social security number or federal identification number of the non-resident member having a signed OTC Form OW-15. All pass-through entities are required to file the non-resident member affidavit information on a diskette or CD with the Oklahoma Tax Commission - Audit Division.

(2) **Format.** The format for filing the diskette or CD will be in either a spreadsheet format (i.e. Lotus 1-2-3 or Excel) or a database format (i.e. dbf or Access).

(3) **Waiver.** Pass-through entities may obtain a waiver from the diskette or CD filing requirement if the pass-through entity can demonstrate that a hardship would result if it were required to file on a diskette or CD. Direct waiver requests to the Oklahoma Tax Commission - Audit Division.

SUBCHAPTER 9. REFUNDS

710:50-9-3. Interest on refunds

(a) **Returns filed prior to January 1, 2004.** For returns filed on or after January 1, 1987, and before January 1, 2004, interest will be paid on income tax refunds that are not processed within ninety (90) days from the date a processible return is filed or due, whichever is later, at the same rate of interest specified for delinquent tax payments.

(b) **Returns filed on or after January 1, 2004 and before January 2, 2010.** In the case of returns filed on or after January 1, 2004 and before January 2, 2010, a taxpayer will be entitled to interest paid at the same rate specified for delinquent tax payments if the refund is not paid to the taxpayer within the following time periods:

(1) For electronically-filed returns, thirty (30) days from the date a processible return is filed or due, whichever is later; and,

(2) For all other returns, one hundred fifty (150) days from the date a processible return is filed or due, whichever is later.

(c) **Returns filed after January 1, 2010 and before July 1, 2016.** For returns filed after January 1, 2010 and before July 1, 2016, a taxpayer will be entitled to interest paid at the same rate specified for delinquent tax payments if the refund is not paid to the taxpayer within the following time periods:

(1) For electronically-filed returns, twenty (20) days from the date a processible return is filed, and

(2) For all other returns, ninety (90) days from the date a processible return is filed.

(d) **Returns filed on or after July 1, 2016.** For returns filed on or after July 1, 2016, a taxpayer will be entitled to interest paid at the same rate specified for delinquent tax payments if the refund is not paid to the taxpayer within the following time periods:

(1) For electronically-filed returns, forty-five (45) days from the date a processible return is filed, and

(2) For all other returns, ninety (90) days from the date a processible return is filed.

(e) **Processible return.** To be "**processable**", all information on the return, including the computations, must be correct and all documents required by the Tax Commission must be included. In the case of an Amended Oklahoma Income Tax Return with a federal adjusted gross income change, the return must be accompanied by documentation to substantiate that the I.R.S. accepted the requested change. [See: 68 O.S. § 217(H)]

(ef) **Exceptions.** Alternative statutory provisions apply in the following instances:

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- (1) Interest will not be paid on refunds that are intercepted for state or federal agencies. See provisions of Subchapter 11 of this Chapter. [See: 68 O.S. § 217(H)]
- (2) In the event of litigation, interest will be paid in accordance with 68 O.S. §2374.
- (3) In the case of refunds made to recover taxes illegally collected on bonus payments from oil and gas leases located on tax exempt Indian lands interest at 6 percent (6%) per annum will be calculated from the date of payment by the taxpayer, until the date the refund is issued. [See: 68 O.S. § 2373]

710:50-9-4. Refunds returned by postal service [REVOKED]

~~The Taxpayer Assistance Division will receive refund vouchers returned by the Postal Service. Upon receipt of a written request signed by the taxpayer(s) the voucher will be remailed.~~

710:50-9-8. Reissued vouchers for deceased taxpayer refunds or lost, stolen or forged vouchers

- (a) Income tax refunds which are issued in the name of a deceased taxpayer who is not represented by an executor or executrix may be returned to the ~~Refund Section of the Taxpayer Assistance Division~~ Oklahoma Tax Commission for reissuance in the name of the claimant, upon a determination that the claimant is the proper recipient. OTC Form 507, along with a separate letter setting out the facts and signed by the claimant, must accompany any such claim.
- (b) Claims for refunds that have been lost in the clearing process may be submitted to the State Treasurer's Office for reissue. Upon notification by the State Treasurer, the ~~Refund Section of the Taxpayer Assistance Division~~ Tax Commission will reissue the voucher in the name of the taxpayer and forward to the holder in due course.
- (c) Refund vouchers which have become lost, stolen or forged will be reissued by the ~~Refund Section of the Taxpayer Assistance Division~~ Tax Commission after the taxpayer has properly executed an affidavit setting out the facts, and upon approval by the State Treasurer's office.

710:50-9-10. ~~Check-off~~ Checkoff program

- (a) ~~Check-off~~ Checkoff program. The Oklahoma Income Tax ~~Check-Off~~ Checkoff Program provides a taxpayer with the opportunity to make a financial gift to a variety of Oklahoma organizations from a tax refund due.
- (b) ~~Termination~~ Expiration of a ~~check-off~~ checkoff category. ~~If, on September 1, of any year, the total contributions to any one of the categories established by the Income Tax Check Off Program do not equal or exceed Fifteen Thousand Dollars (\$15,000.00) for each of the last three consecutive calendar years, the category will be removed from Oklahoma Income Tax Returns for the following and all subsequent years. Any contribution to the removed category after September 1 shall be refunded to the taxpayer. [See: 68 O.S. § 2368.2] All income tax checkoffs provided for in state statute shall expire~~

four (4) years after enactment, unless reauthorized by the Legislature. [See: 68 O.S. § 2368.18]

SUBCHAPTER 13. ESTIMATED TAX

710:50-13-6. Payment of estimated tax

- (a) OTC Form OW-8-ES (individual) and OTC Form OW-8-ESC (corporations, fiduciaries and partnerships) should be used to report and pay estimated Oklahoma Income Tax. Print or type taxpayer's name, Social Security Number or Federal I.D. Number, address and the amount of the payment on each voucher
- (b) ~~The first installment of Oklahoma Estimated Income Tax is to be paid on or before the following dates: April 15 of the current taxable year, June 15 of the current taxable year, September 15 of the current taxable year, and January 15 of the following taxable year. Fiscal year filers will pay Oklahoma Estimated Income Tax on or before the following dates: the 15th day of the fourth month of the fiscal year, the 15th day of the sixth month of the fiscal year, the 15th day of the ninth month of the fiscal year, and the 15th day of the first month in the succeeding fiscal year. Other payments must be made by the dates shown on the vouchers or corresponding dates for fiscal year filers. The estimated tax is to be applied to the succeeding applicable tax year's Oklahoma Income Tax liability, and may be claimed on the succeeding applicable tax year's Oklahoma Income Tax Return.~~
- (c) Refunds will be applied, at the taxpayer's request, to Oklahoma Estimated Income Tax for the following year, on the original ~~Return~~ return only, ~~and may not be adjusted, except as provided in this Section.~~
- (d) ~~Refunds applied to the following year's Oklahoma Estimated Income Tax (at the taxpayer's request) may not be adjusted except in the following case: When a taxpayer claims on the Oklahoma Income Tax Return, a total estimated tax in excess of the amount actually paid and requests the resultant refund be applied to the next year's estimated tax, this produces an erroneous estimated tax figure for the following tax year. In this instance, the amount of credit to be applied to the following year and/or the figure reported for total Oklahoma Estimated Tax for the current year, may be adjusted to the correct amounts. If a taxpayer elects to have an overpayment credited to the following year's Oklahoma Estimated Income Tax in error, the taxpayer may request, in writing, any or all of the estimated tax payment be refunded to the taxpayer. The request must be filed no later than October 15 of the year in which the refund was to be applied. For example, if a 2015 refund was applied to 2016 estimated tax, the written request for a refund of the estimated tax payment must be received by October 15, 2016.~~
- (e) Provided, however, that when a refund is applied, at the Taxpayer's request, to the following year's Oklahoma Estimated Income Tax and either the Tax Commission or the Internal Revenue Service subsequently determines that additional tax is due for the original tax year, no delinquent interest shall be due on the difference between the original tax paid and the subsequently-determined amount of tax, so long as the refund applied exceeds the additional tax due and the taxpayer

makes payment of the additional tax within sixty (60) days of the notice of assessment. In the event that the additional tax due exceeds the refund applied, delinquent interest shall be assessed on the amount of additional tax due from the date the original tax was due, until the total additional tax is paid.

(f) All estimated tax payments should be paid under the Social Security Number listed first on the Oklahoma Income Tax Return.

SUBCHAPTER 15. OKLAHOMA TAXABLE INCOME

PART 3. EXEMPTIONS

710:50-15-30. Additional exemption for 65 or older

(a) There shall be allowed an additional exemption on the Oklahoma Income Tax Return of One Thousand Dollars (\$1,000.00) for each taxpayer or spouse who is sixty-five (65) years of age or older at the close of the tax year, based upon the filing status and federal adjusted gross income of the taxpayer. Taxpayers with the following status may claim this exemption if the federal adjusted gross income does not exceed:

- (1) Twenty-five Thousand Dollars (\$25,000.00) if married and filing jointly;
- (2) Twelve Thousand Five Hundred Dollars (\$12,500.00) if married and filing separately;
- (3) Fifteen Thousand Dollars (\$15,000.00) if single; and
- (4) Nineteen Thousand Dollars (\$19,000.00) if a qualifying head of household. [See: 68 O.S. §2358 ~~(E)(1)(e)~~2358(E)]

(b) For taxable years beginning after December 31, 1999, amounts included in the calculation of federal adjusted gross income pursuant to the conversion of a traditional Individual Retirement Account to a Roth Individual Retirement Account shall be excluded from federal adjusted gross income for purposes of the income thresholds set out in paragraphs (a)(1) through (a)(4) of this Section.

PART 5. OTHER ADJUSTMENTS TO INCOME

710:50-15-50. Deductions

(a) Oklahoma itemized deductions to income will be the same as Federal itemized deductions, subject to the limitation in (i) of this Section. In the event the standard deduction is used on the Federal Return, the Oklahoma standard deduction must be used.

(b) For tax year 2005 and prior, the standard deduction for Oklahoma is the larger of \$1,000.00 or 15% of Oklahoma Adjusted Gross Income not to exceed \$2,000.00 (if married filing separately, the larger of \$500.00 or 15% not to exceed \$1,000.00).

(c) For tax year 2006, taxpayers filing as married joint, head of household or surviving spouse will have a standard deduction for Oklahoma of \$3,000.00. Taxpayers filing as single or

married separate will have a standard deduction for Oklahoma of \$2,000.00.

(d) For tax year 2007, taxpayers filing as married joint or surviving spouse will have a standard deduction for Oklahoma of \$5,500.00. Taxpayers filing as single or married separate will have a standard deduction for Oklahoma of \$2,750.00. Taxpayers filing as head of household will have a standard deduction for Oklahoma of \$4,125.00.

(e) For tax year 2008, taxpayers filing as married joint, or surviving spouse will have a standard deduction for Oklahoma of \$6,500.00. Taxpayers filing as single or married separate will have a standard deduction for Oklahoma of \$3,250.00. Taxpayers filing as head of household will have a standard deduction for Oklahoma of \$4,875.00.

(f) For tax year 2009, taxpayers filing as married joint, or surviving spouse will have a standard deduction for Oklahoma of \$8,500.00. Taxpayers filing as single or married separate will have a standard deduction for Oklahoma of \$4,250.00. Taxpayers filing as head of household will have a standard deduction for Oklahoma of \$6,375.00.

(g) For tax year 2010 and subsequent tax years, taxpayers will have a standard deduction for Oklahoma equal to the standard deduction allowed by the Internal Revenue Code of 1986 based upon the amount and filing status prescribed by the Code for purposes of filing federal individual income tax returns.

(h) Taxpayers will be required to add back the "qualified motor vehicle taxes" which were allowed as an itemized deduction on the Federal return under the provisions of the American Recovery and Reinvestment Act of 2009.

(i) For tax year 2016 and subsequent tax years, taxpayers shall add back state and local sales or income taxes which were allowed as an itemized deduction on the Federal income tax return.

710:50-15-62. Agricultural commodity processing facility income/investment exclusion

(a) **General provisions.** Owners of agricultural commodity processing facilities may exclude from Oklahoma Taxable Income, or in the case of individuals, from Oklahoma Adjusted Gross Income, a portion of their investment costs in any new or expanded agricultural commodity processing facility located in this state.

(1) **For investments made on or after January 1, 1997, but before December 31, 1998.** Owners of agricultural commodity processing facilities may exclude fifteen percent (15%), of their investment cost in a new or expanded agricultural commodity processing facility located in Oklahoma.

(2) **For investments made on or after January 1, 1999.** If the exclusion for investment in agricultural processing facilities results in the reduction in total Oklahoma Income Tax in excess of one million dollars (\$1,000,000.00) in any previous calendar year, the percentage of investment subject to exclusion will be adjusted. The adjusted percentage allowable will be determined by dividing \$1,000,000.00 by six percent, then further dividing the result by the total previous year's investment subject to exclusion.

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(b) **Definitions.** For purposes of this Section, the following words and terms, shall have the following meaning, unless the context clearly indicates otherwise:

(1) **"Agricultural commodities"** means a farm or ranch product, including but not limited to, wheat, corn, soybeans, cotton, timber, cattle, hogs, sheep, horses, poultry, animals of the families bovidae, cervidae, and antilocapridae, or birds of the ratite group, produced in farming or ranching operations, or a product of such crop or livestock in its unmanufactured state, such as ginned cotton, wool-dip, maple syrup, milk, and eggs, or any other commodity listed under any Industry Group Number under Major Group 20, Division D, of the Standard Industrial Classification Manual.

(2) **"Agricultural commodity processing facility"** means building, structures, fixtures and improvements used or operated primarily for the processing or production of marketable products from agricultural commodities. Effective November 1, 2000, the term shall also mean a dairy operation that requires a depreciable investment of at least Two Hundred Fifty Thousand Dollars (\$250,000.00) and which produces milk from dairy cows. The term does not include a facility that provides only, and nothing more than, storage, cleaning, drying or transportation of agricultural commodities. [See: 68 O.S. ~~Supp-2000~~, § 2358(A)(6)(a)]

(3) **"Facility"** means each part of the facility which is used in a process primarily for:

(A) The processing of agricultural commodities, including receiving or storing agricultural commodities, or, effective November 1, 2000, the production of milk at a dairy operation, [See: 68 O.S. ~~Supp-2000~~, § 2358(A)(6)(b)]

(B) Transporting the agricultural commodities or product before, during or after the processing, or

(C) Packaging or otherwise preparing the product for sale or shipment.

(c) **Qualification.** In order to qualify for the exclusion, the agricultural commodity processing facility must be operated primarily for the processing or production of agricultural commodities to marketable products.

(d) **Limitations.** This exclusion from income is to be taken in the taxable year when the investment is made. For purposes of this exclusion, the investment is deemed to be made when the property is placed in service. Under no circumstances shall this exclusion from income lower claimant's Oklahoma Taxable Income below zero. In the event the exclusion does exceed income, any unused portion may be carried forward for a period not to exceed six (6) years from the initial year of qualification. If the exclusion from income amount is determined based on the percentage allowable but not used, the amount shall not change based on subsequent change in percentage allowable to be excluded. In no event will the exclusion percentage exceed fifteen percent (15%).

(e) **Information return required.** Owners who intend to claim the exclusion for investment costs described in this Section must file, on a form prescribed by the Commission, an information return, reporting the amount of qualified property

placed in service during the preceding calendar year. The information return must be submitted by January 31.

PART 7. CREDITS AGAINST TAX

710:50-15-71. Credit for child care/child tax credit

(a) For tax years beginning before January 1, 2008, resident individuals, part-year resident individuals or nonresident individual members of the Armed Forces may claim a credit against the tax imposed by 68 O.S. § 2355 equal to twenty percent (20%) of the credit for child care expenses allowed under the Internal Revenue Code of the United States.

(b) For tax years beginning after December 31, 2007, resident individuals, part-year resident individuals or nonresident individual members of the Armed Forces may claim a credit against the tax imposed by 68 O.S. § 2355 equal to the greater of twenty percent (20%) of the credit for child care expenses allowed under the Internal Revenue Code of the United States or five percent (5%) of the child tax credit allowed under the Internal Revenue Code, whichever amount is greater. If federal adjusted gross income is greater than One Hundred Thousand Dollars (\$100,000.00), no credit is allowed.

(c) Taxpayers must attach a completed copy of the Federal child care schedule to the Oklahoma Income Tax Return to receive a child care credit.

(d) The credit is to be prorated on the ratio that Oklahoma Adjusted Gross Income bears to Federal Adjusted Gross Income, not to exceed one hundred percent (100%). If the Federal Adjusted Gross Income is zero or less, the ratio will be 100%.

710:50-15-74. Credit for investment/new jobs

(a) **For tax years 1981 through 1987.** For tax years 1981 through 1987 the Oklahoma Investment/New Jobs Credit is allowed for Oklahoma Income Tax purposes only on investment in qualified depreciable property which directly results in a net increase in the number of employees engaged in manufacturing or processing in this state.

(b) **For 1988, and later years.** For 1988, and later years, the Oklahoma Investment/New Jobs Credit may be calculated on the investment or new employees when other qualifications are met. (See OTC Form 506).

(c) **Examples.** A company engaged in the process of cooking hamburgers for sale to the general public does not qualify for the Investment/New Jobs Credit. The Oklahoma Supreme Court determined, in the case **McDonald's Corp. vs. Oklahoma Tax Commission**, 563 P.2d 635 (Okla. 1977), that a company engaged in retail sales or a service organization (laundry, transportation, oil & gas production, drilling, restaurant, repair services, etc.) does not qualify for Oklahoma Investment/New Jobs Credit. [See: 68 O.S. §§ 2357.4, 2357.5]

(d) **"Processing" defined.** For purposes of this Section, "processing" means the preparation of tangible personal property for market. "Processing" begins when the form, context, or condition of the tangible personal property is changed with the intent of eventually transforming the property into a saleable product. "Processing" ends when the property being

processed is in the form in which it is ultimately intended to be sold at retail. A business that has the majority of its emphasis on the retail side of business does not qualify as a processor or a manufacturer for purposes of this credit.

(e) **Leasing of employees by manufacturing or processing entity for purposes of the new jobs credit.** A company that engages in manufacturing or processing may still qualify for the Oklahoma New Jobs Credit pursuant to 68 O.S. § 2357.4 even though they lease their employees through an employee leasing company. The leased employees must still meet the requirements of 68 O.S. § 2357.4 for full-time equivalent employees and there must exist an employer-employee relationship between the leased employees and the employer who seeks the new jobs credit pursuant to 68 O.S. § 2357.4. Whether the employer-employee relationship exists between the employer manufacturing or processing entity and an employee who is leased will be determined on a case by case basis by considering the following factors:

- (1) The right of the employer to control the details of the employees work;
- (2) The employer furnishing the tools and the workplace;
- (3) The employee having taxes, worker's compensation and unemployment insurance funds withheld and the employer being liable for these items;
- (4) The employer's right to discharge the employee; and
- (5) The permanency of the employer-employee relationship.

(f) **Transfer of employees.** The transfer of employees to or from a leasing company cannot generate any additional credit, nor will any transfer of employees extend the period of time in which a current credit may be claimed.

(g) **Carryover.** Any credits allowed based on assets placed into service prior to January 1, 2000, or an increase in employment but not used may be carried over, in order, to each of the four (4) years following the year of qualification, and to the extent not used in those years, in order, to each of the fifteen (15) years following the initial five-year period. Credits allowed for assets placed into service after December 31, 1999, but not used may be carried over, in order, to each of the four (4) years following the year of qualification, and to the extent not used in those years, to any year following the initial five-year period.

(h) **Limitations.**

- (1) No qualified establishment, nor its contractors or subcontractors, that has received or is receiving an incentive payment pursuant to Section 3601 et seq. of the Oklahoma Statutes, (Oklahoma Quality Jobs Program Act), Section 3901 et seq. of the Oklahoma Statutes, (Small Employer Quality Jobs Incentive Act) or Section 3911 et seq. of the Oklahoma Statutes (21st Century Quality Jobs Incentive Act) shall be eligible to receive the credit described in this Section in connection with the activity and establishment for which incentive payments have been, or are being received. Effective January 1, 2010, this limitation does not apply to the investment / new jobs credit earned under 68 O.S. § 2357.4 (which requires a \$40 million investment within a three (3) year

time period). Further, the entity must pay an annualized wage which equals or exceeds the state average wage. The qualifying entity must also obtain a determination letter from the Oklahoma Department of Commerce that the business activity of the entity will result in a positive net benefit rate. [See: 68 O.S. §§ 3607, 3909 and 3919]

(2) Business entities that benefit from proceeds of obligations issued by the Oklahoma Development Finance Authority from the Economic Development Pool may not generate, accrue or otherwise claim any investment tax credits during the period of time that withholding taxes attributable to the payroll of said entity are being paid to the Community Economic Development Pooled Finance Revolving Fund or in any manner used for the payment of principal, interest or other costs associated with any obligations issued by the Oklahoma Development Finance Authority pursuant to the provisions Oklahoma Community Economic Development Pooled Finance Act.

(3) Beginning January 1, 2017, except with respect to tax credits allowed from investment or job creation occurring prior to January 1, 2017, the credits authorized by 68 O.S. § 2357.4 shall not be allowed for investment or job creation in electric power generation by means of wind as described by the North American Industry Classification System No. 221119.

(4) Effective for tax years beginning on or after January 1, 2016 and ending on or before December 31, 2018, no more than Twenty-five Million Dollars (\$25,000,000.00) of credit may be allowed as an offset in a taxable year. The formula to be used for the percentage adjustment shall be Twenty-five Million Dollars (\$25,000,000.00) divided by the amount of credits used to offset tax in the second preceding year. [68 O.S. § 2357.4(L)] The Tax Commission shall determine the percentage which may be claimed as a credit no later than September 1 of each calendar year. Any credits carried over into or earned during the 2016, 2017, and 2018 tax years but which are not allowed to be offset against income tax due to the application of the Twenty-five Million Dollar (\$25,000,000.00) cap may be carried over as outlined in subsection (g) and will be available to offset income tax in subsequent tax years.

(i) **Tax credit moratorium.**

(1) Credits based on assets placed in service or jobs created prior to July 1, 2010 are not affected by the tax credit moratorium and may be claimed as provided under 68 O.S. § 2357.4.

(2) No credit may be claimed for assets placed in service or new jobs created on or after July 1, 2010 through June 30, 2012. Credits generated during this time period are deferred, and may be claimed beginning with tax year 2012 returns, subject to the following limitations:

(A) Credits accrued during the period from July 1, 2010 through June 30, 2012, shall be limited to a period of two (2) taxable years.

(B) Only fifty percent (50%) of the total amount of the credit generated between July 1, 2010 and June 30, 2012 may be claimed each taxable year.

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(C) Amended returns shall not be filed after July 1, 2012 to claim the credits generated between July 1, 2010 and June 30, 2012 for tax years prior to tax year 2012.

(3) For example, a calendar year taxpayer places qualifying assets of \$150,000.00 in service in August 2010 which generates \$1,500.00 of credit for investment/new jobs per tax year for a five (5) year period (tax year 2010 through 2014) for a total of \$7,500.00. This results in the taxpayer generating \$3,000.00 of tax credits between July 1, 2010 and June 30, 2012. The taxpayer can initially claim \$1,500.00 in tax year 2012 and \$1,500.00 in tax year 2013 of credits generated during the moratorium. Taxpayer may also claim an additional \$1,500.00 of credits in both tax year 2012 and 2013. Final \$1,500.00 of credits can be claimed in tax year 2014.

710:50-15-76. Oklahoma coal credits

(a) **General provisions applicable to qualifying business entities purchasing Oklahoma-mined coal.** There shall be allowed a credit against the tax imposed by Sections 1803 and 2355 of Title 68 or Sections 624 and 628 of Title 36 of the Oklahoma Statutes for legal business entities purchasing Oklahoma-mined coal for qualifying purposes. In order to qualify for the Oklahoma Coal Credit, the business entity must either furnish water, heat, light, or power to the citizens or to the State of Oklahoma, or burn coal to generate heat, light, or power for use in manufacturing operations in Oklahoma. [See: 68 O.S. § 2357.11; *Wyoming v. Oklahoma*, 112 S.Ct. 789 (1992)]

(1) **Basic credit.** For tax years beginning on or after January 1, 1993, and ending on or before December 31, 2005 and for the period beginning January 1, 2006 through June 30, 2006, the credit shall be Two Dollars (\$2.00) per ton of Oklahoma-mined coal purchased. For the period July 1, 2006 through December 31, 2006 and for tax years beginning on or after January 1, 2007 and ending on or before December 31, 2021, the credit shall be Two Dollars and eighty-five cents (\$2.85) per ton of Oklahoma-mined coal purchased, except as provided in (h) of this Section.

(2) **Extended basic credit.** For the period July 1, 2006 through December 31, 2006 and for tax years beginning on or after January 1, 2007 and ending on or before December 31, 2021, the credit shall be Two Dollars and fifteen cents (\$2.15) per ton of Oklahoma-mined coal purchased. The extended basic credit may not be claimed or transferred prior to January 1, 2008, except as provided in (h) of this Section.

(3) **Additional credit for large quantity purchasers.** For tax years beginning on or after January 1, 1995, and ending on or before December 31, 2005 and for the period beginning January 1, 2006 through June 30, 2006, there shall be allowed, in addition to the credit described in (1) of this subsection, a **supplemental** credit of Three Dollars (\$3.00) per ton of Oklahoma-mined coal purchased. However, to obtain the credit described in this paragraph, purchases must total at least Seven Hundred Fifty Thousand (750,000) tons of Oklahoma-mined coal in the tax year for which credit is sought.

(b) **General provisions applicable to qualifying business entities that mine, produce, or extract coal.** For tax years beginning on or after January 1, 2001, and ending on or before December 31, 2021, there shall be allowed a credit against the tax imposed by Sections 1803 and 2355 of Title 68 or Sections 624 and 628 of Title 36 of the Oklahoma Statutes for every business entity in this state primarily engaged in mining, production, or extraction of coal, and holding a valid permit issued by the Oklahoma Department of Mines, **so long as** the average price of coal mined, produced, or extracted in any month for which credits are claimed is less than Sixty-eight Dollars (\$68.00) per ton.

(1) **Basic credit.** For tax years beginning on or after January 1, 2001 and ending on or before December 31, 2005, and for the period beginning January 1, 2006 through June 30, 2006, the credit shall be Ninety-five Cents (\$0.95) per ton and for the period of July 1, 2006 through December 31, 2006, and for tax years beginning on or after January 1, 2007 and ending on or before December 31, 2021, the credit shall be Five Dollars (\$5.00) for each ton of coal mined, produced, or extracted in, on, under, or through a permit in this state, except as provided in (h) of this Section.

(2) **Additional credit for thin seam coal.** For tax years beginning on or after January 1, 2001 and ending on or before December 31, 2005, and for the period of January 1, 2006 through June 30, 2006, there shall be allowed, in addition to that described in (1) of this subsection, a **supplemental** credit in the amount of Ninety-five Cents (\$0.95) per ton of coal mined, produced, or extracted from **thin seams** in this state, **so long as** the purchaser of the thin seam coal purchases less than Seven Hundred Fifty Thousand (750,000) tons of Oklahoma coal per year.

(3) **Extended credit for thin seam coal.** For tax years beginning on or after January 1, 2005 and ending on or before December 31, 2005, for the period of January 1, 2006, through June 30, 2006, there shall be allowed, in addition to that described in (1) and (2) of this subsection, a **supplemental** credit in the amount of Ninety-five Cents (\$0.95) per ton of coal mined, produced, or extracted from **thin seams** in this state on or after July 1, 2005.

(c) **Transferability.** The coal credits allowed, but not used, shall be freely transferable by written agreement to subsequent transferees, at any time during the five (5) years following the year of qualification.

(1) **"Eligible transferee" defined.** For purposes of this subsection, an **"eligible transferee"** means *any taxpayer subject to the tax imposed by Section 1803 or 2355 of Title 68 or Section 624 or 628 of Title 36 of the Oklahoma Statutes.* [See: 68 O.S. § 2357.11(H)] Pursuant to the statutory definition, an "eligible transferee" taxpayer may be an individual, as well as a legal business entity.

(2) **Written transfer agreement requirements.** The business entity which originally earned the credit and the subsequent transferee must jointly file a copy of the written transfer agreement with the Commission, within thirty (30) days of the transfer. The written agreement must contain the name, address, and taxpayer identification number

of the parties to the transfer, the amount of credit being transferred, the year the credit was originally allowed to the transferring entity, and the tax year or years for which the credit may be claimed.

(3) **Claiming transferred credit.** A copy of OTC Form 572 must be attached to any tax return on which a taxpayer claims a transferred credit.

(4) **Limitation of transferability.** Credits earned after December 31, 2013, shall not be transferable.

(d) **Application of credit election.** Any coal credit may, upon the election of the taxpayer, be claimed as a payment of tax, a prepayment of tax, or a payment of estimated tax for purposes of Section 1803 or 2355 of Title 68 or Section 624 or 628 of Title 36. In no event shall the credit reduce the tax below zero, and as such, this credit is non-refundable. Coal credits shall not be used to lower the price of any Oklahoma-mined coal sold that is produced by a subsidiary of the person receiving a tax credit under this section to other buyers of the Oklahoma-mined coal.

(e) **Carryover provisions.** Any coal credit earned prior to January 1, 2014, to the extent not used, may be carried over in order to each of the five (5) years following the year of qualification. However, at no time may the credit claimed exceed the tax liability for credits earned prior to January 1, 2014.

(f) **Refund of tax credits.** Credits earned on or after January 1, 2014, but not used, shall be refunded to the taxpayer at eighty-five percent (85%) of the face amount of the credits. If the taxpayer is a pass-through entity and does not file a claim for a direct refund, the pass-through entity shall allocate the credit to one or more of the shareholders, partners or members of the pass-through entity. The total amount of credits refunded or allocated shall not exceed the amount of the credit or refund to which the pass-through entity is entitled.

(g) **Tax credit moratorium.** No credit may be claimed for coal purchased, mined, produced or extracted during the period of July 1, 2010 through June 30, 2012, for which the credit would otherwise be allowable. This credit may be claimed for tax year 2012 and subsequent tax years, for Oklahoma-mined coal for qualifying purposes purchased, mined, produced or extracted on or after July 1, 2012.

(h) **Tax credit limitation.** For any credits calculated pursuant to (a)(1) or (a)(2), or (b)(1) of this Section for activities occurring on or after January 1, 2016, the amount of credit allowed shall be equal to seventy-five percent (75%) of the amount otherwise provided. [68 O.S. § 2357.11(N)]

710:50-15-83. Limitation of credits allowed by the Oklahoma Quality Jobs Program, the Small Employer Quality Jobs Incentive Acts and the 21st Century Quality Jobs Incentive Act

No establishment which qualifies under the terms of Section 3601 et seq. of the Oklahoma Statutes, (Oklahoma Quality Jobs Program Act), Section 3901 et seq. of the Oklahoma Statutes, (Small Employer Quality Jobs Incentive Act), or Section 3911 et seq. of the Oklahoma Statutes (21st Century Quality Jobs Incentive Act) and has received or is receiving

incentive payments pursuant to those Acts, nor its contractors or subcontractors, shall be eligible to receive, in connection with the activity and establishment for which incentive payments have been, or are being received, the credits described as follows:

(1) The investment credit provided for by 68 O.S. §2357.4. [See: 710:50-15-74]

(2) The credit for investments in qualified venture capital companies provided for by 68 O.S. §2357.7. [See: 710:50-15-77 and 710:50-15-78]

(3) The credit for recycling, reuse, or ultimate destruction of controlled industrial waste or deleterious substances, provided for by 68 O.S. §2357.16. (Amended and recodified at 27A O.S. §§2-11-301 through 2-11-307.) [See: 710:50-15-75]

(4) The credit for clean-burning motor vehicle fuel property, provided for by 68 O.S. §2357.22. [See: 710:50-15-81]

~~(5) The credit for certain qualified health care plans, provided for by 68 O.S. §2357.31. [See: 710:50-15-79]~~

~~(6) The credits provided pursuant to the Oklahoma Research and Development Incentives Act, 68 O.S. §§54003, 54006~~

710:50-15-90. Oklahoma earned income tax credit

(a) Effective for tax years beginning on or after January 1, 2002, there shall be an Oklahoma Earned Income Tax Credit for resident and part year resident individuals.

(b) The Oklahoma Earned Income Tax Credit shall be an amount equal to five percent (5%) of the Federal Earned Income Tax Credit allowed under Section 32 of the Internal Revenue Code. Effective for tax year 2016 and subsequent tax years, if the credit exceeds the tax imposed by Section 2355 of Title 68, the excess amount shall not be refunded to the taxpayer, nor shall any amount be carried forward to a subsequent tax year. The Oklahoma Earned Income Tax Credit may not be paid in advance and must be claimed on the individual income tax return when filed.

(c) The credit is to be prorated on the ratio that Oklahoma Adjusted Gross Income bears to Federal Adjusted Gross Income, not to exceed one hundred percent (100%). When the Oklahoma Adjusted Gross Income or the Federal Adjusted Gross Income are negative the ratio will be determined as follows:

(1) When the Oklahoma Adjusted Gross Income is negative and is less than the Federal Adjusted Gross Income, the ratio shall be 0%. (For example: Oklahoma Adjusted Gross Income is negative \$1,000 and the Federal Adjusted Gross Income is negative \$500, the ratio shall be 0%).

(2) When the Federal Adjusted Gross Income is negative and is equal to or less than the Oklahoma Adjusted Gross Income, the ratio will be 100%. (For example: Oklahoma Adjusted Gross Income is negative \$500 and the Federal Adjusted Gross Income is negative \$1,000 the ratio is 100%).

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710:50-15-103. Credit for qualified railroad reconstruction or replacement expenditures

(a) **General provisions.** For tax years beginning after ~~12/31/05~~ December 31, 2005 there is a credit allowed against the tax imposed by Section 2355 of Title 68 equal to 50% of an eligible taxpayer's qualified railroad reconstruction or replacement expenditures.

(b) **Definitions.** The following words and terms, when used in this Section, shall have the following meaning, unless the context clearly indicates otherwise:

(1) **"Eligible taxpayer"** means any railroad that is classified by the United States Surface Transportation Board as a Class II or Class III railroad.

(2) **"Qualified railroad reconstruction or replacement expenditures"** means expenditures for reconstruction or replacement of railroad infrastructure. This includes track, roadbed, bridges, industrial leads and track-related structures owned or leased by a Class II or Class III railroad as of January 1, 2006. Qualified railroad reconstruction or replacement expenditures can also include new construction of industrial leads, switches, spurs and sidings and extensions of existing sidings by a Class II or Class III railroad.

(c) **Limitations.**

(1) The amount of the credit may not exceed the product of Five Hundred Dollars (\$500.00) for tax year 2007 and Two Thousand Dollars (\$2,000.00) for tax years 2008 and the number of miles of railroad track owned or leased within this state by the eligible taxpayer as of the close of the taxable year. In tax year 2009 and subsequent tax years, an eligible taxpayer may elect to increase the limit for tax year 2008 to an amount equal to three times the amount specified. However, the taxpayer may only claim one third (1/3) of the credit in any one taxable period. An eligible taxpayer who elects to increase the limitation on the credit will not be granted additional credits during the period of such election.

(2) Effective for tax years beginning on or after January 1, 2016, the credit is limited to seventy-five percent (75%) of the otherwise allowable credit. [68 O.S. § 2357.104(H)]

(d) **Transferability.** The credits allowed pursuant to this Section that are not used are freely transferable by written agreement, to subsequent transferees, at any time during the five (5) years following the year of qualification.

(1) **"Eligible transferee" defined.** For purposes of this subsection, an "eligible transferee" shall be any taxpayer subject to the tax imposed by Section 2355 of Title 68.

(2) **Written transfer agreement requirements.** The person originally allowed the credit and the subsequent transferee must jointly file a copy of the written transfer agreement with the Commission, within thirty (30) days of the transfer. The written agreement must contain the name, address, and taxpayer identification number of the parties to the transfer, the amount of credit being transferred, the year the credit was originally allowed to the

transferring person, and the tax year or years for which the credit may be claimed.

(e) **Carryover provisions.** Any credit allowed pursuant to the provisions of this Section, to the extent not used, may be carried over in order to each of the five (5) years following the year of qualification.

(f) **Tax credit moratorium.** No credit may be claimed for qualified railroad reconstruction or replacement expenditures occurring during the period of July 1, 2010 through June 30, 2012, for which the credit would otherwise be allowable. Qualified railroad reconstruction or replacement expenditures occurring before July 1, 2010 will qualify for the tax credit regardless of when the Department of Transportation issues the certificate of verification of completion of the project. This credit may be claimed for tax year 2012 and subsequent tax years, for qualified railroad reconstruction or replacement expenditures on or after July 1, 2012.

710:50-15-104. Credit for construction of energy efficient residential property

(a) **General provisions.** Effective for tax the time period beginning on or after January 1, 2006, and ending on or before July 1, 2016 ~~year 2006~~, a credit is available for contractors who construct either energy efficient residential property or energy efficient manufactured homes. The credit is dollar for dollar based on the cost of certain eligible expenditures.

(b) **Definitions.** For purposes of this Section, the following words and terms, shall have the following meaning, unless the context clearly indicates otherwise:

(1) **"Contractor"** is the taxpayer who actually constructed the residential property or manufactured home. In cases if more than one person qualifies as the contractor, the primary contractor.

(2) **"Eligible energy efficient residential property"** means a newly constructed residential property or manufactured home property located in the State of Oklahoma. Further the home cannot exceed two thousand (2,000) square feet in order to be eligible for the credit. The eligible energy efficient residential property must be substantially complete after December 31, 2005.

(3) **"Eligible expenditure"** includes the cost of energy efficient heating or cooling systems, insulation material specifically designed to reduce the heat gain or loss of a residential property, exterior windows, exterior doors or metal roofs with appropriate pigmented coatings designed to reduce the heat gain which meets Energy Star program requirements.

(4) **"Home energy ratings"** means a confirmed rating involving an on-site inspection of a home by a residential energy efficiency professional trained and certified by a Residential Energy Services Network accredited home energy rater.

(5) **"Residential energy services network provider"** means an accredited home energy inspector certified by Residential Energy Services Network.

(6) **"Residential property"** means a single dwelling unit, duplex, or townhouse with three stories or less, that provides independent living and could be sold or leased as

separate property. The term does not include Group R-2 and R-4 residential buildings as defined in the International Energy Conservation Code.

(7) **"Substantially complete"** means the residential property or manufactured home has a certificate of occupancy issued if located in a municipality. For residential property or manufactured home in non-metropolitan area, the property will be substantially complete after passing the appropriate inspections required under the applicable County Building Codes permitted under 19 O.S. § 863.44.

(c) Amount of credit.

(1) The credit is capped at Four Thousand Dollars (\$4,000) for those residential properties that are certified at forty percent (40%) or above of the International Energy Conservation Code 2003 and any supplement in effect at the time of completion. If the residential property is certified between twenty percent (20%) and thirty-nine (39%) of the International Energy Conservation Code of 2003 and any supplement in effect at the time of completion, the credit is limited to Two Thousand Dollars (\$2,000.00).

(2) The credit is not available if the residential property is in excess of Two Thousand (2,000) square feet.

(d) Carryover provisions. Any credit allowed pursuant to the Section, to the extent not used, may be carried over in order to each of the four (4) years following the year of qualification. However, at no time may the credit claimed exceed the tax liability.

(e) Transfer of the credit. Effective for credits earned on or after August 25, 2006, the credit for construction of energy efficient residential property may be transferred.

(f) Tax credit moratorium. No credit may be claimed for any expenditure made during the period of July 1, 2010 through June 30, 2012, for which the credit would otherwise be allowable. A credit will be allowed for eligible expenditures made prior to July 1, 2010 regardless of when the property is substantially complete. This credit may be claimed for tax year 2012 and subsequent tax years, for eligible expenditures made on or after July 1, 2012, by contractors who construct either energy efficient residential property or energy efficient manufactured homes.

(g) Termination of the credit. No credit may be claimed for any expenditure made on or after July 1, 2016 for which the credit would otherwise be allowable. The credit shall be allowed for eligible expenditures made prior to July 1, 2016; however, the property must be substantially complete before January 1, 2017.

[OAR Docket #17-523; filed 6-26-17]

**TITLE 710. OKLAHOMA TAX
COMMISSION
CHAPTER 55. MOTOR FUEL**

[OAR Docket #17-524]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:

- Subchapter 4. Motor Fuel Tax
- Part 1. Licenses
- 710:55-4-102 [AMENDED]
- Part 2. Reports [NEW]
- 710:55-4-106 [NEW]
- Subchapter 7. Special Fuels Tax
- 710:55-7-6 [AMENDED]

AUTHORITY:

68 O.S. § 203; Oklahoma Tax Commission

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

December 21, 2016

COMMENT PERIOD:

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March 14, 2017

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APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 13, 2017

FINAL ADOPTION:

June 13, 2017

EFFECTIVE:

September 11, 2017

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

New Section 710:55-4-106 has been added to require the electronic filing of motor fuel tax monthly reports.

Sections 710:55-4-102 and 710:55-7-6 have been amended to clarify policy, improve readability, correct scrivener's errors, remove obsolete language, update statutory citation, and ensure accurate internal cross-references.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 4. MOTOR FUEL TAX

PART 1. LICENSES

710:55-4-102. Bonds

(a) **Applicants required to post a bond.** Applicants for the following licenses shall be required to post a bond:

- (1) Terminal operators
- (2) Exporters
- (3) Transporters
- (4) Tank wagon operator-importers
- (5) Suppliers and permissive suppliers
- (6) Bonded importers

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(b) **Single bond required from applicant for multiple licenses.** An applicant for more than one license shall be required to post only one (1) bond. The bond shall be posted in the greatest amount required for one of the licenses.

(c) **Computation of amount of bond.** Bonds required for licenses described in this Part shall be posted in amounts determined by (1) through ~~(6)~~(5) of this subsection:

(1) **Terminal operators.** Terminal operators must post a bond in an amount not less than three (3) months estimated tax liability, but not to exceed Five Hundred Thousand Dollars (\$500,000.00). The initial bond shall be in the amount of Two Thousand Dollars (\$2,000.00).

(2) **Exporters.** Exporters must post a bond in an amount not less than three (3) months estimated tax liability, but not to exceed One Million Dollars (\$1,000,000.00). The initial bond shall be in the amount of Two Thousand Dollars (\$2,000.00).

(3) **Transporters.** Transporters must post a bond in an amount not less than three (3) months estimated tax liability, but not to exceed One Hundred Thousand Dollars (\$100,000.00). The initial bond shall be in the amount of Two Thousand Dollars (\$2,000.00).

(4) **Tank wagon operators-importers.** Tank wagon operators-importers must post a bond in an amount not less than three (3) months estimated tax liability, but not to exceed Fifty Thousand Dollars (\$50,000.00).

(5) **Suppliers; permissive suppliers; bonded importers.** Suppliers, permissive suppliers, and bonded importers must post a bond in an amount not less than three (3) months estimated tax liability, but not less than One Hundred Thousand Dollars (\$100,000.00), nor more than Two Million Dollars (\$2,000,000.00)

(d) **Alternative to posting bond for supplier's or bonded importer's licenses.** In lieu of posting a bond, an applicant for a supplier's or bonded importer's license, may show proof of financial responsibility. Proof of financial responsibility shall be evidenced by proof of Five Million Dollars (\$5,000,000.00) net worth. "Net worth" means total assets, minus total liabilities, as evidenced in a statement from an independent auditor prepared within six (6) months of the date of application.

(e) **Form of bond.** All bonds shall be in the form of a surety bond, upon a form provided by the Tax Commission, or a cash deposit or certificate of deposit.

(f) **Commission may review, rescind eligibility.** Pursuant to the authority granted by 68 O.S. ~~Supp. 1996~~, § 500.23(C), the Commission may review eligibility standards, including "net worth", of any licensee and may take further actions, including, but not limited to, requiring further assurance of financial responsibility, increasing the amount of required bond, rescission of a permit-holder's eligibility and election to defer payment of motor fuel taxes, or other action needed to ensure remittance of the motor fuel tax.

(g) **Cancellation of license.** Rescission of a permit-holder's eligibility and cancellation of any license or permit shall be preceded by a hearing pursuant to the terms of 68 O.S. § 212.

PART 2. REPORTS

710:55-4-106. Reports must be filed electronically

The required monthly reports must be filed electronically in Extensible Markup Language (XML) format or by Excel Imports into the Taxpayer Access Point (TAP).

SUBCHAPTER 7. SPECIAL FUELS TAX

710:55-7-6. Fee in lieu of special fuel tax

(a) The Oklahoma Special Fuel Tax Code levies a flat fee of Fifty Dollars (\$50.00) on each automobile, pickup truck or van not exceeding one ton in capacity and using ~~liquefied~~liquefied petroleum gas or natural gas as fuel. If a vehicle is acquired or system installed after July 1, the flat fee is Twenty-five Dollars (\$25.00).

(b) The Oklahoma Special Fuel Tax Code levies a flat fee of One Hundred Dollars (\$100.00) on each passenger automobile, pickup truck or van not exceeding one ton in capacity, using compressed natural gas or liquefied natural gas as fuel. If a vehicle is acquired or system installed after July 1, the flat fee is Fifty Dollars (\$50.00).

(c) Beginning January 1, 1993, the Oklahoma Special Fuel Tax Code levies a flat fee of One Hundred Fifty Dollars (\$150.00) on each vehicle exceeding one ton in capacity, using liquefied petroleum gas, compressed natural gas, or liquefied natural gas as fuel. If a vehicle is acquired after July 1, the flat fee is Seventy-five Dollars (\$75.00).

(d) Payment of the fee is mandatory on vehicles described in (a), (b), and (c) of this Section. Assessment of the fee is in substitution for Special Fuel Tax levied under 68 O.S. §§ 703, 705, 707.1, 707.2 and 707.3, and no tax need be paid at the time of purchase of the fuels for use in vehicles covered by this Section and upon which the required fee has been paid. Once the fee has been paid as to a particular vehicle, a decal is issued for that vehicle. Such decal is to be placed on the lower right hand corner of the front windshield of that vehicle.

(e) The decal is issued to one vehicle only and is not transferable to another vehicle, even though the equipment used to adapt the first vehicle for L.P.G. use is transferred to the second vehicle, such that the first vehicle is no longer capable of using ~~liquefied~~liquefied petroleum gas.

(f) Payment of the fee for the decal is due on January 1 of each calendar year. The decal shall be effective only until December 31 of the year in which the fee is paid regardless of the day and month within that year when the fee is paid.

(g) Payment of the fee levied shall be due on the first day that L.P.G. is used in a vehicle covered by this section and thereafter on January 1 of each calendar year. A taxpayer may make application for the decal with the Oklahoma Tax Commission; the required fee is to be remitted at the time application for the decal is made.

(h) Failure to obtain a proper and current decal within thirty (30) days from the date when application for such decal should have been made shall result in a penalty of twenty percent (20%) of the fee being added to the required fee.

(i) Any vehicle subject to the Fee in Lieu of Special Fuel Tax for which the required decal has not been obtained, shall

be subject to payment of the Special Fuel Tax levied on the purchase of L.P.G. for use in that vehicle. Payment of the required Fee and acquisition of the required decal, at a date subsequent to the date due, shall not result in an allowable claim for refund on any Special Fuel Taxes paid prior to the acquisition of the decal.

[OAR Docket #17-524; filed 6-26-17]

**TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 60. MOTOR VEHICLES**

[OAR Docket #17-525]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 3. Registration and Licensing
 - Part 1. General Provisions
 - 710:60-3-22 [AMENDED]
 - 710:60-3-25 [AMENDED]
 - Part 7. Noncommercial Vehicles
 - 710:60-3-70 [AMENDED]
 - Part 11. Other Vehicles
 - 710:60-3-112 [AMENDED]
 - Part 13. Manufactured Homes
 - 710:60-3-130 [AMENDED]
- Subchapter 5. Motor Vehicle Titles
 - Part 1. General Provisions
 - 710:60-5-1 [AMENDED]
 - 710:60-5-4 [AMENDED]
 - Part 5. Certificates of Title
 - 710:60-5-55. Junked titles [AMENDED]
 - Part 7. Transfer of Title
 - 710:60-5-77 [AMENDED]
 - 710:60-5-79 [NEW]
 - Part 11. Liens
 - 710:60-5-111 [AMENDED]
- Subchapter 7. Motor Vehicle Excise Tax
 - 710:60-7-3 [AMENDED]
- Subchapter 9. Motor Vehicle License Agents/Agencies
 - Part 7. Specific Reporting Duties
 - 710:60-9-72 [AMENDED]
 - Part 9. Specific Fiscal Duties
 - 710:60-9-94 [AMENDED]
 - Part 11. Agency Operation
 - 710:60-9-120 [AMENDED]

AUTHORITY:

47 O.S. §§ 1140, and 1149; 68 O.S. § 203; Oklahoma Tax Commission

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n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

Section 710:60-3-22 has been amended to implement the provisions of Senate Bill 1459 which allow a nonprofit charitable organization, upon providing documentation of its tax exempt status as an organization, to obtain from the OTC charitable nonprofit organization license plates for the purposes of demonstrating, transporting or test driving donated vehicles, provided that the organization may possess or use at any one time no more than eight of the described plates. [47:1137.1]

Section 710:60-3-25 has been amended to implement the provisions of House Bill 3192 which provide for an alternative method in which to document "active duty status" for purposes of qualifying for the \$15 reduced vehicle registration rate for vehicles of active duty military service members and waiver of delinquent penalties for Oklahoma resident armed forces personnel who are stationed out-of-state by official assignment. [47:1127]

Sections 710:60-3-70 and 710:60-3-130 have been amended to implement the provisions of House Bill 2378 which exclude "park model recreation vehicle" from the definition of manufactured home for purposes of the levy of motor vehicle excise tax, and Senate Bill 972 which redefines the term "autocycle" by striking the requirement that these vehicles have a fully enclosed compartment for the driver and passenger. [47:1-103.2, 1102:68:2101]

Section 710:60-3-112 has been amended to implement the provisions of House Bill 2492 which expand the list of tax-exempt or nonprofit license plates to be designed for any vehicle owned and operated by the Civil Air Patrol. [47:1135.1]

Sections 710:60-5-4 and 710:60-5-77 have been amended and new Section 710:60-5-79 has been added to comply with the provisions of Senate Bill 1511 which provides for the transfer of a motor vehicle upon the death of the vehicle owner by filing with the Tax Commission a transfer-on-death notice signed by the vehicle owner which designates a death beneficiary. [47:1107.5]

Section 710:60-5-55 has been amended to implement the provisions of House Bill 2624 which modify the type of documentation required to be provided by a person when selling a vehicle to a scrap metal dealer. [2:11-92; 47:1105]

Section 710:60-5-111 has been amended to clarify existing policy to ensure submission of proper documentation by lender when perfecting a lien.

Section 710:60-7-3 has been amended to implement the provisions of Senate Bill 900 which relate to the motor vehicle excise tax exemption afforded to veterans with permanent active service-related disabilities receiving compensation at the 100% rate, allowing an exception to the one vehicle in a consecutive three (3) year period exemption limitation in cases where the vehicle is a replacement for a vehicle which was destroyed and declared by the insurer to be a total loss claim. [68:2105]

Section 710:60-9-72 has been amended to clarify existing policy that motor license agent semimonthly report documentation submission requirements encompass all transaction summaries.

Section 710:60-9-94 has been amended to remove outdated language and clarify existing policy regarding procedures relating to the processing of returned checks for remittance to OTC by a motor license agent.

Section 710:60-9-120 has been amended to remove outdated language and clarify existing policy that motor license agents are expected to maintain an orderly office environment for taxpayer service and comply with Tax Commission equipment policies.

Section 710:60-5-1 has been amended along with other sections that may be amended to clarify policy, improve readability, correct scrivener's errors, remove obsolete language, update statutory citation, and ensure accurate internal cross-references.

CONTACT PERSON:

Lisa R. Haws, Tax Policy Analyst, Tax Policy and Research Division, Oklahoma Tax Commission, 2501 North Lincoln Boulevard, Oklahoma City, Ok 73194, 405-521-3133.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

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SUBCHAPTER 3. REGISTRATION AND LICENSING

PART 1. GENERAL PROVISIONS

710:60-3-22. Charitable organization vehicle registration

(a) Vehicles donated to a charitable organization licensed through the Oklahoma Secretary of State's Office are exempt from delinquent registration fees, excise tax, and penalties. The charitable organization is responsible only for a title fee, when applicable.

(b) Should ownership of a vehicle on which delinquent taxes are due be assigned to a licensed charitable organization and subsequently reassigned back to the donor, all delinquent taxes and fees again become due.

(c) Organizations entitled to a specific exemption from the Secretary of State charitable organization registration requirements pursuant to 18 OS § 552.4 may, upon confirmation of that exemption by the Motor Vehicle Division of the Oklahoma Tax Commission, receive and assign ownership of donated vehicles in the same manner as registered charitable organizations.

(d) A nonprofit charitable organization which is exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3), and which accepts donations of used motor vehicles previously titled in Oklahoma to be subsequently transferred to another owner, upon the qualifying organization providing sufficient documentation of its tax-exempt status, may obtain from the Oklahoma Tax Commission charitable nonprofit organization license plates for demonstrating, transporting or test-driving donated vehicles, provided that no organization shall possess or use at any one time more than eight (8) such plates.

710:60-3-25. Active-duty military U.S. Armed Forces personnel registration

(a) Eligibility for registration rate. The following are eligible for a special armed forces annual vehicle registration rate. Vehicles and manufactured homes owned by members of the U.S. Armed Forces, or their spouses, are eligible for a special registration rate, under the conditions outlined below:

(1) Noncommercial vehicles. Vehicles owned by active-duty reservists and active-duty members of the National Guard. Reservists activated under annual training orders do not qualify for this reduced active-duty military registration rate. Qualifying service members, or their spouses, who are either residents of, or assigned to duty in Oklahoma.

(2) Noncommercial vehicles owned by an Oklahoma resident, or spouse of an Oklahoma resident, stationed out of state due to an official military assignment. The vehicle may not be used in any trade or business, or for any commercial purpose.

(3) Noncommercial vehicles owned by the spouse, who resides in Oklahoma, of an active-duty military service person serving in a foreign country.

(4) Manufactured homes owned by an out of state resident active-duty military personnel stationed service member assigned to duty in Oklahoma.

(5) Manufactured homes located out of state and owned by an Oklahoma resident active-duty military personnel, service member when the manufactured home is also located out of state. Manufactured homes located in Oklahoma and owned by Oklahoma military personnel service members are not entitled to eligible for the special military registration rate.

(6) The reduced registration fee does not apply to vehicles owned by retired members of the Armed Forces, inactive members of the Reserve Corps of the Armed Forces, inactive members of the Oklahoma National Guard and other members and former members of the Armed Forces of the United States who are not on active duty.

(b) **Affidavit required.** A properly completed U.S. Armed Forces Affidavit (OTC Form 779) must be presented by the applicant.

(1) The affidavit requires the signature of the active-duty military service person, or their spouse, and the signature of an officer for the organization to which the military service person is assigned. In lieu of certification by an officer, the applicant may submit copies of written orders documenting that the service member, Guardsman, or Reservist is on active duty at the time of application for registration.

(2) When the active-duty military service person is serving in a foreign country, the spouse may sign the affidavit under penalties of perjury. In this instance, certification by an officer of the U.S. Armed Forces organization is not required.

(3) An Oklahoma resident stationed in another state due to an official military assignment may authorize his/her parents a designated representative to register his/her vehicle(s) on their behalf. A completed U.S. Armed Forces Affidavit, including an officer's certification, is required.

(4) Oklahoma resident armed forces personnel stationed service members assigned to duty outside of this state due to official assignment of the U.S. armed forces or Oklahoma National Guard are entitled to a waiver of delinquent registration penalties for the duration of the out of state assignment and up to sixty (60) days following the end of that assignment. may utilize the The delinquent penalty waiver section of the U.S. Armed Forces Affidavit may be utilized to certify their eligibility for the referenced statutory registration penalty waiver.

(c) **Transfer of ownership.** When a vehicle currently registered at the reduced rate is sold by a military service person member to a purchaser who does not qualify for the military rate, the purchaser must register the vehicle from the date of ownership assignment at the new appropriate registration classification. If the vehicle is sold to another military service person qualifying for the special rate, the purchaser may transfer title into his/her name with no additional registration fee, upon presentation of a properly completed U.S. Armed Forces Affidavit.

PART 7. NONCOMMERCIAL VEHICLES

710:60-3-70. Noncommercial vehicles

Annual registration rates fee amounts are based on the number of years the vehicle has been registered pursuant to a five tiered registration scheme approved by popular vote on August 22, 2000. The Registration fees for the following vehicles/vehicle types are registered using determined by this method.

- (1) **Automobiles.** "Automobiles" includes noncommercial trucks and vans and nonagricultural trucks.
- (2) **Travel trailers.** Travel trailers are any vehicular portable structure built on a chassis and used as a temporary dwelling for travel, recreational or vacation use. The dimensions of a travel trailer cannot exceed 40 feet in length (including hitch or coupling) or 8 feet in width.
- (3) **Motorcycles.** Motorcycles are defined as those vehicles designed and constructed to travel on not more than three (3) wheels, having a saddle or a single seat for the use of the rider.
- (4) **Recreational vehicles.** "Recreational vehicle" means every vehicle which is built on or permanently attached to a self-propelled motor chassis or chassis cab which becomes an integral part of the completed vehicle and is capable of being operated on the highways. In order to qualify as a recreational vehicle pursuant to this subsection such vehicle shall be permanently constructed and equipped for human habitation, having its own sleeping and kitchen facilities, including permanently affixed cooking facilities, water tanks and holding tank with permanent toilet facilities. Recreational vehicle shall not include manufactured homes or any vehicle with portable sleeping, toilet and kitchen facilities which are designed to be removed from such vehicle. Effective November 1, 2016, recreational vehicle includes park model recreational vehicles, as defined in 47 O.S. § 1102.
- (5) **Moped.** A "moped" is any motor-driven cycle with a motor producing no more than two brake horsepower and which is not capable of propelling the vehicle at a speed in excess of thirty (30) miles per hour on level ground. If an internal combustion engine is used, the displacement shall not exceed fifty (50) cubic centimeters, and the moped shall have a power drive system that functions directly or automatically without clutching or shifting by the operator after the drive system is engaged. mopeds are subject to all the provisions of the Motor Vehicle License and Registration Act. No dealer's license is required to sell them. If sales tax was paid upon purchase, no excise tax should be assessed when titling.
- (6) **Dirt bikes, minibikes, all-terrain vehicles (3 & 4 wheelers), and golf carts.** Dirt bikes, minibikes, all-terrain vehicles (3 & 4 wheelers), and golf carts are not street legal and are not to be titled and tagged for street or highway use in Oklahoma. All-terrain vehicles and off-road motorcycles meeting the criteria outlined in OAC 710:60-3-140 are subject to titling and registration, as therein specified. Golf carts owned by the Tourism and Recreation Department may be operated on streets and

highways located within the boundaries of a state park by employees of the Department, or by employees of an independent management company on behalf of the Department.

(7) **Autocycle.** An autocycle, which is to be issued a standard vehicle license plate, means any motor vehicle with the following:

- (A) A seat or saddle for the use of each rider;
- (B) Three wheels in contact with the ground, but excluding a tractor;
- (C) A combustion engine with a piston or rotor displacement of one hundred fifty cubic centimeters (150 cu cm) or greater;
- (D) ~~A fully enclosed compartment for the driver and any passenger;~~
- (~~E~~) For each occupant, safety belts or safety shoulder harnesses which shall be of a type and shall be installed pursuant to 49 C. F. R., Section 571.208 et seq.;
- (~~F~~~~E~~) All equipment required by the provisions of Article II et seq. of Chapter 12 of Title 47 of the Oklahoma statutes, with respect to equipment on vehicles.

PART 11. OTHER VEHICLES

710:60-3-112. Tax exempt license plates

(a) **Classifications.** Tax exempt ~~tags~~license plates are divided into two categories:

(1) **Nonrenewable.** Nonrenewable license plates are issued to political subdivisions of the State and other entities as provided by statute. ~~They are classified as Nonrenewable plates are issued at no cost to State agencies, the Oklahoma Highway Patrol, the Oklahoma Military Department, and volunteer fire departments organized under Title 18 of the Oklahoma Statutes, which are issued directly by the Oklahoma Tax Commission free of charge. Other classification types are County, City, and School. Nonrenewable plates are issued at an initial fee set forth by statute to vehicles owned and operated by Counties, Cities, Schools and the Civil Air Patrol. Each of these groups has issued a distinctive tagplate with a distinctive prefix. A yearly validation decal will not be Yearly validation decals are not issued with these types of exempt ~~tags~~plates as they are nonrenewable and nontransferable (unless transferring to same type of exempt entity). ~~All other nonrenewable exempt plates listed in this paragraph have an initial fee as set forth by statute.~~~~

(2) **Renewable.** All other tax exempt organizations are issued renewable license plates. These ~~tags~~plates are designated by an "E" prefix and must be renewed annually, for a fee set forth by statute, plus an insurance verification fee.

(b) **Display of exempt organization.** All tax exempt organizations, with the exception of political subdivisions of the State (State, County, City and School) and organizations which are prohibited from such displays, must have the name or symbol of the tax exempt or nonprofit organization prominently displayed on both sides of the vehicle in letters not less than 2 inches high and 2 inches wide and of such shape and color as to

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be readily legible during daylight hours from a distance of fifty (50) feet while the vehicle is not in motion.

(c) **Display not required when prohibited by law.** The Statute provides for a waiver of the sign requirement if such a display is prohibited by federal or state law or by state agency rules and regulations.

(d) **Affidavit of tax exempt registration.** An "Affidavit for Tax Exempt Registration" (OTC Form 701-29) must be completed by the vehicle registrant. On the affidavit, the registrant must indicate, by marking the specific statutory vehicle registration exemption applicable to their organization and confirm that the exempt vehicle either meets the sign requirements, or that the sign requirement is inapplicable because of a federal or state law or regulation. If the latter situation is indicated, a photocopy of the applicable federal or state law or state agency rule and regulation must be submitted. Tax exempt organizations statutorily exempted from the sign requirement are not required to complete the signage verification portion of the Affidavit affidavit.

PART 13. MANUFACTURED HOMES

710:60-3-130. Manufactured homes

(a) **Definition.** "**Manufactured home**" means a residential dwelling built in accordance with the ~~provisions of 42 U.S.C. § 5401~~ National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C., Section 5401 et seq., and rules promulgated pursuant thereto and the rules promulgated by the Oklahoma Used Motor Vehicle and Parts Commission pursuant to 47 O.S. § 582. Effective November 1, 2016, manufactured home shall not mean a park model recreational vehicle as defined in 47 O.S. § 1102.

(b) **Initial title and registration.** In most instances, manufactured homes purchased new or brought in from another state are initially titled and registered at motor license agencies. Thereafter, they are placed on county Ad Valorem tax rolls and will be issued registration renewal decals by the County Treasurer.

(c) **License plate and decal required.** A manufactured home license plate and registration decal are required on all manufactured homes registered in this State.

(d) **Fees may be prorated for remainder of current year.** For those manufactured homes purchased new or coming in from another state, license plates and corresponding registration decals shall be issued upon payment of the applicable registration fee for the balance of the year.

(e) **Issuance of license and decal for currently registered manufactured homes; proof of payment of ad valorem tax.** For those manufactured homes already located and registered in this State on December 1, 1988, a license plate and registration decal shall be issued upon proof of current Ad Valorem taxes paid. Proof of payment must be in the form of a Manufactured Home Tag Certification Form or Manufactured Home Certificate (OTC Form 936). When presented with proof of payment, a license plate and corresponding decal will be issued for a total fee as set forth by statute.

(f) **Basis used for registration fee and excise tax.** Both the registration fee and the excise tax assessment are based upon the selling price of the manufactured home. The selling price will be recorded as both the Factory Delivered Price (FDP) and the Total Delivered Price (TDP) when issuing an original Oklahoma title.

(g) **Excise tax on manufactured homes.** The excise tax on new manufactured homes is levied on one-half 1/2 of the retail selling price. The excise tax on a used manufactured home will be applied to sixty-five percent (65%) of one-half the resale price. The excise tax rate is levied by the Oklahoma Statutes.

(h) **Sale of manufactured home; transfer of title; change of basis.** If the manufactured home is sold, the title must be transferred to the new owner, who will have the title issued in his/her name. The FDP should be changed to reflect the purchase price. However, the TDP listed on the title will not be changed.

(i) **Proof of payment of ad valorem tax required upon transfer.** Proof of current paid ad valorem taxes must be obtained before transferring ownership of a manufactured home.

(j) **Manner of proof.** Acceptable proof of paid ad valorem taxes will be a Form 936 Manufactured Home Certificate or other receipt issued by a county treasurer which lists the manufactured home being transferred and clearly designates that taxes for the current calendar year have been paid in full.

(k) **When other basis used in determining tax.** Should the manufactured home be repossessed or brought in used from out-of-state, the "blue book" suggested selling price will be used as a base price for the registration and collection of excise tax.

(l) **Late registration; penalties.** The penalty for late registration of manufactured homes, which are those not registered within the 30 day period from the date of purchase or the date the manufactured home was brought into this state, shall be an amount equal to the registration fee, less the administrative fee, as set forth by statute.

(m) **Park model recreational vehicle.** A park model recreational vehicle formerly registered as a manufactured home may make application for a change in registration classification by completing an affidavit confirming the unit meets the statutory definition criteria outlined in 47 O.S. § 1102 and submitting to the Oklahoma Tax Commission for review.

SUBCHAPTER 5. MOTOR VEHICLE TITLES

PART 1. GENERAL PROVISIONS

710:60-5-1. Certificate of title required

Except for ~~those vehicles that are~~ proportionally registered with the Oklahoma Corporation Commission and properly titled in another state, pursuant to the Trucking One-Stop Shop Act, 47 O.S. Supp. 2004, § 160 et seq., or vehicle types that are exempted from titling requirements, the owner of every ~~motor~~ vehicle registered in this state shall possess an Oklahoma certificate of title as proof of their ownership of such vehicle.

710:60-5-4. Multiple owners

- (a) When multiple owners are listed on vehicle ownership documentation, whether a title document or ownership assignment document, and there is no distinction as to whether ownership is to be joined by 'and', 'and/or', or 'or', the resulting Oklahoma title is to be issued reflecting ownership joined by 'and'.
- (b) When transferring ownership from a title document which lists multiple (former) owners, the following assignment guidelines apply:
 - (1) When ownership is joined by 'or' or 'and/or', any one of the owners may assign ownership.
 - (2) When ownership is joined by 'and', all owners are required to assign ownership.
- (c) When multiple owners are listed, followed by "WROS" (With Rights of Survivorship), the rules under (a) and (b) above apply.
- (d) When ownership is listed as two names, followed by "TOD" (Transfer Upon Death), the first name listed will be considered the primary (unconditional) owner and the second name listed as the secondary (conditional) owner. The secondary owner may obtain ownership only in the event of the primary person's death (upon presentation of the death certificate). The secondary owner has no other ownership claim to the vehicle. As long as the primary owner remains alive, he/she can assign ownership of the vehicle at any time, with no signature or documentary approval of the secondary owner required.
- (e) Effective November 1, 2016, the transfer-upon-death provisions provided for in 47 O.S. § 1107.5 may be utilized as an alternative to placing the TOD designation on a title. [See: OAC 710:60-5-77]

PART 5. CERTIFICATES OF TITLE

710:60-5-55. Junked titles

- (a) **Junked title defined.** A junked vehicle is any vehicle which is incapable of operation or use on the highway, has no resale value except as a source of parts or scrap and has an eighty percent (80%) loss in fair market value.
- (b) **Out-of-state junked titles; junked title permanent classification.** Any vehicle which is a junked vehicle or is specified as a junked vehicle or the equivalent thereof on a certificate of title from another state is to receive an Oklahoma Junked Title. Once a Junked Title is issued on a vehicle, it will remain as such permanently.
- (c) **Procedure for cancellation of title for junked vehicle.** The owner of any vehicle which is incapable of operation or use on the public roads and has no resale value except as parts, scrap or junk, may deliver the certificate of title to the Oklahoma Tax Commission, accompanied by an Affidavit for Cancellation of Oklahoma Title (OTC Form 701-8). Upon verification that any perfected lien against the vehicle has been released and the registration is current, the certificate of title shall be cancelled. There is no charge to the vehicle owner for this cancellation. If unable to cancel the title, an explanation will be returned to the submitting owner.

- (d) **Subsequent transfer of ownership of vehicle for which title has been cancelled.** Once a title is cancelled, no subsequent title or registration may be issued. Any subsequent transfers of ownership will be done so on a certificate of ownership (OTC Form 766). The format of this certificate is prescribed by the Oklahoma Tax Commission and furnished to all motor license agencies. Any form which contains all the information listed on the Oklahoma Tax Commission form will be acceptable.
- (e) **Inspection for absence of vehicle identification number.** If there is no public VIN on the vehicle, it shall be inspected by a law enforcement officer to verify the absence of the number and the corresponding statement shall be signed by the officer on the certificate of ownership.
- (f) **Transfer of ownership for vehicles over ten model years old, or vehicles being sold to a scrap metal dealer, for which title is lost, cancelled or not available.** Any vehicle over ten model years old which is not roadworthy and not capable of repair for operation or use on the roads and highways, or a vehicle which is being sold to a scrap metal dealer pursuant to 2 O.S. § 11-92, and on which the certificate of title has been lost, cancelled or otherwise not available, shall also transfer ownership by use of the certificate of ownership. Use of this transfer of ownership form will result in cancellation of the Oklahoma title, if it has not already been done. Unless being sold to a scrap metal dealer as referenced above, if the vehicle is ten (10) model years or newer, a certificate of ownership may not be utilized unless the title has previously been cancelled.
- (g) **Procedure for transfers by use of certificate of ownership.** This certificate of ownership will be a three part form. The buyer and seller shall each retain a copy and within thirty (30) days of the transaction, the seller shall submit one copy to the Oklahoma Tax Commission or a motor license agent with the applicable fee. All requests for ownership transfer via certificate of ownership must be reviewed and approved by the Commission before processing. The Commission shall review the documentation and vehicle record to ensure the owner of record has submitted a properly completed certificate on an eligible vehicle. The record will be checked against NCIC files for the presence of a stolen vehicle record. If a stolen vehicle report is on file, the appropriate law enforcement agency will be contacted and the transaction will remain on hold, pending that agency's response. If an active lien is on file and the transaction is approved, the lienholder will be notified of the certificate of ownership transfer. If the transaction is not approved, an explanation will be returned to the submitting buyer and seller.

PART 7. TRANSFER OF TITLE

710:60-5-77. Transfer of title upon death

- (a) **Intestacy; transfer to surviving spouse.** When a person dies intestate leaving a vehicle, that vehicle becomes the property of the surviving spouse, if any. If the decedent held title to more than one (1) vehicle, the surviving spouse may choose one (1) vehicle. If there are additional vehicles, or there is no surviving spouse, the vehicles may be distributed by

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the law of descent, upon submission of a properly completed **No Administrator Affidavit** (OTC Form 798) and the death certificate of the deceased vehicle owner. (See: 84 O.S. § 232),

(b) ~~**Transfer by third party; required authorization.** An assigned title which has been assigned by some person other than the person shown on the face of the title must be accompanied by some form of authorization for assignment. This may be a Power of Attorney, Court Order or authorization by an Executor or an Administrator of an estate.~~ **Testate.** When a decedent has left a Last Will and Testament, the will must be probated before any action may be taken regarding disposition of any vehicle owned by the deceased, unless the value of the estate is not more than \$50,000.00. Upon probate of the will, letters testamentary are ordinarily issued by the court, naming the individual or individuals responsible for administering the estate. The named administrator(s) may assign vehicle ownership on behalf of the deceased owner.

(1) **Transfer by power of attorney.** When transferring a title where assignment has been made by Power of Attorney, the Power of Attorney (POA) must be surrendered with the assigned title. When transferring a title where the assignment has been completed by the administrator or executor of an estate, a certified copy of the letters testamentary, naming that individual as executor or administrator for the deceased's estate, is required to be submitted by the title applicant as supporting documentation for the title transaction.

(A) An original copy must be presented. Faxes or photocopies are unacceptable.

(B) The POA must be notarized, if from a notary state

(C) If a general POA (not restricted to a specific vehicle or transaction), the original, or a certified copy of the original, must be presented to the motor license agent. The motor license agent may make a photocopy of the original for submission to OTC.

(D) If a specific POA (restricted to a specific vehicle or transaction), the original, or a certified copy of the original, must be surrendered and submitted to OTC.

(E) A POA may not be utilized if the grantor is deceased.

(2) **Transfer by court order.** When transferring a title when assignment is completed by the administrator or executrix of an estate, a Court Order must be presented authorizing the sale of the motor vehicle being transferred. If not a qualifying family excise tax exempt transfer pursuant to 68 O.S. §2103(C), excise tax is exempt only if a copy of the probated will is provided, naming the applicant as the recipient of that specific vehicle.

(c) **Estate valued at no more than ~~\$20,000.00~~\$50,000.00.** When a decedent has left a will, but the value of the estate does not exceed ~~Twenty~~Fifty Thousand Dollars (~~\$20,000.00~~)(\$50,000.00), ownership of any vehicle(s) bequeathed in the decedent's will may be transferred to the successor of interest by completing a Small Estate Affidavit. (See: 58 O.S. § 393). In addition to the Affidavit, the following must be submitted:

- (1) A copy of the decedent's death certificate.
- (2) A copy of the decedent's unprobated will, naming the applicant as beneficiary of the vehicle.
- (3) Either the title certificate in the decedent's name, or evidence from the Tax Commission vehicle title files that such a title record exists.

(d) **Transfer-on-death notice.** Effective November 1, 2016, the title of a motor vehicle that is not subject to any lien or other encumbrance may be transferred by filing with the Tax Commission a transfer-on-death (TOD) notice, signed by the transferor and designating the transferee. Such notice shall transfer ownership of the vehicle to the transferee upon the death of the transferor.

(1) The notice shall include:

(A) The vehicle identification number of the vehicle;

(B) The number of the license plate issued to the vehicle, if any;

(C) The full name and address of the transferor;

(D) The full name and address of the transferee; and

(E) The signature of the transferor. The signature or consent of or notice to the transferee shall not be required for any purpose during the lifetime of the transferor.

(2) The completed notice may be submitted to the Tax Commission by the transferor/owner at any time, to be recorded in the vehicle record file. The transferee designation may be revoked or changed at any time prior to the death of the transferor by filing an amended notice with the Commission. The transferee may disclaim any ownership interested in the vehicle by filing an amended notice with the Commission.

(3) Transfer-on-death notice is subject to the following limitations:

(A) TOD notices may be filed on motor vehicles only.

(B) Only the record owner(s), per the motor vehicle title files of the Oklahoma Tax Commission, may file a TOD notice.

(C) Ownership of a vehicle on which a TOD notice is to be filed must be in the name of an individual or individuals.

(D) If current ownership reflects multiple individuals joined by "and", all must sign the TOD filing notice. If joined by "or", any single owner may sign the TOD filing notice.

(E) If current ownership reflects multiple individuals, regardless of whether joined by "and" or "or", all must be deceased before a transfer of ownership to the TOD transferee may be completed.

(F) Ownership on a transfer title issued to the TOD transferee is to be entered exactly as designated by the transferor on the TOD notice filing. Any desired change by the transferee must be accomplished on a separate and subsequent title transaction completed by the transferee.

(G) Excise tax is not to be assessed when issuing title to a TOD transferee.

(H) Filing of a TOD notice will supersede any TOD notation reflected on a previously issued title certificate.

(4) Unless revoked by the transferor or transferee, once a TOD is filed to the motor vehicle record, it will remain in effect until the resulting transfer of ownership to the transferee is completed, or until another event precipitating cancellation of the transfer-on-death filing occurs. Presentation of deceased transferor's Last Will and Testament reflecting other disposition of the vehicle does not cancel the TOD notice filing. TOD notice cancelling events include:

(A) Transfer of ownership of the vehicle by the transferor owner.

(B) Transfer of ownership of the vehicle by court order, sheriff's sale, or possessory lien action.

(C) Transfer of ownership of the vehicle by issuance of a repossession title

(D) Subsequent filing of a TOD notice by the owner/transferor, which will replace any previously filed notice.

(E) Presence of active lien on the vehicle record at time transferee files an affidavit to accept title to the vehicle following death of transferor.

(F) Cancellation of the Oklahoma title resulting from notice of subsequent titling of vehicle in another state.

(G) Death of transferee prior to transferor. In the event transferee's death follows transferor's, but before a transfer of vehicle ownership to the transferee has been completed, transferee's ownership interest in the vehicle belongs to the transferee's estate.

(5) To accept the certificate of title of a motor vehicle pursuant to a properly filed transfer-on-death notice, the designated transferee shall execute an affidavit verifying the death of the transferor owner and submit the affidavit, along with a copy of the death certificate of the owner and appropriate transfer fees, to the Tax Commission. Following review of the documentation and confirmation no active liens are present on the vehicle file, a transfer title will be issued to the transferee.

710:60-5-79. Transfer of ownership by third party

A title that has been assigned by a person other than the owner reflected on the face of the title must be accompanied by some form of authorization for the assignment. Such authorization may be a power of attorney or court order.

(1) **Transfer by power of attorney.** When transferring a title where assignment has been made by power of attorney, the power of attorney (POA) must be presented with the assigned title.

(A) Unless otherwise noted below, an original copy, or a certified copy of the original must be surrendered. Faxes or photocopies are unacceptable.

(B) The POA must be notarized, if from a notary state

(C) If a general POA (not restricted to a specific vehicle or transaction), the original, or a certified copy of the original, must be presented to the motor license agent. The motor license agent may make a photocopy of the original for submission to OTC and return the original to applicant.

(D) If a specific POA (restricted to a specific vehicle or transaction), the original, or a certified copy of the original, must be surrendered to the motor license agent.

(E) A POA may not be utilized if the grantor is deceased.

(2) **Transfer by court order.** When transferring a title pursuant to a court order, a certified copy of the court order authorizing the transfer must be surrendered.

PART 11. LIENS

710:60-5-111. Perfecting liens

(a) **Documents required for perfecting lien.** To perfect a lien, either an Oklahoma title, or an Application for Oklahoma Title accompanying a properly assigned Manufacturer's Statement of Origin or out-of-state ownership document, must be presented, along with a completed Lien Entry Form. If the lien is being perfected on behalf of a transferee who has yet to obtain ownership in their name, the title presented must be properly assigned to that transferee before a lien may be perfected.

(b) **Lien form must be legible.** To be acceptable, all lien entry forms must be clearly legible, as determined by the Tax Commission.

(c) **Secured party information.** The secured party must have completed his part of the form, particularly the signature and date of execution. Strikeovers and off line printing are not acceptable.

(d) **Title to conform to lien entry form.** The name of the secured party will be entered on the face of the secured title exactly as it appears on the lien entry form.

(e) **Title receipt reflecting lien to be issued; fees.** When recording a lien on a registered vehicle, boat or motor used as collateral, a title must be issued to reflect the lien. A title fee, in addition to the lien fee, will be assessed.

(f) **Reassignment of lien.** A secured party may file a reassignment of a lien to another secured party by submitting to the Oklahoma Tax Commission Motor Vehicle Division a release of the initial lien, as well as a lien entry form and filing fees for the lien reassignment. The lien entry form is to state it is a reassignment of an existing lien. Upon receipt of proper documentation and payment, the Motor Vehicle Division will enter the new lien information to the vehicle record, reflecting the same effective date as the initial lien.

(g) **Certain liens not perfectible under Motor Vehicle Code.** Lien entry forms cannot be accepted on any vehicle that cannot be issued an Oklahoma Certificate of Title. As an example, farm tractors or mobilized farm machinery cannot be issued a title. A lien cannot be perfected under the Motor Vehicle Code because a title will never be issued.

SUBCHAPTER 7. MOTOR VEHICLE EXCISE TAX

710:60-7-3. Excise tax levy and exemptions

(a) **General levy on transfer of legal ownership.** Excise tax is levied on every exchange of legal ownership on any vehicle registered or being registered in Oklahoma unless a specific tax exemption applies.

(b) **Exemptions.** Following is information on some of the more frequently encountered exempt situations:

(1) **Husband and wife; parent and child.** Only transfers made without consideration between husband and wife, parent and child, or vice versa, are exempt. A Family Affidavit (Form 794) must be included with the other supporting documentation and is to be attached to the Title documentation. This exemption does not apply to transfers between in laws or grandparents to grandchildren.

(2) **Out-of-state residence and registration; nonresident military.** Any vehicle brought into Oklahoma by a person formerly living in another state is exempt, if the person owned and registered the vehicle in such other state of his residence at least sixty (60) days prior to the time it is required to be registered in Oklahoma. Nonresident members of the Armed Forces stationed in Oklahoma may register their vehicle without excise tax if the vehicle has been registered by them in another state (60 day limit does not apply).

(3) **Governmental entities.** Any vehicle is exempt if registered by the State of Oklahoma or any political subdivision thereof. Additionally, vehicles leased by a county, municipality, or a school district are exempt from the excise tax.

(4) **Title by inheritance.** Any vehicle on which legal ownership was obtained by inheritance is exempt from the levy of the excise tax.

(5) **Certain transfers of corporations and partnerships.** Legal ~~Ownership~~ownership of vehicles obtained by transfer as set out in Section 2105(9) of Title 68 may also be exempt.

(6) **Moped.** A motorized bicycle (moped) is exempt if sales tax was paid.

(7) **Rural water districts.** A Rural Water District is exempt.

(8) **Rural electric cooperatives.** A Rural Electric Coop is exempt.

(9) **Federal reserve banks.** Federal Reserve Banks are exempt.

(10) **Vehicles registered under International Registration Plan.** Transfer of vehicles registered under the International Registration Plan between lessor and lessee at the termination of the lease are exempt from the excise tax.

(11) **Short term rentals by rental companies.** Vehicles acquired by rental companies not to be rented for terms of more than 90 days may be registered and titled by the rental agency exempt from excise tax. An Oklahoma title branded "Rental Vehicle" will be issued. If the vehicle is sold less than one (1) year from date of issuance

of the title, the rental agency must pay the excise tax that would have been due on the vehicle, plus a 20% penalty before transferring the vehicle, unless the vehicle is being transferred to the manufacturer or its financing company, to a franchised dealer of the same line/make of the vehicle to be transferred, or to anyone, if the vehicle is in a salvage condition (salvage or junk title).

(12) **Foreclosure of lien or mortgage; insurance contracts.** Any vehicle, the ownership of which was obtained by the lienholder or mortgagee under or by foreclosure of a lien or mortgage in the manner provided by law or to the insurer under subrogated rights arising by reason of loss under an insurance contract, is exempt from excise tax.

(13) **New vehicles registered by new car dealers.** A new vehicle registered by a new vehicle dealer is exempt for a period of four (4) months.

(14) **Insurance companies.** An insurance company may obtain title to a vehicle on which they paid a loss exempt from excise tax.

(15) **Revocable trusts.** Transfers made without consideration between an individual and an express trust which that individual or the spouse, child or parent of that individual has a right to revoke are exempt.

(16) **Limited liability companies.** A limited liability company is a combination of a corporate and a partnership business organization structure. Excise tax exemption applies to the following transfers:

(A) Transfers to the limited liability company if former owners are members of the limited liability company and the interest in the company is in proportion to interest in the vehicle prior to the transfer. A notarized bill of sale indicating such will be required as supporting documentation.

(B) Transfers of ownership from a limited liability company to members when a dissolution is made. A notarized affidavit indicating such is required.

(17) **Vehicle lease or lease-purchase agreements.** Transfers of ownership of a vehicle acquired by a lessee are exempt from excise tax, provided the vehicle excise tax was paid at the time of the initial lease or lease-purchase agreement and an Oklahoma title was issued.

(18) **Fire Protection Districts.** Vehicles acquired by a Fire Protection District are exempt from the levy of excise tax.

(19) **Exemption for disabled veterans in receipt of compensation at the one hundred percent rate.** Persons who have been honorably discharged from active service in any branch of the Armed Forces of the United States or Oklahoma National Guard, and who have been certified by the United States Department of Veterans Affairs, or its successor, to be in receipt of compensation at the one hundred percent (100%) rate for a permanent disability sustained through military action or accident or resulting from a disease contracted while in such service is exempt from vehicle excise tax for one (1) vehicle in a consecutive three (3) year period, unless the vehicle is a replacement for a vehicle which was destroyed and declared by the insurer to be a total loss claim.

(A) To prove eligibility a disabled veteran must submit either an Oklahoma Tax Commission exemption card with the notation "Sales Tax Exemption:100% Disabled Veteran" or a letter from the United States Department of Veterans Affairs, its successor, or the Armed Forces of the United States, certifying that the veteran is receiving disability compensation at the 100% rate.

(B) In order to qualify for the exemption, the vehicle must have been purchased on or after July 1, 2005 and the name of the eligible disabled veteran must be included as an owner on the vehicle title.

(C) The consecutive three (3) year period computation is to be based upon the actual purchase date of the vehicle(s), as reflected in the ownership assignment date on the MSO or title certificate surrendered to the Commission at time of title application. To qualify for this excise tax exemption, the actual date of purchase of the vehicle must be more than three (3) years removed from the date of purchase of the prior vehicle to which the exemption was most recently applied.

(D) To qualify for an excise tax waiver under the total loss claim exception to the three (3) year restriction, documentation confirming the insurer's total loss claim declaration must be presented for review and approval by the Tax Commission.

(20) **Exemption for repossessed vehicle transferred back to former owner.** Ownership of a vehicle transferred by the reposessor back to the former Oklahoma title record owner(s) within thirty (30) days of issuance of the repossession title.

(A) Ownership must be identical to that reflected in the Oklahoma title record immediately prior to issuance of the repossession title. Ownership (as assigned by the reposessor) may reflect an additional name without the assessment of excise tax only if an exemption exists between the owners. Otherwise, any change in ownership will result in the assessment of excise tax.

(B) Title assignment to the former owner(s) must be completed within thirty (30) days of issuance of the repossession title.

SUBCHAPTER 9. MOTOR VEHICLE LICENSE AGENTS/AGENCIES

PART 7. SPECIFIC REPORTING DUTIES

710:60-9-72. Semimonthly reporting procedure

(a) **Semimonthly reports.** Each motor license agent must submit semimonthly reports to the Tax Commission to properly account for all funds, regardless of source, received by a motor license agent in the performance of the agent's duties.

(b) **Closing dates for report preparation.** Reports are to be ended on the fifteenth (15th) and the last day of each month. Report summary pages are to be generated from the computer

system and included with the required report transaction documentation. Driver license transaction reporting guidelines are established by the Department of Public Safety. IRP (International Registration Plan) transaction reporting guidelines are established by the Corporation Commission.

(c) **Transaction documents.** Semimonthly report transaction documentation is to be prepared and submitted to the Oklahoma Tax Commission in a manner outlined by the Motor Vehicle Division. The Division shall communicate any report preparation procedural changes to motor license agents in a timely manner.

(d) **When reports due; penalties for late report.** All agents are to prepare semimonthly reports to be filed with the Oklahoma Tax Commission no later than the first (1st) day of the month for the report ending on the fifteenth (15th) day of that month and the fifteenth (15th) day of the following month for the report ending on the last day of a month. When a report due date falls on a Saturday, Sunday, state holiday or federal holiday, the next business day becomes the due date for that report. If not postmarked by the due date, a penalty of 1% of the gross amount of the report shall be assessed. The penalty increases to 3% should the report not be postmarked within 5 days of the due date.

(e) **Sufficiency of semimonthly reports.** To comply with the reporting requirement, the reports filed with the Oklahoma Tax Commission must include system generated remittance pages, Department of Public Safety driver license transaction report summary (when applicable), Oklahoma Corporation Commission IRP transaction report summary (when applicable) and all supporting individual transaction documentation. Any such semimonthly report that does not include these minimum requirements shall not constitute the mandatory report. In the event a proper semimonthly report is not filed on or before the due dates, in accordance with (d) of this Section, the report shall be delinquent.

PART 9. SPECIFIC FISCAL DUTIES

710:60-9-94. Procedures for reporting and collecting dishonored checks on OTC transactions

The following procedures should be followed in the event a check deposited by a motor license agent is returned unpaid.

(1) **Notice of dishonored check.** The bank should notify the agent that they are holding an unpaid item. The agent must make two (2) attempts to redeem the check through the depository bank. Should the bank refuse to accept the dishonored check a second (2nd) time, it shall be treated as if two (2) attempts were made. The agent shall retrieve the check immediately from the bank utilizing one of the following methods:

(A) The agent may utilize current funds due the OTC to reimburse the bank for the dishonored check and immediately forward the check and supporting documentation to the Commission for review and credit. If not received by the Commission within five (5) business days of retrieval, the OTC funds utilized will be considered delinquent and the delinquent

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depositing penalties outlined in 47 O.S. § 1142 shall apply.

(B) The agent may utilize personal funds to reimburse the bank for the dishonored check and attempt collection from the taxpayer for a period of thirty (30) days, as set forth below.

(2) **Procedure for collection of dishonored check; applicable penalties; taxpayer liability.** An initial returned check fee of \$25.00 is to be charged to the maker of a dishonored check, after an attempt has been made to deposit the check twice. Should payment for the check be subsequently collected by any motor license agent, that agent may retain the \$25.00 returned check fee. Any accrued penalty to date of collection is to be assessed. The taxpayer is notified to remit payment immediately to the tag office. If the agent's collection attempts on a check retrieved from the depository bank with personal funds are unsuccessful, the agent shall send to the Oklahoma Tax Commission the dishonored check, agent's file copies of documents on which the check was issued, and a copy of the notification to the taxpayer within thirty (30) days of retrieval from the depository bank. Upon receipt of the required documentation, the Commission will issue credit to the agent's account in the full amount of the check. ~~The security verification form is to be retained in the tag office along with photocopies of all transaction and correspondence documents issued.~~ Copies of all transaction and correspondence documentation is to be retained in the motor license agent's office. In the event the taxpayer returns all items issued by the motor license agent, the insufficient check is not to be returned to the taxpayer, or the transaction cancelled by the agent. Return of these items does not relieve the taxpayer of responsibility to remit the proper fees to the State of Oklahoma.

(3) **Subsequent tender of payment.** After the documents and dishonored check have been forwarded to the Motor Vehicle Division, the agent shall not accept payment from the registrant without contacting the Division for instructions.

(4) **Tag license plate or decal may be held.** The motor vehicle agent may hold a ~~tag license plate~~ or decal until the taxpayer's check has cleared the bank.

(5) **Dishonored checks to be forwarded to the Oklahoma Tax Commission; time limits.** Dishonored checks for which the agent utilizes OTC funds to retrieve from the depository bank are to be forwarded immediately to the Oklahoma Tax Commission, along with the documentation required by the Commission to record and confirm date of retrieval from the depository bank. Information relating to any dishonored check retrieved with OTC funds is to be timely entered to the MLA deposit entry program, in the manner outlined by the Commission. All dishonored checks retained by the agent for attempted collection and for which payment is not received are to be sent to the Oklahoma Tax Commission no later than thirty (30) days after the date picked up from the bank. Further delays in processing may prevent collection.

(6) **Purchaser not responsible.** The purchaser of a vehicle shall not be required, as a condition for registration

of the vehicle, to pay any tax, fee or penalty due resulting from a dishonored check submitted by the previous owner.

PART 11. AGENCY OPERATION

710:60-9-120. Summary of operational requirements

The following is a summary of operational requirements for agents and agencies:

(1) Agents are required to operate the agency forty (40) hours a week, of which at least four (4) hours are after normal business hours or on Saturday. The number of operating hours required of a specific agency may be reduced upon written approval from the Oklahoma Tax Commission.

(2) Agents are required to collect fees as outlined by state statute, and issue all documents (i.e. license plates, registration decals, title certificates) prescribed by the Oklahoma Tax Commission. Additionally, an agent must issue all titles and liens, boats and motors titles - registrations, etc., prescribed by the Oklahoma Tax Commission.

(3) Agents are required to deposit all monies required by the Commission into the designated Oklahoma Tax Commission bank account within one (1) banking day of collection, preparing an Advice of Deposit which is to be submitted to the Oklahoma Tax Commission in the manner prescribed by the Commission.

(4) Agents are required to prepare semimonthly reports to be received by the Oklahoma Tax Commission within the time frame outlined in Section 710:60-9-55.

(5) Agents must perform all necessary inspections required by the Oklahoma Tax Commission motor license agents manual.

(6) Agents are required to provide a notary within their agency.

(7) Agents are required to insure that all transactions are processed and entered to the Oklahoma Tax Commission computer system on a daily basis.

(8) The Advice of Deposit shall be submitted to the Oklahoma Tax Commission, Motor Vehicle Division in the manner prescribed by the Commission. Advice of Deposit information is to be entered to the Oklahoma Tax Commission MLA deposit entry system immediately following depositing of the funds.

(9) Agents are responsible for errors in tax computations and/or fee computations and collections as determined by the Commission.

(10) A motor license agent shall follow the process and procedures set forth in Section 710:60-9-94 for reporting and collecting dishonored checks on Tax Commission transactions. (11) Agents are required to maintain files of all receipts and required reports issued by their office, including those of a former agent, if applicable, for at least two (2) years. ~~Transaction receipts are to be maintained in ascending receipt number order.~~

(12) Agents must pay or account for all missing items identified by an inventory audit.

(13) Agents shall not issue license plates, registration decals, receipts, or any type of document until payment of all applicable taxes and fees has been received in full. Payment may be made by cash, money order, personal or company check, cashier's check, or by a nationally recognized credit or debit card. The Tax Commission shall determine which nationally recognized credit or debit cards will be required to be accepted by motor license agents, ensuring no loss of state revenue results from their use. All checks and money orders are to be made payable to the Oklahoma Tax Commission.

(14) Agents are required to maintain strict compliance with the Motor Vehicle Licensing and Registration Act and with the rules, regulations, fee schedule, and procedures as set forth in the Motor License Agents Manual of Procedure and instructional material periodically issued by the Tax Commission.

(15) Agents are responsible for keeping abreast of, as well as implementing, statutory and procedural changes and instructions issued by the Tax Commission. Annual area schools conducted by the Commission are an important component in disseminating such instruction. Area school attendance is not mandatory, unless specifically mandated by the Commission, but is strongly encouraged.

(16) Agents are required to post the Public Notice Fee Chart, in addition to any other required public notices provided by the Tax Commission, in a conspicuous location in the agency.

(17) All customers' checks are to be made payable to: Oklahoma Tax Commission. One of the following identifying numbers must be listed on the face of the check: the remitter's driver license number, or a Department of Public Safety identification number.

(18) Motor license agents are authorized to perform additional duties as directed by the Tax Commission, in compliance with Oklahoma statutory guidelines.

(19) Agents must maintain a clean, orderly office environment, conducive to taxpayer service.

(20) Agents shall comply with Oklahoma Tax Commission policies relating to the provision and maintenance of equipment furnished by the Commission.

[OAR Docket #17-525; filed 6-26-17]

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

[OAR Docket #17-526]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 1. General Provisions
710:65-1-8 [AMENDED]
- Subchapter 7. Duties and Liabilities
710:65-7-8 [AMENDED]
- Subchapter 11. Credits and Refunds
710:65-11-1 [AMENDED]
- Subchapter 13. Sales and Use Tax Exemptions

- Part 13. Contractors Refund; Change of Rates
710:65-13-70 [AMENDED]
- Part 29. Manufacturing
710:65-13-155 [AMENDED]
- Part 31. Medicine, Medical Appliances, and Health Care Entities and Activities
710:65-13-170 [AMENDED]
710:65-13-171 [AMENDED]
- Part 43. Social, Charitable, and Civic Organizations and Activities
710:65-13-356 [AMENDED]
- Subchapter 19. Specific Applications and Examples
Part 31. "P"
710:65-19-268 [AMENDED]
- Subchapter 21. Use Tax
710:65-21-8 [AMENDED]

AUTHORITY:

68 O.S. § 203; Oklahoma Tax Commission

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Approved by Governor's declaration on June 13, 2017

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September 11, 2017

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

Section 710:65-1-8 has been amended to implement the provisions of Section 2 of HB 2531 which modified the definition of *maintaining a place of business* contained in the Oklahoma Sales Tax Code attributing nexus to vendors for purposes of the requirement to collect and remit Oklahoma sales tax based on actions and operation of affiliated businesses.

Section 710:65-7-8 has been amended to state policy in accordance with Oklahoma's membership as a Streamlined Sales and Use Tax state regarding the information which must be obtained by a vendor from a purchaser claiming a resale exemption for sales tax purposes in order to be relieved from liability to collect sales tax.

Section 710:65-11-1 has been amended to clarify the procedure for credit/refund requests by a purchaser.

Section 710:65-13-70 has been amended to reflect the applicable statutory provisions governing refunds to contractors due to a change of sales tax rate.

Section 710:65-13-155 has been amended to reflect the applicable statutory provision governing protest procedures.

Sections 710:65-13-170 and 710:65-13-171 have been amended to clarify the exempt treatment of sales of prosthetic devices for use by an individual.

Section 710:65-13-356 has been amended to correct obsolete references to the form currently utilized to claim a sales or use tax refund.

Section 710:65-19-268 has been amended for clarification purposes to make specific reference to valet parking.

Section 710:65-21-8 has been amended to outline the additional requirements placed on non-collecting retailers pursuant to the passage of Section 4 of HB 2531.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S.,

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SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 1. GENERAL PROVISIONS

710:65-1-8. Established place of business; maintaining a place of business

(a) "Established place of business" defined.

(1) An "established place of business" means a location at which:

(A) Any person regularly engages in, conducts, or operates a business:

- (i) in a continuous manner,
- (ii) for any length of time,
- (iii) that is open to the public during hours customary for the type of business; and

(B) Merchandise for resale is maintained, and not exempted by law from attachment, execution, or other species of forced sale barring any satisfaction of any delinquent sales tax liability.

(2) A location used in conducting a hobby is not considered an "established place of business" even though occasional taxable sales are made from the location; i.e., a garage set up as a wood working shop. The occasional sales are taxable and are to be reported by the seller on a sales tax report as casual sales.

(b) "Maintaining a place of business" defined. "Maintaining a place of business in this state" means and includes the following shall be presumed to include:

(1) ~~Having~~Utilizing or maintaining in this state, directly or through subsidiary;~~the operations outlined in (A) through (E) of this paragraph whether owned or operated by the vendor or any other person, other than a common carrier acting in its capacity as such.~~

- (A) an office (to include a home office),
- (B) a distribution house,
- (C) a sales house (such as a shop or store),
- (D) a warehouse (could be in a home's garage), or
- (E) any other physical place of business (a hot dog stand on wheels, a barbecue wagon parked on the roadside, or an ice cream truck traveling a route); or

(2) Having agents operating in this state such as salesmen, brokers, or wholesale buyers; ~~or~~

~~(3A)~~ Whether the place of business, or agent is within this state temporarily (traveling salesman, buyers for out-of-state firms) or permanently (shop or store in a mall); or

~~(4B)~~ Whether the person is authorized to do business within this state. Example: A broker, who is self-employed, operates his business from an office he has established in a spare bedroom of his home in this state. He does not have an "established place of business" but he does "maintain a place of business in this state." [See: 68 O.S. §§ 1352(10), (13); 1401(10)]

(3) The presence of any person, other than a common carrier acting in its capacity as such, that has substantial nexus in this state and that:

(A) sells a similar line of products as the vendor and does so under the same or a similar business name,

(B) uses trademarks, service marks or trade names in this state that are the same or substantially similar to those used by the vendor,

(C) delivers, installs, assembles or performs maintenance services for the vendor,

(D) facilitates the vendor's delivery of property to customers in the state by allowing the vendor's customers to pick up property sold by the vendor at an office, distribution facility, warehouse, storage place or similar place of business maintained by the person in this state, or

(E) conducts any other activities in this state that are significantly associated with the vendor's ability to establish and maintain a market in this state for the vendor's sale.

(4) The presumptions in paragraphs (1) and (2) of subsection (b) may be rebutted by demonstrating that the person's activities in this state are not significantly associated with the vendor's ability to establish and maintain a market in this state for the vendor's sales.

SUBCHAPTER 7. DUTIES AND LIABILITIES

710:65-7-8. Vendors' responsibility - sales for resale

~~In the case of sales for resale, items set out in this Section written certification containing the purchaser's name, address, type of business, sales tax permit number, and the signature of the purchaser are required to establish properly completed documentation:~~

~~(1) A copy of the purchaser's sales tax permit, or if unavailable, the purchaser's name, address, sales tax permit number, and its date of expiration. If a copy of the sales tax permit is unavailable, and if the information provided has not been previously verified, it must be verified by either calling the Taxpayer Assistance Division or by reference to the sales tax permit list obtained pursuant to OAC 710:65-9-6;~~

~~(2) A statement that the articles purchased are purchased for resale;~~

~~(3) The signature of the purchaser or a person authorized to legally bind the purchaser;~~

~~(4) Certification on the face of the invoice, bill or sales slip or by a separate document, that says the purchaser is engaged in reselling the articles purchased; and,~~

~~(5) In cases where purchases are made on regular basis, and the certification indicates that all purchases are for resale, then subsequent purchases may be made without further certification until the expiration date of the permit.~~

SUBCHAPTER 11. CREDITS AND REFUNDS

710:65-11-1. Sales tax credits and refunds

(a) Credits, other than for bad debts discussed below, may not be taken on the sales tax reporting form until or unless a valid letter of credit has been received from the Commission. The burden of establishing the right to, and the validity of, a credit or refund is on the vendor or purchaser claiming the credit or refund.

(b) ~~Credit/refund requests should be documented with the following information~~ submitted by a vendor shall include the information set out in paragraphs (1) through (8) of this subsection (if applicable); ~~The application for credit may be obtained from the Oklahoma Tax Commission, 2501 N. Lincoln Boulevard, Oklahoma City, OK 73194, or online at www.tax.ok.gov.~~

(1) A written detailed explanation of why the credit/refund is due. (Include exemption numbers and/or an explanation on exempt customers.)

(2) Amended reports detailing the correct figures that should have been reported. (A worksheet may be used in lieu of an amended report for each month involving an extended period.)

(3) Copies or a list of the sales tax reports on which the sales were originally reported.

(4) Copies of cancelled checks used to remit the tax paid.

(5) Copies of the original invoices on which the tax was originally charged. If the number of invoices exceeds twenty-five (25), the invoices must be accompanied by an electronic spreadsheet of the invoices associated with the refund claim that relates back to the tax amount requested on the application for credit. The required fields should accurately list the customer name, invoice date, invoice number, description of the items, the taxable amount, the sales/use tax requested, period the tax was remitted, permit number the tax was remitted under, and the jurisdiction(s) for which the tax was paid.

(6) Copies of the credit invoices or checks showing the tax collected or charged in error has been refunded to your customer.

(7) A recap of the credit/refunds by tax type, tax period, and taxing jurisdiction.

(8) Other documentation which may be pertinent to the requested credit/refund. ~~[See: 68 O.S. §227]~~

(c) Credit/refund requests submitted by a purchaser shall include the information set out in paragraphs (1) through (5) of this subsection (if applicable). The application for credit may be obtained from the Oklahoma Tax Commission, 2501 N. Lincoln Boulevard, Oklahoma City, OK 73194, or online at www.tax.ok.gov.

(1) The name, address, telephone number of the contact person along with the name, address, telephone number and at least the last four digits of the purchaser's identification number.

(2) A written detailed explanation of why the credit/refund is due. Such explanation must contain sufficient factual information about the transaction and reason why the transaction is not subject to tax. (Include exemption number, if applicable)

(3) Copies of the original invoices included in the refund request, in chronological order, from the oldest to the most current. If the number of invoices exceeds twenty-five (25), the invoices must be accompanied by an electronic spreadsheet of the invoices associated with the refund claim that relates back to the tax amount requested on the application for credit. The required fields should accurately list the vendor name, invoice date, invoice number, description of the items, the taxable amount, the sales/use tax requested, period the tax was remitted, permit number the tax was remitted under, and the jurisdiction(s) for which the tax was paid.

(4) Additional documents which support the refund claim, for example: executed contracts, shipping documents or bills of lading, or documentation reflecting usage of tangible personal property, if not evident from the invoice description.

(5) If the amount of the credit/refund request exceeds \$10,000.00, the purchaser must also provide the following:

(A) A statement from each vendor to whom the purchaser paid the tax setting forth each invoice included in the claim.

(B) The amount of state, city and/or county tax collected from the purchaser and reported by the vendor and the local jurisdiction(s) for which the tax was paid.

(C) The date on which the tax was remitted to the Tax Commission, and

(D) A statement that the vendor has not, and will not, refund the tax to the purchaser.

SUBCHAPTER 13. SALES AND USE TAX EXEMPTIONS

PART 13. CONTRACTORS REFUND; CHANGE OF RATES

710:65-13-70. Refund to contractor due to change of sales tax rate

(a) **Terms and limitations.** Any contractor who becomes liable for additional sales tax because of an increase in the rate of state, municipal, or county sales tax subsequent to the date a contract is executed is entitled to a refund of the additional sales taxes paid on property, equipment and services necessary to complete the contract due to the increase in rate. Provided however:

(1) The contractor must have a contract for the development or improvement of real estate which requires the purchase of materials, supplies, and equipment by the contractor to complete the contract.

(2) The contract must be a lump sum contract rather than a contract which provides for or permits the pass through of the additional tax to contracting entity.

(3) Subsequent to the date the contract was executed a state law increasing the rate of sales tax imposed by Sales

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Tax Code or an ordinance increasing the sales tax levy of a political subdivision becomes effective.

(4) The contractor makes purchases of materials, supplies and equipment required under the contract paying the increased rate of sales tax.

(5) Only those purchases of materials, supplies and equipment required to be made to complete the contract and affixed to or used to improve the real estate will qualify for the refund.

(b) **Rates in effect.** The rates in effect at the time the contract is entered will be applicable to purchases made pursuant to the contract or any change order under the contract until the earlier of:

(1) The contract or any change order has been completed, accepted and the contractor has been discharged from any further obligation under the contract or change order; or

(2) Two (2) years from the date on which the contract was entered.

(c) **Application.** In order to receive a refund ~~the contractor,~~ within the time prescribed in ~~Section 227 of Title 68 subsection~~

(f), the contractor must file the "Contractor's Application for Sales Tax Refund" on forms available from the Commission. The form may be submitted on an annual basis for purchases made the preceding year or upon completion of the contract. The following documentation must be supplied:

(1) A copy of the contract which qualifies the contractor for the lower sales tax rate.

(2) A separate schedule for each vendor detailing purchases made by invoice date, number, amount, and distribution of tax paid certified by the vendor.

(3) A summary sheet certified by the contractor which details those invoices on which the higher sales tax rate was paid.

(d) **Computation.** All vendor's remittances will be considered timely filed, therefore, the contractor's refund will be reduced by the remuneration in effect at the time the sale was made.

(e) **Documentation, forms, certification.** Before the Commission will process any refund due to change of rate, the contractor must supply all forms and documentation required by the Commission. Each vendor must complete the certification for property, materials and supplies the vendor sold to the contractor. The contractor must complete the certification pertaining to all purchases to which the refund provisions are applicable. [See: 68 O.S. § 1354(21)]

(f) **Time limitations.** The contractor shall file a claim for said refund before the expiration of three (3) years from the date of completion of the contract or five (5) years after the contract was entered into, whichever date is earlier.

710:65-13-155. Exemption for sales of tangible personal property to be consumed or incorporated in the construction or expansion of a qualified aircraft maintenance or manufacturing facility

(a) **Qualification.** Sales of tangible personal property to a qualified aircraft maintenance or manufacturing facility to be consumed or incorporated in a new facility or to expand an existing facility are exempt from sales and use tax. For purposes of this exemption, sales made to a contractor or sub-contractor who has previously entered into a contractual relationship with a qualified aircraft maintenance or manufacturing facility for construction or expansion of a facility shall be considered sales made to the qualified aircraft maintenance or manufacturing facility.

(1) For purposes of this exemption "facility" is defined as buildings and land improvements used in maintaining or manufacturing aircraft, except that up to ten percent (10%) of the square feet of such building may be devoted to office space used to provide clerical support for the manufacturing operation.

(2) For purposes of this exemption, "aircraft maintenance or manufacturing facility" is defined as any enterprise whose total cost of construction exceeds the sum of Five Million Dollars (\$5,000,000.00) and which employs at least Two Hundred Fifty (250) new full-time-equivalent employees, as certified by the Employment Security Commission, upon completion of the facility.

(b) **Limitations.**

(1) The exemption pertains only to sales of tangible personal property made after the effective date of the statute. The exemption applies to sales of tangible personal property made to a contractor or sub-contractor to be consumed or incorporated in the construction of a new or expanded facility pursuant to a contract with an aircraft maintenance or manufacturing facility, as well as to sales of tangible personal property made to an aircraft maintenance or manufacturing facility.

(2) No exemption shall be granted if the aircraft maintenance or manufacturing facility fails to file both the documentation required below with the Commission within thirty-six (36) months of first purchase and the required certification issued by the Employment Security Commission within sixty (60) months of first purchase.

(c) **Administration.** Pursuant to statute, the exemption outlined above will be administered as a refund for state and local taxes paid to the vendor or, in the case of use tax, self-remitted to the State of Oklahoma.

(d) **Application process.**

(1) **Application.** All persons who believe that they fall within the exemption provided shall file an Application/Intent to Qualify with the Commission. The Application/Intent to Qualify shall be on forms provided by the Commission and shall include, as attachments, specifications of the new or expanded facility, a complete description of the maintenance, repair or manufacturing that will take place within the facility, and other information requested by the Commission.

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(2) **Review.** Upon receipt of the Application, the Application will be reviewed by the Commission for completeness and compliance with the exemption. A copy of the Application will be forwarded to the Employment Security Commission for establishment of the entity's base line employment. The applicant will be notified of any action taken regarding the Application by the Commission.

(e) **Claims process.**

(1) **Records required for claim.**

(A) For each purchase made, the entity who believes that it will be certified shall file the following documentation with the Commission on forms provided for that purpose by the Commission:

- (i) Invoice indicating the amount of state and local taxes billed to the aircraft maintenance or manufacturing facility;
- (ii) Affidavit of the vendor of the tangible personal property that state and local sales tax reflected on that invoice has not been credited, rebated, or refunded to the aircraft maintenance or manufacturing facility, but rather, that the sales tax charged has been collected by the vendor and remitted to the Tax Commission. Any number of invoices from the same vendor may be attached to one affidavit so long as the affidavit covers all invoices attached;
- (iii) All additional documentation required to be submitted by the Commission.

(B) In cases where the state and local sales tax was paid by a contractor or sub-contractor who has previously entered into a contract with an aircraft maintenance or manufacturing facility, the aircraft maintenance or manufacturing facility shall file with the Commission the following:

- (i) Invoices indicating the amount of state and local sales taxes billed;
- (ii) An affidavit from the contractor or sub-contractor who made the purchase of tangible personal property stating that the sales tax reflected on the attached invoice is based on state and local sales tax paid by the contractor or sub-contractor on tangible personal property to be consumed or incorporated in a construction of new or expanded aircraft maintenance or manufacturing facility and that the amount of state and local sales tax claimed was paid by the contractor or sub-contractor to the vendor and no credit, refund or rebate has been claimed by the contractor or sub-contractor. Any number of invoices can be attached to an affidavit of a contractor or sub-contractor provided that all invoices attached reflect purchases made by that contractor or sub-contractor and are reflected in the affidavit;
- (iii) Additional documentation required by the Commission.

(2) **Filing claims.** At the option of the entity who believes it will be certified as an aircraft maintenance or manufacturing facility, the documentation can be filed

monthly, quarterly, semi-annually, or annually. However, all documentation must be filed no later than thirty-six (36) months after first purchase is made.

(3) **Review.** The Commission will review the documentation submitted and determine within thirty (30) days whether the refund claimed will be allowed. In the event that the claim is denied, the person who submitted the documentation will be notified by the Commission as to the reason for the denial. The person who submitted the documentation will similarly be notified that a claim has been approved.

(f) **Fiscal procedure.** Each month, the Commission shall transfer from sales tax collected, to an account designated by the Commission, the estimated amount of claims approved by the Commission the previous month.

(g) **Certification process.**

(1) **Application review.** Upon completion of the new or expanded facility and the addition of the employees as required by statute, the person who believes he falls within the exemption shall apply for certification on forms provided by the Commission. Each application for certification shall be reviewed by the Commission for the purpose of determining that the total costs of construction for such facility exceeded the sum of Five Million Dollars (\$5,000,000.00) required by law. During such time that the Commission is reviewing the application for certification, the Commission will forward a copy of the application for certification to the Employment Security Commission who will review employees hired. Upon completion of the review by the Commission and the Employment Securities Commission, the Tax Commission will notify the applicant of the approval or denial of the certification requested.

(2) **Approval.** The applicant whose certification has been approved shall receive a refund in the amount not to exceed the total amount of state and local sales taxes paid and previously approved by the Commission. The applicant will also receive accrued interest upon the principal amount of the refund made as provided for by statute. [See: 68 O.S. §1357.5(C)]

(3) **Denial of certification; protest procedure.**

(A) Any applicant whose request for certification is denied may, within ~~thirty (30)~~ **sixty (60)** days after the mailing of the denial by the Commission, file with the Commission a protest under oath, signed by the applicant or a duly authorized agent setting out:

- (i) a statement of denial as determined by the Commission;
- (ii) a statement of the applicant's disagreement with such denial, and
- (iii) supporting documentation relied on by the taxpayer in support of certification.

(B) If an applicant fails to file a written protest within the sixty (60) days, then the denial, without further action of the Commission, shall become final and no appeal will be entertained.

(C) Applicants filing a protest to the denial of certification by the Commission shall be scheduled for

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a hearing en banc before the Commission for a date, time and place set by the Commission. Notice of the date, time and place will be given by mail at least ten (10) days prior to the hearing.

(D) The burden of proving that the denial of certification was erroneous is on the applicant. The applicant can present testimony, evidence and argument in support of the requested certification.

(E) The Commission will issue an order in each case. That order is directly appealable to the Supreme Court. The appeal must be perfected within thirty (30) days of the mailing of the order by filing a Petition in Error with the Clerk of the Supreme Court of the State of Oklahoma and by filing a designation of the record with the Secretary of the Commission at the same time the Petition in Error is filed. [See: 68 O.S. §225]

(F) **Additional information.** For further information the applicant should refer to the Rules of Practice and Procedure before the Office of the Administrative Law Judges (710:1-5-21 through 710:1-5-49). [See: 68 O.S. §§1357.5, 1404.4]

PART 31. MEDICINE, MEDICAL APPLIANCES, AND HEALTH CARE ENTITIES AND ACTIVITIES

710:65-13-170. Medicines, drugs, hospitals, nursing homes, practitioners, and medical equipment and appliances, generally

(a) **Drugs.** Sales of drugs, except for over-the-counter drugs, prescribed for the treatment of human beings by a person licensed to prescribe the drugs are exempt from sales tax. Ocular lenses, if permanently implanted through medical surgery, and sales of insulin and medical oxygen are also exempt from sales tax. [68 O.S. § 1357(9)]

(b) **Prosthetic devices.** Sales of prosthetic devices for use by an individual are exempt from sales tax.

(c) **Medical equipment, appliance, or device.** Except as set forth in 710:65-13-173, the sale or rental of medical equipment, appliances or devices is taxable. Examples of these taxable items are: syringes, replacement joints, bandages, oxygen regulators and tanks, crutches and wheelchairs.

(ed) **Sales to hospitals, nursing homes and practitioners.** Sales of medical appliances, medical devices and other medical equipment to hospitals, infirmaries, sanitariums, nursing homes, and similar institutions, and practitioners are taxable when such items are furnished to their patients as part of the services provided. The institutions, companies and practitioners are considered to be the users or consumers. In-state vendors collect and remit the tax on sales of such property to the institutions, and use tax is due on out-of-state purchases. These institutions and practitioners primarily render services and are not liable for sales tax on receipts from meals, bandages, dressings, x-ray photographs, and other tangible personal property when used in rendering medical service to

patients, regardless of whether the tangible items are billed separately.

(de) **Sales to medical benefits recipients, generally.** Unless otherwise prohibited by federal or state law, if a vendor of medical equipment and devices makes a sale to an individual, the sale is not considered to be made to a governmental agency or insurance company, even if the individual assigns the proceeds of an insurance policy to the vendor and the vendor receives payment directly from the insurance company or the governmental agency via the assignment.

(ef) **Sales tax refund claims.** Under circumstances where hospitals, nursing homes, similar institutions and practitioners dispense or provide medical appliances, medical devices or medical equipment to Medicare or Medicaid patients, a refund may be claimed by the institution or practitioner for the sales taxes previously paid by the institution or practitioner on such items.

(fg) **Direct payment permits (DPP).** Health care providers may qualify for a direct payment permit, valid for three (3) years, pursuant to the provisions of Section 710:65-9-10 of this Chapter.

710:65-13-171. Sales of prosthetic devices to individuals

(a) **General provisions.** Sales of prosthetic devices to an individual for use by such an individual are exempt from sales tax.

(b) Applicable definitions. For purposes of this Section:

(1) **"Prosthetic device"** means a replacement, corrective or supportive device, including repair and replacement parts for same, worn on or in the body to:

(A) Artificially replace a missing portion of the body;

(B) Prevent or correct physical deformity or malfunction; or,

(C) Support a weak or deformed portion of the body.

(2) **"Prosthetic device"** does **not** include corrective eye glasses, contact lenses, or hearing aids. A non-exhaustive list of prosthetic devices is set forth in 710:65-13-173(e).

(3) **"Use by that individual"** means usage for the purposes and in a manner for which the device was designed and intended.

(c) **Medicare and Medicaid recipients.** Eye glasses, contact lenses, and hearing aids are considered items of "medical equipment", and if their cost will be reimbursed by Medicare or Medicaid pursuant to the terms set out in 710:65-13-173, the sale is tax exempt.

PART 43. SOCIAL, CHARITABLE, AND CIVIC ORGANIZATIONS AND ACTIVITIES

710:65-13-356. Exemption for Blue Star Mothers of America, Inc.

(a) **Qualification for Blue Star Mothers of America, Inc.** ~~Effective November 1, 2007, qualifying sales~~ Sales of tangible personal property made to tax exempt 501(c)(19) service organizations of mothers who have children serving or have served

in the military known as the Blue Star Mothers of America, Inc. are exempt from state sales tax. The exemption shall only apply to purchases of tangible personal property actually sent to United States Military personnel overseas who are serving in a combat zone.

(b) **Administration.** Pursuant to statute, the exemption for sales to "Blue Star Mothers of America, Inc." will be administered as a refund of state sales taxes which were paid by "Blue Star Mothers of America, Inc." to vendors. State sales tax shall only be refundable on purchases of tangible personal property actually sent to United States Military personnel overseas who are serving in a combat zone.

(c) **Refund procedure.** Before making its first refund claim or simultaneous thereto the claimant organization must provide to the Credits and Refunds Section of the Account Maintenance Division the following information:

(A) A letter from the Internal Revenue Service (IRS) recognizing the organization as exempt from federal income taxation pursuant to 26 U.S.C. Section 501(c)(19);

(B) A written description stating the activities of the organization, as evidenced by copies of:

- (i) Articles of incorporation;
- (ii) By-laws;
- (iii) Brochure; or
- (iv) Notarized letter from the President or Chairman of the organization.

(d) **Application process.** To claim a refund under this Section, the qualified organization may, within sixty (60) days after the end of each calendar quarter, submit a completed and signed Form ~~06-0713-9A~~, *Application for Refund of State Sales Tax*, along with invoices and all receipts indicating the amount of state sales tax paid on qualifying purchases during such preceding calendar quarter. Form ~~06-0713-9A~~ may be obtained from the Account Maintenance Division, Oklahoma Tax Commission, 2501 Lincoln Blvd., Oklahoma City, OK 73194, or online at ~~www.oktax.state.ok.us~~ www.tax.ok.gov.

SUBCHAPTER 19. SPECIFIC APPLICATIONS AND EXAMPLES

PART 31. "P"

710:65-19-268. Sales of parking privileges

(a) Sales of the service of storage or of parking privileges by auto hotels or parking lots are subject to sales tax.

(b) The sale of parking privileges for motor vehicles is taxable even if the person making the sale is primarily engaged in some other business or profession.

(c) Mandatory charges for valet parking are subject to sales tax regardless of whether the charge is made by an auto hotel, parking lot, or person who is primarily engaged in some other business or profession, such as a hotel, restaurant, or club.

(d) The charges for the storage of impounded motor vehicles, made by persons operating wrecking services are subject

to sales tax. Charges separately stated from the storage charges are not subject to sales tax.

(~~d~~e) Charges for parking privileges sold, leased or used by institutions of the Oklahoma System of Higher Education are not subject to sales tax.

(~~e~~f) Charges for the storage of vehicles other than motor vehicles, such as aircraft or boats, are not subject to sales tax.

SUBCHAPTER 21. USE TAX

710:65-21-8. Out-of-state retailers or vendors not registered in Oklahoma

(a) **Definitions.** For the purposes of this Section:

(1) **"De minimis online auction website"** means any online auction website that facilitates total gross sales in Oklahoma in the prior year of less than \$100,000.00 and reasonably expects Oklahoma sales in the current year will be less than \$100,000.00.

(2) **"De minimis retailer"** means any non-collecting retailer that made total gross sales in Oklahoma in the prior year of less than \$100,000.00 and reasonably expects Oklahoma sales in the current year will be less than \$100,000.00.

(3) **"Non-collecting retailer"** means a retailer, not currently registered to collect and remit Oklahoma sales and use tax, who makes sales of tangible personal property from a place of business outside of Oklahoma to be shipped to Oklahoma for use and who is not required to collect Oklahoma sales or use taxes.

(4) **"Oklahoma purchaser"** means a purchaser that requests goods be shipped to Oklahoma.

(5) **"Online auction website"** means a collection of web pages on the Internet that allows persons to display tangible personal property for sale which is purchased through a competitive process where participants place bids with the highest bidder purchasing the item when the bidding period ends.

(b) **Requirements for notice.** Effective October 1, 2010, every non-collecting retailer must give notice that Oklahoma use tax is due on nonexempt purchases of tangible personal property and should be paid by the Oklahoma purchaser.

(1) **Notice contents.** The notice must be readily visible and contain the information set forth as follows:

(A) The non-collecting retailer is not required, and does not collect Oklahoma sales or use tax;

(B) The purchase is subject to Oklahoma use tax unless it is specifically exempt from taxation;

(C) The purchase is not exempt merely because it is made over the Internet, by catalog, or by other remote means;

(D) The State of Oklahoma requires Oklahoma purchasers to report all purchases that were not taxed and pay tax on those purchases. The tax may be reported and paid on the Oklahoma individual income tax return [Form 511] or by filing a consumer use tax return. [Form 21-1]; and

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- (E) The referenced forms and corresponding instructions are available on the Oklahoma Tax Commission website, www.tax.ok.gov.
- (2) **Website and/or catalog notice.** Notice on a website shall occur on a page necessary to facilitate the applicable transaction. It shall be sufficient if the non-collecting retailer provides a prominent linking notice that reads as follows: "See important Oklahoma sales tax information regarding the tax you may owe directly to the State of Oklahoma", if such linking notice directs the purchaser to the principal notice required by this Section. Notice in a catalog shall be part of the order form. It shall be sufficient if the non-collecting retailer provides a prominent reference to a supplemental page that reads as follows: "See important Oklahoma sales tax information regarding the tax you may owe directly to the State of Oklahoma on page ___", if such page includes the principal notice required by this Section.
- (3) **Invoice notice.** For internet purchases, the invoice notice must occur on the electronic order confirmation. It shall be sufficient if the non-collecting retailer provides a prominent linking notice that reads as follows: "See important Oklahoma sales tax information regarding the tax you may owe directly to the State of Oklahoma", if such linking notice directs the purchaser to the principal notice required by this Section. If the non-collecting retailer does not issue an electronic order confirmation, the complete notice must be placed on the purchase order, bill, receipt, sales slip, order form, or packing statement. For catalog purchases, the complete notice must be placed on the purchase order, bill, receipt, sales slip, order form, or packing statement.
- (4) **Exceptions.**
- (A) For internet purchases, notice on the check-out page fulfills both the website and invoice notice requirements simultaneously. It shall be sufficient if the non-collecting retailer provides a prominent linking notice that reads as follows: "See important Oklahoma sales tax information regarding the tax you may owe directly to the State of Oklahoma", if such linking notice directs the purchaser to the principal notice required by this Section.
- (B) If a retailer is required to provide a similar notice for another state in addition to Oklahoma, the retailer may provide a consolidated notice so long as such notice includes the information contained in (b) of this Section, specifically references Oklahoma and meets the placement requirements of this Section.
- (c) **Prohibition from advertising no tax due.** A non-collecting retailer may not state or display or imply that no tax is due on any Oklahoma purchase unless such display is accompanied by the notice required by (b) of this Section each time the display appears.
- (1) For example, a summary of the transaction including a line designated "sales tax" and showing the amount of sales tax as "zero" or "0.00" would constitute a "display" implying that no tax is due on the purchase. Such a

display must be accompanied by the notice required by (b) of this Section every time it appears.

- (2) Notwithstanding the limitation in this subsection, if a non-collecting retailer knows that a purchase is exempt from Oklahoma tax pursuant to Oklahoma law, the non-collecting retailer may display or indicate that no sales tax is due even if such display is not accompanied by the notice required by (b) of this Section.
- (d) **Invoice notification exception for online auction websites.** With the exception of notification on invoices, the provisions of this Section shall apply to online auction websites as defined in (a) of this Section.
- (e) **De minimis exception.** A de minimis retailer and a de minimis online auction website, as defined in (a) of this Section, shall be exempt from the notice requirements in (b) of this Section.
- (f) **Annual purchase statement.** In addition to the requirements outlined in (b) of this Section, every non-collecting retailer must provide, by February 1 of each year, a statement to each customer to whom tangible personal property was delivered in this state a statement of the total sales made to the customer during the preceding calendar year.

(1) **Statement contents.** The statement must contain language substantially similar to the following: *You may owe Oklahoma use tax on purchases you made from us during the previous tax year. The amount of tax you may owe is based on the total sales price of [insert total sales price] that must be reported and paid when you file your Oklahoma income tax return unless you have already paid the tax.*

(2) **Confidential information prohibited.** The statement must not contain any information that would indicate, imply or identify the class, type, description or name of the products purchased.

(3) **Statement distribution.** The statement may be provided by first-class mail, email or other electronic communication.

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TITLE 710. OKLAHOMA TAX COMMISSION CHAPTER 90. WITHHOLDING

[OAR Docket #17-527]

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These sections have been amended to clarify policy, improve readability, correct scrivener's errors, remove obsolete language, update statutory citation, and ensure accurate internal cross-references.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 1. GENERAL PROVISIONS

710:90-1-13. Pensions, annuities, and certain other deferred income

(a) **Treatment of designated distributions.** Designated distributions, as defined by the Internal Revenue Code (IRC), Section 3405, whether periodic or non-periodic, should be treated as if they were a payment of wages for Oklahoma Income Tax Withholding purposes. The payor of any periodic or non-periodic payment should inform recipients who are or become Oklahoma residents of the need to withhold if:

- (1) The recipient has not chosen the election of "no federal withholding," provided by Sections 3405(a)(2) and (b)(3) of the Internal Revenue Code, or
- (2) The recipient elects to have Oklahoma Income Tax withheld irrespective of any election to not withhold federal income tax.

(b) **Treatment of periodic payments.** The amount to be withheld from a periodic payment is determined as if it were a payment of wages. The marital status and number of withholding allowances an employee may claim in determining the tax to be withheld shall be the same as that claimed on Form W-4P, Withholding Certificate for Pension or Annuity Payments, or a similar form provided by the payer.

- (1) If the recipient has not provided a withholding certificate, tax will be withheld as if the recipient were married and claiming three (3) withholding allowances.
- (2) The recipient can choose not to have tax withheld, regardless of how much tax is owed for the previous year, or is expected to be owed in the current year.

(c) **Treatment of non-periodic payments.** Tax will be withheld at a five percent (5%) rate on any non-periodic payments.

- (1) The recipient cannot use Form W-4P to determine the amount to be withheld, since withholding allowances or marital status are not taken into consideration.
- (2) The recipient can use ~~Form~~ Form W-4P to specify an additional amount to be withheld.
- (3) The recipient can also use Form W-4P to choose not to have tax withheld.

(d) **Employer contributions.** Employer contributions to qualified cash or deferred arrangements are not subject to Oklahoma Withholding Tax.

SUBCHAPTER 3. RETURNS AND PAYMENTS

710:90-3-11. Income tax withholding for pass-through entities

(a) **General provisions.** Generally, any pass-through entity that makes a distribution to a non-resident member is required to deduct and withhold Oklahoma income tax from distributions of taxable income being made with respect to Oklahoma source income.

(b) **Definitions.** The following words and terms, when used in this Section, shall have the following meaning, unless the context clearly indicates otherwise:

- (1) **"Member"** means:
 - (A) A shareholder of an S-Corporation;
 - (B) A partner in a general partnership;
 - (C) A partner in a limited partnership;
 - (D) A partner in a limited liability partnership;
 - (E) A member of a limited liability company; or,
 - (F) A beneficiary of a trust.
- (2) **"Non-resident"** means an individual who is not a resident of, or domiciled in, this state; a business entity which does not have a commercial domicile in this state; or a trust which is not organized in this state.
- (3) **"Pass-through entity"** means:
 - (A) A corporation that is treated as an S-Corporation under the Internal Revenue Code;
 - (B) A general partnership;
 - (C) A limited partnership;
 - (D) A limited liability partnership;
 - (E) A trust; or,
 - (F) A limited liability company that is not taxed as a corporation for federal income tax purposes. [68 O.S. § 2385.29]
- (4) **"Pass-through entity"** does not include an entity which is disregarded for income tax purposes under the Internal Revenue Code.

(c) **S-Corporations; general, limited, or limited liability partnerships; limited liability companies.** In the case of S-Corporations; general, limited, or limited liability partnerships; and limited liability companies, withholding of five percent (5%) is required on the Oklahoma portion of the taxable income distributed to each non-resident member. In the case of S-Corporations paying the tax on behalf of non-resident

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shareholders (68 O.S. § 2365) or partnerships filing composite returns on behalf of non-resident partners, the non-resident members withholding can be claimed on the return filed by the S-Corporation or the partnership.

(d) **Trusts.** For trusts, withholding of five percent (5%) is required on the Oklahoma portion of the taxable income distributed to each beneficiary of the trust.

(e) **Non-resident members not subject to withholding.** The following persons and organizations are not subject to required withholding by a pass-through entity:

- (1) Persons, other than individuals, who are exempt from federal income tax;
- (2) Organizations granted an exemption under Section 501(c)(3) of the Internal Revenue Code;
- (3) Insurance companies subject to the Oklahoma Gross Premiums Tax and therefore exempt from Oklahoma income tax pursuant to 68 O.S. § 2359(c); and
- (4) Non-resident members who have submitted an affidavit (OTC Form OW-15) to the pass-through entity and which pass-through entity has submitted the affidavit information on behalf of the member to the Tax Commission. In the affidavit, the non-resident member agrees to be subject to the personal jurisdiction of the Tax Commission in the courts of this state for the purpose of determining and collecting any Oklahoma taxes, including estimated tax payments, together with any related interest and penalties. See (k) of this Section for the procedure to be followed in filing the affidavit.

(A) For non-resident partners included in a composite partnership return under *OAC 710:50-19-1* and filing OTC Form OW-15, the inclusion of the partners' income within the composite partnership return will satisfy the requirements contained in the affidavit.

(B) For non-resident shareholders filing OTC Form OW-15, and electing not to file Oklahoma income tax returns under 68 O.S. § 2365, inclusion of the non-resident shareholder's income in the Subchapter S corporate income tax return will satisfy the requirements contained in the affidavit.

(C) For non-resident beneficiaries included in a trust return and filing OTC Form OW-15, the inclusion of the beneficiary's income within the trust return will satisfy the requirements contained in the affidavit.

(f) **When pass-through entities are not required to withhold.** Withholding is not required in the following instances:

- (1) When an entity is not required to file a federal income tax return, or properly elects out of such duty;
- (2) When a pass-through entity is making distributions of income not subject to Oklahoma income tax;
- (3) When a pass-through entity has withheld tax on royalty interest income pursuant to 68 O.S. § 2385.25 et seq.;
- (4) When a pass-through entity is making distributions to another pass-through entity. Provided however, the exception set out in this paragraph does not relieve the lower-tiered pass-through entity from the duty to withhold on distributions it makes which are not otherwise exempt;

(5) When a pass-through entity is a publicly traded partnership, as defined by Section 7704(b) of the Internal Revenue Code, and is treated as a partnership for purposes of the Internal Revenue Code. Provided the publicly traded partnership has agreed to file an annual information return reporting the name, address, taxpayer identification number, and other information requested by the Tax Commission of each unit-holder with an income in the state in excess of Five Hundred Dollars (\$500.00); or,

(6) When a distribution made by a pass-through entity has been determined to be not subject to the provisions of this Section by the Commission.

(g) **Due dates for payment of pass-through entity withholding.** Pass-through entities that withhold income tax on distributions of taxable income to non-resident members are required to remit the amount of tax withheld from each non-resident member on or before the due date of the pass-through entity's income tax return, including extensions. Any pass-through entity that can reasonably expect the total amount of income tax withheld from all non-resident members to exceed Five Hundred Dollars (\$500.00) for the taxable year **must** make quarterly estimated tax payments. OTC Form ~~OW-9-EW~~WTP-10005 is to be used to remit the quarterly estimated tax payments. The required estimated tax payments are due on or before the last day of the month after the end of the calendar quarter and must be made in equal quarterly installments. The total of the required quarterly estimated tax payments is the lesser of seventy percent (70%) of the withholding tax that must be withheld for the current taxable year, or one hundred percent (100%) of the withholding tax withheld for the previous taxable year. Any pass-through entity that can reasonably expect the total amount of tax withheld from all non-resident members to be less than Five Hundred Dollars (\$500.00) for the taxable year may, *at their option*, make quarterly estimated tax payments.

(h) **Required reports.** The pass-through entity is required to provide non-resident members and the Oklahoma Tax Commission an annual written statement showing the name of the pass-through entity, to whom the distribution was paid, the amount of taxable income distributed, and the amount of Oklahoma income tax withheld. Further, the statement must also furnish the non-resident member's name, address, and social security number or Federal Employer Identification Number. To accomplish this:

(1) Each pass-through entity must provide non-resident members with Oklahoma Tax Commission Form 500-B, (OTC Form 500-B), on or before the due date of the pass-through entity's income tax return, including extensions. Copies of OTC Form 500-Bs, along with OTC Form 501, must be sent to the Oklahoma Tax Commission by the same date.

(2) Each pass-through entity must file with the Oklahoma Tax Commission the appropriate income tax withholding return (OTC Form ~~OW-9-CW~~WTP-1003) on or before the due date of the pass-through entity's income tax return, including extensions.

(3) Each non-resident member must enclose a copy of OTC Form 500-B to the Oklahoma income tax return as verification for this withholding.

(i) **Non-resident members entitled to credit, or refund, from Oklahoma income taxes paid.** Any non-resident member from whom an amount is withheld pursuant to the provisions of this Section, and who files an Oklahoma income tax return is entitled to a credit for the amount withheld. If the amount withheld is greater than the tax due, the non-resident member will be entitled to a refund of the amount of the overpayment.

(j) **Pass-through entities must register.** Pass-through entities that make distributions subject to Oklahoma withholding must register with the Oklahoma Tax Commission.

(k) **Affidavit filing procedures.** Non-resident members who elect to file an affidavit (OTC Form OW-15) agreeing to be subject to the personal jurisdiction of the Tax Commission in the courts of this state for the purpose of determining and collecting any Oklahoma taxes, including estimated tax payments, and any related interest and penalties, must remit the affidavit to the appropriate pass-through entity. The pass-through entity is to retain the affidavit and file the following information with the Oklahoma Tax Commission by the due date of the required annual tax return of the pass-through entity.

(1) **Content.** The name, address, and social security number or federal identification number of the non-resident member having a signed OTC Form OW-15. All pass-through entities are required to file the non-resident member affidavit information on a diskette or CD with the Oklahoma Tax Commission - Compliance Division.

(2) **Format.** The format for filing the diskette or CD will be in either a spreadsheet format (i.e. Lotus 1-2-3 or Excel) or a database format (i.e. dbf or Access).

(3) **Waiver.** Pass-through entities may obtain a waiver from the diskette or CD filing requirement if the pass-through entity can demonstrate that a hardship would result if it were required to file on a diskette or CD. Direct waiver requests to the Oklahoma Tax Commission - Compliance Division.

[OAR Docket #17-527; filed 6-26-17]

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

[OAR Docket #17-528]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 5. Used Tire Recycling
710:95-5-2 [AMENDED]
710:95-5-8 [AMENDED]
Subchapter 9. Professional Licensing Compliance Review
710:95-9-3 [AMENDED]
Subchapter 11. State Employees Compliance Review
710:95-11-2 [AMENDED]

710:95-11-3 [AMENDED]
710:95-11-4 [AMENDED]
Subchapter 17. Prepaid Wireless Fee
710:95-17-3 [AMENDED]
710:95-17-5 [AMENDED]
710:95-17-7 [AMENDED]
710:95-17-9 [AMENDED]
710:95-17-10 [NEW]
710:95-17-11 [AMENDED]
710:95-17-13 [AMENDED]
710:95-17-15 [AMENDED]

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n/a

GIST/ANALYSIS:

Subchapter 5 has been amended to update statutory citations.

Subchapter 9 has been amended to update the email address to contact the Tax Commission's Professional Licensing Compliance Unit in addition to statutory citations and other references.

Subchapter 11 has been amended to update statutory citations and other references.

Subchapter 17 has been amended to implement the provisions of HB 3126 [2016] which: 1) imposes a (\$0.75) 9-1-1 wireless telephone fee on retail sales of prepaid wireless telecommunications and 9-1-1 enabled wireless and VoIP/IP connections; 2) authorizes vendor retention amounts and 3) provides for fee billing, reporting and payment procedures.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 5. USED TIRE RECYCLING

710:95-5-2. Definitions

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

"**Commission**" means the Oklahoma Tax Commission.

"**DEQ**" means the Oklahoma Department of Environmental Quality.

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"ODH" means the Oklahoma Department of Health.

"Tire-derived fuel facility" or "TDF facility" means a facility that uses processed tires or whole used tires for energy or fuel recovery.

"Used tire" means an unprocessed whole tire or tire part that can no longer be used for its original intended purpose but can be beneficially reused as approved by the DEQ. Any used tire collected in accordance with the requirements of the Oklahoma Used Tire Recycling Act is not considered to be discarded. A tire that can be used, reused or legally modified to be reused for its original intended purpose shall not be a used tire.

"Used tire facility" means any place which is permitted as a solid waste disposal site, in accordance with the Oklahoma Solid Waste Management Act, at which used tires are processed.

"Used tire processing" means altering the form of whole used tires by shredding, chipping, or other method approved by the department, except baling. [27A O.S. ~~Supp. 2005~~, §2-11-401.1]

710:95-5-8. Transactions to which the fee is inapplicable

(a) The Oklahoma Used Tire Recycling Fee is not applicable to sales for resale to holders of valid Oklahoma Sales Tax Permits who are in the business of selling tires. The sale for resale provision will only be valid if the purchaser holds an Oklahoma resale permit and actually resells the tires. The fee applies to tires sold to mechanics or others not holding sales tax permits.

(b) Pursuant to 27A O.S. ~~Supp. 2002~~, ~~§ 2-11-403(A)(3)~~ § 2-11-401.2, the Oklahoma Used Tire Recycling Fee is not applicable to the sale of a used tire by a tire dealer on which the used tire fee has previously been paid, provided that the tire dealer can document that the tire carcass was one on which the fee was previously paid when the tire was originally purchased, either as a new tire or as a used tire, or when the vehicle upon which it was mounted was first registered in Oklahoma. This documentation may consist of a copy of the bill of sale, invoice, or other document showing when, where, by whom, and the circumstances under which the fee was collected.

(c) The Oklahoma Used Tire Recycling Fee is not applicable to the transfer of a tire carcass by a tire owner to a tire recapper, who after completion of the recapping, delivers the recapped tire back to the owner of the tire, since no sale of the tire has been made, but rather, a service has been performed.

(d) The Oklahoma Used Tire Recycling Fee is not applicable to the sale of a recapped tire by a tire dealer where the fee has previously been paid and the documentation described in (b) of this Section has been obtained.

(e) No fee shall be assessed by a tire dealer if the customer retains the used agricultural tire for use on a farm or ranch.

SUBCHAPTER 9. PROFESSIONAL LICENSING COMPLIANCE REVIEW

710:95-9-3. General provisions

(a) **Information to be provided.** Each licensing entity shall provide to the Commission a list of all its licensees, along with social security numbers and other identifying information that may be required by the Commission. The list, in the form of a complete renewal file, should be provided to the Commission the month following the license renewal cycle. [See: 68 O.S. § 238.1(B)]

(b) **Requisite lead time and format.** Every licensing entity shall provide the information described in subsection (a) in a timely manner, so there is a minimum of six months lead time within which to research and resolve any compliance issues with licensees. [See: 68 O.S. § 238.1(B)]

(c) **Contact information.** The Commission's Professional Licensing Compliance Unit can be reached by phone at 522-6800 or by E-mail at ~~license-review@oktax.state.ok.us~~ license-review@tax.ok.gov.

SUBCHAPTER 11. STATE EMPLOYEES COMPLIANCE REVIEW

710:95-11-2. Definitions

In addition to terms defined in Section 238.2(G) of Title 68 of the Oklahoma Statutes, the following words and terms, when used in this Subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Appointing authority" means the chief administrative officer of a state agency.

"Employee" or "state employee" means an appointed officer or employee of a state agency. However, the term "employee" or "state employee" does not include an elected official, or an employee of a local governmental entity. [68 O.S. ~~Supp. 2003~~, § 238.2(G)(2)]

"In compliance" with state income tax laws means that all income tax filing obligations have been met, and balances due have been paid in full. For purposes of this Subchapter, in the case of a state employee with an outstanding obligation upon initial review, "in compliance" includes the following situations:

(A) The state employee has filed all reports due and entered into a payment program with the Commission for the taxes due;

(B) The state employee has provided documentation that the employee is currently participating in a payment plan and is current in all payments; or,

(C) The state employee has a pending request for relief before the Commission, or has been determined to be an "innocent spouse" with regard to an outstanding obligation, pursuant to 710:50-3-60 through 710:50-3-65. [See: 68 O.S. ~~Supp. 2003~~, § 238.2(D)]

"State agency" means any office, department, board, commission, or institution of the executive, legislative, or judicial branch of state government.

"Tax Commission" means the Oklahoma Tax Commission.

710:95-11-3. General provisions

(a) **Information to be provided.** The Office of State Finance Oklahoma Office of Management and Enterprise Services shall provide to the Tax Commission a list of all state employees, along with social security numbers and other identifying information that may be required by the Commission. The list should be provided to the Commission not later than August 1 of each year and shall include all employees of the state as of the preceding July 1. [See: 68 O.S. Supp. 2003, § 238.1(B) § 238.2(B)]

(b) **Contact information.** The Commission's State Employee Compliance Unit can be reached by phone at 522-6800 or by Email at employees-review@ok-tax.state.ok.us employees-review@tax.ok.gov.

710:95-11-4. Procedure for review of status and notification to state employee

(a) **Review and notification to state employee.** Information from the Office of State Finance Oklahoma Office of Management and Enterprise Services shall be reviewed to determine those state employees for whom compliance cannot be confirmed. Each state employee for whom compliance cannot be confirmed shall be notified, no later than November 1 of each year, in a letter mailed to the address provided by the Office of State Finance Oklahoma Office of Management and Enterprise Services, that Commission records indicate non-compliance with the Oklahoma Income Tax income tax laws. The state employee will be informed that the employee will be subject to disciplinary action by the appointing authority unless the state employee is determined to be in compliance by the Commission. The notice shall include a statement of the reasons the taxpayer is considered to be out of compliance with the Oklahoma Income Tax income tax laws, the amount of any tax, penalty, and interest due, or a list of tax years for which income tax returns have not been filed, or both, in applicable cases. The notice shall also provide information regarding the rights of the employee and what procedures must be followed in order to come into compliance with the income tax laws.

(b) **Compliance assistance.** The Commission shall make every reasonable effort to assist non-compliant state employees to attain compliance status within six (6) months from the date of notification.

SUBCHAPTER 17. PREPAID WIRELESS FEE

710:95-17-3. Definitions

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

"Consumer" means a person who purchases prepaid wireless telecommunications service in a retail transaction.

"Prepaid wireless nine one one fee" means the fee that is required to be collected by a seller from a consumer in the amount established in Section 2843.2 of Title 63 of the Oklahoma Statutes.

"9-1-1 wireless telephone fee" means the fee imposed in Section 2865 of Title 63 of the Oklahoma Statutes to finance the installation and operation of emergency 9-1-1 services and any necessary equipment.

"Prepaid wireless telecommunications service", as defined in paragraph 12 of subsection A of Section 1354.30 of Title 68 Section 2862 of Title 63 of the Oklahoma Statutes, means a telecommunications wireless service that provides the right to utilize mobile wireless service as well as other non-telecommunication telecommunications services, including the download of services, digital products delivered electronically, content and ancillary services, which must be paid for in advance that is sold in predetermined units or dollars of which the number declines with use in a known amount. "Prepaid wireless telecommunications service" does not include traditional calling cards.

"Provider" means a person who provides prepaid wireless telecommunications service pursuant to a license issued by the Federal Communications Commission.

"Retail transaction" means the purchase of prepaid wireless telecommunications service from a seller for any purpose other than for resale.

"Seller" means a person who sells prepaid wireless telecommunications service to another person.

"Traditional calling card" means a calling card which provides access only to long distance telephone service by enabling the user to originate a call using an access number or authorization code and which is not intended for use exclusively on a cellular phone.

"Voice over Internet Protocol (VoIP) provider" means a provider of interconnected Voice over Internet Protocol service to end users in the state, including resellers.

"Wireless service provider" means a provider of commercial mobile service under Section 332(d) of the Telecommunications Act of 1996, 47 U.S.C., Section 151 et seq., Federal Communications Commission rules, and the Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, and includes a provider of wireless two-way communication service, radio-telephone communications related to cellular telephone service, network radio access lines or the equivalent, and personal communication service.

The term does not include a provider of:

- (A) a service whose users do not have access to 9-1-1 service,
- (B) a communication channel used only for data transmission, or
- (C) a wireless roaming service or other nonlocal radio access line service.

"Wireless telecommunications connection" means the ten-digit access number assigned to a customer regardless of whether more than one such number is aggregated for the purpose of billing a service user.

710:95-17-5. Fees, reports, payments and penalties

(a) **Fee imposition.** A fifty cent (\$0.50) fee is imposed on every retail sale of prepaid wireless telecommunications service occurring in Oklahoma. Every seller of prepaid wireless telecommunications services must collect the fifty cent (\$0.50)

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~~fee on every purchase of prepaid wireless telecommunications service not for resale.~~ **9-1-1 wireless telephone fee imposition.** Beginning January 1, 2017, a seventy-five cent [\$0.75] 9-1-1 wireless telephone fee is imposed:

- (1) Monthly on each wireless telephone connection and other communication device or service connection with the ability to dial 9-1-1 for emergency calls;
- (2) Monthly on each service that is enabled by Voice over Internet Protocol (VoIP) or Internet Protocol (IP) with the ability to dial 9-1-1 for emergency calls; and
- (3) On each prepaid wireless retail transaction occurring in this state.

(b) **Fee invoice.** The 9-1-1 wireless telephone fees imposed pursuant to paragraphs (1) and (2) of subsection (a) which are required to be collected by the wireless service provider or VoIP provider may be added to and must be separately stated in any billing to the service subscriber. [63 O.S. § 2866(D)]. The 9-1-1 wireless telephone fee imposed pursuant to paragraph (3) of subsection (a) ~~is and~~ is and collected by the seller from the consumer ~~and should~~ shall be separately stated on the invoice, receipt or similar document provided to the consumer, or otherwise disclosed to the consumer. ~~[63 O.S. § 2843.2(B)&(C)].~~ [63 O.S. § 2867(C)].

(bc) **Fee incidence:** The prepaid 9-1-1 wireless telephone fee is the liability of the consumer or wireless service subscriber. However, the seller must remit all prepaid wireless fees collected from consumers and in the event the seller fails to separately state the prepaid wireless fee on the consumers invoice or receipt, the seller will be deemed to have collected the fee and will be liable for payment thereof. [63 O.S. § 2843.2(E)]. ~~[63 O.S. §§ 2866(C) and 2867(D)]~~

(ed) **Examples of prepaid wireless telecommunications service.** Examples of prepaid wireless telecommunications services include cellular phones preloaded with a set dollar amount, minutes or units of air time, or sold with rebates for airtime; calling cards for cellular phones preloaded with a set dollar amount, minutes or units of air time and the recharging of a reusable cellular phone calling card or the cellular phone itself with additional minutes or units of air time.

(de) **Examples and illustrations.** Examples and illustrations of situations involving 9-1-1 wireless telephone fee calculation and the base determination for purposes of sales tax collection and other applicable taxes, fees and surcharges.

- (1) **Multiple purchase transactions.** Sellers ~~must collect a~~ ~~\$0.75 fee is imposed~~ for each ~~product of prepaid wireless telecommunications service sold at retail~~ transaction outlined in subsection (a) of this Section. For example, if a consumer simultaneously buys five (5) preloaded cellular phone cards, ~~\$0.50~~ \$0.75 is imposed on each card resulting in a total of ~~\$2.50~~ \$3.75 in ~~prepaid~~ 9-1-1 wireless telephone fees. Further if a person's monthly wireless telecommunications subscription includes four (4) service connections or wireless telephone lines a \$0.75 fee would be imposed on each connection for a total monthly fee of \$3.00.
- (2) **Fee excluded from base.** When separately stated on the invoice, the ~~prepaid~~ 9-1-1 wireless telephone fee should not be included in the base for measuring sales tax

or any other applicable tax, fee, surcharge, or other charge that is imposed by the state, any political subdivision of this state, or any intergovernmental agency. ~~[63 O.S. § 2843.2(F)]~~

(ef) **Monthly electronic reporting.** On the 20th of the month every seller of prepaid wireless telecommunications service, wireless service providers and Voice over Internet Protocol providers, except as noted in ~~(f)~~ (g) of this Section, shall report and make payment of the 9-1-1 wireless telephone fees for the previous calendar month in accordance with the Tax Commission's electronic funds transfer and electronic data interchange program available online at www.ok.tax.gov. ~~[63 O.S. § 2843.2(H)]~~

(fg) **Exception to electronic reporting and payment.** Any seller of prepaid wireless telecommunications services, wireless service providers and Voice over Internet Protocol providers which has been granted an exception to the electronic filing requirement for sales tax reporting and payment purposes pursuant to *OAC* 710:65-3-4(c) shall automatically receive an electronic filing exception for purposes of reporting and paying prepaid wireless fees. These ~~sellers~~ entities shall file Form ~~BT-146~~ 20013-A on or before the 20th day of each month. Remittances covering the ~~prepaid~~ 9-1-1 wireless telephone fees must accompany the ~~prepaid wireless~~ return. Form BT-146 20013-A is available telephonically at (405) 521-3160 or online at www.tax.ok.gov.

(gh) **Interest.** Interest at the rate of one and one-quarter percent (1 1/4%) per month will be imposed on all liability not paid at the time when required to be paid. Said interest will be imposed and collected on the delinquent fees at one and one-quarter percent (1 1/4%) per month from the date of delinquency until paid. [68 O.S. § 217]

(hi) **Penalty for failure to file and remit.** A ~~seller~~ taxpayer who fails to file a return and remit the full fee amount within fifteen (15) days after the due date shall be subject to a penalty of ten percent (10%) of the fee amount due. [68 O.S. § 217]

(ij) **Waiver of penalty; interest.** At the discretion of the Tax Commission, the interest or penalty, or both, may be waived provided the taxpayer can demonstrate that the failure to pay the tax when due is satisfactorily explained, or that the failure resulted from a mistake by the taxpayer of either law or fact, or that the taxpayer is unable to pay the interest or penalty due to insolvency. Requests for waiver or remission must be made in writing and must include all pertinent facts to support the request. [See: 68 O.S. §§ 220]

710:95-17-7. Due date that falls on Saturday, Sunday or holiday

If a due date of a ~~prepaid~~ 9-1-1 wireless telephone fee report falls on Saturday, Sunday, holiday, or a date when the Federal Reserve Banks are closed, such due date shall be considered to be the next business day.

710:95-17-9. Contents of monthly prepaid wireless fee report

(a) **General provisions.** Every seller ~~making retail sales of~~ prepaid wireless telecommunications service, wireless service

providers and Voice over Internet Protocol providers shall file a monthly report for sales made the preceding month stating the name of the seller, address, telephone number, federal employer identification number (FEIN) or social security number (SSN), account number of the business and the period (month and year) covered by the report. In addition, the report shall disclose the following:

- (1) Total number of retail transactions for prepaid wireless telecommunications.
- (2) Amount of ~~prepaid wireless nine one one~~ resulting 9-1-1 wireless telephone fees.
- (3) Amount of seller's retention outlined in subsection (b), if applicable.
- (4) Total number of VoIP Connections.
- (5) Total number of Wireless Connections.
- (6) Amount of resulting 9-1-1 telephone fees.
- (7) Amount of seller's retention outlined in subsection (b), if applicable.
- (8) The balance of fees due less any retention amount allowed, as described in (b) of this Section.
 - (A) The return should show the amount of interest (if any) that is due.
 - (B) The return should show the amount of penalty (if any) that is due.

(59) Such other reasonable information as the Tax Commission may require. ~~{63 O.S. § 2843.2(H)}~~

(b) ~~Seller's retention~~ **Retention for timely reporting and payment.** When the ~~prepaid wireless 9-1-1 wireless telephone~~ fee report with all required information included is timely filed, and the total amount of fees reported are timely paid, ~~the seller may deduct and retain three percent (3%) of the fees collected pursuant to paragraph (3) of subsection (a) of 710:95-17-5 may be deducted and retained in addition to one percent (1%) of the fees collected pursuant to paragraphs (1) and (2) of subsection (a) of 710:95-17-5 prepaid wireless nine one one fees collected from consumers. The three percent (3%) retention amount~~ amounts may not be deducted and retained by a ~~seller taxpayer~~ who files an incomplete report, files his report after the date of delinquency, or fails to make full payment on or before the due date. ~~{63 O.S. § 2843.2(I)}~~ {63 O.S. § 2867(B)}

710:95-17-10. Record maintenance for wireless and VoIP service providers

The wireless service provider or VoIP provider must maintain records of the amount of 9-1-1 telephone fees collected in accordance with the provisions of this subchapter for a period of three (3) years from the time the fee is collected.

710:95-17-11. Registrants must file a return for every reporting period

Sellers making retail sales of prepaid wireless telecommunications services, wireless service providers and Voice over Internet Protocol providers must file a return for each reporting period, notwithstanding the fact that, during one or more of such reporting periods, there is no item sold ~~at retail~~ subject to the ~~prepaid wireless 9-1-1 telephone~~ fee. On the return for such a reporting period, the ~~seller taxpayer~~ should indicate that no

~~retail sales~~ transactions subject to the fee were made and that no fees are due. ~~{63 O.S. § 2843.2(H)}~~

710:95-17-13. Records required to document resale transactions

Where the nature of the seller's business is such that a portion or all of its sales of prepaid wireless telecommunications services are for resale, the records that must be kept to document the resale nature of the transaction are as follows:

- (1) The name and address of the customer,
- (2) The date of the transaction,
- (3) The number of prepaid wireless services purchased for resale,
- (4) A copy of the purchaser's resale number issued by the Tax Commission along with a written statement signed by a person authorized to bind the business that it is in the business of reselling the items being purchased, and that the items being purchased are for resale. The certification may be made in the manner set forth in *OAC* 710:65-13-200(a)(1), and
- (5) Such other information as may be necessary to establish the nontaxable character of such transactions. ~~{63 O.S. 2843.2(K)}~~

710:95-17-15. Sourcing retail purchases of prepaid wireless telecommunications service

Retail purchases of prepaid wireless telecommunications services shall be sourced as follows:

- (1) A retail transaction that is effected in person by a consumer at a business location of the seller shall be treated as occurring in this state if that business location is in this state. ~~Any other retail transaction shall be sourced as follows:~~
- ~~(2)~~ *When the retail transaction does not occur at a business location of the seller, the retail transaction is sourced to the location where receipt by the consumer, or the consumer's donee, designated as such by the consumer, occurs, including the location indicated by instructions for delivery to the consumer or donee, known to the seller;*
- ~~(3)~~ *When the provisions of paragraph ~~1~~ 2 of this subsection do not apply, the sale is sourced to the location indicated by an address for the consumer that is available from the business records of the seller that are maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith;*
- ~~(4)~~ *When the provisions of paragraphs ~~(1) and~~ (2) and 3 of this subsection do not apply, the sale is sourced to the location indicated by an address for consumer obtained during the consummation of the sale, including the address of a consumer's payment instrument, if no other address is available, when use of this address does not constitute bad faith; and*
- ~~(5)~~ *When none of the previous rules of paragraphs (1), (2), ~~or~~ (3), and (4) of this subsection apply, including the circumstance in which the seller is without sufficient information to apply the previous rules, then the location will be determined by the address from which the service was*

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provided, disregarding for these purposes any location that merely provided the digital transfer of the product sold. If the seller knows the mobile telephone number, the location will be that which is associated with the mobile telephone number. [~~63 O.S. § 2843.2(D)~~63 O.S. § 2865(B)]

[OAR Docket #17-528; filed 6-26-17]

TITLE 715. TEACHERS' RETIREMENT SYSTEM CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #17-507]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

715:1-1-16. General IRS qualifications rules [AMENDED]

AUTHORITY:

70 O.S. Section 17-101, et seq., especially Section 17-106(10); Board of Trustees

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

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Superseded rules:

715:1-1-16. General IRS qualifications rules [AMENDED]

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34 Ok Reg 512

Docket number:

17-191

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

715:1-1-16 is being amended to ensure continuing plan qualification under the Internal Revenue Code.

CONTACT PERSON:

Julie Ezell (405) 521-4745

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 14, 2017:

715:1-1-16. General IRS qualification rules

In addition to other Code provisions otherwise noted, and in order to satisfy the applicable requirements under the Code, the retirement system shall be subject to the following provisions, notwithstanding any other provision of the retirement system law:

(1) The Board of Trustees shall distribute the corpus and income of the retirement system to the members and their beneficiaries in accordance with the retirement system law.

(2) Forfeitures arising from severance of employment, death, or for any other reason may not be applied to increase the benefits any member would otherwise receive under the retirement system law.

(3) The Board of Trustees or its designee may not:

(A) determine eligibility for benefits,

(B) compute rates of contribution, or

(C) compute benefits of members or beneficiaries in a manner that discriminates in favor of members who are considered officers, supervisors, or highly compensated, as prohibited under Code Section 401(a)(4)

(4) The Board of Trustees may not engage in a transaction prohibited by Code Section 503(b).

(5) Compliance with Code Section 401(a)(2) for exclusive benefit and nondiversion of trust funds:

(A) The assets of the Plan shall never inure to the benefit of an employer and shall be held for the exclusive purpose of providing benefits to members and their beneficiaries and defraying reasonable expenses of administering the Plan.

(B) The trust fund must not revert, and no contributions shall be permitted to be returned, to the employers, except due to a mistake of fact as permitted by Revenue Ruling 91-4.

[OAR Docket #17-507; filed 6-23-17]

TITLE 715. TEACHERS' RETIREMENT SYSTEM CHAPTER 10. GENERAL OPERATIONS

[OAR Docket #17-508]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 15. Service Retirement

715:10-15-3. Date of retirement; making application [AMENDED]

715:10-15-3.1. Employer's verification of retirement information [NEW]

715:10-15-10. Retirement plans [AMENDED]

715:10-15-11.1. Designation of Trustee of Oklahoma Discretionary and Special Needs Trust as joint annuitant or beneficiary [NEW]

AUTHORITY:

70 O.S. Section 17-101, et seq., especially Section 17-106(10); Board of Trustees

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Subchapter 15. Service Retirement

715:10-15-3. Date of retirement; making application [AMENDED]

715:10-15-3.1. Employer's verification of retirement information [NEW]

715:10-15-10. Retirement plans [AMENDED]

715:10-15-11.1. Designation of Trustee of Oklahoma Discretionary and Special Needs Trust as joint annuitant or beneficiary [NEW]

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February 23, 2017

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17-192

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

715:10-15-3 is being amended to make it clear that the Intent to Retire must be returned to OTRS no less than 60 days prior to the date of retirement;

715:10-15-3.1 is being added to provide a procedure for the Employer's Verification of Retirement Information that was added to statute effective November 1, 2016.

715:10-15-10 is being amended to clarify that certain retirement options allow the naming of a joint annuitant. Retirement options are provided for in 70 O.S. § 17-105;

715:10-15-11.1 is being added to provide procedure for the approval of trustees of certain trusts to become the joint annuitant of certain retirement plans pursuant to a statute change effective November 1, 2016.

CONTACT PERSON:

Julie Ezell, Rules Liaison, Teachers' Retirement System of Oklahoma, 2500 N. Lincoln Blvd., Oklahoma City, OK 73105, 405-521-4746

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 14, 2017:

SUBCHAPTER 15. SERVICE RETIREMENT

715:10-15-3. Date of retirement; making application

The earliest effective date of retirement for any eligible member is the first day of the month following the one in which employment ceases, with the first annuity payment due the last day of that month.

- (1) It is the member's responsibility to notify, by filing a retirement contract as outlined in paragraphs 4 and 5 of this section, the TRS Board of Trustees of the date on which retirement is to begin.
- (2) Payments for all years of service, for which a member wants to receive credit, must be made no less than 90 days prior to the date of retirement.

(3) State law does not permit TRS to make retroactive retirement payments. Members should ensure that their creditable service record is up-to-date and accurate before they retire.

(34) Not less than ninety (90) days prior to retirement, the member must submit to TRS a Pre-Retirement Information Verification, copy of the member's proof of birth, copy of the joint annuitant's proof of birth (if applicable), copy of marriage certificate or license if married to joint annuitant, and verification of 120 days of accrued/unused sick leave for calculation of sick leave credit. The Pre-Retirement Information Verification and supporting pre-retirement documentation must be on file with TRS to enable TRS to prepare a complete Application to Retire.

(45) After submitting all required pre-retirement documentation, the member will receive an ~~Intent Application~~ to Retire. This form must be returned to TRS no less than sixty (60) days prior to the effective date of retirement. Upon receipt of the completed ~~Intent Application~~ to Retire the member will receive a final contract for retirement.

(56) The Final Contract for Retirement, properly executed before a notary, is required by statutes to be filed with TRS no less than thirty (30) days before the date of retirement. Therefore, the final contract for retirement must be completed and on file with TRS by the first day of the month immediately preceding the retirement date. The first retirement benefit payment will be made on the first day of the month following the effective date of retirement.

(67) For example, a retirement contract must be on file by May 1, for a retirement date of June 1, in order to process the first retirement benefit payment on July 1.

715:10-15-3.1. Employer's verification of retirement information

Employers of members actively employed during the school year of retirement must submit to TRS information on the member's final year of employment to complete the member's retirement.

(1) Upon receipt of the Application to Retire from a member, TRS shall notify the employer that final employment information is needed from the employer. The employer shall submit the required employment information via TRS' online Employer Portal not less than sixty (60) days prior to the member's date of retirement. Information submitted by the employer shall include, but not be limited to: last day the member is expected to be physically on the job; last day the member is expected to be on the payroll, the member's expected final annual compensation for that employment year, and an expected balance of accrued/unused sick leave.

(2) No later than the 15th day of the month of the member's retirement the employer shall confirm via the TRS Employer Portal the information provided to TRS in subsection (1) above, making any changes to the final information as is necessary. Failure to submit this information by the deadline or errors in submitted information that result in a disqualification of retirement eligibility shall be

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the responsibility of the employer as is provided in 70 O.S. § 17-105(1)(a)(2).

715:10-15-10. Retirement plans

A member may elect to receive a monthly life annuity under one of the following plans:

(1) The Maximum Retirement Plan provides the greatest monthly lifetime benefit that each individual member's years of creditable service and average salary permit. The maximum retirement plan is the monthly entitlement calculated using the standard retirement formula set by statutes. In the event the total retirement payments made prior to the death of a retired member are less than the member's accumulated contributions (with any interest credited to the account prior to July 1, 1968), the difference shall be paid to the member's designated beneficiary or to the member's estate if no designated beneficiary survives the member.

(2) Retirement Option 1 provides a slightly reduced lifetime benefit. The monthly entitlement is the difference between the annuity portion of the maximum retirement plan and the annuity portion of an Option 1 retirement plan subtracted from the Maximum retirement plan. If the retired member dies before receiving in the annuity portion of the monthly payments an amount equal to the member's deposits (with any interest credited to the account prior to July 1, 1968), the remaining balance shall be paid in a lump sum to the member's designated beneficiary or to the member's estate if no beneficiary survives the member. (The member's deposits are "protected" for the member's beneficiary for a longer period of time than under the maximum retirement plan, hence, the monthly benefit is less than the Maximum benefit.)

(3) Retirement Option 2 provides a reduced monthly benefit payable to the member for life. At the death of the retired member, the same monthly benefit payable to the member shall continue to the member's joint annuitant, if living. This option is known as a "100% joint survivor annuity." The reduction in the monthly benefit is based on actuarial tables developed for this purpose and approved by the Board of Trustees. The ages of the member and joint annuitant are an important factor in computing this benefit. The joint annuitant for the Option 2 retirement plan may be the member's spouse, another person, or the beneficiary of a Discretionary and Special Needs Trust as provided in 70 O.S. § 17-105(g). If the designated joint annuitant is not the member's spouse, IRS Regulations require that the adjusted member/joint annuitant age difference cannot be more than ten (10) years. The adjusted member/joint annuitant age difference is determined by first calculating the excess of the age of the member over the age of the joint annuitant based on their ages on the date of retirement. If the member is younger than age 70, the age difference determined in the previous sentence is reduced by the number of years that the member is younger than age 70 based on the member's age on the date of retirement. If the adjusted member/joint annuitant age difference is greater than ten (10) years, the Option

2 retirement plan is not available. In the event the member's joint annuitant dies at any time after the member's retirement date but before the death of the member, the member shall return to the retirement benefit, including any post-retirement benefit increases the member would have received, had the member not selected the Option 2 retirement plan. The joint annuitant designation cannot be changed under any circumstance after the date of retirement except as provided in OAC 715:10-15-11. The reduction in the monthly payment is much greater than under all other retirement options because two people are protected for the life of both individuals.

(4) Retirement Option 3 provides a reduced monthly benefit payable to the member for life. At the death of the retired member, one-half (or 50%) of the monthly benefit payable to the member, shall continue to the member's joint annuitant, if living. This option is known as a "50% joint survivor annuity." The reduction in the monthly benefit is based on actuarial tables developed for this purpose and approved by the Board of Trustees. The age of the joint annuitant is an important factor in computing this benefit. The joint annuitant for the Option 3 retirement plan may be any person or the beneficiary of a Discretionary and Special Needs Trust as provided in 70 O.S. § 17-105(g). In the event the member's joint annuitant dies at any time after the member's retirement date but before the death of the member, the member shall return to the retirement benefit, including any post-retirement benefit increases, the member would have received had the member not selected the Option 3 retirement plan. The joint annuitant cannot be changed under any circumstance after the date of retirement except as provided in OAC 715:10-15-11. The reduction in the monthly payment, while not as great as in the Option 2 plan, still requires a substantial reduction because two people are protected for the life of both individuals.

(5) Retirement Option 4 provides a reduced monthly benefit payable to the member for life. In the event the retired member dies within one hundred twenty (120) continuous months from the date of retirement, the balance of the payments is continued to the designated beneficiary until a total of one hundred twenty (120) months have been completed. The actual reduction is based on actuarial tables developed for this purpose and approved by the Board of Trustees. The beneficiary must be designated at the time of retirement. The Option 4 retirement plan is not available for a member whose retirement date is on or after the member reaches age 93. However, if the designated beneficiary is the member's spouse, the Option 4 retirement plan may be selected if the 120-month period does not extend beyond the joint life and last survivor expectancy of the member and the member's spouse. If the beneficiary dies before the total number of "guaranteed" months have been completed, the remaining payments shall be computed at the rate of interest used in determining the original guarantee. The funds remaining shall be paid to the administrators, executors or assigns of the last surviving payee.

715:10-15-11.1. Designation of Trustee of Oklahoma Discretionary and Special Needs Trust as joint annuitant or beneficiary

(a) 70 O.S. § 17-105(g) provides that any person who is eligible to be named as a beneficiary or joint annuitant, and who is also a beneficiary of a trust created under the Oklahoma Discretionary and Special Needs Trust Act, or comparable Trust Act under another state, may be a beneficiary or joint annuitant of a retired member by having the trustee of the trust established for the benefit of that individual named as the legal beneficiary or joint annuitant. Benefit payments shall be paid to the Trustee for the benefit of the beneficiary.

(b) If a beneficiary or joint annuitant, at the time of or subsequent to being named a beneficiary or joint annuitant of a TRS member, is or becomes the beneficiary of a Special Needs Trust, TRS will acknowledge the trust as the beneficiary or joint annuitant and make payments to the Trustee once the following has been submitted to and approved by TRS:

(1) Trust creation documents which include the following:

- (A) Provision that the trust is non-revocable;
- (B) Provision for only one beneficiary of the trust which cannot be changed and provision no other beneficiaries may be added; and,
- (C) Provision that the beneficiary must hold all interests in the trust except for the remainder interest to be paid in the event of the beneficiary's death;

(2) Signed and notarized acknowledgment from Trustee that he or she will notify TRS within 15 (fifteen) days of the death of the beneficiary, or in the event a new Trustee is appointed, or any other change to the Trust documents that would affect the eligibility of the beneficiary or Trustee from being eligible to be named a beneficiary under subsection (b) such as addition of a beneficiary, etc.; and, the tax identification number of the Trust, as well as the Social Security number of the Trust beneficiary.

[OAR Docket #17-508; filed 6-23-17]

TITLE 748. OKLAHOMA UNIFORM BUILDING CODE COMMISSION CHAPTER 20. ADOPTED CODES

[OAR Docket #17-575]

RULEMAKING ACTION:
PERMANENT final adoption

- RULES:**
- Subchapter 1. IBC® 2015
 - 748:20-1-1. Adoption of International Building Code®, 2015 Edition (IBC® 2015) [AMENDED]
 - 748:20-1-9. IBC® 2015 Chapter 4 Special Detailed Requirements Based on Use and Occupancy [AMENDED]
 - 748:20-1-18. IBC® 2015 Chapter 35 Referenced Standards [AMENDED]
 - Subchapter 3. IFC® 2015
 - 748:20-3-1. Adoption of International Fire Code®, 2015 Edition (IFC® 2015) [AMENDED]
 - 748:20-3-7. IFC® 2015 Chapter 2 Definitions [AMENDED]

- 748:20-3-13.1. IFC® 2015 Chapter 57 Flammable and Combustible Liquids [RENUMBERED TO 748:20-3-13.4.]
- 748:20-3-13.2. IFC® 2015 Chapter 23 Motor Fuel-Dispensing Facilities and Repair Garages [NEW]
- 748:20-3-13.3. IFC® 2015 Chapter 55 Cryogenic Fluids [NEW]
- 748:20-3-13.4. IFC® 2015 Chapter 57 Flammable and Combustible Liquids [NEW]
- 748:20-3-13.5. IFC® 2015 Chapter 61 Liquid Petroleum Gases [NEW]
- 748:20-3-14. IFC® 2015 Chapter 80 Referenced Standards [AMENDED]
- Subchapter 5. IRC® 2015
- 748:20-5-3. IRC® 2015 Appendices [AMENDED]
- 748:20-5-28. Appendix Y, Residential Tornado Provisions [AMENDED]
- Subchapter 7. IEBC® 2015
- 748:20-7-1. Adoption of International Existing Building Code®, 2015 Edition (IEBC® 2015) [AMENDED]
- 748:20-7-9. IEBC® 2015 Chapter 16 Referenced Standards [AMENDED]
- Subchapter 9. NEC® 2014
- 748:20-9-1. NEC® 2014 Adoption of National Electrical Code®, 2014 Edition (NEC® 2014) [AMENDED]
- 748:20-9-7. NEC® 2014 Chapter 5 Special Occupancies [AMENDED]
- Subchapter 11. IFGC® 2015
- 748:20-11-1. Adoption of International Fuel Gas Code®, 2015 Edition (IFGC® 2015) [AMENDED]
- 748:20-11-6.1. IFGC® 2015 Chapter 2 Definitions [NEW]
- 748:20-11-8. IFGC® 2015 Chapter 4 Gas Piping Installations [AMENDED]
- 784:20-11-10. IFGC® 2015 Chapter 8 Referenced Standards [AMENDED]
- Subchapter 13. IMC® 2015
- 748:20-13-1. Adoption of International Mechanical Code®, 2015 Edition (IMC® 2015) [AMENDED]
- 748:20-13-9. IMC® 2015 Chapter 5 Exhaust Systems [AMENDED]
- 748:20-13-11. IMC® 2015 Chapter 15 Referenced Standards [AMENDED]
- Subchapter 15. IPC® 2015
- 748:20-15-1. Adoption of International Plumbing Code®, 2015 Edition (IPC® 2015) [AMENDED]
- 748:20-15-8. IPC® 2015 Chapter 3 General Regulations [AMENDED]
- 748:20-15-17. IPC® 2015 Chapter 15 Referenced Standards [AMENDED]

AUTHORITY:

Oklahoma Uniform Building Code Commission; 59 O.S. §§ 1000.23

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n/a

INCORPORATIONS BY REFERENCE:

Incorporated standards:

- International Code Council; International Building Code®, 2015 Edition
- International Code Council; International Fire Code®, 2015 Edition
- International Code Council; International Residential Code®, 2015 Edition
- International Code Council; International Existing Building Code®, 2015 Edition
- National Fire Protection Association; National Electrical Code®, 2014 Edition
- International Code Council; International Fuel Gas Code®, 2015 Edition
- International Code Council; International Mechanical Code®, 2015 Edition
- International Code Council; International Plumbing Code®, 2015 Edition

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Incorporating rules:

748:20-1-1., 748:20-1-9., 748:20-1-8., 748:20-3-1., 748:20-3-7., 748:20-3-13.1. (Renumbered to 748:20-3-13.4); 748:20-3-13.2., 748:20-3-13.3., 748:20-3-13.4., 748:20-3-13.5.; 748:20-3-14., 748:20-5-3., 748:20-5-28., 748:20-7-1., 748:20-7-9., 748:20-9-1., 748:20-9-7., 748:20-11-1., 748:20-11-6.1., 748:20-11-8., 748:20-11-10., 748:20-13-1., 748:20-13-9., 748:20-13-11., 748:20-15-1., 748:20-15-8., and 748:20-15-17.

Availability:

8:00 a.m. to 4:30 p.m., Monday through Friday at the Oklahoma Uniform Building Code Commission, 2401 NW 23rd Street, Suite 2F, Oklahoma City, OK 73107, 405-521-6501

GIST/ANALYSIS:

The purpose of these permanent rules is to continue implementation of 59 O.S. §§1000.20 - 1000.29 (the "Act") originally enacted by SB1182, effective June 2, 2009, creating the Oklahoma Uniform Building Code Commission (the "OUBCC"). These permanent rules amend the adoptions of the International Building Code®, 2015 Edition (IBC®), as the statewide minimum code for commercial building construction; the International Fire Code®, 2015 Edition (IFC®), as the statewide minimum code for residential and commercial fire prevention and fire protection systems; the International Residential Code®, 2015 Edition (IRC®), as the statewide minimum code for residential building construction for one- and two-family dwellings and townhouses; the International Existing Building Code®, 2015 Edition (IEBC®), as the statewide minimum code for commercial existing building construction; the National Electrical Code®, 2014 Edition (NEC®), as the statewide minimum code for commercial electrical construction; the International Fuel Gas Code®, 2015 Edition (IFGC®), as the statewide minimum code for commercial fuel gas construction; the International Mechanical Code®, 2015 Edition (IMC®), as the statewide minimum code for commercial mechanical construction; and the International Plumbing Code®, 2015 Edition (IPC®), as the statewide minimum code for commercial plumbing construction; in the State of Oklahoma as modified by the OUBCC for implementation in the State of Oklahoma.

748:20-1-1., 748:20-1-9., and 748:20-1-18. amend the Oklahoma modifications to provide notification of trademark information, provide for changes needed for the alternative fuel industry of Oklahoma, and update the edition year in the referenced standards, to the provisions adopted by the OUBCC for the IBC®, 2015 edition.

748:20-3-1., 748:20-3-7., 748:20-3-13.1., 748:20-3-13.2., 748:20-3-13.3., 748:20-3-13.4., 748:20-3-13.5., and 748:20-3-14. amend the Oklahoma modifications to provide notification of trademark information, provide for changes needed for the alternative fuel industry of Oklahoma, and update the edition year in the referenced standards, to the provisions adopted by the OUBCC for the IFC®, 2015 edition.

748:20-5-3. and 748:20-5-28. amend the Oklahoma modifications to correct a section error and provide for an update to an appendix regarding garage door wind speed ratings, to the provisions adopted by the OUBCC for the IRC®, 2015 edition.

748:20-7-1. and 748:20-7-9. amend the Oklahoma modifications to provide notification of trademark information and update an edition year in the referenced standards to the provisions adopted by the OUBCC for the IEBC®, 2015.

748:20-9-1. and 748:20-9-7. amend the Oklahoma modifications to provide notification of trademark information and changes needed for the alternative fuel industry of Oklahoma, to the provisions adopted by the OUBCC for the NEC®, 2014.

748:20-11-1., 748:20-11-6.1., 748:20-11-8., and 748:20-11-10. amend the Oklahoma modifications to provide trademark information, changes needed for the alternative fuel industry of Oklahoma and update an edition year in the referenced standards, to the provisions adopted by the OUBCC for the IFGC®, 2015 edition.

748:20-13-1., 748:20-13-9., and 748:20-13-11. amend the Oklahoma modifications to provide for trademark information, changes needed for the alternative fuel industry of Oklahoma and update an edition year in the referenced standards, to the provisions adopted by the OUBCC for the IMC®, 2015 edition.

748:20-15-1., 748:20-15-8., and 748:20-15-17. amend the Oklahoma modifications to provide for trademark information, correct wording and measurement errors and update an edition year to the referenced standards, to the provisions adopted by the OUBCC for the IPC®, 2015.

CONTACT PERSON:

Billy Pope, Chief Executive Officer, OUBCC, 2401 NW 23rd, Suite 2F, Oklahoma City, OK 73107, 405-521-6501

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2017:

SUBCHAPTER 1. IBC® 2015

748:20-1-1. Adoption of International Building Code®, 2015 Edition (IBC® 2015)

(a) The Oklahoma Uniform Building Code Commission (the "OUBCC") hereby adopts the International Building Code®, 2015 Edition (IBC® 2015) as amended and modified in this subchapter as the statewide minimum code for commercial building construction in the State of Oklahoma pursuant to 59 O.S. 1000.23.

(b) The OUBCC through formal action expressly chose to adopt the IBC® 2015 as amended and modified in this subchapter, as the statewide minimum code for commercial building construction in the State of Oklahoma. In like manner, the OUBCC through formal action expressly chose to not adopt the International Building Code®, 2012 Edition (IBC®, 2012) for any purpose.

(c) As part of its 2012 code cycle, the International Code Council, Inc.® (ICC®) reorganized the format of certain of its model codes as it was foreseeable to ICC that additional chapters will need to be added in the future as model regulations for new processes or operations are developed. The format reorganization was designed by ICC to accommodate such future chapters by providing reserved (unused) chapters in several parts of certain of its model codes as part of its 2012 code cycle. The format reorganization continues into the ICC's 2015 code cycle and is adopted by the OUBCC to the extent provided in this subchapter by the phrase "reserved for future use" inserted in lieu of titles for chapters.

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748:20-1-9. IBC® 2015 Chapter 4 Special Detailed Requirements Based on Use and Occupancy

Chapter 4 of the IBC® 2015 is adopted with the following modifications:

(1) Section 406.7.2.1 Canopies used to support gaseous hydrogen systems. This section has been modified by deleting the word "hydrogen" in the heading and in the third requirement; and by adding the wording "lighter-than-air" to require the section header to make the section applicable to all lighter-than-air fuels. This section has been modified to read: 406.7.2.1 Canopies used to support lighter-than-air gaseous systems. Canopies that are used to shelter dispensing operations where flammable compressed gases are located on the roof of the canopy shall be in accordance with the following:

(A) The canopy shall meet or exceed Type I construction requirements.

(B) Operations located under canopies shall be limited to refueling only.

(C) The canopy shall be constructed in a manner that prevents the accumulation of gas.

(2) Section 406.7.2.2. Canopies sheltering units and devices that dispense lighter-than-air gas. This section has been added to require all canopies to be designed to prevent the accumulation or entrapment of ignitable vapors under canopies when dispensing lighter-than-air gas or all electrical equipment installed beneath the canopy is required to be suitable for Class I, Division 2 hazardous (classified) locations. This section has been added to read: 406.7.2.2 Canopies sheltering units and devices that dispense lighter-than-air gas. Where CNG, LNG, or Hydrogen motor fuel dispensing devices are installed beneath a canopy, the canopy shall be designed to prevent the accumulation or entrapment of ignitable vapors, including provisions for natural or mechanical ventilation means, or all electrical equipment installed beneath the canopy or within the enclosure shall be suitable for Class I, Division 2 hazardous (classified) locations. Tank vents that are installed within or attached to the canopy shall extend a minimum of 5 feet (1524 mm) above the highest projection of the canopy. Compression and storage equipment located on the top of the canopy shall be in accordance with current State of Oklahoma adopted International Fire Code®, Section 2309.

(43) Section 419.1 General. This section has been modified to add a new exception to allow Group B, M, and F occupancies located in a detached dwelling unit to be constructed in accordance with the IRC® if they comply with the limitations in Section 419.1.1. This section has been modified to read: 419.1 General. A live/work unit shall comply with Sections 419.1 through 419.9. Exceptions:

(A) Dwelling or sleeping units that include an office that is less than 10 percent of the area of the dwelling unit are permitted to be classified as dwelling units with accessory occupancies in accordance with Section 508.2.

(B) Group B, M, and F occupancies that are located in a detached dwelling unit complying with the limitations of Section 419.1.1 shall be permitted to be constructed in accordance with the IRC®.

(24) Section 419.1.1 Limitations. This section has been modified to limit the nonresidential portion of the live/work unit to not greater than 2,500 square feet (232 square meters). This section has been modified to read: 419.1.1 Limitations. The following shall apply to all live/work areas:

(A) The nonresidential portion of the live/work unit is permitted to be not greater than 2,500 square feet (232 square meters) in area;

(B) The nonresidential area is permitted to be not more than 50 percent of the area of each live/work unit;

(C) The nonresidential area function shall be limited to the first or main floor only of the live/work unit; and

(D) Not more than five nonresidential workers or employees are allowed to occupy the nonresidential area at any one time.

(35) Section 423 Storm Shelters. This section title has been modified to add to the title the words "Safe Rooms". This section has been modified to read: Section 423 Storm Shelters and Safe Rooms.

(46) Section 423.1 General has been modified to require both storm shelters and safe rooms to be constructed in accordance with the definitions in Chapter 2 of this code and this section. The section has been modified to read: Section 423.1 General. In addition to other applicable requirements in this code, storm shelters and safe rooms shall be constructed in accordance with the definitions and this section.

(57) Section 423.1.1 Scope. This section has been modified to include above and below ground storm shelters and safe rooms and limit the use of the terms storm shelter and safe room to those structures constructed according to this section. This section has been modified to read: 423.1.1 Scope. This section applies to the construction of above or below ground storm shelters or safe rooms constructed as separate detached buildings, or rooms within buildings, structures, or portions thereof for the purpose of providing safe refuge from storms that produce high winds, such as tornados. Any room or structure, as may be used as a place of refuge during a severe wind storm event, shall not be defined as a storm shelter or safe room unless specifically designed to the requirements as listed in Section 423.

(68) Section 423.2 Definitions. This section has been modified to add wording noting the definitions of a Safe Room, Community Safe Room, and Other Safe Room to the definitions of Chapter 2 of this code. This section has been modified to read: 423.2 Definitions. The following terms are defined in Chapter 2 of this code:

(A) SAFE ROOM.

- (i) Community safe room.
- (ii) Other safe room.

(B) STORM SHELTER.

- (i) Community storm shelter.
- (ii) Residential storm shelter.

(79) Section 423.3 Critical emergency operations. This section, including the exception, has been moved to the newly created Appendix N, entitled "Supplemental Storm Shelter and Safe Room Requirements" and is not adopted as a minimum standard for residential or commercial construction within the State of Oklahoma. This section has been renumbered in Appendix N to become N102. The section number 423.3 itself, will stay as part of this code for numbering alignment but will not have any requirements attached to it.

(810) Section 423.4 Group E occupancies. This section, including exceptions, has been moved to the newly created Appendix N, entitled "Supplemental Storm Shelter and Safe Room Requirements" and is not adopted as a

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minimum standard for residential or commercial construction within the State of Oklahoma. The section has been renumbered in Appendix N to become N103. The section number 423.4 itself, will stay as part of this code for numbering alignment but will not have any requirements attached to it.

~~(911)~~ Section 423.5 Required. This section has been added to specify the requirements when storm shelters or safe rooms are provided. This section has been added to read: 423.5 Required. Where storm shelters and safe rooms are provided, they shall be provided in compliance with ICC 500[®] except as required by Sections 423.5.1 through 423.5.2.3.

~~(4012)~~ Section 423.5.1 Number of doors. This section has been added to clarify the number of doors required for a storm shelter or safe room. This section has been added to read: 423.5.1 Number of doors. The number of means of egress doors from a storm shelter or safe room shall be determined based upon the occupant load for the normal occupancy of the space in accordance with Chapter 10 of this code. For facilities used solely for storm shelters or safe rooms, the number of doors shall be as specified in Section 423.5.1.1 based upon the occupant load as calculated in ICC 500[®], Section 501.1. Where only one means of egress is provided and the occupant load as calculated per ICC 500[®], Section 501.1 is 16 or more but less than 50, an emergency escape opening shall be provided in accordance with ICC 500[®] Section 501.4.

~~(4113)~~ Section 423.5.1.1 Minimum number of doors per storm shelter or safe room. This section has been added to specify the minimum number of doors necessary based upon occupant load. This section has been added to read: 423.5.1.1 Minimum number of doors per storm shelter or safe room. For 1-49 occupants provide a minimum 1 door in storm shelter or safe room; for 50-500 occupants provide a minimum number of 2 doors in storm shelter or safe room; for 501-1000 occupants provide a minimum number of 3 doors in storm shelter or safe room; and for more than 1000 occupants provide a minimum number of 4 doors in storm shelter or safe room.

~~(4214)~~ Section 423.5.2 Sanitation facilities. This section has been added to clarify sanitation facility requirements in storm shelters or safe rooms. This section has been added to read: 423.5.2. Sanitation facilities. Toilet and hand-washing facilities shall be located within the storm shelter or safe room and provided in the minimum number shown in Sections 423.5.2.1 through 423.5.2.3.

~~(4315)~~ Section 423.5.2.1 Temporary sanitary fixtures. This section has been added to allow temporary sanitary fixtures, chemical toilets or other means approved by the authority having jurisdiction in community storm shelters and community safe rooms based upon the occupant load. This section has been added to read: 423.5.2.1 Temporary sanitary fixtures. Temporary sanitary fixtures, chemical toilets or other means approved by the authority having jurisdiction shall be provided in community storm shelters and community safe rooms when an occupant load as

calculated per ICC 500[®], Section 501.1 is 16 or more but less than 50.

~~(4416)~~ Section 423.5.2.2 Permanent sanitary fixtures. This section has been added to require permanent sanitary fixtures and hand-washing facilities within community storm shelters and community safe rooms based upon occupant load. This section has been added to read: 423.5.2.2 Permanent sanitary fixtures. Permanent toilet and hand-washing facilities shall be located within community storm shelters and community safe rooms with an occupant load of 50 or more based upon the occupant load as calculated in ICC 500[®], Section 501.1. One toilet facility per 500 occupants, or portions thereof and one hand-washing facility per 1000 occupants, or portions thereof shall be provided based upon the occupant load as calculated by ICC 500[®] Section 501.1

~~(4517)~~ Section 423.5.2.3 Additional facilities. This section has been added to provide relief from the requirements for sanitary facilities in community storm shelters and community safe rooms when the number of facilities for the community storm shelter or community safe room as calculated per Section 423.5.2.2 exceeds the number of facilities provided for the normal occupancy of the space. This section has been added to read: 423.5.2.3 Additional facilities. Where the required number of sanitation facilities for the community storm shelter or community safe room, as calculated per Section 423.5.2.2 exceeds the number of facilities provided for the normal occupancy of the space, the additional facilities shall be permitted to be temporary sanitary fixtures, chemical toilets, or other means as approved by the authority having jurisdiction.

748:20-1-18. IBC[®] 2015 Chapter 35 Referenced Standards

Chapter 35 of the IBC[®] 2015 is adopted with the following modifications:

(1) A reference for the Federal Emergency Management Agency (FEMA) 2008 edition of P-320[®] Taking Shelter from the Storm: Building a Safe Room for your Home or Small Business has been added to the chapter. This section has been added to read: FEMA P-320[®]-2008 Taking Shelter from the Storm: Building a Safe Room for your Home or Small Business, Code reference section 202.

(2) A reference for the Federal Emergency Management Agency (FEMA) 2008 edition of P-361[®] Design and Construction Guidance for Community Safe Rooms has been added to the chapter. This section has been added to read: FEMA P-361[®]-2008 Design and Construction Guidance for Community Safe Rooms, Code reference section 202.

(3) The reference to ICC 500[®] has been modified to change the edition year from 2015 to 2008, and sections to be referenced. This section has been modified to read: ICC 500[®]-08 ICC/NSSA Standard on the Design and Construction of Storm Shelters, Code reference sections: 202, 423.5, 423.5.1, 423.5.1.1, 423.5.2, 423.5.2.1, 423.5.2.2, and 423.5.2.3.

(4) The reference to the International Existing Building Code® has been modified to include after the title the words "as adopted and modified by the State of Oklahoma through the OUBCC." This section has been modified to read: IEBC®-15 International Existing Building Code® as adopted and modified by the State of Oklahoma through the OUBCC.

(5) The reference to the International Energy Conservation Code® has been modified to change the edition year to 2006. This section has been modified to read: IECC®-06 International Energy Conservation Code®.

(6) The reference to the International Fire Code® has been modified to include after the title the words "as adopted and modified by the State of Oklahoma through the OUBCC." This section has been modified to read: IFC®-15 International Fire Code® as adopted and modified by the State of Oklahoma through the OUBCC.

(7) The reference to the International Fuel Gas Code® has been modified to include after the title the words "as adopted and modified by the State of Oklahoma through the OUBCC." This section has been modified to read: IFGC®-15 International Fuel Gas Code® as adopted and modified by the State of Oklahoma through the OUBCC.

(8) The reference to the International Mechanical Code® has been modified to include after the title the words "as adopted and modified by the State of Oklahoma through the OUBCC." This section has been modified to read IMC®-15 International Mechanical Code® as adopted and modified by the State of Oklahoma through the OUBCC.

(9) The reference to the International Plumbing Code® has been modified to include after the title the words "as adopted and modified by the State of Oklahoma through the OUBCC." This section has been modified to read: IPC®-15 International Plumbing Code® as adopted and modified by the State of Oklahoma through the OUBCC.

(10) The reference to the International Residential Code® has been modified to include after the title the words "as adopted and modified by the State of Oklahoma through the OUBCC." This section has been modified to read: ~~IRC®-09~~IRC®-15 International Residential Code® as adopted and modified by the State of Oklahoma through the OUBCC.

(11) The referenced standard for NFPA® 70® National Electrical Code® has been modified to add after the title the words "as adopted and modified by the State of Oklahoma through the OUBCC." This section has been modified to read: 70-14 National Electrical Code® as adopted and modified by the State of Oklahoma through the OUBCC.

SUBCHAPTER 3. IFC® 2015

748:20-3-1. Adoption of International Fire Code®, 2015 Edition (IFC® 2015)

(a) The Oklahoma Uniform Building Code Commission (the "OUBCC") hereby adopts the International Fire Code®,

2015 Edition (IFC® 2015) as amended and modified in this subchapter as the statewide minimum code for residential and commercial fire prevention and fire protection systems in the State of Oklahoma pursuant to 59 O.S. § 1000.23.

(b) The OUBCC through formal action expressly chose to adopt the IFC® 2015 as amended and modified in this subchapter, as the statewide minimum code for residential and commercial fire prevention and fire protection systems in the State of Oklahoma. In like manner, the OUBCC through formal action expressly chose to not adopt the International Fire Code®, 2012 Edition (IFC®, 2012) for any purpose.

(c) As part of its 2012 code cycle, the International Code Council, Inc.® (ICC®) reorganized the format of certain of its model codes as it was foreseeable to ICC® that additional chapters will need to be added in the future as model regulations for new processes or operations are developed. The format reorganization was designed by ICC® to accommodate such future chapters by providing reserved (unused) chapters in several parts of certain of its model codes as part of its 2012 code cycle. The format reorganization continues into the ICC's® 2015 code cycle and is adopted by the OUBCC to the extent provided in this subchapter by the phrase "reserved for future use" inserted in lieu of titles for chapters.

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748:20-3-7. IFC® 2015 Chapter 2 Definitions

Chapter 2 of the IFC® 2015 is adopted with the following modifications:

(1) The definition of an AUTHORITY HAVING JURISDICTION has been added to clarify the different individuals that may have authority with in the code. This definition has been added to read: AUTHORITY HAVING JURISDICTION. Means an organization, office, or individual responsible for enforcing the requirements of the State Adopted Building Codes, including the prior authorization or approval of any equipment, materials, installations or procedures used in all or part of the construction of a new, or alteration or renovation of an existing building or structure, including integral finishes, fixtures and building system therein.

(2) The definition of a DISPENSING AREA has been added to clarify multiple references in the code with regard to fuel dispensing. This definition has been added to read: DISPENSING AREA. The appropriate hazardous (classified) locations for the fuel being dispensed in accordance with the National Electrical Code® - NFPA® 70.

(3) The definition of a MAIN RAILROAD TRACK has been added to provide clarity to building code officials. This definition has been added to read: MAIN RAILROAD TRACK. That part of the railway, exclusive of switch tracks, branches, yards, and terminals upon which trains are operated by timetable or train order or both.

(44) The definition for Residential Group R-3 has been modified to clarify the International Residential Code® 2015 (IRC® 2015) can be utilized so long as the facilities

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have four or fewer rooms. This definition has been modified to read: [BG] Residential Group R-3. Residential R-3 occupancies where occupants are primarily permanent in nature and not classified as Group R-1, R-2, R-5, or I including Boarding houses (non-transient) with 16 or fewer occupants, Boarding houses (transient) with 10 or fewer occupants, Buildings that do not contain more than two dwelling units, Care facilities that provide accommodations for five or fewer persons receiving care, Congregate living facilities (non-transient with 16 or fewer occupants), Congregate living facilities (transient) with 10 or fewer occupants and Lodging houses with four or fewer guest rooms.

(A) [BG] Care facilities within a dwelling. Care facilities for five or fewer persons receiving care that are within a single-family dwelling are permitted to comply with the IRC[®] provided an automatic sprinkler system is installed in accordance with Section 903.3.1.3 or Section P2904 of the IRC[®].

(B) [BG] Lodging houses. Owner-occupied lodging houses with four or fewer guest rooms shall be permitted to be constructed in accordance with the IRC[®].

(25) The definition of a SELF-SERVICE STORAGE FACILITY from the International Building Code[®], 2015 Edition (Section 202) has been added to the International Fire Code[®], 2015 Edition. This definition has been added to read: SELF-SERVICE STORAGE FACILITY. Real property designed and used for the purpose of renting or leasing individual storage spaces to customers for the purpose of storing and removing personal property on a self-service basis.

748:20-3-13.1. IFC[®] 2015 Chapter 57 Flammable and Combustible Liquids [RENUMBERED TO 748:20-3-13.4.]

Chapter 57 of the IFC[®] 2015 is adopted with the following modification: Section 5705.5 Alcohol based hand rubs classified as Class I or II. This section has been modified to require guards or shields on alcohol based hand rub dispensers when installed over a carpeted area. This section has been modified to read: 5705.5 Alcohol based hand rubs classified as Class I or II liquids. The use of wall mounted dispensers containing alcohol based hand rubs classified as Class I or II liquids shall be in accordance with all of the following:

- (1) The maximum capacity of each dispenser shall be 68 ounces (2 L).
- (2) The minimum separation between dispensers shall be 48 inches (1219 mm)
- (3) The dispensers shall not be installed above, below, or closer than 1 inch (25 mm) to an electrical receptacle, switch, appliance, device or other ignition source. The wall space between the dispenser and the floor or intervening counter top shall be free of electrical receptacles, switches, appliances, devices or other ignitions sources.
- (4) Dispensers shall be mounted so that the bottom of the dispensers is not less than 42 inches (1067 mm) and not more than 48 inches (1219 mm) above the finished floor.

(5) ~~Dispensers shall not release their contents except when the dispenser is manually activated. Facilities shall be permitted to install and use automatically activated "touch free" alcohol based hand rub dispensing devices with the following requirements:~~

~~(A) The facility or persons responsible for the dispensers shall test the dispensers each time a new refill is installed in accordance with the manufacturer's care and use instructions.~~

~~(B) Dispensers shall be designed and must operate in a manner that ensures accidental or malicious activations of the dispensing devices are minimized. At a minimum, all devices subject to or used in accordance with this section shall have the following safety features:~~

~~(i) Any activations of the dispenser shall only occur when an object is placed within 4 inches (98 mm) of the sensing device.~~

~~(ii) The dispenser shall not dispense more than the amount required for hand hygiene consistent with label instructions as regulated by the United States Food and Drug Administration (USFDA).~~

~~(iii) An object placed within the activation zone and left in place will cause only one activation.~~

~~(6) Storage and use of alcohol based hand rubs shall be in accordance with the applicable provisions of Sections 5704 and 5705.~~

~~(7) Dispensers when installed over a carpeted area shall have a guard or shield to prevent alcohol based hand rub product from dispensing onto the floor.~~

748:20-3-13.2. IFC[®] 2015 Chapter 23 Motor Fuel-Dispensing Facilities and Repair Garages

Chapter 23 of the IFC[®] 2015 is adopted with the following modifications:

(1) Section 2301.7 Liquid natural gas (LNG) motor fuel-dispensing facilities. This section has been added to clarify that motor fuel-dispensing facilities for LNG shall comply with the requirements of Section 2303 and Chapter 55. This section has been added to read: 2301.7 Liquid natural gas motor fuel-dispensing facilities. Motor fuel-dispensing facilities utilizing liquid natural gas (LNG) fuel shall comply with the requirements of Section 2303 and Chapter 55.

(2) Section 2302 Definitions. This section has been modified to add to the terms "Main Railroad Track" and "Dispensing Area" to the list of terms defined in Chapter 2. This section has been modified to read: 2302.1 Definitions. The following terms are defined in Chapter 2:

(A) AIRCRAFT MOTOR-VEHICLE FUEL-DISPENSING FACILITY.

(B) ALCOHOL-BLENDED FUELS.

(C) AUTOMOTIVE MOTOR FUEL-DISPENSING FACILITY.

(D) DISPENSING AREA.

(E) DISPENSING DEVICE, OVERHEAD TYPE.

(F) FLEET VEHICLE MOTOR FUEL-DISPENSING FACILITY.

(G) LIQUEFIED NATURAL GAS (LNG).

(H) MAIN RAILROAD TRACK.

(I) MARINE MOTOR FUEL-DISPENSING FACILITY.

(J) REPAIR GARAGE.

(K) SELF-SERVICE MOTOR FUEL-DISPENSING FACILITY.

(3) Section 2303.1 Location of dispensing devices. This section has been modified to provide a sixth requirement when different types of fuel-dispensing devices for different fuels are located under the same canopy to prevent the accumulation or entrapment of ignitable vapors or all the electrical equipment located under the canopy must be suitable for Class I, Division 2 hazardous (classified) location. This section has been modified to read: 2303.1 Location of dispensing devices. Dispensing devices shall be located as follows:

(A) Ten feet (3048 mm) or more from lot lines.

(B) Ten feet (3048 mm) or more from buildings having combustibile exterior wall surfaces or buildings having noncombustibile exterior wall surfaces that are not part of a 1-hour-fire-resistance-rated assembly or buildings having combustibile overhangs. Exception: Canopies constructed in accordance with the International Building Code® providing weather protection for the fuel islands.

(C) Such that all portions of the vehicle being fueled will be on the premises of the motor fuel-dispensing facility.

(D) Such that the nozzle, when the hose is fully extended, will not reach within 5 feet (1524 mm) of building openings.

(E) Twenty feet (6096 mm) or more from fixed sources of ignition.

(F) Where compressed natural gas (CNG), LNG, or Hydrogen motor fuel-dispensing devices are installed beneath a canopy or within an enclosure, either the canopy or enclosure shall be designed to prevent the accumulation or entrapment of ignitable vapors, including provisions for natural or mechanical ventilation means, or all electrical equipment installed beneath the canopy or within the enclosure shall be suitable for Class I, Division 2 hazardous (classified) locations. Tank vents that are installed within or attached to the canopy or enclosure shall extend a minimum of 5 feet (1524 mm) above the highest projection of the canopy. Compression and storage equipment located on top of the motor fuel-dispensing facility canopies shall be in accordance with current State of Oklahoma adopted International Fire Code®, Section 2309 and International Building Code®, Section 406.

(4) Section 2303.2.1 Local emergency disconnect switches. This section has been added to clarify when local emergency disconnect switches are required and when those switches are required to be interlocked with other local emergency disconnect switches. This section

has been added to read: 2303.2.1 Local emergency disconnect switches. A local emergency disconnect switch, provided within 20 feet (6096 mm) of any dispensing unit shall be interlocked with all other dispensing units of the same fuel type and all other dispensing devices located within 20 feet (6096 mm) of the local emergency disconnect switch.

(5) Section 2303.2.2 Emergency disconnect switch lighting. This section has been added to clarify the requirements for providing illumination for emergency disconnect switch lighting. This section has been added to read: 2303.2.2 Emergency disconnect switch lighting. Permanent lighting shall be provided during hours of operation in times of darkness at all dispensing devices, required signage, emergency disconnects and emergency shutdown controls. The lighting shall be designed to provide illumination such that all dispensing devices, required signage, emergency disconnect switches and emergency shutdown controls are visible to the operator.

(6) Section 2304.3.7 Quantity Limits. This section has been modified to include an exception to the requirement that dispensing devices at unsupervised locations be programmed or set to limit uninterrupted fuel delivery to 25 gallons and require manual action to resume delivery. This section has been modified to read: 2304.3.7 Quantity limits. Dispensing equipment used at unsupervised locations shall comply with one of the following:

(A) Dispensing devices shall be programmed or set to limit uninterrupted fuel delivery to 25 gallons (95 L) and require a manual action to resume delivery. Exception: Dispensing devices that are equipped with a listed breakaway device or equal approved by the Authority Having Jurisdiction. Such emergency breakaway device shall be installed, maintained and replaced in accordance with the manufacturer's instructions.

(B) The amount of fuel being dispensed shall be limited in quantity by a preprogrammed card as approved.

(7) Section 2307.3 Attendants. This section has been modified to add an exception to the requirement for an attendant when the dispensing equipment meets the guidelines of NFPA® 58 for a "Low emission transfer." This section has been modified to read: 2307.3 Attendants. Motor fuel-dispensing operations for LP-gas shall be conducted by qualified attendants or in accordance with Section 2307.7 by persons trained in the proper handling of LP-gas. Exception: When the dispensing equipment meets the guidelines of NFPA® 58 for "Low emission transfer" an attendant is not required.

(8) Section 2307.4.1 Low emission transfer. This section has been added to clarify when the dispensing equipment meets the guidelines of NFPA® 58, Section 6.28.5 for "Low emission transfer" then the transfer distance shall be reduced by one-half. This section has been modified to read: 2307.4.1 Low emission transfer. When the dispensing equipment is installed in accordance with Section 6.28.5 of NFPA® 58 for "Low emission transfer," the

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transfer distance requirements in Table 6.5.2.1 and Section 6.25.4.3(1) of NFPA[®] 58 shall be reduced by one-half.

(9) Section 2307.7 Public fueling of motor vehicles. This section has been modified to provide an exception to the owner's requirement to train users when the dispensing equipment meets the guidelines of NFPA[®] 58 for a "Low emission transfer." This section has been added to read: 2307.7 Public fueling of motor vehicles.

(A) Self-service LP-gas dispensing systems, including key, code and card lock dispensing systems, shall be limited to the filling of permanently mounted containers providing fuel to the LP-gas powered vehicle.

(B) The requirements for self-service LP-gas dispensing systems shall be in accordance with the following:

(i) The arrangement and operation of the transfer of product into a vehicle shall be in accordance with this section and Chapter 61.

(ii) The system shall be provided with an emergency shut-off switch located within 100 feet (30 480 mm) of, but not less than 20 feet (6096 mm) from dispensers.

(iii) The owner of the LP-gas motor fuel-dispensing facility or the owner's designee shall provide for the safe operation of the system and the training of users. Exception: If the LP-gas motor fuel-dispensing facility meets the requirements of a low emission transfer station per NFPA[®] 58, then training of the users is not the responsibility of the facility.

(iv) The dispenser and hose-end valve shall release not more than 1/8 fluid ounce (4 cc) of liquid to the atmosphere upon breaking the connection with the fill valve on the vehicle.

(v) Portable fire extinguishers shall be provided in accordance with Section 2305.5.

(vi) Warning signs shall be provided in accordance with Section 2305.6.

(vii) The area around the dispenser shall be maintained in accordance with Section 2305.7.

(10) Section 2308.3.2 Warning signs. This section has been added to include warning signs to be posted on Compressed Natural Gas (CNG) dispensing devices. This section has been added to read: 2308.3.2 Warning signs. Warning signs complying with Section 310 shall be posted as follows:

(A) Warning sign(s) shall be conspicuously posted within sight of each dispenser in the fuel dispensing area and shall state the following:

(i) No smoking

(ii) Shut off motor

(iii) Flammable Gas

(iv) Natural gas vehicle fuel cylinders shall be inspected at intervals not exceeding 3 years or 36,000 miles to ensure safe operation of the vehicle

(v) Natural gas fuel cylinders past their end-of-life date shall not be refueled and shall be removed from service.

(B) A warning sign with the words "No smoking, flammable gas" shall be posted in all compressor and storage areas.

(C) The lettering on the sign shall be legible and large enough to be visible from each point of transfer.

(D) The service pressure of each dispenser shall be posted in view of the operator.

(11) Section 2308.4 Private fueling of motor vehicles. This section has been modified to allow for the industry practice of utilizing CNG trailers that are not permanently attached to CNG powered vehicles and delete the requirement for the owner to ensure the user of a CNG powered vehicle to be properly trained on the vehicle's filling procedures. This section has been modified to read: 2308.4 Private fueling of motor vehicles.

(A) Self-service CNG dispensing systems, including key, code and card lock dispensing systems, shall be limited to the filling of approved, permanently mounted fuel containers.

(B) In addition to the requirements in Section 2305, the owner of a self-service CNG motor fuel-dispensing facility shall ensure the safe operation of the system.

(12) Section 2308.7 Emergency shutdown control. This section has been modified to change the word "control" to "devices" in the section heading, clarify the requirements of the emergency manual shutdown device and provide an exception to those requirements for time-fill applications. This section has been modified to read: 2308.7 Emergency shutdown devices. A remote and local emergency manual shutdown device shall be provided. Upon activation, the emergency shutdown system shall automatically close valves between the main gas supply and the compressor and between the storage containers and dispensers, and automatically shut off the power supply to the compressor and the following associated devices: dispensing enclosures; remote pumps; power, control, and signal circuits; and electrical equipment in the hazardous (classified) locations surrounding the fuel dispensing enclosures. All labeled emergency shutdown devices shall be interconnected, whether required or not. Resetting from an emergency shutoff condition shall require manual intervention and the manner of resetting shall be approved by the Authority Having Jurisdiction. Exception: In time-fill applications, in lieu of a defined remote and local emergency manual shutdown device, an emergency manual shutdown device shall be provided within 50 feet (15 240 mm) of each fixed point of dispensing hose attachment and located inside and outside the compressor area within 10 feet (3048 mm) of the main access to the compressor area.

(13) Section 2308.7.1 Remote emergency shutdown device. This section has been added to clarify the distance requirements remote emergency manual shutdown device placement and provide for an exception to the maximum distance required when located within line of sight of

the dispensing enclosures and approved by the Authority Having Jurisdiction. This section has been added to read: 2308.7.1 Remote emergency shutdown device. A remote emergency manual shutdown device shall be located within 100 feet (30 480 mm) of, but not less than 20 feet (6096 mm) from all dispensing enclosures and shall be provided inside and outside the compressor area within 10 feet (3048 mm) of the main access to the compressor area. Exception: A remote emergency shutdown device may be located greater than 100 feet (30 480 mm) from one or more dispensing enclosures when within line of sight of the dispensing enclosures and approved by the Authority Having Jurisdiction.

(14) Section 2308.7.2 Local emergency shutdown device. This section has been added to require a local emergency manual shutdown device be provided within 15 feet (4572 mm) of each dispensing enclosure. This section has been added to read: 2308.7.2 Local emergency shutdown device. A local emergency manual shutdown device shall be located within 15 feet (4572 mm) of each dispensing enclosure.

(15) Section 2311.4.3 Ventilation. This section has been modified to clarify the point at which themechanical ventilation should be exhausted in a basement or pit. This section has been modified to read:2311.4.3. Ventilation. Where class I liquids or LP-gas are stored or used within a building having a basement or pit wherein flammable vapors could accumulate, the basement or pit shall be provided withmechanical ventilation in accordance with the International Mechanical Code®, at a minimum rate of 1 1/2 cubic feetper minute per square foot (cfm/square foot) [0.0008 cubic meters per (second meter squared)] taken from a point within 12 inches (305 mm) of the floor to prevent the accumulation of flammable vapors.

(16) Section 2311.5 Preparation of vehicles for repair. This section has been modified to clarify Liquefied Natural Gas vehicles comply with Section 2311.5.1 as applicable. This section has been modified to read: 2311.5 Preparation of vehicles for repair.

(A) For vehicles powered by gaseous fuels, the fuel shutoff valves shall be closed prior to repairing any portion of the vehicle fuel system.

(B) Vehicles powered by gaseous fuels in which the fuel system has been damaged shall be inspected and evaluated for fuel system integrity prior to being brought into the repair garage. The inspection shall include testing of the entire fuel delivery system for leakage. Liquefied Natural Gas (LNG) vehicles shall comply with Section 2311.5.1 as applicable.

(17) Section 2311.5.1 Liquefied Natural Gas (LNG) This section has been added to clarify the process needed to measure and record the pressure of the LNG vehicle fuel system prior to and on every third day while in the repair facility to ensure the fuel pressure does not exceed the maximum allowable fuel pressure. This section has been added to read: 2311.5.1 Liquefied Natural Gas. Liquefied Natural Gas (LNG) vehicle fuel system

pressure shall be measured and recorded prior to entering the repair facility and at least every third day the vehicle remains in the building. Records shall be posted on the windshield of the vehicle. The maximum allowable system pressure shall be no more than 170 psig. Pressure above 170 psig shall be reduced by operating the vehicle, or limited venting outdoors as required.

(18) Section 2311.7 Repair garages for vehicles fueled by lighter-than-air fuels. This section has been modified to include a third exception for repair garages where work is conducted only on vehicles that have been defueled and their systems purged with nitrogen gas and where there are standard operating procedures to document and maintain the fueling status throughout the repair operations are approved. This section has been modified to read: 2311.7 Repair garages for vehicles fueled by lighter-than-air fuels. Repair garages for the conversion and repair of vehicles that use CNG, liquefied natural gas (LNG), hydrogen or other lighter-than-air motor fuels shall be in accordance with Sections 2311.7 through 2311.7.2.3 in addition to the other requirements of Section 2311. Exceptions:

(A) Repair garages where work is conducted only on vehicles that have been defueled and their systems purged with nitrogen gas, and where standard operating procedures to document and maintain the fueling status throughout the repair operations has been approved.

(B) Repair garages where work is not performed on the fuel system and is limited to exchange of parts and maintenance not requiring open flame or welding on the CNG-, LNG-, hydrogen- or other lighter-than-air-fueled motor vehicle.

(C) Repair garages for hydrogen-fueled vehicles where work is not performed on the hydrogen storage tank and is limited to the exchange of parts and maintenance not requiring open flame or welding on the hydrogen-fueled vehicle. During the work, the entire hydrogen fuel system shall contain a quantity that is less than 200 cubic feet (5.6 cubic meters) of hydrogen.

(19) Section 2311.7.1.1 Design. This section has been modified to clarify exhaust outlets should be located within 18 inches (475 mm) of the high point of the room on exterior walls or the roof and to change the ventilation rate from not less than 1 cubic foot per minute per 12 cubic feet of room volume to 1 cubic foot per square foot of room area. This section has been modified to read: 2311.7. 1.1 Design.

(A) Indoor locations shall be ventilated utilizing air supply inlets and exhaust outlets arranged to provide uniform air movement to the extent practical. Inlets shall be uniformly arranged on exterior walls near floor level. Outlets shall be located within 18 inches (457 mm) of the high point of the room in exterior walls or the roof.

(B) Ventilation shall be by a continuous mechanical ventilation system or by a mechanical ventilation

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system activated by a continuously monitoring natural gas detection system or, for hydrogen, a continuously monitoring flammable gas detection system, each activating at a gas concentration of not more than 25 percent of the lower flammable limit (LFL). In all cases, the system shall shut down the fueling system in the event of failure of the ventilation system.

(C) The ventilation rate shall be not less than 1 cubic foot per minute per square foot [0.0051 cubic meters per (second square meter)] of room area.

748:20-3-13.3. IFC® 2015 Chapter 55 Cryogenic Fluids

Chapter 55 of the IFC® is adopted with the following modification: Section 5501.1 Scope. This section has been modified to add a third exception for liquefied natural gas (LNG) facilities for LNG vehicular applications to comply with Chapter 23 and NFPA® 52. This section has been modified to read: 5501.1 Scope.

(1) Storage, use and handling of cryogenic fluids shall comply with this chapter and NFPA® 55. Cryogenic fluids classified as hazardous materials shall also comply with the general requirements of Chapter 50. Partially full containers containing residual cryogenic fluids shall be considered as full for the purposes of the controls required. Exceptions:

(A) Fluids used as refrigerants in refrigeration systems (see Section 606).

(B) Liquefied natural gas (LNG), which shall comply with NFPA® 59 A.

(C) LNG facilities for LNG vehicular applications, which shall comply with Chapter 23 and NFPA® 52.

(2) Oxidizing cryogenic fluids, including oxygen, shall comply with Chapter 63, as applicable.

(3) Flammable cryogenic fluids, including hydrogen, methane, and carbon monoxide, shall comply with Chapters 23 and 58, as applicable.

(4) Inert cryogenic fluids, including argon, helium and nitrogen, shall comply with ANSI/CGA P-18.

748:20-3-13.4. IFC® 2015 Chapter 57 Flammable and Combustible Liquids

Chapter 57 of the IFC® 2015 is adopted with the following modification: Section 5705.5 Alcohol-based hand rubs classified as Class I or II. This section has been modified to require guards or shields on alcohol-based hand rub dispensers when installed over a carpeted area. This section has been modified to read: 5705.5 Alcohol-based hand rubs classified as Class I or II liquids. The use of wall-mounted dispensers containing alcohol-based hand rubs classified as Class I or II liquids shall be in accordance with all of the following:

(1) The maximum capacity of each dispenser shall be 68 ounces (2 L).

(2) The minimum separation between dispensers shall be 48 inches (1219 mm)

(3) The dispensers shall not be installed above, below, or closer than 1 inch (25 mm) to an electrical receptacle, switch, appliance, device or other ignition source. The

wall space between the dispenser and the floor or intervening counter top shall be free of electrical receptacles, switches, appliances, devices or other ignition sources.

(4) Dispensers shall be mounted so that the bottom of the dispenser is not less than 42 inches (1067 mm) and not more than 48 inches (1219 mm) above the finished floor.

(5) Dispensers shall not release their contents except when the dispenser is manually activated. Facilities shall be permitted to install and use automatically activated "touch free" alcohol-based hand-rub dispensing devices with the following requirements:

(A) The facility or persons responsible for the dispensers shall test the dispensers each time a new refill is installed in accordance with the manufacturer's care and use instructions.

(B) Dispensers shall be designed and must operate in a manner that ensures accidental or malicious activations of the dispensing devices are minimized. At a minimum, all devices subject to or used in accordance with this section shall have the following safety features:

(i) Any activations of the dispenser shall only occur when an object is placed within 4 inches (98 mm) of the sensing device.

(ii) The dispenser shall not dispense more than the amount required for hand hygiene consistent with label instructions as regulated by the United States Food and Drug Administration (USFDA).

(iii) An object placed within the activation zone and left in place will cause only one activation.

(6) Storage and use of alcohol-based hand rubs shall be in accordance with the applicable provisions of Sections 5704 and 5705.

(7) Dispensers when installed over a carpeted area shall have a guard or shield to prevent alcohol-based hand rub product from dispensing onto the floor.

748:20-3-13.5. IFC® 2015 Chapter 61 Liquefied Petroleum Gases

Chapter 61 of the IFC® 2015 is adopted with the following modifications:

(1) Section 6106.1 Attendants. This section has been modified to provide an exception to the requirement for a qualified attendant if the motor fuel-dispensing equipment meets the guidelines of NFPA® 58 for a "Low emission transfer." This section has been modified to read: 6106.1 Attendants. Dispensing of LP-gas shall be performed by a qualified attendant. Exception: When the dispensing equipment meets the guidelines of NFPA® 58 for "Low emission transfer" an attendant is not required.

(2) Section 6106.2 Overfilling. This section has been modified to include an overfilling prevention device on the container as one of the ways to measure the volume in the container. This section has been modified to read: 6106.2 Overfilling. LP-gas containers shall not be filled or maintained with LP-gas in excess of either the volume determined using the fixed liquid-level gauge installed in accordance with the manufacturer's specifications and in

accordance with Section 5.7.5 of NFPA® 58, the volume determined by the overfilling prevention device installed on the container, or the weight determined by the required percentage of water capacity marked on the container. Portable LP-gas containers shall not be refilled unless equipped with an overfilling prevention device (OPD) where required by Section 5.7.3 of NFPA® 58.

748:20-3-14. IFC® 2015 Chapter 80 Referenced Standards

Chapter 80 of the IFC® 2015 is adopted with the following modifications:

- (1) The reference to the International Building Code® has been modified to include after the title the words "as adopted and modified by the State of Oklahoma through the OUBCC." This section has been modified to read: IBC®-15 International Building Code® as adopted and modified by the State of Oklahoma through the OUBCC.
- (2) The reference to the International Existing Building Code® has been modified to include after the title the words "as adopted and modified by the State of Oklahoma through the OUBCC." This section has been modified to read: IEBC®-15 International Existing Building Code® as adopted and modified by the State of Oklahoma through the OUBCC.
- (3) The reference to the International Fuel Gas Code® has been modified to include after the title the words "as adopted and modified by the State of Oklahoma through the OUBCC." This section has been modified to read: IFGC®-15 International Fuel Gas Code® as adopted and modified by the State of Oklahoma through the OUBCC.
- (4) The reference to the International Mechanical Code® has been modified to include after the title the words "as adopted and modified by the State of Oklahoma through the OUBCC." This section has been modified to read: IMC®-15 International Mechanical Code® as adopted and modified by the State of Oklahoma through the OUBCC.
- (5) The reference to the International Plumbing Code® has been modified to include after the title the words "as adopted and modified by the State of Oklahoma through OUBCC." This section has been modified to read: IPC®-15 International Plumbing Code® as adopted and modified by the State of Oklahoma through the OUBCC.
- (6) The reference to the International Residential Code® has been modified to include after the title the words "as adopted and modified by the State of Oklahoma through the OUBCC." This section has been modified to read: ~~IRC®-09~~IRC®-15 International Residential Code® as adopted and modified by the State of Oklahoma through the OUBCC.
- (7) The referenced standard for NFPA® 2 Hydrogen Technologies Code has been modified to change the edition year from 2011 to 2016. This Section has been modified to read: 02-16 Hydrogen Technologies Code.
- (78) The referenced standard for NFPA® 70® National Electrical Code® has been modified to include after the title the words "as adopted and modified by the State of

Oklahoma through the OUBCC." This section has been modified to read: 70-14 National Electrical Code® as adopted and modified by the State of Oklahoma through the OUBCC.

SUBCHAPTER 5. IRC® 2015

748:20-5-3. IRC® 2015 Appendices

- (a) The OUBCC through formal action has chosen not to adopt appendices A through Y of the IRC® 2015 for inclusion in the statewide minimum code for residential construction in the State of Oklahoma. Appendices A through Y are informative and provide prescriptive requirements which are not mandatory unless specifically referenced in the adopting ordinance or order by other jurisdictions within the State of Oklahoma in accordance with 59 O.S. § 1000.29.
- (b) The OUBCC hereby creates a new appendix V, entitled "Appendix V Automatic Fire Systems." Sections ~~R312.2.1~~R312.2 entitled "One- and two-family dwellings automatic fire systems" and "R312.2.1 entitled "Design and installation" have been removed from Chapter Three of the IRC® 2015 and relocated to Appendix V, entitled "Appendix V, Automatic Fire Systems."
- (c) OUBCC hereby creates a new appendix W, entitled "Appendix W Energy Efficiency." Section N1101.14 entitled "Certificate" has been removed from Chapter Eleven of the IRC® 2015 and relocated to Appendix W, entitled "Appendix W, Energy Efficiency."
- (d) The OUBCC hereby creates a new appendix X, entitled "Appendix X, Swimming Pools, Spas and Hot Tubs." Appendix G has been carried forward from the previous adoption of IRC® 2009 and relocated to Appendix X, entitled "Appendix X, Swimming Pools, Spas and Hot Tubs."
- (e) The OUBCC hereby creates a new Appendix Y, entitled "Appendix Y, Residential Tornado Provisions."

748:20-5-28. Appendix Y, Residential Tornado Provisions

- (a) This appendix has been newly created and entitled "Residential Tornado Provisions." The provisions contained in this appendix are not mandatory unless specifically referenced in the adopting ordinance or order.
- (b) Y101 Scope. This section heading has been added to specify the sections of this appendix that deal with the Scope of the appendix. This section header has been added to read: Y101. Scope.
 - (1) Section Y101.1 General. This section has been added to clarify the provisions shall be applicable for new construction. This section has been added to read: Y101.1 General. These provisions shall be applicable for new construction where residential tornado provisions are required. This appendix provides prescriptive based requirements for construction of a residential structure meeting or exceeding a 135 mph wind event corresponding to an EF-2 tornado rating. The single most important objective in protecting a structure against high wind is

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achieving a continuous load path from the roof to the foundation. Based on the findings of studies and failures associated with various construction types, a group of 11 building practices (each associated with a different aspect of the structure) are summarized in this section.

(2) Section Y101.2 Application. This section has been added to clarify the administrative provisions of this appendix are applicable in the administrative and building planning and construction requirements in Chapters 1 through 10 of this code. The section has been added to read: ~~Section~~ Y101.2 Application. In addition to the general administration requirements of Chapter 1, the administrative provisions of this appendix shall also apply to the building planning and construction requirements of Chapters 1 through 10.

(3) Section Y101.3 Wind design criteria. This section has been added to clarify that if Section R301.2.1 is modified, the buildings and portions thereof shall be constructed in accordance with the code and the ultimate wind speed design of 135 mph. This section has been added to read: Y101.3 Wind design criteria. Modifying section R301.2.1 buildings and portions thereof shall be constructed in accordance with the wind provisions of this code using the ultimate design wind speed 135 mph.

(4) Section Y101.4 Lumber sheathing. This section has been added to address the permitted forms of lumber sheathing. This section has been added to read: Y101.4 Lumber sheathing. Only OSB or plywood sheathing is permitted. Dimensional lumber sheathing may not be used. Allowable spans and attachment for lumber used as roof or exterior wall sheathing shall conform to the following:

(A) ~~Section~~ Y101.4.1 Sixteen Inch Framing. For rafter, stud, or beam spacing of 16 inches, the minimum nominal sheathing panel thickness will be 7/16 inch, the minimum wood structural panel span rating 24/16, to be nailed with 8d ring shank (0.131 inch x 2.5 inch) or 10d (0.148 inch x 3 inch) nails on 4 inches on center along the edges and 6 inches on center in the field.

(B) Y101.4.2 ~~Section~~ Twenty-four Inch Framing. For rafter, stud or beam spacing of 24 inches, the minimum nominal sheathing panel thickness will be 23/32 inch, the minimum wood structural panel span rating 24/16 to be nailed with 8d ring shank (0.131 inch x 2.5 inch) or 10d (0.148 inch x 3 inch) nails on 4 inches on center along the edges and 4 inches on center in the field.

(5) Section Y101.5 Ceiling joist and rafter connections. This section has been added to require ceiling joists and rafters to be nailed to each other in a manner to achieve a connection that can transfer a 500 pound force in both compression and tension across the connections. This section has been added to read: Y101.5 Ceiling joist and rafter connections. In addition to the provisions of Chapter 8, ceiling joists and rafters shall be nailed to each other

in a manner to achieve a connection that can transfer a 500 pound force in both compression and tension across the connection.

(6) Section Y101.6 Rafter uplift resistance. This section has been added to require individual rafters to be attached to supporting wall assemblies by connections capable of resisting uplift forces of 500 pounds. This section has been added to read: Y101.6 Rafter uplift resistance. Individual rafters shall be attached to supporting wall assemblies by connections capable of resisting uplift forces of 500 pounds.

(7) Section Y101.7 Gable end walls. This section has been added to clarify connections and sheathing for gable end walls. This section has been added to read: Y101.7 Gable end walls. Gable end walls will be sheathed per Y101.4 and will have connections to both a.) supporting wall assemblies and b.) roof framing by connections capable of resisting uplift forces of 500 pounds in both compression and tension across the connection.

(8) Section Y101.8 Exterior wall bracing. This section has been added to clarify sheathing methods to be utilized to brace exterior walls and prohibit intermittent bracing on exterior walls. This section has been added to read: Y101.8 Exterior wall bracing. Only continuous sheathing methods per R602.10.4.2 may be used to brace exterior walls. Frame garage doors using the sheathed portal frame method CS-PF. Lumber sheathing and attachment per Y101.4. Any form of intermittent bracing is not allowed on an exterior wall. Intermittent bracing may only be used for interior braced wall lines.

(9) Section Y101.9 Multi story construction. This section has been added to require nailing upper and lower story wall sheathing to a common rim board. This section has been added to read: Y101.9 Multi story construction. Nail upper and lower story wall sheathing to common rim board in order to maintain continuity between stories.

(10) Section Y101.10 Wood floor above crawl space construction. This section has been added to require extending structural wood sheathing to lap the sill plate. This section has been added to read: Y101.10 Wood floor above crawl space construction. Extend structural wood sheathing to lap the sill plate. Nail to sill plate at 4 inches on center along the edges. Nail to rim board if present with 8d ring shank (0.131 inch x 2.5 inch) or 10d (0.148 inch x 3 inch) nails at 4 inches on center along both the top and bottom edges of the rim board.

(11) Section Y101.11 Garage Doors. This section has been added to require garage doors to be rated for 135 mile per hour winds. This section has been added to read: Y101.11 Garage Doors. Garage doors are to be wind rated to 135 mph.

SUBCHAPTER 7. IEBC® 2015

748:20-7-1. Adoption of International Existing Building Code®, 2015 Edition (IEBC® 2015)

(a) The Oklahoma Uniform Building Code Commission (the "OUBCC") hereby adopts the International Existing Building Code®, 2015 Edition (IEBC® 2015) as amended and modified in this subchapter as the statewide minimum code for commercial existing building construction in the State of Oklahoma pursuant to 59 O.S. 1000.23.

(b) The OUBCC through formal action expressly chose to adopt the IEBC® 2015 as amended and modified in this subchapter, as the statewide minimum code for commercial existing building construction in the State of Oklahoma. In like manner, the OUBCC through formal action expressly chose not to adopt the International Existing Building Code®, 2012 Edition (IEBC®, 2012) for any purpose.

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748:20-7-9. IEBC® 2015 Chapter 16 Referenced Standards

Chapter 16 of the IEBC® 2015 is adopted with the following modifications:

(1) The reference to the International Building Code® has been modified to include after the title the words "as adopted and modified by the State of Oklahoma through the OUBCC." This section has been modified to read: IBC®-15 International Building Code® as adopted and modified by the State of Oklahoma through the OUBCC.

(2) The reference to the International Energy Conservation Code® has been modified to change the edition year to 2006. This section has been modified to read: IECC®-06 International Energy Conservation Code®.

(3) The reference to the International Fire Code® has been modified to include after the title the words "as adopted and modified by the State of Oklahoma through the OUBCC." This section has been modified to read: IFC®-15 International Fire Code® as adopted and modified by the State of Oklahoma through the OUBCC.

(4) The reference to the International Fuel Gas Code® has been modified to include after the title the words "as adopted and modified by the State of Oklahoma through the OUBCC." This section has been modified to read: IFGC®-15 International Fuel Gas Code® as adopted and modified by the State of Oklahoma through the OUBCC.

(5) The reference to the International Mechanical Code® has been modified to include after the title the words "as adopted and modified by the State of Oklahoma through the OUBCC." This section has been modified to read: IMC®-15 International Mechanical Code® as adopted and modified by the State of Oklahoma through the OUBCC.

(6) The reference to the International Plumbing Code® has been modified to include after the title the words "as adopted and modified by the State of Oklahoma through the OUBCC." This section has been modified to read:

IPC®-15 International Plumbing Code® as adopted and modified by the State of Oklahoma through the OUBCC.

(7) The reference to the International Residential Code® has been modified to include after the title the words "as adopted and modified by the State of Oklahoma through the OUBCC." This section has been modified to read: ~~IRC®-09~~IRC®-15 International Residential Code® as adopted and modified by the State of Oklahoma through the OUBCC.

(8) The referenced standard for NFPA® 70® National Electrical Code® has been modified to add after the title the words "as adopted and modified by the State of Oklahoma through the OUBCC." This section shall now read: 70-14 National Electrical Code® as adopted and modified by the State of Oklahoma through the OUBCC.

SUBCHAPTER 9. NEC® 2014

748:20-9-1. Adoption of National Electrical Code®, 2014 Edition (NEC® 2014)

(a) The Oklahoma Uniform Building Code Commission (the "OUBCC") hereby adopts the National Electrical Code®, 2014 Edition - NFPA® 70® (NEC® 2014), as amended and modified in this subchapter as the statewide minimum code for commercial electrical construction in the State of Oklahoma pursuant to 59 O.S. § 1000.23.

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748:20-9-7. NEC® 2014 Chapter 5 Special Occupancies

Chapter 5 is adopted with modifications as follows:

(1) Section 505.7 (A) Implementation of zone classification system. This section has been modified to require a registered professional engineer to engineer and design, and select the equipment and wiring methods for classification areas. It allows for the installation of the equipment, wiring methods and inspections to be performed by qualified persons. This section has been modified to read: 505.7 (A) Implementation of zone classification system. Classification of areas, engineering and design, selection of equipment and wiring methods shall be performed by a Registered Professional Engineer with expertise in Hazardous (Classified) Locations and Zone Systems. The installation of equipment and wiring methods, and inspections shall be performed by qualified persons.

(2) Section 506.6 (A) Implementation of zone classification system. This section has been modified to require a registered professional engineer to engineer and design, and select the equipment and wiring methods for classification areas. It allows for the installation of the equipment, wiring methods and inspections to be performed by qualified persons. This section has been modified to read:

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506.6 (A) Implementation of zone classification system. Classification of areas, engineering and design, selection of equipment and wiring methods, shall be performed by a Registered Professional Engineer with expertise in Hazardous (Classified) Locations and Zone Systems. The installation of equipment and wiring methods inspection shall be performed by qualified persons.

(3) Section 511.2 Major Repair Garage. This section has been modified to include maintenance or repairs that require open-flame cutting or welding as part of the definition of a major repair garage. This section has been modified to read: 511.2 Major Repair Garage. A building or portions of a building where major repairs, such as engine overhauls, painting, body and fender work, maintenance or repairs that require open-flame cutting or welding, and repairs that require draining of the motor vehicle fuel tank are performed on motor vehicles, including associated floor space used for offices, parking, or showrooms [30A: 3.3.12.2].

SUBCHAPTER 11. IFGC® 2015

748:20-11-1. Adoption of International Fuel Gas Code®, 2015 Edition (IFGC® 2015)

(a) The Oklahoma Uniform Building Code Commission (the "OUBCC") hereby adopts the International Fuel Gas Code®, 2015 Edition (IFGC® 2015) as amended and modified in this subchapter as the statewide minimum code for commercial fuel gas construction in the State of Oklahoma pursuant to 59 O.S. 1000.23.

(b) The OUBCC through formal action expressly chose to adopt the IFGC® 2015 as amended and modified in this subchapter, as the statewide minimum code for commercial fuel gas construction in the State of Oklahoma. In like manner, the OUBCC through formal action expressly chose not to adopt the International Fuel Gas Code®, 2012 Edition (IFGC®, 2012) for any purpose.

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748:20-11-6.1. IFGC® 2015 Chapter 2 Definitions

Chapter 2 of the IFGC® 2015 is adopted with the following modifications:

(1) The definition of a DISPENSING AREA has been added to clarify multiple references in the code with regard to fuel dispensing. This definition has been added to read: DISPENSING AREA. The appropriate hazardous (classified) locations for the fuel being dispensed in accordance with the National Electrical Code® - NFPA® 70.

(2) The definition of a MAIN RAILROAD TRACK has been added to clarify to building code officials. This definition has been added to read: MAIN RAILROAD TRACK. That part of the railway, exclusive of switch

tracks, branches, yards, and terminals upon which trains are operated by timetable or train order or both.

748:20-11-8. IFGC® 2015 Chapter 4 Gas Piping Installations

Chapter 4 of the IFGC® 2015 is adopted with the following ~~modification~~ modifications:

(1) Section 404.12 Minimum burial depth. This section has been modified to change the minimum burial depth from 12 inches (305 mm) to 18 inches (457 mm) and to allow for an exception when there is no ability to meet that minimum depth. This section has been modified to read: 404.12 Minimum burial depth. Underground piping systems shall be installed a minimum depth of 18 inches (457 mm) below grade, except as provided for in Section 404.12.1. Exception: Where a minimum depth of cover cannot be provided, the pipe shall be installed in conduit or bridged (shielded).

(2) Section [F] 412.5 Attendants. This section has been modified to provide an exception the requirement of an attendant when the dispensing equipment meets the guidelines of NFPA® 58 for a "Low emission transfer." This section has been modified to read: [F] 412.5 Attendants. Motor fuel-dispensing operations shall be conducted by qualified attendants or in accordance with Section 412.9 by persons trained in the proper handling of LP-gas. Exception: When the dispensing equipment meets the guidelines of NFPA® 58 for "Low emission transfer" an attendant is not required.

(3) Section [F] 412.6.1 Low emission transfer. This section has been added to clarify when the dispensing equipment meets the guidelines of NFPA® 58, Section 6.28.5 for "Low emission transfer" then the transfer distance shall be reduced by one-half. This section has been modified to read: [F] 412.6.1 Low emission transfer. When the dispensing equipment is installed in accordance with Section 6.28.5 of NFPA® 58 for "Low emission transfer," the transfer distance requirements in Table 6.5.2.1 and Section 6.25.4.3(1) of NFPA® 58 shall be reduced by one-half.

(4) Section [F] 412.9 Public fueling of motor vehicles. This section has been modified to provide an exception to the owner's requirement to train users when the dispensing equipment meets the guidelines of NFPA® 58 for a "Low emission transfer." This section has been added to read: [F] 412.9 Public fueling of motor vehicles.

(A) Self-service LP-gas dispensing systems, including key, code and card lock dispensing systems, shall be limited to the filling of permanently mounted containers providing fuel to the LP-gas-powered vehicle.

(B) The requirements for self-service LP-gas dispensing systems shall be in accordance with the following:

(i) The arrangement and operation of the transfer of product into a vehicle shall be in accordance with this section and Chapter 61 of the International Fire Code®.

- (ii) The system shall be provided with an emergency shut-off switch located within 100 feet (30 480 mm) of, but not less than 20 feet (6096 mm) from dispensers.
 - (iii) The owner of the LP-gas motor fuel-dispensing facility or the owner's designee shall provide for the safe operation of the system and the training of users. Exception: If the LP-gas motor fuel-dispensing facility meets the requirements of a low emission transfer station per NFPA® 58, then training of the users is not the responsibility of the facility.
 - (iv) The dispenser and hose-end valve shall release not more than 4 cubic centimeters of liquid to the atmosphere upon breaking the connection with the fill valve on the vehicle.
 - (v) Portable fire extinguishers shall be provided in accordance with Section 2305.5 of the International Fire Code®.
 - (vi) Warning signs shall be provided in accordance with Section 2305.6 of the International Fire Code®.
 - (vii) The area around the dispenser shall be maintained in accordance with Section 2305.7 of the International Fire Code®.
- (5) Section [F] 413.3.2 Warning signs. This section has been added to include warning signs be posted on Compressed Natural Gas (CNG) dispensing devices. This section has been added to read: [F] 413.3.2 Warning signs. Warning signs complying with Section 310 of the International Fire Code® shall be posted as follows:
- (A) Warning sign(s) shall be conspicuously posted within sight of each dispenser in the fuel dispensing area and shall state the following:
 - (i) No smoking
 - (ii) Shut off motor
 - (iii) Flammable Gas
 - (iv) Natural gas vehicle fuel cylinders shall be inspected at intervals not exceeding 3 years or 36,000 miles to ensure safe operation of the vehicle
 - (v) Natural gas fuel cylinders past their end-of-life date shall not be refueled and shall be removed from service.
 - (B) A warning sign with the words "NO SMOKING, FLAMMABLE GAS" shall be posted in all compressor and storage areas.
 - (C) The lettering on the sign shall be legible and large enough to be visible from each point of transfer.
 - (D) The service pressure of each dispenser shall be posted in view of the operator.
- (6) Section [F] 413.5 Private fueling of motor vehicles. This section has been modified to allow for the industry practice of utilizing CNG trailers that are not permanently attached to CNG powered vehicles and delete the requirement for the owner to ensure the user of a CNG powered

vehicle be properly trained on the vehicle's filling procedures. This section has been modified to read: [F] 413.5 Private fueling of motor vehicles.

(A) Self-service CNG-dispensing systems, including key, code and card lock dispensing systems, shall be limited to the filling of approved, permanently mounted fuel containers.

(B) In addition to the requirements in the International Fire Code, the owner of a self-service CNG-dispensing facility shall ensure the safe operation of the system.

(7) Section [F] 413.8 Emergency shutdown control. This section has been modified to change the word "control" to "device" in the section heading, clarify the requirements of the emergency shutdown device and provide an exception to those requirements for time-fill applications. This section has been modified to read: [F] 413.8 Emergency shutdown devices. A remote and local emergency manual shutdown device shall be provided. Upon activation, the emergency shutdown system shall automatically close valves between the main gas supply and the compressor and between the storage containers and dispensers, and automatically shut off the power supply to the compressor and the following associated devices: dispensing enclosures; remote pumps; power, control, and signal circuits; and electrical equipment in the hazardous (classified) locations surrounding the fuel dispensing enclosures. All labeled emergency shutdown devices shall be interconnected, whether required or not. Resetting from an emergency shutoff condition shall require manual intervention and the manner of resetting shall be approved by the Authority Having Jurisdiction. Exception: In time-fill applications, in lieu of a defined remote and local emergency manual shutdown device, an emergency manual shutdown device shall be provided within 50 feet (15 240 mm) of each fixed point of dispensing hose attachment and located inside and outside the compressor area within 10 feet (3048 mm) of the main access to the compressor area.

(8) Section 413.8.1 Remote emergency shutdown device. This section has been added to clarify the distance requirements for remote emergency shutdown device placement and provide an exception to the maximum distance required when located within line of sight of the dispensing enclosures and approved by the Authority Having Jurisdiction. This section has been added to read: 413.8.1 Remote emergency shutdown device. A remote emergency manual shutdown device shall be located within 100 feet (30 480 mm) of, but not less than 20 feet (6096 mm) from all dispensing enclosures and shall be provided inside and outside the compressor area within 10 feet (3048 mm) of the main access to the compressor area. Exception: A remote emergency manual shutdown device may be located greater than 100 feet (30 480 mm) from one or more dispensing enclosures when within line of sight of the dispensing enclosures and approved by the Authority Having Jurisdiction.

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(9) Section 413.8.2 Local emergency shutdown device. This section has been added to require a local emergency shutdown device be provided within 15 feet (4572 mm) of each dispensing enclosure. This section has been added to read: 413.8.2 Local emergency shutdown device. A local emergency manual shutdown device shall be located within 15 feet (4572 mm) of each dispensing enclosure.

748:20-11-10. IFGC® 2015 Chapter 8 Referenced Standards

Chapter 8 of the IFGC® 2015 is adopted with the following modifications:

- (1) The reference to the International Building Code® has been modified to include after the title the words "as adopted and modified by the State of Oklahoma through the OUBCC." This section has been modified to read: IBC®-15 International Building Code® as adopted and modified by the State of Oklahoma through the OUBCC.
- (2) The reference to the International Energy Conservation Code® has been modified to change the edition year to 2006. This section has been modified to read: IECC®-06 International Energy Conservation Code®.
- (3) The reference to the International Fire Code® has been modified to include after the title the words "as adopted and modified by the State of Oklahoma through the OUBCC." This section has been modified to read: IFC®-15 International Fire Code® as adopted and modified by the State of Oklahoma through the OUBCC.
- (4) The reference to the International Mechanical Code® has been modified to include after the title the words "as adopted and modified by the State of Oklahoma through the OUBCC." This section has been modified to read: IMC®-15 International Mechanical Code® as adopted and modified by the State of Oklahoma through the OUBCC.
- (5) The reference to the International Plumbing Code® has been modified to include after the title the words "as adopted and modified by the State of Oklahoma through the OUBCC." This section has been modified to read: IPC®-15 International Plumbing Code® as adopted and modified by the State of Oklahoma through the OUBCC.
- (6) The reference to the International Residential Code® has been modified to include after the title the words "as adopted and modified by the State of Oklahoma through the OUBCC." This section has been modified to read: ~~IRC®-09~~IRC®-15 International Residential Code® as adopted and modified by the State of Oklahoma through the OUBCC.
- (7) The referenced standard for NFPA® 70® National Electrical Code® has been modified to add after the title the words "as adopted and modified by the State of Oklahoma through the OUBCC." This section shall now read: 70-14 National Electrical Code® as adopted and modified by the State of Oklahoma through the OUBCC.

748:20-13-1. Adoption of International Mechanical Code®, 2015 Edition (IMC® 2015)

- (a) The Oklahoma Uniform Building Code Commission (the "OUBCC") hereby adopts the International Mechanical Code®, 2015 Edition (IMC® 2015) as amended and modified in this subchapter as the statewide minimum code for commercial mechanical construction in the State of Oklahoma pursuant to 59 O.S. 1000.23.
- (b) The OUBCC through formal action expressly chose to adopt the IMC® 2015 as amended and modified in this subchapter, as the statewide minimum code for commercial mechanical construction in the State of Oklahoma. In like manner, the OUBCC through formal action expressly chose not to adopt the International Mechanical Code®, 2012 Edition (IMC®, 2012) for any purpose.
- (c) This material contains information which is proprietary to and copyrighted by the International Code Council, Inc. The acronym "ICC" and the ICC logo are trademarks and service marks of ICC. ALL RIGHTS RESERVED.

748:20-13-9. IMC® 2015 Chapter 5 Exhaust Systems

Chapter 5 of the IMC® 2015 has been adopted with the following modifications:

- (1) Section [F] 502.15 Repair garages. This section has been modified to require compliance with Section 2311.4.3 of the International Fire Code® when designing basement or pit ventilation. This section has been modified to read: [F] 502.15 Repair garages. Where Class I liquids or LP-gas are stored or used within a building having a basement or pit wherein flammable vapors could accumulate, the basement or pit shall be provided with ventilation designed in accordance with Section 2311.4.3 of the International Fire Code® to prevent the accumulation of flammable vapors therein.
- (2) Section [F] 502.16.1 Design. This section has been modified to clarify exhaust outlets should be located within 18 inches (475 mm) of the high point of the room on exterior walls or the roof and to change the ventilation rate from not less than 1 cubic foot per minute per 12 cubic feet of room volume to 1 cubic foot per square foot of room area. This section has been modified to read: [F] 502.16.1 Design.
 - (A) Indoor locations shall be ventilated utilizing air supply inlets and exhaust outlets arranged to provide uniform air movement to the extent practical. Inlets shall be uniformly arranged on exterior walls near floor level. Outlets shall be located within 18 inches (457 mm) of the high point of the room in exterior walls or the roof.
 - (B) Ventilation shall be by a continuous mechanical ventilation system or by a mechanical ventilation system activated by a continuously monitoring natural gas detection system, or for hydrogen, a continuously monitoring flammable gas detection system, each activating at a gas concentration of not more than 25 percent of the lower flammable limit (LFL). In all cases, the system shall shut down the fueling system in the event of failure of the ventilation system.

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(C) The ventilation rate shall not be less than 1 cubic foot per minute per square foot [0.0051 cubic meters per (second square meter)] of room area.

(43) Section 506.3.1.1 Grease duct materials. This section has been added to clarify the language between the code and NFPA® 96 regarding the type of steel to be utilized. This section has been modified to read: 506.3.1.1 Grease duct materials. Grease ducts serving Type I hoods shall be constructed of non- galvanized carbon steel having a minimum thickness of 0.0575 inch (1.463 mm) (No. 16 gage) or stainless steel not less than 0.0450 inch (1.14 mm) (No. 18 gage) in thickness. Exception: Factory-built commercial kitchen grease ducts listed and labeled in accordance with UL 1978 and installed in accordance with Section 304.1.

(24) Section 507.2. Type I hoods. This section has been modified to add an additional exception for installation of Type II hoods when specific conditions are met. This section has been modified to read: Type I hoods shall be installed where cooking appliances produce grease or smoke as a result of the cooking process. Type I hoods shall be installed over medium-duty, heavy-duty, and extra-heavy-duty cooking appliances. Exceptions:

(A) A Type I hood shall not be required for an electric cooking appliance where an approved testing agency provides documentation that the appliance effluent contains 5 mg per cubic meter when tested at an exhaust flow rate of 500 cfm (0.236 cubic meters per second) in accordance with UL 710B.

(B) In non-commercial cooking occupancies a residential or Type II hood can be installed over a medium-duty residential appliance when approved.

748:20-13-11. IMC®2015 Chapter 15 Referenced Standards

Chapter 15 of the IMC® 2015 is adopted with the following modifications:

(1) The reference to the International Building Code® has been modified to include after the title the words "as adopted and modified by the State of Oklahoma through the OUBCC." This section has been modified to read: IBC®-15 International Building Code® as adopted and modified by the State of Oklahoma through the OUBCC.

(2) The reference to the International Energy Conservation Code® has been modified to change the edition year to 2006. This section has been modified to read: IECC®-06 International Energy Conservation Code®.

(3) The reference to the International Fire Code® has been modified to include after the title the words "as adopted and modified by the State of Oklahoma through the OUBCC." This section has been modified to read: IFC®-15 International Fire Code® as adopted and modified by the State of Oklahoma through the OUBCC.

(4) The reference to the International Fuel Gas Code® has been modified to include after the title the words "as adopted and modified by the State of Oklahoma through the OUBCC." This section has been modified to read:

IFGC®-15 International Fuel Gas Code® as adopted and modified by the State of Oklahoma through the OUBCC.

(5) The reference to the International Plumbing Code® has been modified to include after the title the words "as adopted and modified by the State of Oklahoma through the OUBCC." This section has been modified to read: IPC®-15 International Plumbing Code® as adopted and modified by the State of Oklahoma through the OUBCC.

(6) The reference to the International Residential Code® 2009 has been modified to include after the title the words "as adopted and modified by the State of Oklahoma through the OUBCC." This section has been modified to read: ~~IRC®-09~~IRC®-15 International Residential Code® as adopted and modified by the State of Oklahoma through the OUBCC.

(7) The referenced standard for NFPA® 70® National Electrical Code® has been modified to include after the title the words "as adopted and modified by the State of Oklahoma through the OUBCC." This section shall now read: 70-14 National Electrical Code® as adopted and modified by the State of Oklahoma through the OUBCC.

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748:20-15-1. Adoption of International Plumbing Code®, 2015 Edition (IPC® 2015)

(a) The Oklahoma Uniform Building Code Commission (the "OUBCC") hereby adopts the International Plumbing Code®, 2015 Edition (IPC® 2015) as amended and modified in this subchapter as the statewide minimum code for commercial plumbing construction in the State of Oklahoma pursuant to 59 O.S. 1000.23.

(b) The OUBCC through formal action expressly chose to adopt the IPC®, 2015 as amended and modified in this subchapter, as the statewide minimum code for commercial plumbing construction in the State of Oklahoma. In like manner, the OUBCC through formal action expressly chose not to adopt the International Plumbing Code®, 2012 Edition (IPC®, 2012) for any purpose.

(c) This material contains information which is proprietary to and copyrighted by the International Code Council, Inc. The acronym "ICC" and the ICC logo are trademarks and service marks of ICC. ALL RIGHTS RESERVED.

748:20-15-8. IPC®2015 Chapter 3 General Regulations

Chapter 3 of the IPC® 2015 is adopted with the following modifications:

(1) Section 305.3 Pipes through foundations walls. This section has been modified to require the relieving arch or pipe sleeve pipe to conform with the materials and standards listed in Table 702.2 or as approved by the authority having jurisdiction. This section has been modified to read: 305.3 Pipes through foundation walls. Any pipe that passes through a foundation wall shall be provided with a relieving arch or pipe sleeve pipe shall be built into the foundation wall. The relieving arch or pipe

sleeve shall conform to one of the materials and standards listed in ~~Title Table~~ Table 702.2, or as approved. The sleeve shall be two pipe sizes greater than the pipe passing through the wall.

(2) Section 305.4.1 Sewer depth. This section has been modified to include a depth for the septic tank connection unless otherwise approved by the authority having jurisdiction. This section has been modified to read: 305.4.1 Sewer depth. Building sewers that connect to private sewage disposal systems shall be a minimum of 12 inches (305 mm) or as approved by the authority having jurisdiction below finished grade at the point of septic tank connection. Building sewers shall be a minimum of 12 inches (305 mm) below grade.

(3) Section 312.2 Drainage and vent water test. This section has been modified to change the test from a requirement of a 10 foot (3048 mm) head of water to a requirement of a 5 foot (1524 mm) head of water. This section has been modified to read: 312.2 Drainage and vent water test. A water test shall be applied to the drainage system either in its entirety or in sections. If applied to the entire system, all openings in the piping shall be tightly closed, except the highest opening, and the system shall be filled with water to the point of overflow. If the system is tested in sections, each opening shall be tightly plugged except the highest openings of the section under test, and each section shall be filled with water, but no section shall be tested with less than a 5 foot (1524 mm) head of water. In testing successive sections, at least the upper 5 feet (1524 mm) of the next preceding section shall be tested so that no joint or pipe in the building, except the uppermost 5 feet (1524 mm) of the system, shall have been submitted to a test of less than a 5 foot (1524 mm) head of water. This pressure shall be held for at least 15 minutes. The system shall then be tight at all points.

(4) Section 312.3 Drainage and vent air test. This section has been modified to change the equivalent pressure for the inches of mercury to match the feet of water change made for the drainage and vent test. This section has been modified to read: 312.3 Drainage and vent air test. Plastic piping shall not be tested using air. An air test shall be made by forcing air into the system until there is a uniform gauge pressure of 2.5 psi (17.25 kPa) or sufficient to balance a 5-inch (127 mm) column of mercury. This test shall be held for a period of not less than 15 minutes. Any adjustments to the test pressure required because of changes in ambient temperatures or the seating of gaskets shall be made prior to the beginning of the test period.

(5) 312.6 Gravity sewer test. This section has been modified to allow the authority having jurisdiction to determine if this test is required and change the test from a 10 foot (3048 mm) head of water test to a 5 foot (~~1024~~1524 mm) head of water test. This section has been modified to read: 312.6 Gravity sewer test. Where required, gravity sewer tests shall consist of plugging the end of the building sewer at the point of connection with the public sewer,

filling the building sewer with water, testing with not less than a 5 foot (~~1024~~1524 mm) head of water and maintaining such pressure for 15 minutes.

(6) Section 312.10.1 Inspections. This section was modified to allow for third-party inspections to be accepted by the code official. This section has been modified to read: 312.10.1 Inspections. Annual inspections shall be made of all backflow prevention assemblies and air gaps to determine whether they are operable, in accordance with Chapter 1, Sections 104.3 and 105.3.2

748:20-15-17. IPC® 2015 Chapter 15 Referenced Standards

Chapter 15 of the IPC® 2015 is adopted with the following modifications:

(1) The reference to the International Building Code® has been modified to include after the title the words "as adopted and modified by the State of Oklahoma through the OUBCC." This section has been modified to read: IBC®-15 International Building Code® as adopted and modified by the State of Oklahoma through the OUBCC.

(2) The reference to the International Energy Conservation Code® has been modified to change the edition year to 2006. This section has been modified to read: IECC-06 International Energy Conservation Code®.

(3) The reference to the International Fire Code® has been modified to include after the title the words "as adopted and modified by the State of Oklahoma through the OUBCC." This section has been modified to read: IFC®-15 International Fire Code® as adopted and modified by the State of Oklahoma through the OUBCC.

(4) The reference to the International Fuel Gas Code® has been modified to include after the title the words "as adopted and modified by the State of Oklahoma through the OUBCC." This section has been modified to read: IFGC®-15 International Fuel Gas Code® as adopted and modified by the State of Oklahoma through the OUBCC.

(5) The reference to the International Mechanical Code® has been modified to include after the title the words "as adopted and modified by the State of Oklahoma through the OUBCC." This section has been modified to read: IMC®-15 International Mechanical Code® as adopted and modified by the State of Oklahoma through the OUBCC.

(6) The reference to the International Residential Code® 2009 has been modified to include after the title the words "as adopted and modified by the State of Oklahoma through the OUBCC." This section has been modified to read: ~~IRC®-09~~IRC®-15 International Residential Code® as adopted and modified by the State of Oklahoma through the OUBCC.

(7) The referenced standard for NFPA® 70® National Electrical Code® has been modified to include the words after the title "as adopted and modified by the State of Oklahoma through the OUBCC." This section shall now

read: 70-14 National Electrical Code® as adopted and modified by the State of Oklahoma through the OUBCC.

[OAR Docket #17-575; filed 7-6-17]

TITLE 765. OKLAHOMA USED MOTOR VEHICLE AND PARTS COMMISSION CHAPTER 2. INFORMAL AND FORMAL PROCEDURES

[OAR Docket #17-620]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. Informal Procedures - Consumer Complaints 765:2-1-4 [REVOKED]

AUTHORITY:

Oklahoma Used Motor Vehicle and Parts Commission 47 O.S. Section 582(E) 75 O.S. Section 250 75 O.S. Section 302

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

December 19th, 2016

COMMENT PERIOD:

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Approved by Governor's declaration on June 13, 2017

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June 13, 2017

EFFECTIVE:

September 11, 2017

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

765:2-1-4 would be revoked.

CONTACT PERSON:

John W. Maile, Executive Director, Used Motor Vehicle and Parts Commission, 421 N.W. 13th Street, Suite 330, Oklahoma City, OK 73103, 405-521-3600, John.W.Maile@umvpc.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 1. INFORMAL PROCEDURES - CONSUMER COMPLAINTS

765:2-1-4. Applicants with Felony conviction(s) [REVOKED]

An applicant who has been convicted of a Felony in any state or Federal jurisdiction within the last twenty (20) years

preceding the application for license shall require review and approval by the Commission en banc before beginning to act as a licensee.

[OAR Docket #17-620; filed 7-11-17]

TITLE 765. OKLAHOMA USED MOTOR VEHICLE AND PARTS COMMISSION CHAPTER 4. TERM OF LICENSES GENERAL LICENSING PROVISIONS

[OAR Docket #17-621]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

765:4-1-3 [AMENDED] 765:4-1-4 [NEW] 765:4-1-6 [NEW]

AUTHORITY:

Oklahoma Used Motor Vehicle and Parts Commission 47 O.S. Section 582(E) 75 O.S. Section 250 75 O.S. Section 302

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INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The title of Chapter 4 would be changed to reflect the general nature of the Chapter. The provisions in 765:4-1-3(b) & 765:4-1-6 would allow bonds & verifications or notaries signatures to be submitted electronically. 765:4-1-4 requires additional information from applicants with felony convictions.

CONTACT PERSON:

John W. Maile, Executive Director, Used Motor Vehicle and Parts Commission, 421 N.W. 13th Street, Suite 330, Oklahoma City, OK 73103, 405-521-3600, John.W.Maile@umvpc.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

765:4-1-3. Bonds

(a) All bonds required for licensing shall expire on the 31st day of December of the odd numbered year after the issuance

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of the bond, except as provided hereinafter. Upon proof that the cost of the required bond for the entire license period exceeds Two Thousand Dollars (\$2,000.00), an applicant or licensee may request that the Commission allow the applicant or licensee to submit a one (1) year bond which expires December 31st of the year of the issuance of the license and a separate bond for the second license year. In the event that the licensee fails to submit a bond for the second license year, the license shall expire and be revoked coterminously with the expiration of the bond.

(b) Any bond required for any license to be issued by this Commission may be submitted by electronic means, provided the electronic bond provides sufficient information to allow the Commission to determine that the bond is a good and valid bond issued by the bonding company providing the bond.

765:4-1-4. OSBI Report

Every applicant for a license to be issued by the Commission shall be required to submit a current report from the Oklahoma State Bureau of Investigation (OSBI Report) which indicates whether the applicant has been charged or convicted of a felony. The report shall include information showing whether any of the charges or convictions were violent or sex offender felonies.

765:4-1-6. Electronic verification

Every application which requires a verification or notary signature may be performed by electronic verification when the database of the Commission is sufficiently developed to accept such verification.

[OAR Docket #17-621; filed 7-11-17]

TITLE 765. OKLAHOMA USED MOTOR VEHICLE AND PARTS COMMISSION CHAPTER 10. USED MOTOR VEHICLE DEALERS

[OAR Docket #17-622]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 3. Operation
765:10-3-5 [AMENDED]

AUTHORITY:
Oklahoma Used Motor Vehicle and Parts Commission
47 O.S. Section 582(E)
75 O.S. Section 250
75 O.S. Section 302

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SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The proposed Rule Amendments would clarify the guidelines which used motor vehicle dealers are required to follow. They clarify where and when vehicles may be offered for sale, and the extent of the authority of the license.

CONTACT PERSON:

John W. Maile, Executive Director, Used Motor Vehicle and Parts Commission, 421 N.W. 13th Street, Suite 330, Oklahoma City, OK 73103, 405-521-3600, John.W.Maile@umvpc.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 3. OPERATION

765:10-3-5. Prohibited Acts

(a) A used motor vehicle dealer shall not solicit or offer compensation for referrals of prospective buyers from used motor vehicle salespersons employed by another used motor vehicle dealer.

(b) A used motor vehicle dealer shall not fail to execute any of the forms required in a used motor vehicle transaction. A used motor vehicle dealer who fails to execute the required forms or who violates the terms of any contractual obligation in the sales transaction shall be subject to the appropriate fine for violation of the Rules of the Commission.

(c) A used motor vehicle dealer shall not display or offer a used motor vehicle for sale at any location, other than the location for which the dealer has been issued a license or at the location of another licensed used motor vehicle dealer by consignment. Provided, this prohibition shall not restrict a dealer from taking a vehicle to an identified prospective buyer for inspection and demonstration for the convenience of the parties.

(d) A used motor vehicle dealer shall not offer a used motor vehicle for sale or lease to option to purchase on Sundays, unless the dealer is conducting a classic, antique, or special interest automobile auction.

(e) A used motor vehicle dealer shall not allow an unlicensed individual or a salesperson to act as a dealer using the dealer's license, or allow any unlicensed person to use the dealer's name, license, or dealer number for any prerogative reserved to a dealer.

[OAR Docket #17-622; filed 7-11-17]

TITLE 765. OKLAHOMA USED MOTOR VEHICLE AND PARTS COMMISSION CHAPTER 13. TEMPORARY LICENSE PLATES

[OAR Docket #17-623]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 3. Design
765:13-3-5 [AMENDED]

AUTHORITY:
Oklahoma Used Motor Vehicle and Parts Commission
47 O.S. Section 582(E)(1)
75 O.S. Section 583 B.3.
75 O.S. Section 302 et.seq

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EFFECTIVE:
September 11, 2017

SUPERSEDED EMERGENCY ACTIONS:
n/a

INCORPORATIONS BY REFERENCE:
n/a

ANALYSIS:
To require used motor vehicle dealers to be able to account for the temporary license plates issued by the dealer.

CONTACT PERSON:
John W. Maile, Executive Director, Used Motor Vehicle and Parts Commission, 421 N.W. 13th Street, Suite 330, Oklahoma City, OK 73103, 405-521-3600, John.W.Maile@umvpc.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 3. DESIGN

765:13-3-5. Records

The dealer shall maintain a record of temporary license plates issued. The record shall include the unique sequential number, the date issued, the name of the purchaser and the year, make, model and vehicle identification number of the vehicle for which the temporary license plate was issued. The record shall be available to Commission and law enforcement personnel upon request. Failure to maintain a record of temporary license plates issued and/or failure to account for temporary license plates shall subject the dealer to a fine not

to exceed One Thousand Dollars (\$1,000.00) per violation and/or suspension or revocation of the dealer's license.

[OAR Docket #17-623; filed 7-11-17]

TITLE 770. OKLAHOMA DEPARTMENT OF VETERANS AFFAIRS CHAPTER 15. CLAIMS AND BENEFITS DIVISION PROGRAM

[OAR Docket #17-529]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 7. Honorable Interment of Indigent Veterans Program [NEW]
770:15-7-1. Purpose [NEW]
770:15-7-2. Eligibility for Indigent Veterans Burial Program [NEW]
770:15-7-3. Procedures for processing claims [NEW]
770:15-7-4. Policies and basis for claims [NEW]

AUTHORITY:
Oklahoma Department of Veterans Affairs; Title 72 O.S. Section 63.1; Title 75 O.S., Section 250 et seq.

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n/a

INCORPORATIONS BY REFERENCE:
n/a

GIST/ANALYSIS:
The approved rules establishes the regulatory guidance for the Honorable Interment Of Indigent Veterans Program, providing grant assistance for the proper interment or cremation of indigent veterans of the United States Armed Forces. The program shall provide for a burial grant for any indigent veteran or any person who qualifies for financial assistance as determined by the Oklahoma Department of Veterans Affairs. These rules are impacted by both state and federal statutes. The federal statutes are Title 38 of the United States Code; Title 38 of the Code of Federal Regulations. The state statute impacting this rule is Oklahoma Statutes Title 72.

CONTACT PERSON:
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

Permanent Final Adoptions

SUBCHAPTER 7. HONORABLE INTERMENT OF INDIGENT VETERANS PROGRAM

770:15-7-1. Purpose

The purpose of the *Honorable Interment of Indigent Veterans Program* is to provide assistance for the proper interment or cremation of honorably discharged indigent veterans of the United States Armed Forces. *The program shall provide for a burial grant for any indigent veteran or any person who qualifies for financial assistance as determined by the Oklahoma Department of Veterans Affairs* [Senate Bill No. 398, 2016].

770:15-7-2. Eligibility for Interment of Indigent Veterans Program

To be eligible for Honorable Interment Of Indigent Veterans Program through the Oklahoma Department of Veterans Affairs, a veteran must be honorably discharged and otherwise meet all the following, pursuant to 72 O.S. §2 and 72 O.S. §34.

(1) The deceased shall be a veteran as defined by 38 U.S.C. 101(2) [Senate Bill No. 398, 2016].

(A) Who is eligible under 38 Code of Federal Regulation 38.620 [Senate Bill No. 398, 2016].

(B) An Oklahoma resident who served in the National Guard or Reserve Component whose only service is active duty training or inactive duty for training but meets all other 38 Code of Federal Regulations 38.620 statutes [Senate Bill No. 398, 2016].

(2) The indigent veteran has been determined to be homeless as defined as follows: A homeless veteran is an individual without permanent housing who may live on the streets, stay in a shelter, mission, abandoned building or in any other unstable or non-permanent situation [Senate Bill No. 398, 2016].

(3) The Veteran shall have died in Oklahoma [Senate Bill No. 398, 2016].

(4) The Veteran shall have been homeless and indigent at the time of death [Senate Bill No. 398, 2016].

(5) The Veteran's estate did not possess money or other assets to pay for or defray funeral expenses [Senate Bill No. 398, 2016].

(6) There is no other person obligated by law to pay for funeral expenses of the deceased [Senate Bill No. 398, 2016].

(7) The veteran's remains have been interred or buried in Oklahoma [Senate Bill No. 398, 2016].

770:15-7-3. Procedures for processing claims

(a) The Oklahoma Department of Veterans Affairs Executive Director or his or her designee require the following documentation / evidence in support of the claim for reimbursement:

(1) Documentation showing the Veteran was homeless and indigent at the time of death.

(2) Documentation or discharge records verifying the deceased veteran was eligible under 38 CFR 38.620 and a veteran as defined by 38 U.S.C. 101(2).

(3) Documentation or discharge records verifying the deceased was an Oklahoma resident who served in the National Guard or Reserve Component meeting all other 38 CFR 38.620 statutes but does not meet 38 U.S.C. 101(2).

(4) An Oklahoma Certificate of Death for the Veteran.

(5) Documentation showing the Veteran's estate did not possess money or other assets to pay for or defray funeral expenses.

(6) The applicant will attest that a due diligence search and inquiry have been completed and no other person(s) obligated by law to pay for funeral expenses of the deceased has been found.

(7) Documentation showing the veteran's burial location/cemetery or placement of the veteran's cremains.

(8) Documentation showing the veteran has a Memorial Headstone/Marker provided pursuant to 38 U.S. Code § 2306 or otherwise meeting the physical standards for size, composition, placement, and informational content as those available to qualifying veterans through the Department of Veterans Affairs.

(b) The Oklahoma Department of Veterans Affairs will accept for consideration documents/supporting evidence from:

(1) Medical Examiner's and/or;

(2) Federal, State, City, or County Law Enforcement agencies and/or;

(3) County or City Offices responsible for the arrangement for the disposition of the indigent veteran and/or;

(4) Funeral Director completion and signed affidavit or;

(5) ODVA Form 505.

770:15-7-4. Policies and basis for claims

(a) The Executive Director of the Department of Veterans Affairs or his or her designee shall make final approval of Indigent Veteran Burial Applications.

(1) The approving authority shall determine whether the deceased meets eligibility criteria and approve funds to defray burial costs on a reimbursement basis.

(2) Maximum reimbursement shall not exceed Five Hundred Dollars (\$500.00) per indigent veteran.

(3) Reimbursement will be paid from the Indigent Veteran Burial Revolving Fund.

(b) If there are insufficient resources in the Indigent Veteran Burial Revolving Fund, payment will be made from the Oklahoma Department of Veterans Affairs Revolving Fund.

(c) Once funds are available in the Indigent Veteran Burial Revolving Fund the Oklahoma Department of Veterans Affairs may be reimbursed for payments made from the Oklahoma Department of Veterans Affairs Revolving Fund.

(d) The handling, allowing, disallowing and supervision of the Indigent Veteran Burial Revolving Fund is vested in the Headquarters office with the Executive Director.

(e) Review of applications or claims shall be made by a panel of at least 3 members from the Central Office and/or Claims Office staff and recommendations made to the Executive Director for his or her final approval.

(f) The Executive Director shall make a complete investigation of any reported or suspected misrepresentation of eligibility of the deceased. If there is fraud connected with the case, the ODVA Executive Director may deny payment on a current application, suspend future eligibility of the applicant, and may refer unusual cases to the Attorney General for appropriate action.

(g) The Oklahoma Department of Veterans Affairs Executive Director or his or her designee will establish internal operating procedures for the expeditious processing of the claim.

(h) The Department of Veterans Affairs will accept the discharge or statement of service in determining eligibility for the claim. Honorable discharges are accepted without question. For discharge characterizations other than Honorable, or other irregularities regarding CFR 38 statutes, ODVA will ask the Veterans Administration for a determination as to whether or not the veteran meets all the eligibility criteria for all benefits as it pertains to interment.

(i) The procedures in (a) through (h) of this section may include the development of forms, letters of instruction, checklists for the use of review panels, and correspondence to claimants.

[OAR Docket #17-529; filed 6-28-17]

**TITLE 777. STATEWIDE VIRTUAL
CHARTER SCHOOL BOARD
CHAPTER 1. ADMINISTRATIVE
OPERATIONS**

[OAR Docket #17-639]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions

777:1-1-5 [AMENDED]

777:1-1-9 [AMENDED]

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Statewide Virtual Charter School Board; 70 O.S., §§ 3-145 et seq.

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n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The rules will assist virtual charter school leaders in understanding the rules and the appeals processes.

CONTACT PERSON:

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,
THE FOLLOWING RULES ARE CONSIDERED
FINALLY ADOPTED AS SET FORTH IN 75 O.S.,
SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE
DATE OF SEPTEMBER 11, 2017:**

SUBCHAPTER 1. GENERAL PROVISIONS

777:1-1-5. Time computation

Any period of time prescribed by this Title shall be calculated in accordance with the following provisions:

(1) The day of the act or event from which the designated period of time begins to run shall not be included.

(2) The last day of the period so computed shall be included, unless:

(A) The last day falls on a Saturday, a Sunday, or a legal holiday as defined by the Oklahoma Statutes, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday as defined by the Oklahoma Statutes; or

(B) The last day falls on any other day when the administrative office of the Statewide Virtual Charter School Board does not remain open for public business until 4:30 p.m., in which event the period runs until the end of the next day when the receiving office does remain open for public business until 4:30 p.m.

777:1-1-9. Individual proceedings

(a) **Definitions.** The following words and terms, when used in this subchapter, shall have the following meaning:

(1) "Board" shall mean the Statewide Virtual Charter School Board.

(2) "Individual proceeding" shall have the meaning set forth in the Administrative Procedures Act at 75 O.S. § 250.3.

(b) **Computation of time.** Any period of time prescribed pursuant to the provision of this rule shall be computed in accordance with the provisions of the Administrative Procedures Act at 70 O.S. § 250.8.

(c) **Petitions.** An individual proceeding shall be initiated by filing a petition with the Statewide Virtual Charter School Board. The petition shall meet all of the following requirements:

(1) The Petition must include:

(A) A statement of the legal authority and jurisdiction under which the petitioner seeks to initiate the proceeding and the hearing is to be held;

(B) A reference to each particular statute and/or rule involved;

(C) A short and plain statement of the allegations asserted; and

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- (D) A statement or description of the request for the relief petitioner seeks from the Board.
- (2) The Petition must clearly identify the petitioner(s) and be signed by the petitioner or counsel for the petitioner.
- (d) **Informal disposition.** Nothing in this Section shall prevent informal disposition of a petition from being made by stipulation, agreed settlement, consent order, or default, unless otherwise precluded by law. In the event of an informal disposition of a petition, written notice signed by each party or counsel representatives shall be delivered to the Statewide Virtual Charter School Board prior to the time of the scheduled hearing.
- (e) **Right to counsel.** All parties to an individual proceeding shall have the right to representation by legal counsel in accordance with the provisions of 75 O.S. § 310. The Board may be represented by its own counsel, or, if deemed necessary by the Chairperson of the Board, a request may be made of the Attorney General to provide counsel to the Board to rule on questions of admissibility of evidence, competency of witnesses, and any other questions of law. In the event that counsel is not requested from the Attorney General, the Chairperson of the Board or a hearing officer appointed by the Board will rule on the evidence, competency of the witnesses and other questions of law.
- (f) **Entry of appearance.** All parties or attorneys representing parties in an individual proceeding shall file an entry of appearance. The entry of appearance shall constitute the address of record for the party at which all documents in the individual proceedings will be served. The entry of appearance shall meet all of the following requirements:
- (1) The case caption of the individual proceeding;
 - (2) The name and signature of the party or parties entering an appearance in the individual proceeding; and
 - (3) The mailing address, telephone, fax number and e-mail address of the party or parties entering an appearance in the individual proceeding or, if represented by counsel:
 - (A) The name and signature of the attorney or attorneys entering an appearance in the individual proceeding on behalf of the party or parties;
 - (B) The name of the law firm of the attorney(s), if any; and
 - (C) The Oklahoma Bar Association number of the attorney(s).
- (g) **Motions.** All requests for action in an individual proceeding before the Board shall be made in the form of a motion. Motions shall be filed with the Board, and shall comply with all of the following requirements:
- (1) The motion must clearly and specifically state:
 - (A) The facts upon which the request is based;
 - (B) All legal grounds in support of the request; and
 - (C) The action or relief sought.
 - (2) The motion must be signed by the movant or counsel for the movant;
 - (3) The motion must include the name and contact information of record of the movant or counsel for the movant; and
- (4) ~~The motion must be signed by the movant or counsel for the movant;~~
- (5) The motion must be timely served upon all parties to the proceeding and shall include a certificate of service that complies with the provisions of (h)(3) of this Section.
- (h) **Service.** Methods of service and proof of service of any notice, pleading, order, or other document required by this Section shall comply with the following provisions:
- (1) **Methods of service.** Service of any notice, pleading, or order required by this Section shall be made by one of the following methods:
 - (A) By personal delivery, served by a person licensed to make service of process in civil cases;
 - (B) By certified mail with delivery shown by return receipt. Service by certified mail shall be effective on the date of receipt or, if refused, on the date refusal by the Respondent. Acceptance or refusal by any officer of a business or an authorized agent for a business shall constitute acceptance or refusal by the party addressed;
 - (C) By publication if it is shown that service cannot be made by any other means despite the exercise of due diligence; or
 - (D) Any other method authorized by 12 O.S. § 2005(B).
 - (2) **Proof of service.** Proof of service of any petition to initiate an individual proceeding shall be filed with the Statewide Virtual Charter School Board. Acknowledgment in writing of the document by the recipient, or appearance by the recipient at a hearing without objection to service, shall be considered proof of service.
 - (3) **Certificates of service.** All documents filed with the Statewide Virtual Charter School Board in a pending individual proceeding and all documents requiring service in accordance with the provisions of this Section shall include a Certificate of Service that meets all of the following requirements:
 - (A) The Certificate of Service shall state "I hereby certify that on this ____ day of _____, _____, a copy of the foregoing document was mailed, postage prepaid, to:" and shall identify the name and address of all parties to whom the document was served.
 - (B) The Certificate of Service shall be signed by the party or counsel for the party charged with service of the document.
- (i) **Formal hearing procedures.** A hearing on a petition shall be conducted by the Chairman of the Board or the hearing officer in accordance with 75 O.S. § 310 and the following procedures:
- (1) ~~Initial-Date of hearing.~~ When a petition is filed, the Board shall promptly set the petition for an ~~initial~~ hearing. Notice of the hearing shall comply with the requirements of 75 O.S. § 309. At the hearing, the Board may choose to consider evidence and arguments in support of or in opposition to the petition, the Board may set the matter for further hearing.
 - (2) **Appointment of a hearing officer.** The Chairman of the Board shall preside over any hearing conducted in an

individual proceeding in accordance with the provisions of this Section. Alternatively, the Board, at its discretion, may utilize a hearing officer to conduct the hearing. If utilized, the hearing officer shall be appointed by the Chairperson of the Board upon a vote of the majority of the members of the Board.

(3) **Continuances.** Any party to the proceeding may request a continuance of the scheduled hearing in accordance with the following provisions:

(A) A party may request to continue a hearing scheduled in an individual proceeding by filing a motion for continuance with the Board. The motion for continuance shall meet all of the following requirements:

(i) The motion shall comply with all of the requirements of (g) of this Section; and

(ii) The motion shall be filed at least five (5) business days prior to the scheduled hearing date, provided that this time requirement may be waived by the Board or hearing officer for good cause shown by the movant.

(B) The Board may continue a scheduled hearing by submitting written notification to all parties via certified mail, return receipt requested, or by electronic mail at least five (5) business days prior to the date of the scheduled hearing, provided that the time requirement may be waived by the Board or the hearing officer for good cause shown by the Board or counsel for the Board.

(C) If a motion for continuance is unopposed and the Board finds good cause for granting the motion, counsel for the Board shall prepare and sign a continuance order. The continuance order shall be filed with the Board and served in accordance with the requirements of (h) of this Section.

(D) If a motion for continuance is opposed, the non-moving party shall file a motion opposing the continuance stating all factual and legal grounds for denial of the motion. The Board or the hearing officer shall issue an order concerning the motion as soon as possible prior to the hearing. The order shall be filed with the Board, and copies of the order served in accordance with the provisions of (h) of this Section and by email if possible.

(4) **Discovery and subpoenas.** The Board or the hearing officer may require parties to an individual proceeding to attend discovery when necessary and appropriate for prompt adjudication of an individual proceeding conducted in accordance with the provisions of this Section. Discovery shall be conducted in accordance with 75 O.S. § 315 and the following provisions:

(A) **Depositions.** The parties, upon notice may take depositions of witnesses in the same manner prescribed for depositions in civil actions in the district courts of the State of Oklahoma. The depositions may be admitted into evidence by the Board or the hearing officer in the same manner as other evidence. Costs of depositions shall be borne by the deposing party.

(B) **Subpoenas.** Subpoenas for the attendance of a witness or for production of evidence may be issued in accordance with the following provisions:

(i) **Issuance of a subpoena.** The Chairman of the Board or the hearing examiner may direct the Board to issue a subpoena upon the motion of a party. The signature of the Executive Director shall be sufficient authentication for issuance of any subpoena. A motion for issuance of a subpoena shall comply with the provisions of (h) of this Section and shall be filed with sufficient time to permit service of the subpoena at least five (5) business days prior to the hearing at which the attendance of the witness or ten (10) business days prior to the date production of records is required.

(ii) **Service of a subpoena.** Subpoenas shall be served in any manner prescribed for service of a subpoena in a civil action in the district courts of the State of Oklahoma.

(iii) **Objections to and compliance with subpoenas.** Any party to the proceeding may move to quash a subpoena or subpoenas duces tecum issued in accordance with the provisions of this Section, provided that, prior to quashing a subpoena or subpoenas duces tecum the agency shall give notice to all parties. A subpoena or subpoenas duces tecum may not be quashed if any party objects.

(iv) **Enforcement of subpoenas.** Upon the failure of any person to obey a subpoena, or upon the refusal of any witness to be sworn or make an affirmation or to answer a question put to her or him in the course of any individual proceeding, the Board shall consider the issue of enforcement of the subpoena as soon as convenient. By resolution, the Board may direct initiation of appropriate judicial proceedings necessary to enforce the subpoena. Meanwhile, the hearing or other matters shall proceed, so far as is possible, but the Board or the hearing officer, at its discretion at any time may order a stay or continuance of the proceedings for such time as may be necessary to secure a final ruling in the compliance proceedings.

(v) **Costs of issuance and service of subpoenas.** The costs covering the issuance and service of subpoenas and all witness fees incurred on behalf of a party to the proceedings, other than the Board, shall be borne by the party on whose behalf they are incurred, provided that the Board in its final order may tax such costs to another party if justice so requires.

(j) **Disqualification of a Board member or hearing officer.** A Board member or hearing officer shall withdraw from any individual proceeding in which he or she cannot accord a fair and impartial hearing or consideration. Any party may request the disqualification on the ground of his or her inability to give a fair and impartial hearing by filing an affidavit promptly upon discovery of the alleged disqualification, stating with particularity the grounds upon which it is claimed that a fair

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and impartial hearing cannot be accorded. The issue shall be determined promptly by the Board, or if it affects a member of the Board, by the remaining members thereof, if a quorum. Upon the entry of an order of disqualification affecting a hearing officer, the Board shall either assign a replacement hearing officer, or conduct the hearing itself. Upon the entry of an order of disqualification affecting a Board member, the Governor immediately shall appoint a member pro tempore to sit in place of the disqualified member in that proceeding.

(k) **Presentation and consideration of evidence.** Presentation and consideration of evidence shall be conducted in accordance with the following procedures:

(1) **Witness and exhibit lists.** The parties to the hearing shall exchange witness and exhibit lists no later than five (5) business days prior to the hearing.

(2) **Admissibility and consideration of evidence.** The Board or hearing examiner may determine the order in which evidence shall be received and presented. Admission and consideration of evidence in an individual proceeding conducted in accordance with the provisions of this Section shall be conducted in accordance with the Administrative Procedures Act at 75 O.S. §§ 309 through 326 and the following provisions:

(A) **Official notice.** The Board or hearing officer may take notice of judicially cognizable facts or of generally recognized technical or scientific facts within the specialized knowledge of the Statewide Virtual Charter School Board. The Board or hearing officer shall give notice to all parties, prior to, or at the hearing, of any facts of which it proposes to take official notice. Any party or her/his attorney may request that official notice be taken of any fact qualified for such notice by the statutes of this state. If such official notice is taken, it shall be stated in the record, and all parties shall have opportunity to contest and give evidence in rebuttal or derogation of the official notice.

(B) **Exclusion of witnesses.** A party may request the exclusion of witnesses to the extent and for the purposes stated in 12 O.S. § 2615. Exclusion of a witness shall not be considered a violation of the Oklahoma Open Meeting Act.

(C) **Testimony of witnesses.** All testimony of witnesses presented by parties shall be made under oath or affirmation. A party may conduct cross-examination of witnesses called by other parties. Witnesses may also be questioned by the Board or the hearing officer.

(D) **Objections to evidence.** Objections to evidence may be made and shall be included in the record of the proceedings.

(E) **Documentary evidence and authentication.** Documentary evidence may be received in the form of copies or excerpts. Parties may challenge the authenticity of any copies. Any part of the evidence may be received in written form, when a hearing will be expedited and the interests of the parties will not be prejudiced.

(l) **Order of procedure.** The order of procedure at the hearing shall be as follows:

(1) Opening statements by legal counsel of both parties;

(2) Presentation of evidence by both parties followed by cross-examination of witnesses, and questions by State Board members or the hearing officer;

(3) Closing arguments by legal counsel of both parties; and

(4) Submission of case to the Board or the hearing officer for decision.

(m) **Dismissal of an action.** Upon a hearing, if the petitioner fails to show a prima facie case for lack of sufficient evidence, the Board may dismiss the petition upon grounds of failure to prove sufficient facts in support of the petition or upon the recommendation of the hearing examiner on the same grounds.

(n) **Deliberations and decisions.** Deliberations by the Board or the hearing officer in an individual proceeding may be held in executive session pursuant to the provisions of the Open Meeting Act set forth at 25 O.S. § 307.

(o) **Decision.** Decisions shall be issued in accordance with the following procedures:

(1) After hearing all evidence, and all witnesses, the Board or, if applicable, the hearing officer, shall render a decision on the petition.

(2) The decision shall be announced at the conclusion of the hearing and notification of that decision shall be by certified or registered mail, restricted delivery with return receipt requested to the petitioner.

(3) If the petitioner fails to appear at the scheduled hearing without prior notification within the time frame to request a stay or continuance set forth in (i) of this Section and without a demonstration of good cause, or fails to prove the allegations by clear and convincing evidence, the petition shall be dismissed.

(p) **Findings of fact and conclusions of law.** After the decision is announced, but before issuance of the final order, if the Board has not heard the case or read the record of the individual proceeding, the Board or hearing officer shall provide the parties with an opportunity to prepare and submit proposed findings of fact and conclusions of law in accordance with the provisions of 75 O.S. § 311. After the parties have been given notice and an opportunity to file exceptions, present briefs and oral arguments to the proposed findings of fact and conclusions of law, the Board may take action to accept, reject, or modify the proposed Findings and Conclusions of the hearing officer. The Board shall render findings of fact and conclusions of law. All findings of fact made by the Board shall be based exclusively on the evidence presented during the course of the hearing or previously filed briefs, (made a part of the record), of the testimony of witnesses taken under oath.

(q) **Final order.** As the final determination of the matter, the final order shall constitute the final agency order and shall comply with the requirements set forth at 75 O.S. § 312. If no motion for rehearing, reopening or reconsideration of the order is filed in accordance with (t) of this Section, the final agency order shall represent exhaustion of all administrative remedies. All final orders in an individual proceeding shall be in writing

and made a part of the record. Final orders are to be issued and signed by the Chairperson of the Board or the hearing officer for transmission to the parties by the Board. Within five (5) business days of the date of issuance of the final order, parties shall be notified of a final order either personally or by certified mail, return receipt requested. Upon request, a copy of the order shall be delivered or mailed to each party and the party's attorney of record, if any.

(r) **Communication with parties.** Unless required for the disposition of ex parte matters authorized by law, the Chairperson and the members of the Board, the hearing officer, or the employees or the agents of the Board shall not communicate, directly or indirectly, in connection with any issue of fact, with any person or party, nor, in connection with any issue of law, with any party or his or her representative except upon notice and opportunity for all parties to participate. The Chairperson and members of the Board or their employees may communicate with one another and have the aid and advice of one or more personal assistants. Advice may also be secured from the Attorney General's office.

(s) **Record of hearing.** The record of the hearing shall be set forth in such form and detail as the Chairperson or the Board may direct.

(1) In accordance with the requirements of 75 O.S. § 309, the record shall include:

- (A) All pleadings, motions, and intermediate rulings;
- (B) Evidence received or considered during the individual proceeding;
- (C) A statement of matters officially noticed;
- (D) Questions and offers of proof, objections, and rulings thereon;
- (E) Proposed findings and exceptions;
- (F) Any decision, opinion, or report by the Board or a hearing officer presiding at the hearing; and
- (G) All other evidence or data submitted to the Board or hearing officer in connection with their consideration of the case.

(2) The Board shall ensure that all proceedings, except for executive sessions, are electronically recorded. The recording shall be made and maintained in accordance with the requirements of 75 O.S. § 309, and a copy shall be provided to any party to the proceeding upon request. The Board may, but is not required to direct the recording of a proceeding to be fully transcribed and have a copy of the transcript placed on file in the Board's office. Parties to the proceeding may have the proceedings transcribed by a court reporter at their own expense.

(t) **Rehearing, reopening or reconsideration of an order.** The ruling shall become final unless, within ten (10) calendar days of entry of the order of declaratory ruling, the petitioner files a written request for a reconsideration of the petition with the Board stating all grounds upon which the petitioner seeks reconsideration of the Board's ruling. A petition for rehearing,

reopening, or reconsideration of an agency order issued pursuant to the provisions of this Section shall comply with the following procedures:

(1) A petition for rehearing, reopening or reconsideration of a final order must be filed with the Board within ten (10) days from the entry of the order. It must be signed by the party or his or her attorney, and must set forth with particularity the statutory grounds upon which it is based. However, a petition based upon fraud practiced by the prevailing party or upon procurement of the orders by perjured testimony or fictitious evidence may be filed at any time. All petitions for rehearing, reopening, or reconsideration will be considered and ruled upon as soon as the convenient conduct of the Board's business will permit.

(2) A petition for a rehearing, reopening, or reconsideration shall set forth the grounds for the request. The grounds for such a petition shall be either:

- (A) Newly discovered or newly available evidence, relevant to the issues;
- (B) Need for additional evidence adequately to develop the facts essential to proper decision;
- (C) Probable error committed by the Agency in the proceeding or in its decision such as would be grounds for reversal on judicial review of the order;
- (D) Need for further consideration of the issues and the evidence in the public interest; or
- (E) A showing that issues not previously considered ought to be examined in order to properly dispose of the matter. The grounds justifying the rehearing shall be set forth by the Statewide Virtual Charter School Board which grants the order, or in the petition of the individual making the request for the hearing.

(3) It is the burden of the party requesting a rehearing to notify the opposing party of the appeal.

(4) Upon receipt of a written request for reconsideration in accordance with this subsection, the request shall be set on the agenda for consideration by the Statewide Virtual Charter School Board at the next available regular meeting or at a subsequent regular or special meeting. Rehearing, reopening, or reconsideration of the matter may be heard by the Statewide Virtual Charter School Board or may be referred to a hearing officer. The hearing must be confined to those grounds on which the recourse was granted.

(u) **Judicial review.** Any person or party aggrieved or adversely affected by a final order in an individual proceeding, after the exhaustion of administrative remedies, is entitled to certain judicial review in accordance with the provisions of the Oklahoma Administrative Procedures Act, and the procedures set forth therein shall govern appeals.

[OAR Docket #17-639; filed 7-13-17]

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

[OAR Docket #17-640]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions

777:10-1-2 [AMENDED]

777:10-1-3 [NEW]

Subchapter 3. Statewide Virtual Charter Schools Sponsorship

777:10-3-3 [AMENDED]

777:10-3-4 [NEW]

777:10-3-5 [AMENDED]

Subchapter 5. Statewide Virtual Charter Schools Facilities

777:10-5-3 [AMENDED]

AUTHORITY:

Statewide Virtual Charter School Board; 70 O.S., §§ 3-145 et seq.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

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Approved by Governor's declaration on June 13, 2017

FINAL ADOPTION:

June 13, 2017

EFFECTIVE:

September 11, 2017

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The rules will assist virtual charter school leaders in understanding the rules and the appeals processes.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

777:10-1-2. Definitions

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

"Charter school site" or "school site" or "statewide virtual charter school site" means the physical location of any facility or structure, other than the legal residence of a student or the parent/legal guardian of a student, ~~approved by the Statewide Virtual Charter School Board~~ for use by

a statewide virtual charter school to provide face-to-face or virtual instruction to students enrolled in the statewide virtual charter school.

"Face-to-face instruction" means any in-person tutoring, educational instruction, or any other activity provided by the statewide virtual charter school to an enrolled student for which the student's physical presence and/or participation is used by the charter school to earn credit for a virtual course, meet the instructional requirements of 70 O.S. § 1-111 and/or counted toward the student's compulsory attendance requirements set forth at Art. 13, § 4 of the Oklahoma Constitution, 70 O.S. § 10-105, and/or accompanying regulations of the State Department of Education relating to student attendance.

"Statewide virtual charter school" means any charter school sponsored by the Statewide Virtual Charter School Board in accordance with the requirements of the Oklahoma Charter Schools Act for the purpose of providing full-time virtual public school courses of instruction for Pre-K through twelfth (12th) grade students whose legal residence is located within the State of Oklahoma.

"SVCSB" means the Statewide Virtual Charter School Board.

"OCAS" means the Oklahoma Cost Accounting System.

777:10-1-3. School establishment requirements

By July 1 of the first year of operation, the school shall have in place the following:

(1) Purchased and implemented a state-approved school finance system; Every approved statewide virtual charter school must utilize a state-approved school finance system aligned with the Oklahoma Cost Accounting System (OCAS). The school must notify the Statewide Virtual Charter School Board of the name of the system being utilized by July 1 prior to the start of school.

(2) Purchased and implemented a state-approved student information system; Every approved statewide virtual charter school must utilize a state-approved student information system. The school must notify the Statewide Virtual Charter School Board of the name of the system being utilized by July 1 prior to the start of school.

(3) Secured connectivity to state reporting systems; Every approved statewide virtual charter school must verify connections to state-reporting systems. The school must notify the Statewide Virtual Charter School Board of the name of the system being utilized by July 1 prior to the start of school.

(4) Secured and occupy a public school administration facility. Every approved statewide virtual charter school must have a public site that allows the public to have access to the main office of the school. The school must notify the State Virtual Charter School Board of the location, address, contact information of the facility by July 1 prior to the start of the school, and during the year if the location of the site changes. Notification to the Statewide Virtual Charter School Board shall be through the online information gathering system set forth in 777:10-3-4.

SUBCHAPTER 3. STATEWIDE VIRTUAL CHARTER SCHOOL SPONSORSHIP

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

(a) **Sponsorship application cycle and timelines.** To ensure that timely processing, review, and consideration of applications for sponsorship occurs within the time periods specified by 70 O.S. § 3-134, and to ensure that the application process is completed with sufficient time for new schools to comply with all statutory reporting requirements for the beginning of the next school year, (e.g., statutory state finance reporting deadlines for state aid purposes) the ~~Statewide Virtual Charter School Board shall establish a schedule for each year's application cycle for charter school sponsorship requests. No later than September 1 of each school year, the Board shall approve a timeline for the application cycle for the following school year that sets forth deadlines for each of the following events is as follows:~~

- (1) Completion of charter school training required by 70 O.S. § 3-134(A) prior to submission of letter of intent to submit an application;
- (2) Submission of a letter of intent to submit an application by May 1 prior to the July 1 application deadline;
- (3) Submission of a full application for statewide virtual charter school sponsorship by July 1 of the year prior to the first year of proposed operation;
- (4) Public presentation of application/proposal for sponsorship at the next regularly scheduled Statewide Virtual Charter School Board meeting;
- (5) Review of application and recommendation ~~by State Department of Education staff;~~
- (6) Statewide Virtual Charter School Board decision on application for sponsorship at a subsequent Board meeting;
- (7) Submission of an amended application within thirty (30) days of receipt of notification of rejection;
- (8) Board decision on amended application, if applicable, within thirty (30) days of receipt of amended application; and
- (9) Negotiation and execution of a contract for sponsorship.

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

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

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

- (i) A description of the charter school program offered by the school which complies with the purposes outlined in 70 O.S. § 3-136;
- (ii) Student admission and enrollment policies and procedures;
- (iii) Management and administration of the charter school;
- (iv) Requirements and procedures for program and financial audits;
- (v) All of the requirements set forth in 70 O.S. § 3-136, including, but not limited to, compliance with all regulations of the State Department of Education pertaining to health, safety, civil rights and insurance and financial reporting and auditing requirements;
- (vi) Assumption of liability by the charter school; and
- (vii) Employment rights and personnel policies of the school required to be included in employee contracts pursuant to 70 O.S. § 3-135(B);

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

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

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

- (i) Virtual provider technology, course delivery and technical support;
- (ii) Facility safety and emergency and crisis management;
- (iii) School calendar, sample daily schedule as applicable to online learning at proposed school, school instructional hours, school holidays, dismissals and closures; and

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

(2) Each applicant shall:

(A) Articulate the vision and purpose of the school;

(B) Articulate the mission of the school, specifying how the school will embrace and accomplish its vision and purpose;

(C) Describe the elements of the school program that align with and support the school's mission;

(D) Describe how the school will ensure education access and equity for all eligible students;

(E) Describe how the governing body and governing documents ensure that a functioning organization with competent governance will be sustained, including:

- (i) lines of authority;
- (ii) leadership roles and responsibilities;

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- (iii) governing by-laws;
 - (iv) meeting schedules for governing body;
 - (v) a list of advisory bodies;
 - (vi) external organizations applicable to school management;
 - (vii) make-up of governing body, including proof of Oklahoma residency for a majority of Board members.
 - (viii) start up plan;
 - (ix) recruitment, hiring and personnel policies, professional and staff development and training, technology capacity, system accessibility, student records and data management, student recruitment policies and procedures, admission and enrollment policies and procedures (including minimum and maximum enrollment for each contract year and proposed school calendar and sample daily schedule), promotion and graduation policies and procedures, attendance policies and procedures, student conduct and discipline plan, school safety and emergency response plan, parent and family education and engagement plan; ~~and~~
 - (x) school effectiveness measurement criteria; and
 - (xi) location and description of school facilities.
- (F) Describe how the governing body will ensure a sound and stable financial condition for the school, including:
- (i) description of the roles and responsibilities of the treasurer and financial officers, and how each has demonstrated experience in school finance or the equivalent thereof;
 - (ii) financial policies, including financial controls and compliance with audit requirements;
 - (iii) financial plan for the first five years of operation;
 - (iv) start-up and five-year budgets and cash flow projections; The documents provided must account for the school's anticipated enrollment, as well as, a budget if the school only realizes a portion of the school's anticipated enrollment.
 - (v) anticipated fundraising plan, if applicable; ~~and~~;
 - (vi) insurance coverage/plan; and
 - (vii) verifiable proof of secured funds for each source of revenue, and documentation to support any agreement, donation or loan that supports the budget.
- (G) Describe how the governing body will ensure the delivery of a high-quality education program that meets academic performance for growth, proficiency, and college career readiness, including:
- (i) grade levels served;
 - (ii) plan for program delivery and program evaluation;
 - (iii) curriculum and instructional model, including learning environment, curriculum

overview, curriculum materials, instructional strategies, equipment and technology requirements, alignment with Oklahoma academic standards,

(iv) student assessment, including plan to measure and report student progress, and benchmarks for student learning, district/school assessments, Oklahoma School Testing Program;

(v) plan for support structures (e.g. online tutoring, home mentors, and technical support services in place 24x7) in addition to teacher support,

(vi) plan for support of diverse learners, (students at-risk for poor learning outcomes, academically behind learners, and other students identified through testing and assessments as being in need of targeted remediation, intervention, and/or support);

(vii) co-curricular and extracurricular activities; ~~and~~

(viii) student performance; and

(ix) school culture.

(H) Include a concise plan that details expected school growth and how the school will evolve to meet the needs of school growth.

(I) Demonstrate the applicant's experience in common education school operation.

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

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

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

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

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

(ii) Students who require or may require accommodations, regular or special education and related aids, or other services under a plan developed in accordance with the requirements of

Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act;

(D) That each statewide virtual charter school has consistent procedures in place governing the admission, identification, evaluation, re-evaluation, parental notification, and provision of educational programs and services in compliance with applicable federal and state laws and regulations to students with special needs or unique abilities, including, but not limited to:

- (i) Students who are English Language Learners/Limited English Proficient and who require services as necessary to overcome language barriers and ensure that they can participate meaningfully in the district's education programs; and
- (ii) Students who meet the definition of "gifted and talented children" set forth in 70 O.S. § 1210.301;

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

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

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

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

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

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

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

- (A) The School District Transparency Act at 70 O.S. § 5-135.4 et seq.;
- (B) The Oklahoma Public School Audit Law at 70 O.S. § 22-101 et seq.;
- (C) Annual itemized expenditure budget and request for appropriated funds and estimate of revenues required by 70 O.S. § 5-128.1; and
- (D) Statutes and regulations pertaining to the Oklahoma Cost Accounting System (OCAS).

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

(c) **Filing, review, approval, and denial of charter school applications for sponsorship.** All applications for sponsorship shall be submitted by the governing body of the prospective charter school to the Statewide Virtual Charter School Board by filing an original and sixteen (16) copies of the application with the Statewide Virtual Charter School Board. Upon receipt of an application for sponsorship, the Board shall stamp the application to record the date of receipt, and shall promptly submit written confirmation of the receipt of the application to the contact name and address of record of the governing body listed on the application.

(1) **Application format.**

- (A) The text and attachments shall use standard one-inch margins, be clearly paginated, and use a readable font not smaller in type than 11 point;
- (B) A cover page shall be labeled *Application for Initial Authorization* and include the following information:
 - (i) Name of proposed school;
 - (ii) Address of proposed school;
 - (iii) Contact information: name, title, phone, email address; ~~and~~
 - (iv) Application submission date; ~~and~~
 - (v) Name of applicant(s) and requested sponsor.

(C) A cover letter not to exceed two pages shall provide a brief overview of the proposed school;

(D) A clearly labeled table of contents shall be included setting forth all major sections (Foundation for the School Charter, Organizational Capacity, Financial Management, Education Program and Performance, Growth Plan), appendices, and page numbers;

(E) Tables, graphs, and other data provided in the application shall be clearly presented and explained and shall be relevant to the text;

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(F) The application shall include a signed and notarized ~~statement~~statements from the Head of the School and the governing body members, as applicable, showing their agreement to fully comply as an Oklahoma public charter school with all ~~state and federal laws and regulations and specifically the Oklahoma Open Meeting and Open Records Acts; and statute, regulations, and requirements of the United States of America, State of Oklahoma, Statewide Virtual Charter School Board, and Oklahoma Department of Education. Specifically cite agreement to abide by the Oklahoma Open Meeting Act and the Oklahoma Open Records Act, and to guarantee access to education and equity for all eligible students regardless of their race, ethnicity, economic status, academic ability, or other factors as established by law. In addition, the head of school and governing body members, as applicable, will guarantee to establish the components necessary to begin school operations in the State of Oklahoma on July 1 of the first year, including a public administration facility, state-approved school financial system, state-approved student information system, and secured applicable connections to state reporting systems.~~

(G) The application shall include documentation of applicant's completion of charter school training.

(2) **Initial review and recommendation.** Prior to consideration of the application by the Statewide Virtual Charter School Board, a review panel may be formed by the Executive Director for the purpose of developing a recommendation on the application to the Board for consideration. The panel, chaired by the Executive Director, may include representatives with expertise in the area of accreditation, education services, technology, school finance, federal programs, education law, curriculum, instruction, special education, and student information.

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

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

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

(ii) If the applicant can demonstrate previous experience in operation of a virtual charter school, whether applicant has a history of non-compliance with applicable state, federal, tribal and/or local statutes and regulations either in the State of Oklahoma or in other jurisdictions;

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

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

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

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

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

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

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

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

(6) Appeal of denial of sponsorship applications.

The procedures for filing appeals to the State Board of Education shall be governed by 70 O.S. § 3-145.3 and the policies and rules adopted by the State Board of Education, with a copy of the appeal mailed to the Statewide Virtual Charter School Board.

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

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

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

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

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

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

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

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

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

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

(F) Terms providing that the charter school will provide any and all records of the school including, but not limited to, financial records upon request by the sponsor;

(G) Terms providing that the charter school will provide any and all school records including, but not limited to, financial records from education service providers upon request by the sponsor;

(H) Terms providing that the school is subject to requests for audit by the State Auditor's office;

(I) Terms providing that the charter school shall adopt a viable conflict of interest policy and a code of ethics;

(J) Terms providing that the charter school submit three data-driven goals and measurement criteria, including one non-academic goal, and included in the Performance Framework.

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

(6) The term of the initial contract shall be effective for five (5) years from the first day of operation in accordance with the provisions of 70 O.S. § 3-137;

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

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

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

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

(A) At least one (1) year prior to expiration of the initial contract term, but no earlier than eighteen (18) months prior to the date of expiration of the contract; the governing body of the charter school may submit a proposal for renewal of the contract to the Statewide Virtual Charter School Board by filing an original and seven (7) copies of the proposal with the Board.

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

(C) The Board shall review the proposal for renewal and take action on the request for renewal no

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later than eight (8) months prior to the date of expiration of the contract.

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

(2) **Format for renewal application.** The renewal application shall include:

(A) Text and attachments using standard one-inch margins, clearly paginated, and using a readable font not smaller in type than 11 point.

(B) A cover page labeled *Application for Reauthorization*, including the following information:

- (i) Name of school;
- (ii) Address of school;
- (iii) Contact information: name, title, phone, email address;
- (iv) Date application approved by governing body; and
- (v) Application submission date.

(C) A cover letter no more than two pages in length providing a brief overview of the school's mission, design elements, and major challenges and accomplishments over the term of the current contract.

(D) A clearly labeled table of contents setting forth all major sections, appendices, and page numbers.

(E) Clearly labeled attachments provided in the appendix;

(F) Clearly labeled tables, graphs, and other data provided in this application in addition to an explanation of their relevance to the text.

(G) A signed and notarized statement from the Head of the School and the governing body members, as applicable, showing their consideration and approval of the reauthorization application and their agreement to fully comply, as an Oklahoma public charter school with all state and federal laws and regulations and specifically the Oklahoma Open Meeting and Open Records Acts; and statute, regulations, and requirements of the United States of America, State of Oklahoma, Statewide Virtual Charter School Board, and Oklahoma Department of Education. Specifically cite agreement to abide by the Oklahoma Open Meeting Act and the Oklahoma Open Records Act, and to guarantee access to education and equity for all eligible students regardless of their race, ethnicity, economic status, academic ability, or other factors. and

(H) A single page entitled *Introduction to the School* containing, at a minimum, the following list of information:

- (i) Name of school;
- (ii) Location of School;
- (iii) Year Opened;
- (iv) Year Renewed, if applicable;
- (v) ~~Maximum enrollment;~~

~~(vi) Current enrollment;~~

~~(vii) Grade span;~~

~~(viii) Most recent report card grade accountability report information from the State of Oklahoma;~~

~~(ix) Attendance rate;~~

~~(x) Graduation rate;~~

(x) Recurrent enrollment; and

~~(xi) Dropout rate;~~

~~(xii) Mobility rate; and~~

(xiii) Percentage of at risk students enrolled. Any other information the school deems necessary to include.

(3) **Information in renewal request.** Each applicant shall:

~~(A) Articulate the mission of the school, specifying how the school embraces and accomplishes its vision or purpose;~~

~~(B) Describe the elements of the school program that support the school's mission;~~

~~(C) Describe how the school ensures education access and equity for all eligible students;~~

~~(D) Describe how the governing body and governing documents ensure that a functioning organization with competent governance will be sustained.~~

~~(E) Describe how the governing body ensures a sound and stable financial condition for the school.~~

~~(i) description of the roles and responsibilities of the treasurer and financial officers;~~

~~(ii) financial reporting;~~

~~(iii) financial plan for operation;~~

~~(iv) annual audits;~~

~~(v) anticipated fundraising plan, if applicable, and~~

~~(vi) insurance coverage plan;~~

~~(F) Describe how the governing body ensures the delivery of a high quality education program that meets academic performance for growth, proficiency, and college career readiness.~~

~~(G) Include a concise plan that details the school's plans for the next charter term to modify and augment the school's programs to ensure high quality educational services and student success. In addition to the information found in the performance report, and the school's response to the performance report, if any, this reauthorization application is the school's opportunity to address each of the following components highlighting what the school believes is most important in each area:~~

~~(i) Faithfulness to the foundation of the charter;~~

~~(ii) Organizational capacity;~~

~~(iii) Financial management;~~

~~(iv) Education program and performance; and~~

~~(v) Strategic planning.~~

(B) Appendices. Provide documents and related information for the term of the contract beyond those

provided in the performance report and response, including examples of community and parent support of the school.

(4) **Performance report and site visit.** The sponsor of the school will issue a school performance report in accordance with State statute. The school shall have forty-five (45) days to respond to the performance report and submit any corrections or clarifications for the report. In evaluating a school's renewal request, the Board may consider the performance report, results of a site visit, and evidence provided in the school's presentation to the Board.

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

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

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

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

(C) The procedures for filing appeals to the State Board of Education shall be governed by 70 O.S. § 3-145.3 and the policies and rules adopted by the State Board of Education, with a copy of the appeal mailed to the Statewide Virtual Charter School Board.

(f) **Terminations of contracts for sponsorship of statewide virtual charter schools.** The Statewide Virtual Charter School Board may terminate the contract with a statewide virtual charter school in accordance with the following procedures:

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

- (A) Failure to meet the requirements for student performance set forth in the terms of the contract;
- (B) Failure to meet the standards of fiscal management set forth in the terms of the contract;
- (C) Violations of applicable state, federal, tribal, or local laws, statutes, and/or regulations;
- (D) Other good cause as established by the Board, which may include, but shall not be limited to:

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

(ii) Failure by the governing body of the charter school, its charter school administrators, charter school personnel, and/or charter school contractors to accurately report student enrollment counts;

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

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

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

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

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

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

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

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

- (i) A response to the factual and legal grounds for termination set forth in the notice; and
- (ii) A summary of evidence that the school intends to submit in support of its response.

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

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

(4) **Appeals of termination.** The procedures for filing appeals to the State Board of Education shall be governed by 70 O.S. § 3-145.3 and the policies and rules adopted by the State Board of Education, with a copy of the appeal mailed to the Statewide Virtual Charter School Board.

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

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

777:10-3-4. Oversight and evaluation of virtual charter schools by the Statewide Virtual Charter School Board

(a) **Oversight and annual review.** The Statewide Virtual Charter School will provide ongoing oversight of the charter schools through data and evidence collection, site visits, attendance of governing board meetings, school website compliance checks, and school performance reviews. At the end of each year, schools will be subject to an annual review consisting of a compilation of performance ratings and findings that will be shared with key stakeholders. The charter school will have fifteen (15) business days to respond to the annual review in writing and such response will become part of the record. A

formal review of school performance may be conducted during the contract term, as applicable. The annual review report and any response will be posted to the SVCSB's website along with other information regarding each of the schools.

(b) **Performance framework.** The performance framework establishes accountability criteria for virtual charter schools authorized by the Statewide Virtual Charter School Board that assesses schools on their ability to operate as a sound, independent school that successfully serves all students in the areas of academic, financial, and organizational capacities. The board will use a checklist to determine if the charter school meets the standards or does not meet the standards for each criteria.

(1) Oklahoma performance measures will be used to assess the school's academic performance, including overall achievement, overall growth, subgroup achievement, subgroup growth and post-secondary readiness. Academic performance is measured via twenty-four (24) accountability indicators (see items A-X below). To meet the expectations, schools must demonstrate attainment of each indicator for each grade level and will be given weight accordingly. Indicators and measurements required to demonstrate that each standard has been met for achievement in each category are listed below. Sub-group measures will only be applicable if the school has a minimum of ten (10) students in the sub-group.

(A) Are students achieving proficiency on statewide assessments in Reading/English Language Arts

(i) The percentage of students scoring proficient or above at each grade level on the Oklahoma School Testing Program (OSTP) state assessments is equal to or above the state level of proficiency; or

(ii) The percentage of students scoring proficient or above at each grade level on the Oklahoma School Testing Program (OSTP) state assessments is improved 5% or greater each year over the baseline score established the first year of the charter contract term.

(B) Are students achieving proficiency on statewide assessments in Math

(i) The percentage of students scoring proficient or above at each grade level on the Oklahoma School Testing Program (OSTP) state assessments is equal to or above the state level of proficiency; or

(ii) The percentage of students scoring proficient or above at each grade level on the Oklahoma School Testing Program (OSTP) state assessments is improved 5% or greater each year over the baseline score established the first year of the charter contract term.

(C) Are students enrolled in the school for two or more consecutive academic years achieving proficiency on statewide assessments in Reading/English Language Arts?

(i) The percentage of students scoring proficient or above at each grade level on the Oklahoma

- School Testing Program (OSTP) state assessments is equal to or above the state level of proficiency;
or
(ii) The percentage of students scoring proficient or above at each grade level on the Oklahoma School Testing Program (OSTP) state assessments is improved 5% or greater each year over the baseline score established the first year of the charter contract term.
- (D) Are students enrolled in the school for two or more consecutive academic years achieving proficiency on statewide assessments in Math?
(i) The percentage of students scoring proficient or above at each grade level on the Oklahoma School Testing Program (OSTP) state assessments is equal to or above the state level of proficiency;
or
(ii) The percentage of students scoring proficient or above at each grade level on the Oklahoma School Testing Program (OSTP) state assessments is improved 5% or greater each year over the baseline score established the first year of the charter contract term.
- (E) Are students enrolled in the school for three or more consecutive academic years achieving proficiency on statewide assessments in Reading/English Language Arts?
(i) The percentage of students scoring proficient or above at each grade level on the Oklahoma School Testing Program (OSTP) state assessments is equal to or above the state level of proficiency;
or
(ii) The percentage of students scoring proficient or above at each grade level on the Oklahoma School Testing Program (OSTP) state assessments is improved 5% or greater each year over the baseline score established the first year of the charter contract term.
- (F) Are students enrolled in the school for three or more consecutive academic years achieving proficiency on statewide assessments in Math?
(i) The percentage of students scoring proficient or above at each grade level on the Oklahoma School Testing Program (OSTP) state assessments is equal to or above the state level of proficiency;
or
(ii) The percentage of students scoring proficient or above at each grade level on the Oklahoma School Testing Program (OSTP) state assessments is improved 5% or greater each year over the baseline score established the first year of the charter contract term.
- (G) Are students in the special education subgroup achieving proficiency on statewide assessments in Reading/English Language Arts?
(i) The percentage of students scoring proficient or above at each grade level on the Oklahoma School Testing Program (OSTP) state assessments
is equal to or above the state level of proficiency;
or
(ii) The percentage of students scoring proficient or above at each grade level on the Oklahoma School Testing Program (OSTP) state assessments is improved 5% or greater each year over the baseline score established the first year of the charter contract term.
- (H) Are students in the special education subgroup achieving proficiency on statewide assessments in Math?
(i) The percentage of students scoring proficient or above at each grade level on the Oklahoma School Testing Program (OSTP) state assessments is equal to or above the state level of proficiency;
or
(ii) The percentage of students scoring proficient or above at each grade level on the Oklahoma School Testing Program (OSTP) state assessments is improved 5% or greater each year over the baseline score established the first year of the charter contract term.
- (I) Are students in the special education subgroup enrolled for two or more consecutive academic years achieving proficiency on statewide assessments in Reading/English Language Arts?
(i) The percentage of students scoring proficient or above at each grade level on the Oklahoma School Testing Program (OSTP) state assessments is equal to or above the state level of proficiency;
or
(ii) The percentage of students scoring proficient or above at each grade level on the Oklahoma School Testing Program (OSTP) state assessments is improved 5% or greater each year over the baseline score established the first year of the charter contract term.
- (J) Are students in the special education subgroup enrolled for two or more consecutive academic years achieving proficiency on statewide assessments in Math?
(i) The percentage of students scoring proficient or above at each grade level on the Oklahoma School Testing Program (OSTP) state assessments is equal to or above the state level of proficiency;
or
(ii) The percentage of students scoring proficient or above at each grade level on the Oklahoma School Testing Program (OSTP) state assessments is improved 5% or greater each year over the baseline score established the first year of the charter contract term.
- (K) Are students in the special education subgroup enrolled for three or more consecutive academic years achieving proficiency on statewide assessments in Reading/English Language Arts?
(i) The percentage of students scoring proficient or above at each grade level on the Oklahoma

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School Testing Program (OSTP) state assessments is equal to or above the state level of proficiency;

or

(ii) The percentage of students scoring proficient or above at each grade level on the Oklahoma School Testing Program (OSTP) state assessments is improved 5% or greater each year over the baseline score established the first year of the charter contract term.

(L) Are students in the special education subgroup enrolled for three or more consecutive academic years achieving proficiency on statewide assessments in Math?

(i) The percentage of students scoring proficient or above at each grade level on the Oklahoma School Testing Program (OSTP) state assessments is equal to or above the state level of proficiency;

or

(ii) The percentage of students scoring proficient or above at each grade level on the Oklahoma School Testing Program (OSTP) state assessments is improved 5% or greater each year over the baseline score established the first year of the charter contract term.

(M) Are students in the economically disadvantaged subgroup achieving proficiency on statewide assessments in Reading/English Language Arts?

(i) The percentage of students scoring proficient or above at each grade level on the Oklahoma School Testing Program (OSTP) state assessments is equal to or above the state level of proficiency;

or

(ii) The percentage of students scoring proficient or above at each grade level on the Oklahoma School Testing Program (OSTP) state assessments is improved 5% or greater each year over the baseline score established the first year of the charter contract term.

(N) Are students in the economically disadvantaged achieving proficiency on statewide assessments in Math?

(i) The percentage of students scoring proficient or above at each grade level on the Oklahoma School Testing Program (OSTP) state assessments is equal to or above the state level of proficiency;

or

(ii) The percentage of students scoring proficient or above at each grade level on the Oklahoma School Testing Program (OSTP) state assessments is improved 5% or greater each year over the baseline score established the first year of the charter contract term.

(O) Are students in the economically disadvantaged subgroup enrolled for two or more consecutive academic years achieving proficiency on statewide assessments in Reading/English Language Arts?

(i) The percentage of students scoring proficient or above at each grade level on the Oklahoma

School Testing Program (OSTP) state assessments is equal to or above the state level of proficiency;

or

(ii) The percentage of students scoring proficient or above at each grade level on the Oklahoma School Testing Program (OSTP) state assessments is improved 5% or greater each year over the baseline score established the first year of the charter contract term.

(P) Are students in the economically disadvantaged subgroup enrolled for two or more consecutive academic years achieving proficiency on statewide assessments in Math?

(i) The percentage of students scoring proficient or above at each grade level on the Oklahoma School Testing Program (OSTP) state assessments is equal to or above the state level of proficiency;

or

(ii) The percentage of students scoring proficient or above at each grade level on the Oklahoma School Testing Program (OSTP) state assessments is improved 5% or greater each year over the baseline score established the first year of the charter contract term.

(Q) Are students in the economically disadvantaged subgroup enrolled for three or more consecutive academic years achieving proficiency on statewide assessments in Reading/English Language Arts?

(i) The percentage of students scoring proficient or above at each grade level on the Oklahoma School Testing Program (OSTP) state assessments is equal to or above the state level of proficiency;

or

(ii) The percentage of students scoring proficient or above at each grade level on the Oklahoma School Testing Program (OSTP) state assessments is improved 5% or greater each year over the baseline score established the first year of the charter contract term.

(R) Are students in the economically disadvantaged subgroup enrolled for three or more consecutive academic years achieving proficiency on statewide assessments in Math?

(i) The percentage of students scoring proficient or above at each grade level on the Oklahoma School Testing Program (OSTP) state assessments is equal to or above the state level of proficiency;

or

(ii) The percentage of students scoring proficient or above at each grade level on the Oklahoma School Testing Program (OSTP) state assessments is improved 5% or greater each year over the baseline score established the first year of the charter contract term.

(S) Based on state expectations for student graduation within four years, does the school meet the expectations for student graduation?

- (i) The school's most recent graduation rate is equal to or greater than the most recent average graduation rate for the State of Oklahoma or
- (ii) The school's most recent graduation rate increased 20% or more of the difference between the graduation rate of the baseline year and 100% over the past two years.
- (T) Based on the extended-year adjusted graduation rate, does the school meet the expectations for student graduation? Evidence indicates a majority of extended-year students graduating.
- (U) Did the school meet the expectation for graduating eligible seniors during the most recent year? The percent of eligible seniors enrolled on the first day of the school year and graduating in the current school year is equal to or greater than the current graduation rate for the State of Oklahoma.
- (V) Are the school's students participating in the American College Testing (ACT) college preparation assessment process? The most recent year's average American College Testing (ACT) participation rate is equal to or greater than the most recent average scores recorded for the State of Oklahoma.
- (W) Does the school's student performance on the American College Testing (ACT) meet the state performance level? The school's most recent year's average composite American College Testing (ACT) score is equal to or greater than the most recent average scores recorded for the State of Oklahoma.
- (X) Are students benefiting from college and career readiness opportunities (i.e. college preparatory coursework, Career Technology programs, military service)? Evidence provides a profile of college and career readiness opportunities.
- (2) Fiscal viability of the schools is measured through audit findings, quarterly financial reports, and financial reporting. Financial performance is measured via six (6) accountability indicators (see items A-F below). To meet the expectations, schools must demonstrate attainment of each indicator. Indicators and measurements required to demonstrate that each standard has been met for achievement in each category are listed below.
- (A) Did the most recent audit have findings? There were no findings of significant deficiencies, material noncompliance or known fraud on the school's most recent independent financial audit.
- (B) Did any of the school's audits over the term of the contract have findings? There were no findings of significant deficiencies, material noncompliance or known fraud on any independent financial audits over the term of the charter contract?
- (C) Did the school consistently submit appropriate quarterly financial reports over the most recent year? Appropriate reports were submitted in the Oklahoma Cost Accounting System (OCAS) format, on time, and indicating financial stability of the school.
- (D) Did the school consistently submit appropriate quarterly financial reports over the term of the charter contract? Appropriate reports were submitted in the Oklahoma Cost Accounting System (OCAS) format, on time, and indicating financial stability of the school.
- (E) Did the school consistently meet financial reporting expectations over the most recent year, as required by the State Department of Education and confirmed by the Office of Financial Accounting, Oklahoma Cost Accounting System (OCAS), and Audits? Financial reporting met expectations over the most recent year.
- (F) Did the school consistently meet financial reporting expectations over the term of the charter contract, as required by the State Department of Education and confirmed by the Office of Financial Accounting, Oklahoma Cost Accounting System (OCAS), and Audits? Financial reporting met expectations over the term of the charter contract.
- (3) Organizational performance is measured by effective organizational structure, governance, record of compliance, attendance, recurrent enrollment, accreditation and student support. Organizational performance is measured via eighteen (18) accountability indicators (see items A-W below). To meet the expectations, schools must demonstrate attainment of each indicator. Indicators and measurements required to demonstrate that each standard has been met for achievement in each category are listed below.
- (A) Is the school faithful to its mission and implementing key design elements within the approved charter contract? Evidence documents faithfulness to the school's mission and implementation of key design elements of school.
- (B) Does the school follow appropriate procedures to ensure student access and equity? Data confirms appropriate procedures to ensure student access and equity.
- (C) Does the school have approved and appropriate policies and procedures that ensure student and staff safety and success, and does the school communicate those policies and procedures to students/families and staff? Approved and appropriate policies and procedures are implemented and communicated.
- (D) Does the school adhere to applicable state and federal laws and regulations? Evidence suggests the school adheres to state and federal laws and regulations.
- (E) Does the school adhere to the terms of the charter contract? Evidence suggests the school adheres to the charter contract.
- (F) Does a stable governing board exist? History of board stability exists.
- (G) Does the governing board recruit, select, orient and train members with skills and expertise to enable them to govern the school appropriately? Board agendas and minutes document board member activities.

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(H) Does the charter school comply with the Open Meeting Act and Open Records Act? The charter school consistently complies with requirements of the Open Meeting Act and Open Records Act.

(I) Does the charter school provide transparency through Statewide Virtual Charter School Board access to school records? The charter school has provided the Statewide Virtual Charter School Board with all requested school records.

(J) Does the educational service provider(s) provide transparency through Statewide Virtual Charter School Board access to school records? The charter school has provided the Statewide Virtual Charter School Board with all requested school records.

(K) Did the school consistently meet the reporting expectations as required by the State Department of Education during the most recent year? The State Department of Education confirms reporting expectations fulfilled.

(L) Did the school consistently meet the reporting expectations as required by the State Department of Education over the term of the charter contract? The State Department of Education confirms reporting expectations fulfilled.

(M) Did the school consistently meet the reporting expectations as required by the Statewide Virtual Charter School Board during the most recent year? Reporting expectations fulfilled as required - 90% or above in both on-time and accuracy categories.

(N) Did the school consistently meet the reporting expectations as required by the Statewide Virtual Charter School Board over the term of the charter contract? Reporting expectations fulfilled as required - 90% or above in both on-time and accuracy categories.

(O) Does the school website meet the standards for transparency and documentation as mandated by the Oklahoma School District Transparency Act and requested by the Statewide Virtual Charter School Board? The school has consistently met requirements for school website as mandated by the Oklahoma School District Transparency Act and requested by the Statewide Virtual Charter School Board.

(P) Did the school receive accreditation from the State Department of Education in the most recent year? The school received accreditation with no deficiencies noted from the State Department of Education in the most recent year.

(Q) Did the school receive accreditation from the State Department of Education over the term of the charter contract? The school received accreditation with no deficiencies noted from the State Department of Education over the term of the charter contract.

(R) Does the school meet the expectations for student attendance? Evidence documents the school met the expectations for student attendance.

(S) Does recurrent enrollment of students meet expectations? The school's student recurrent enrollment

rate meets the expectations indicated by the methodology used for public schools in Oklahoma.

(T) Does the school provide support structures for students and families that are accessible twenty-four (24) hours per day and seven (7) days per week, such as teacher support, individualized learning plans, guidance/counseling program? Students and families have access to multiple support structures twenty-four (24) hours per day and seven (7) days per week.

(U) The charter school will submit up to three (3) data-driven goals and measurement criteria for approval by the SVCBS.

(i) Did the charter school meet the expectations of Goal One?

(ii) Did the charter school meet the expectations of Goal Two?

(iii) Did the charter school meet the expectations of Goal Three?

(4) A Performance Framework Index will be calculated based on the following categories:

(A) Academic (A) Calculation - (Score) * (Weight) = A with at weight of 33.33%.

(B) Financial (F) Calculation - (Score) * (Weight) = F with at weight of 33.33%.

(C) Organizational (O) Calculation - (Score) * (Weight) = O with at weight of 33.33%.

(D) Performance Framework scores will guide reauthorization procedures.

(i) A Performance Framework Index (PFI) score of 80% or higher calculated over the course of the charter contract term will result in renewal of authorization for a five (5) year term should the governing board of the charter school choose to submit a letter requesting reauthorization

(ii) A Performance Framework Index (PFI) score of 70% or higher calculated over the course of the charter contract term is expected. However, an application for renewal of authorization is required for consideration by the Statewide Virtual Charter School Board.

(iii) A Performance Framework Index (PFI) score of less than 70% calculated over the course of the charter contract term places the charter school at risk of non-approval of the renewal for authorization. An application for reauthorization is required for consideration by the Statewide Virtual Charter School Board.

(E) In the event data is not available, the Statewide Virtual Charter School Board will designate corresponding score with "Not Applicable".

(c) **Submission of school data.** To aid the Statewide Virtual Charter School Board in assessing whether the schools are meeting the expectations of the performance framework, schools are required to submit school data to the Statewide Virtual Charter School Board through an online data collection system.

(1) Schools must submit the requested documentation according to the instructions for the submission by the due date indicated in the online data collection system;

- (A) Current charter contract and any amendments;
- (B) Management contracts;
- (C) Lease/purchase agreements;
- (D) Annual budget;
- (E) Audit documents (audit, response, corrective action);
- (F) School performance review report response;
- (G) Key design elements of school report and evidence of implementation;
- (H) College preparation coursework report;
- (I) Career technology programs report;
- (J) Senior graduation report;
- (K) Current inventory report;
- (L) Quarterly financial statements;
- (M) Handbooks (Student/family handbook, Employee handbook);
- (N) School calendar;
- (O) Student support documentation;
- (P) Internal assessment plan;
- (Q) School policies (attendance, employment, enrollment/lottery);
- (R) Governing Board rosters, submit updated rosters as changes are made;
- (S) Insurance verification;
- (T) Enrollment counts (initial, monthly and final);
- (U) Surety bond verification;
- (V) Accreditation application and status;
- (W) First Quarter statistical report summary;
- (X) Board meeting calendar, agendas, minutes;
- (Y) Plan for Improvement;
- (Z) Final state aid and federal allocations;
- (AA) ACT profile report;
- (BB) Military service report;
- (CC) Four (4) year cohort and extended year graduation rate documents;
- (DD) Annual statistical report summary;
- (EE) Strategic planning documents;
- (FF) Oklahoma School Testing Program (OSTP) documentation;
- (GG) Child counts;
- (HH) Enrollment file;
- (II) Estimate of Needs and Supplemental Estimate;
- (JJ) Litigation documents; and
- (KK) State accountability report.

(2) In the event submission through the online system is not possible, the school must hand-deliver hard-copy documentation to the office of the Statewide Virtual Charter School Board by the due date.

(3) Failure to submit the documentation is grounds for termination of the contract.

(4) Receipt of document submissions does not necessarily indicate approval of the content of the data.

(d) **School website compliance.** In order to aid in transparency, charter schools sponsored by the Statewide Virtual Charter School Board will be subject to website compliance

checks at any time. The schools must have the following information available on its website:

- (1) Governing board members (board member information, and office held if any);
- (2) Schedule of governing board meetings;
- (3) Board meeting agendas;
- (4) Board meeting approved minutes;
- (5) School accountability reports; and
- (6) Financial documents or a link to the Oklahoma Cost Accounting System (OCAS), including:
 - (A) District expenditure data;
 - (B) Identification of school district; and
 - (C) Oklahoma Cost Accounting System (OCAS) Code designation for each expenditure.

777:10-3-5. Full-time virtual charter schools - succession of contractual rights and reversion of property to Statewide Virtual Charter School Board

(a) Pursuant to 70 O.S. § 3-136(F), upon the date of expiration or termination of a contract for sponsorship for a statewide virtual charter school, or in the event of a failure of a statewide virtual charter school to continue operations, all real and personal property acquired by the charter school shall be disposed of as set forth in the contract for sponsorship and in accordance with the following provisions:

(1) All unencumbered state aid, local, or federal funds, and all real property and personal property for which state, local or federal funds have been used all or in part to procure the property, shall be retained by the Statewide Virtual Charter School Board as the sponsor.

(2) All funds and property subject to the provisions of this subsection shall be deemed to revert to the Board as of the Termination Date. For purposes of this Section the Termination Date shall be either:

- (A) The effective date of expiration or termination of the contract for sponsorship; or
- (B) In the event a statewide virtual charter school fails to continue operation prior to expiration or termination of the contract, the date upon which the last day of courses were provided to students enrolled in the charter school.

(3) No later than ninety (90) calendar days prior to the date of expiration of the sponsorship contract, the statewide virtual charter school shall provide the Statewide Virtual Charter School Board with executed copies of all of the following documents:

- (A) A detailed list of all real and/or personal property and other assets procured by the charter school during the term of the contract that includes identification of all sources of funds used to procure the property. All items procured all or in part with state, local or federal funds shall be clearly identified;
- (B) Title documents, deeds, and/or leases for all real or personal property or other assets procured all or in part with state or federal funds;
- (C) Copies of all executory contracts to which the charter school or its governing body is a party; and

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(D) All documentation relating to debt, liabilities, encumbrances, or other obligations incurred by the charter school and/or the governing body of the charter school during the term of the sponsorship contract.

(a) **School Closure Process.** Final school closure determination may be made as the result of voluntary or involuntary school closure decisions. This includes a decision of the charter school governing board to close the school, nonrenewal of a charter contract, or termination of a charter contract. In the event of a voluntary closure by the school, the final closure determination occurs as of the date the charter school governing board votes to close the school. In the event of an involuntary closure of the school, the final closure determination occurs as of the date the final order is issued by the SVCSB. Once a final closure determination is made the SVCSB will appoint a Closing Officer to provide oversight of school closure. Oversight responsibilities include management of the operational process of charter school closure and ensured continuation of appropriate educational services and transfer process for students and families, and ensure the governing board of the charter school continues to meet as necessary to take actions needed to wind down school operations, manage school finances, allocate resources and facilitate all aspects of closure. Under the oversight and with the support of the Closing Officer, the charter school is responsible for completing the tasks required for the closing of the school in a legal and orderly manner while continuing to operate the school and provide academic and other services to students and families. With the exception of the cost of the SVCSB Closing Officer, all expenses of school closure will be provided for through charter school funds. These include, but are not limited to, the expense of contracted expertise such as accountants and auditor, general supplies and postage, and auction costs. The following School Closure Protocol will be implemented ten (10) days after the final order is issued, and may be stayed by the Statewide Virtual Charter School Board in the event of a request for reconsideration or rehearing:

(1) Within two (2) calendar weeks:

(A) The Closing Officer meets with the school's Chief Administrative officer and the Governing Board President to provide information regarding the school closure process and expectations.

(B) A special meeting of the charter school governing board will be called for to establish a Transition Team composed of school staff, applicant staff, and others designated by the applicant who will attend to the tasks and responsibilities of school closure on behalf of the school.

(C) The SVCSB issues a media release appropriate for public notification of charter school closure.

(D) A temporary hold will be placed on all state and federal funding.

(E) Notification of school closure determination is submitted to the Oklahoma State Department of Education (OSDE) including name of school, date of action, effective date of closure, criteria for closure determination, closure process information, and location of student and personnel records. Request name

and contact information for OSDE representative for communication purposes and for assistance with closure. Similar notification also sent to the Oklahoma Teachers Retirement System (if applicable), State Treasurer, and State Auditor.

(F) Notification is made to parents of enrolled students regarding school closure determination including name of school, date of action, effective date of closure, and expected future communication to parents.

(G) Notification to school staff regarding school closure determination including name of school, date of action, effective date of closure, and expected future communication to school staff.

(5) No later than forty five (45) days after the Termination Date, the charter school shall complete and provide the Statewide Virtual Charter School Board with a final audit of the charter school that complies with the annual audit requirements of the Oklahoma Public School Audit Law at 70 O.S. § 22-101 et seq and accompanying regulations.

(6) No later than sixty (60) calendar days after the Termination Date, the charter school shall deliver all records pertaining to operation of the charter school and its students to the Statewide Virtual Charter School Board or to the State Department of Education.

(2) Once a Transition Team is established, the following should occur within thirty (30) days:

(A) The Closing Officer and Transition Team will establish a written student transfer plan including the steps required for the transfer of students and student records and the security of those records.

(B) The Closing Officer and Transition Team will contact Oklahoma school districts regarding charter school closure.

(C) The Closing Officer and Transition Team will establish a written plan for ongoing communication with families. This plan will include communication through closure process and a final report of school closure to charter school families. A list of all students/families will be generated and maintained to include student name, parent name, address, telephone, email, grade level, and school district of residence.

(D) The Closing Officer and Transition Team will establish a written plan for ongoing communication with staff. This plan will include the initial communication of school closure, follow-up communication as needed, and a final report of school closure to charter school staff. A list of all staff will be created to include name, position, address, telephone, email. Notification includes information regarding closure determination, closure date, personnel records, and benefits.

(E) The Closing Officer and Transition Team will secure all financial and personnel records. In addition, Closing Officer and Transition Team will identify all agencies, employees, insurers, contractors, creditors, debtors, grantors, and management

organizations. The statewide virtual charter school shall provide the Statewide Virtual Charter School Board with executed copies of all of the following documents:

- (i) A detailed list of all real and/or personal property and other assets procured by the charter school during the term of the contract that includes identification of all sources of funds used to procure the property. All items procured all or in part with state, local or federal funds shall be clearly identified.
 - (ii) Title documents, deeds, and/or leases for all real or personal property or other assets procured all or in part with state or federal funds.
 - (iii) Copies of all executory contracts to which the charter school or its governing body is a party.
 - (iv) All documentation relating to debt, liabilities, encumbrances, or other obligations incurred by the charter school and/or the governing body of the charter school during the term of the sponsorship contract.
 - (v) The Closing Officer and Transition Team Chair will ensure a complete financial accounting. A financial plan for school closure will be established. The Closing Officer may include other financial experts on behalf of the SVCSB to assist with the process.
 - (vi) All assets will be inventoried. Inventory shall include name of asset, quantity, estimated value, and location of property. Assets include, but are not limited to, property, furnishings, technology, books, supplies, and equipment.
 - (vii) All assets will be confirmed by the Closing Officer and Transition Team. Within forty-five (45) business days of a final closure determination date, the charter school assets may be liquidated and funds used to satisfy remaining school debt. Otherwise the sponsor may dispose of remaining school property as deemed appropriate and retaining any remaining funds.
- (3) Prior to final closeout, the charter school shall complete all federal, state, and local obligations on behalf of school employees as governed by Federal and State Statute and regulations; including but not limited to the following:
- (A) File all final federal, state, and local employer payroll tax returns and issue final W-2s and Form 1099s by the statutory deadlines.
 - (B) File the Federal Notice of Discontinuance with the Department of Treasury.
 - (C) Make final federal tax payments.
 - (D) File the final withholding tax return.
 - (E) File the final return with the IRS.
 - (F) Complete all tax requirements of the State of Oklahoma.
 - (G) Provide employees with notices and pamphlets required under applicable state and federal law.

(4) Within thirty (30) business days of school closure, all school records, including but not limited to, student, personnel and financial records are received and secured by the SVCSB or the State Department of Education (SDE).

(5) Within forty-five (45) business days of school closure, a final school closure audit will be conducted and provided to the SVCSB. A copy of the audit will be presented to the State Superintendent of Public Instruction, and all fiscal balances of the charter school will be retained by the charter school authorizer.

(46) The Statewide Virtual Charter School Board shall have forty-five (45) days after the date of delivery of all of the documents set forth in (3) of this subsection to request any additional documentation from the charter school the Board deems necessary to determine the assets and liabilities of the statewide virtual charter school.

(7) The Closing Officer will report school closure progress to the SVCSB at each regular meeting through the school closing transition period.

(8) Upon completion of school closure, a final report from the Closing Officer will be presented to the Statewide Virtual Charter School Board.

(79) All personal property of the charter school reverting to the Statewide Virtual Charter School Board in accordance with the provisions of 70 O.S. 3-136 and this Section shall be delivered to the Board no later than sixty (60) calendar days after the ~~Termination~~ School Closure Date in the manner and to the location(s) directed by the Board.

(810) The Chairman of the Statewide Virtual Charter School Board is authorized to execute conveyances and documents on behalf of the Board as necessary to fulfill the requirements of this subsection.

(b) School district contracts for sponsorship of full-time virtual charter schools. In accordance with the provisions of 70 O.S. 3-145.5, the following provisions shall apply to school district contracts for sponsorship of charter schools who provide full-time virtual education:

(1) Contracts for sponsorship of a full-time virtual charter school. Beginning July 1, 2014, no school district shall:

(A) Offer full-time virtual education to any student whose legal residence, as determined in accordance with the provisions of 70 O.S. § 1-113, is located outside of the boundaries of the school district; or

(B) Enter a contract to provide full-time virtual education to any student whose legal residence, as determined in accordance with the provisions of 70 O.S. § 1-113, is located outside of the boundaries of the school district.

(2) Succession of contracts for school district sponsorship of a virtual charter school executed prior to January 1, 2014. Beginning July 1, 2014, the Statewide Virtual Charter School Board shall succeed to the contractual sponsorship rights of any school district that executed

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a contract for sponsorship of a charter school prior to January 1, 2014. Contract succession shall be conducted in accordance with all of the following procedures:

(A) No later than July 1, 2014, the charter school shall provide the Statewide Virtual Charter School Board with all of the following documents:

- (i) All of the documentation set forth in (a)(3) through (a)(4) of this Section; ~~and~~
- (ii) Copies of all reports, documents, and statements required by the Oklahoma Public School Audit Law, for all previous fiscal years of the charter school's operation; including, but not limited to, auditor's opinions and related financial statements of the charter school; and
- (iii) Copies of the charter school's annual estimate of needs, and income and expenditure data required by 70 O.S. §§ 5-135 and 5-135.2 for all previous fiscal years of the charter school's operation.

(B) The terms of succession to the contract for sponsorship by the Statewide Virtual Charter School Board shall be as follows:

- (i) The Statewide Virtual Charter School Board shall not succeed to any terms of a contract for sponsorship executed between a charter school and a school district that violates or conflicts with the Oklahoma Charter Schools Act and/or any state or federal laws and regulations applicable to charter schools, charter school sponsors, or the Statewide Virtual Charter School Board. In the event that any such statute or regulation goes into effect during the term of the contract, the conflicting contractual term shall be deemed superseded by law and deemed null and void.
- (ii) Any debt, obligations, encumbrances, and/or liabilities incurred by the charter school in violation of the provisions of Art. 10 § 26 of the Oklahoma Constitution shall be deemed null and void, and shall not be assumed by the Statewide Virtual Charter School Board.
- (iii) The Statewide Virtual Charter School Board may require the statewide virtual charter school to execute an addendum to the contract for sponsorship for the purpose of clarifying terms not otherwise addressed in the existing contract as necessary to comply with the Oklahoma Charter Schools Act or any other provision of state or federal law applicable to charter schools.

(C) The Statewide Virtual Charter School Board shall not distribute any state aid funds to a statewide virtual charter school pursuant to the provisions of this subsection until all of the following conditions have been met:

- (i) All appropriate conveyances and other documents necessary to effect the transfer of any property associated with the contract have been finally executed by the parties and copies of the

finally executed documents have been filed with the Statewide Virtual Charter School Board;

(ii) All property, equipment, supplies, records, and assets required to be transferred to the Statewide Virtual Charter School Board in accordance with the provisions of 70 O.S. § 3-145.5(B) has been delivered in the manner and to the location(s) directed by the Board;

(iii) The charter school is in compliance with all applicable state and federal regulations pertaining to charter schools; and

(iv) All other requirements of this paragraph have been met.

(D) The Statewide Virtual Charter School Board shall not distribute midyear allocation funds to a statewide virtual charter school that is a party to a contract for sponsorship assumed by the Statewide Virtual Charter School pursuant to the provisions of this subsection until:

(i) The statewide virtual charter school has conducted a final audit of the charter school for fiscal year 2014 that complies with the Oklahoma Public School Audit Law at 70 O.S. § 22-101 et seq and accompanying regulations;

(ii) Copies of the auditor's opinions, related financial statements, and any other documentation pertaining to the audit have been provided to the Statewide Virtual Charter School Board; and

(iii) The charter school has presented the audit at a meeting of the Statewide Virtual Charter School Board.

(E) Succession to the contractual rights and responsibilities of sponsorship by the Statewide Virtual Charter School Board shall not qualify the charter school to apply for funds from the Charter School Incentive Fund established pursuant to the provisions of 70 O.S. § 3-144, nor shall the first year of operation under the sponsorship of the Board be considered the charter school's first year of operation.

(F) The Chairman of the Statewide Virtual Charter School Board is authorized to execute conveyances and documents on behalf of the Board as necessary to fulfill the requirements of this subsection.

(c) **Termination or nonrenewal for good cause.** Failure by any charter school to comply with the provisions of this Section shall constitute good cause for:

(1) Termination or nonrenewal of a contract for sponsorship with the Statewide Virtual Charter School Board; and/or

(2) Denial of any application for sponsorship subsequently submitted by the charter school and/or authorized representatives of the charter school, including, but not limited to, the governing body of a charter school.

SUBCHAPTER 5. STATEWIDE VIRTUAL CHARTER SCHOOL FACILITIES

777:10-5-3. Statewide virtual charter school sites

(a) **Face-to-face instruction.** No statewide virtual charter school or employee of the statewide virtual charter school shall provide face-to-face instruction to any charter school student unless:

- (1) The instruction occurs at either:
 - (A) The legal residence of a student or the parent/legal guardian of a student; or
 - (B) A municipality-, state-, or federally-owned or regulated facility approved as a charter school site of the statewide virtual charter school in which the student is enrolled that complies with all federal, state and local statutes and regulations governing health and safety that are applicable to public school facilities; and
- (2) The instruction is limited to no more than ~~nine~~ twelve (12) hours per week of instruction per student.
- (3) Approval of statewide virtual charter school sites. The Board may approve an additional charter school site if the following conditions have been met:
 - (A) The statewide virtual charter school submits an application at least sixty (60) days prior to beginning face-to-face instruction at the facility;
 - (B) The facility complies with all federal and state statutes and regulations governing safety that are applicable to public school facilities; and
 - (C) The facility has been approved by the State Department of Education Office of Accreditation.

(b) **Reporting of approved statewide virtual charter school sites.** ~~No later than July 1 prior to each school year, each~~Each statewide virtual charter school shall provide the Statewide Virtual Charter School Board and the State Department of Education with a list of all approved statewide virtual charter school sites. A statewide virtual charter school shall not be eligible to obtain funding for instruction provided at any statewide virtual charter school site not ~~approved and reported~~authorized in accordance with the provisions of this Section and all other applicable statutes and regulations pertaining to charter school ~~facilities~~sites. The charter school must maintain documentation that all sites comply with all federal, state and/or local statutes and regulations governing health and safety, and must produce such documentation to the Statewide Virtual Charter School Board and State Department of Education upon request.

(d) **Transportation supplement funding.** A statewide virtual charter school shall not be eligible to receive transportation supplement funding for transportation to a statewide virtual charter school site in accordance with the provisions of 70 O.S. § 3-141 for any school year without a written transportation plan approved by the Statewide Virtual Charter School Board. The statewide virtual charter school shall submit its approved transportation plan to the State Department of Education Office of State Aid no later than July 1 prior to the school year for which the transportation plan has been approved.

[OAR Docket #17-640; filed 7-13-17]

TITLE 777. STATEWIDE VIRTUAL CHARTER SCHOOL BOARD CHAPTER 15. OKLAHOMA SUPPLEMENTAL ONLINE COURSE CERTIFICATION

[OAR Docket #17-641]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
777:15-1-1 through 777:15-1-9 [NEW]

AUTHORITY:
Statewide Virtual Charter School Board; 70 O.S., §§ 3-145 et seq.

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n/a

INCORPORATIONS BY REFERENCE:
n/a

GIST/ANALYSIS:
The rules will assist virtual charter school leaders in understanding the rules and the appeals processes.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

777:15-1-1. Purpose
The Statewide Virtual Charter School Board (SVCSB) makes publicly available a list of supplemental online courses which it has reviewed and certified to ensure that the courses are high quality options and are aligned with the subject matter standards approved by the State of Oklahoma. In conjunction with the Office of Management and Enterprise Services (OMES), the SVCSB negotiates with online course providers to offer a state rate price to school districts for supplemental online courses. These rules have been adopted for the purpose of implementing policy and procedures pursuant to Oklahoma Statute Title 70, Section 3-145.3.

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777:15-1-2. Definitions

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

"Course provider" means an entity that meets eligibility requirements and provides an online course to Oklahoma school districts.

"Course review" means the process conducted by content and pedagogical experts to ensure courses recommended for certification by the SVCSB meet the established standards.

"Oklahoma Online Course Catalog" means a publicly available listing of courses certified (or pending review) by the SVCSB available through approved Course Providers.

"Online course" means an educational course in which instruction and content are delivered primarily over the Internet. A student and teacher are in different locations for a majority of the student's instructional period, most instructional activities take place in an online environment, the online instructional activities are integral to the academic program, consistent communication between a student and a teacher and among students is emphasized, and a student is not required to be located on the physical premises of a public school district. An online course is the equivalent of what would typically be taught in one semester.

"Receiver district" means an Oklahoma public school district that has students enrolled in the district who take one or more online courses.

777:15-1-3. Application for course certification

(a) To have a course(s) listed in the Oklahoma Online Course Catalog, Course Providers must first be approved as vendors through the Oklahoma Management and Enterprise System (OMES). Potential vendors must respond to the Request for Proposals (RFP) released by the SVCSB through OMES and provide all required documentation according to the deadline listed in the RFP solicitation.

(b) Once the solicitation period has closed, all submitted materials will be reviewed for compliance by the SVCSB and OMES. Entities meeting the minimum criteria established in the RFP will be approved as vendors for the State of Oklahoma.

777:15-1-4. Pricing

Each course offered through the Oklahoma Online Course Catalog must be offered at a price that does not exceed the lowest price at which the course is offered for use or sale to any state, public school, or school district in the United States. The price of any course or item or service for the course must automatically be reduced to the extent that, and at the same time as, the price is reduced or offered for a lesser fee elsewhere in the United States. A course or item or service for the course must be provided free of charge or at a price discount to the same extent that it is provided to any state, public school, or school district anywhere in the United States.

777:15-1-5. Course review requirements

(a) Online Course Providers must supply the following at the time of course review:

(1) The name of the institution or organization providing the online content;

(2) Course title and subject code (using appropriate course title and subject code as established by the Oklahoma State Department of Education's approved Subject Codes for the appropriate academic year);

(3) Number of students who may be admitted to the course per instructor;

(4) Explanation of the alignment between Oklahoma content standards and course content and assignments;

(5) Protocols established to monitor student engagement and course progression, including guidelines to address non-responsive students;

(6) Description of procedures for reporting students' course progression, grade and other student information to the local school district;

(7) Instructor credentials and qualifications;

(8) Recognition of course by external entity (e.g., NCAA, College Board Authorized, AdvancED certification); and

(9) Course syllabus that includes:

(A) course title;

(B) course description;

(C) course credits;

(D) objectives that clearly state, in measurable terms, what the students will know or be able to do at the end of the course;

(E) assignments/assessments;

(F) instructional strategies and student expectations, including any synchronous attendance requirements;

(G) time requirements;

(H) grading policy;

(I) contact policies for communication between teacher and students and teacher and parents;

(J) resources and materials required; (k) technology requirements, including the Learning Management System (LMS) utilized;

(L) accommodation and accessibility statement; and

(M) course outline (i.e. list of units/modules in sequential order).

(b) At the time of the course review, guest access to the course will be required for the reviewers. If substantive changes are made to a course since its last certification, it must be submitted for review regardless of its current status in the review cycle. Substantive changes would include altering the intended course outcomes, significantly changing instructional strategies or assessment protocols used in the course as a whole, or any revision that impacts standards alignment. Only courses certified (or pending review) by the Statewide Virtual Charter School Board will be accepted into the Oklahoma Online Course Catalog.

(c) Course Providers of Advanced Placement (AP) courses must provide the results of their College Board AP Course

Audit and Authorization. No other course evaluation will be conducted for AP Courses. If a course is authorized by the College Board as an AP course, it is automatically listed as "state-certified" in the Oklahoma Online Course Catalog. Online Providers must provide evidence annually of AP Authorization Renewal.

777:15-1-6. Course review and certification process

(a) All approved vendors will have the online courses they submitted as part of the RFP published on the OSOCP website and reviewed according to the schedule adopted by the SVCSB.

(b) Course reviews will be conducted by content experts and pedagogical experts selected by the SVCSB. Courses will be evaluated using rubrics to determine alignment with the current academic standards approved by the State of Oklahoma (or nationally/ internationally accepted content standards set for courses whose content is not included in state standards) and the International Association for K-12 Online Learning (iNACOL) National Standards for Quality Online Courses. The rubric published in the most current National Standards for Quality Online Courses will be used as part of the Course Review, along with a rubric to measure the presence of each of the academic standards for the content area. Online Course Providers of Advanced Placement (AP) courses must provide the results of the AP Course Audit and Authorization. No other course evaluation will be conducted for AP Courses. Online Providers must provide evidence annually of AP Authorization Renewal.

(c) If results of the initial review suggest that a course will not be recommended for certification, the Course Provider will be contacted with the review results and will have fifteen (15) calendar days to revise material or provide additional information pertinent to the review. These revisions will be examined by the course reviewers and, if appropriate, the rubric scores will be modified. Once the course review is complete, results of the evaluation will be presented to the Statewide Virtual Charter School Board (SVCSB). The SVCSB will consider the evidence and vote whether to certify or not certify the course. The decision will be made on a simple majority vote. If the SVCSB votes to not certify a course, the course will be removed from the Oklahoma Online Course Catalog and the Course Provider will be notified of the reasons the course was not certified. The Course Provider may revise the course and resubmit for additional Course Review and certification consideration. Resubmitted courses will be reviewed after all submitted courses have undergone an initial review. Courses approved will be certified for a five-year period. After which, Course Providers must apply for renewal. Certified courses will be identified as such and have their course review ratings published in the Oklahoma Online Course Catalog available on the OSOCP website. Courses pending review will be identified as such and have the date of their scheduled review published in the Oklahoma Online Course Catalog.

777:15-1-7. Certified courses remaining in good standing

(a) To remain in good standing and have a course(s) continuously listed in the Oklahoma Online Course Catalog through the entirety of the approval period, Course Providers agree to:

- (1) Maintain their vendor status.
- (2) Notify the SVCSB of any additions, deletions or changes to certified courses by completing the online form located on the OSOCP website.
- (3) Serve all enrolled students, regardless of number enrolled in a section so that Receiver Districts have reliable course options for students.
- (4) Provide online instructors who are 1) certified in Oklahoma or another state to teach in the content area of the course offered; or 2) a faculty member at an accredited institution of higher education, possessing the specific content expertise necessary to teach the course. Additionally, the Course Provider shall supply certification or applicable credentialing documentation to the SVCSB as part of the course review process and within ten (10) working days upon the hire of any new instructors for any certified course. The Course Provider shall be responsible for such obligation regardless of whether instructors are employees of the Course Provider, independent contractors, or employees of a third-party course vendor. Course Providers shall take all steps necessary to verify the qualifications of non-employee instructors.
- (5) Notify SVCSB in writing within ten (10) working days if for any reason an online instructor no longer meets the requirements to teach a course offered. The name and credentials of the replacement instructor must also be provided at that time.
- (6) Refer only to courses currently certified and listed in the Oklahoma Online Course Catalog as "Statewide Virtual Charter School Board approved."
- (7) Own, secure, and/or maintain licensure and copyright for all courses offered in the Oklahoma Online Course Catalog.
- (8) Maintain a current course syllabus including key information such as examinations requiring proctoring and other supporting information (see syllabus requirements in Course Review Requirements).
- (9) Course Providers of Advanced Placement (AP) courses must provide evidence annually of AP Authorization Renewal.
- (10) Refrain from significantly modifying or changing courses without prior notice and approval from the SVCSB. Course Providers shall provide written notice of any planned modification in sufficient detail for SVCSB Course Reviewers to determine whether the course continues to satisfy all requirements. Failure to obtain written approval may result in removal of the course from the approved catalog.
- (11) Ensure that each certified course is maintained throughout the duration that the course is offered and continues to meet the current academic standards approved by the State of Oklahoma; the International Association for K-12 Online Learning (iNACOL) National Standards

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for Quality Online Courses; and Oklahoma's Information Technology Accessibility Standards.

(12) Employ the appropriate course title and subject code as established by the Oklahoma State Department of Education's approved Subject Codes for the appropriate academic year for the purpose of data collection.

(13) Report aggregate student success data to the SVCSB in the requested format and by the timeline set. The SVCSB does not collect individual student information. By August 1 of each year, the Course Provider will report the following aggregate student success data to the SVCSB:

- (A) Total number of unique Oklahoma students;
- (B) Total number of courses taken by Oklahoma students;
- (C) Number of students in each course (both over-all number and Oklahoma students); and
- (D) Successful completion rate (number and percent) of each course (i.e. X#/60% of students enrolled in X successfully completed the course). Include both overall rates and Oklahoma-specific rates.

(b) Course providers will be notified if a course(s) is found to be noncompliant and will have fifteen (15) business days after notification to bring the course(s) into compliance. If the course(s) is still noncompliant at the end of this period, the course certification will be revoked and the course will be removed from the Oklahoma Online Course Catalog.

777:15-1-8. Process for course certification renewal

Courses that remain in good standing are certified for a period of five years. Course Providers may apply for renewal of their course certification six months prior to the completion of the course approval period. Course Providers will notify the SVCSB of their intent to apply for renewal by submitting all documents listed in the Course Review Requirements. Course Providers who have maintained their "good standing" status throughout the course approval period will have their courses reviewed and considered for certification following a similar procedure as their initial Course Review and Certification Process. Aggregate student success data will be considered in renewal decisions. Additionally, the SVCSB may survey districts to collect satisfaction data and those data may also be considered in renewal decisions. Course Providers who have not maintained a "good standing" status must provide documentation explaining the lapse in "good standing" status and the protocols that are in place to prevent such a lapse in the future.

777:15-1-9. SVCSB responsibilities

The SVCSB shall:

- (1) Ensure that all courses listed in the Oklahoma Online Course Catalog are reviewed according to the stated requirements.
- (2) Notify the Course Providers of changes in current academic standards approved by the State of Oklahoma; the International Association for K-12 Online Learning (iNACOL) National Standards for Quality Online

Courses; and Oklahoma's Information Technology Accessibility Standards, or other standards that prompt the need for course revisions. Such notification is a courtesy and does not negate the responsibility of the Course Providers to maintain currency with regard to these standards.

(3) Maintain accurate information in the Oklahoma Online Course Catalog.

[OAR Docket #17-641; filed 7-13-17]

TITLE 780. OKLAHOMA DEPARTMENT OF CAREER AND TECHNOLOGY EDUCATION CHAPTER 10. ADMINISTRATION AND SUPERVISION

[OAR Docket #17-514]

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Subchapter 3. State Technical Assistance, Supervision, and Services

780:10-3-2 [AMENDED]

780:10-3-4 [REVOKED]

Subchapter 5. Finance

780:10-5-4 [AMENDED]

Subchapter 7. Local Programs, ~~Career Majors~~ or Instructional Positions:

Application; Student Accounting; Evaluation

780:10-7-2 [AMENDED]

780:10-7-3 [AMENDED]

780:10-7-3.2 [AMENDED]

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n/a

GIST/ANALYSIS:

The proposed rule amendments corrects errors in format, punctuation, capitalization and grammar. It also updates information to match current terminology. Additionally, proposed rule amendments delete language and roles that are no longer in effect due to agency reorganization. This rule amendment provides clarification needed to describe the change in program names and how instructions will be disseminated for reporting. Through reorganization, the Information Commons division has been absorbed and services to state staff and field staff are provided differently.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 3. STATE TECHNICAL ASSISTANCE, SUPERVISION, AND SERVICES

780:10-3-2. Career guidance and counseling, career information, disability services, integrated academics, innovation support services, essential skills and career development

(a) **Career guidance to technology centers.** The Department shall provide coordination and leadership for career guidance and counseling to technology centers and other entities whose primary purpose is the delivery of career guidance and counseling. Technology center districts shall have an identifiable guidance program in place, implemented and administered by an adequate number of credentialed staff and coordinated by staff with experience in delivering or supervising student services that addresses the career development needs of all students. Technology centers shall provide all students with information and advisement about career and educational options, administer assessment instruments such as interest inventories, aptitude tests, and achievement tests or acquire the results of such assessments prior to enrollment to provide career guidance, and provide support for students to help them be successful in their career pathway.

(b) **Career Information.** The Department shall provide technical assistance to schools, institutions, and agencies for career development software and career information materials.

(c) **Financial Aid Services.** The Department shall represent the Oklahoma career and technical education system by performing a liaison function with the Federal Student Financial Aid Office (SEFA) (FSA) of the US Department of Education. As such, the Department will determine the in-service needs of technology center financial aid personnel and arrange for knowledgeable individuals, from SEAFSA or other professional organizations, to conduct workshops and training sessions. The purpose of these in-service opportunities is to strengthen financial aid programs at technology centers ensuring adherence to current state and federal regulations governing the administration of financial aid programs. The Oklahoma Department of Career and Technology Education shall collect relevant statistical data related to financial aid activities at technology centers and report this information where appropriate. The Oklahoma Department of Career and Technology Education shall also administer the Oklahoma GI Bill program that provides tuition assistance to qualified Vietnam-era veterans.

~~(d) **Innovation Support Services.** The Department shall provide support for the alignment of Oklahoma education innovation and improvement initiatives through the services of the Innovation Support Services Liaisons. The Innovative~~

~~Support Services Liaisons shall provide technical assistance and services focused on the High Schools That Work ten key practices, guidance and instruction for improved student achievement along with leadership from the Technology Center Services Division to create a culture of high expectations to local education agencies and/or technology centers for school improvement with raised student achievement. The ISS Division/Liaisons shall accomplish its purpose by providing:~~

- ~~(1) Support for education innovation.~~
- ~~(2) Lead and participate in technical assistance visits and provide technical review visits with follow up.~~
- ~~(3) Assist in locating and using resources and materials.~~
- ~~(4) Provide guidance for implementing career pathways, plans of study, improved instruction, and services supported by the Oklahoma Department of Career and Technology Education.~~
- ~~(5) ISS Liaisons shall serve local education agencies designated by the Oklahoma Department of Career and Technology Education. The local education agency shall request the assistance and shall designate a local administrator, counselor, or instructor to coordinate the services to be delivered.~~

~~(ed) **Disabilities services.** The Department shall coordinate and provide technical assistance to assure appropriate services and accessibility for individuals with disabilities and other members of special populations enrolled in CareerTech instruction at technology centers and at local education agencies. The Department will also provide guidance and assistance for the field to assist students with transition from high school to a technology center as well as transition from technology centers to postsecondary education and/or work.~~

~~(fe) **Integrated academics and essential skills.** The Department shall coordinate developmental activities and provide technical assistance to technology centers, comprehensive school programs and skills centers for education enhancement, career assessment, and employability skills development.~~

780:10-3-4. Information Commons [REVOKED]

~~(a) **Objectives.** The Information Commons shall be responsible for the following activities:~~

- ~~(1) Providing current career and technology education materials and services designed to meet the informational requirements of Department personnel and CareerTech educators in the state of Oklahoma; and,~~
- ~~(2) Providing assistance to persons doing research in the field of CareerTech education.~~

~~(b) **Services.** The Information Commons shall accomplish its objectives by providing the following services:~~

- ~~(1) Searches of the Information Commons collection using the on-line database. Searches may be initiated by phone, fax, Internet e-mail, or walk-in requests;~~
- ~~(2) Searching commercial on-line databases and the Internet if needed;~~
- ~~(3) Promoting new acquisitions to CareerTech educators in Oklahoma through a monthly acquisitions list; and,~~
- ~~(4) Utilizing interlibrary loans as need dictates.~~

~~(e) **Circulation.**~~

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- (1) **Patrons.** The Information Commons shall circulate materials primarily to Department personnel, career and technology faculty, and students at any Oklahoma college or university, and to *CareerTech* educators in Oklahoma.
- (2) **Researchers.** Materials may be circulated to persons doing research in the field of career and technology education, subject to recall if needed by Department personnel.
- (3) **Circulation periods for printed materials.**
- (A) **One-month circulation; renewals.** Printed materials, except high demand materials, shall be circulated for one month and may be renewed in written or verbal form if there are no holds on the materials.
- (B) **High demand materials.** High demand materials will be checked out for a two week period only.
- (C) **Fines; replacement copy charges.** No fines will be charged on late materials, but if materials are lost, a replacement copy charge will be issued to the responsible party. No additional materials will be loaned to that particular party until such previously stated charges are paid, or overdue materials are returned.
- (D) **Interlibrary loan fines.** Materials obtained through interlibrary loans are subject to fines assessed by the lending library. If these materials are returned late, the fines will be the responsibility of the person requesting the interlibrary loan.
- (d) **Gifts.** The Information Commons may accept gifts of materials. Upon acceptance, these materials become property of the Information Commons and will be evaluated according to the Information Commons's selection criteria and then added or disposed of accordingly.
- (e) **Collection development.**
- (1) **Selection.** Materials are considered for purchase on requests and recommendations from the Oklahoma Department of Career and Technology Education staff, from catalogs and advertisements of publishers, and from professionally prepared selection aids. Criteria for selection of materials for purchase are considered on the basis of the subject matter with emphasis on career and technology education, the reputation of the author/artist/publisher, the publication year, and the price. The Information Commons tries to accommodate all requests for job related materials from the staff, but it has the responsibility of adhering to the budget restraints of the Department. Some requests may be evaluated by the Information Commons staff and determined to be too expensive or unrelated to vocational education or *CareerTech* education and will not be purchased.
- (2) **Weeding.** Materials on Oklahoma career and technology education will be retained indefinitely in the "Historical Collection." All other materials in the Information Commons collection will be reviewed on an ongoing basis according to age, space, usage, and relevance. If the items

have not been checked out in the last year or if technological changes have rendered the items obsolete, they will be evaluated and may be discarded.

SUBCHAPTER 5. FINANCE

780:10-5-4. Instructional funding

- (a) **Secondary and full-time adult career majors in technology centers.**
- (1) **Formula payments.** The State Board will fund a portion of the cost of instruction and services in accordance with an approved technology center funding formula. The Department shall consider enrollment, number of school sites in the district, number of instructors employed on a full-time basis, transportation, availability of funds, provision of appropriate student services for all students and appropriate state and federal laws in developing the annual technology center funding budget.
- (2) **Formula adjustment.** The failure of a technology center to meet minimum standards may result in an adjustment of the funding.
- (b) **Secondary programs in comprehensive schools.**
- (1) **Budgets.** The State Board will assist local districts in providing for excess costs of *CareerTech* programs. The Department shall prepare budgets to be approved annually based upon availability of funds and appropriate state and federal laws.
- (2) **Program assistance monies.** All approved *CareerTech* programs shall receive the program assistance monies annually. Pending availability of funds. These monies shall be used to support the additional costs of the *CareerTech* program limited to the purchase of equipment, instructional delivery and supplies, and staff development.
- (3) **Equipment matching funds.** New *CareerTech* programs will receive equipment matching funds in the first year of operation, if funding is available. If funding is available, matching funds will be provided to existing programs.
- (4) **Location of equipment.** Any program equipment purchased with state or federal funds shall remain in the program area for which it is intended.
- (5) **~~CareerTech teacher contracts.~~** ~~*CareerTech* teacher contracts shall be a minimum of 10 months and shall begin on or before August 1 of each year.~~
- (6) **Teacher salary supplement.** The Department shall determine annually the amount to reimburse each school district to augment the salary of each teacher of a 10 month *CareerTech* program in a comprehensive school. Teachers are required to attend summer conference and other required teacher professional development per division to receive teacher salary supplement and program assistance.
- (7) **Additional salary.** In those programs where the instructor is employed and approved by the State Board beyond 10 calendar months, the additional salary will be calculated on the basis of 1/10 of the base salary as prescribed by the school district for an instructor of like qualifications

~~employed on a 10-month basis. The career and technology instructor's summer pay is to be calculated on the local school base schedule (including increments and any flat raises provided by the legislature over and above the minimum salary and increments) for instructors of like qualifications. Agriculture Education programs are on a 12-month contract, the department shall determine annually the amount to reimburse each district to augment the salary of each agriculture education 12-month contract teacher.~~

~~(87) Part-time programs. In order to receive 100 percent funding, a program must be full-time. Any exceptions to the offering of a full-time program shall constitute a reduction in funding of 50 percent. Approved funded programs may not fall below half-time and 50% funding.~~

(c) **TechConnect Plus.** Reimbursement for approved Tech-Connect Plus programs shall include incentive assistance and teacher salary supplement in the same manner as with other comprehensive school programs. The program assistance (state) funds are provided to meet the minimum program operation requirements. Federal career and technology (vocational) education funds and/or local funds may be used to meet the program operation recommendations.

(d) **Business and Industry Services.** The Department shall reimburse Business and Industry Services initiatives based on the availability of funds and approved by the Business and Industry Services Division.

(e) **Skills Centers programs.** The Department shall fund Skills Centers programs based on the availability of funds.

(f) **Postsecondary institutions-collegiate.** Funds shall be allocated to postsecondary institutions as set forth in agreements between the State Board and the Oklahoma State Regents for Higher Education or as mandated by P.L. 101-392.

(g) **Apprenticeship.** Local education agencies conducting apprenticeship-related training shall qualify for reimbursement at a rate approved by the Department.

(h) **Work-site learning.** Approved work-site learning activities shall meet the standards established by the Department. Reimbursement shall be based on availability of funds and approval by the Department.

(i) **Reduction in instruction and/or student services due to changes in funding.** The Oklahoma Department of Career and Technology Education may also recommend reduction in instruction and/or student services based upon loss of funding, lack of funding, revenue shortfalls or other changes in funding. The rules dealing with probationary status and reevaluation shall not apply to instruction being considered for closure based upon changes in funding. The State Board shall make the determination for reduction in instruction and/or student services based on economic factors, need, duplication, school to industry articulation, school to postsecondary articulation, student demand, student placement, student completion/retention, performance measures and/or standards and the decision of the Board shall be final.

SUBCHAPTER 7. LOCAL PROGRAMS, CAREER MAJORS OR INSTRUCTIONAL POSITIONS; APPLICATION; STUDENT ACCOUNTING; EVALUATION

780:10-7-2. Student accounting system

(a) **Data collection.**

(1) **Report submissions.** Each local education agency or eligible recipient shall submit student accounting reports by the established due dates as instructed by the Information Management Division ~~in their yearly guidebooks.~~

(2) **Program enrollment data.** Each local education agency or eligible recipient shall submit enrollment information for every student who received CareerTech services during the school year or fiscal year as instructed by the Information Management Division ~~in their yearly guidebooks.~~

(3) **Completion/Follow-Up Report.** Technology centers are required to submit completion data on all students enrolled in ~~full-time program~~ ~~career majors~~. Placement information is required on all students identified as concentrators or ~~program~~ ~~career major~~ completers. Placement data is also required on all twelfth grade enrollees in the comprehensive schools.

(4) **Other Requests for Data.** As federal and state requests for data change, other types of data may be requested from each local education agency or eligible recipient. ~~Guidebooks/instructions~~ Instructions will be provided from the Information Management Division as needed to explain reporting requirements and due dates.

(b) **Data requests.**

(1) **Student data analysis requests.** All requests for student data analysis shall be directed to the Information Management Division. Specialized or very detailed data analysis should be requested at least three weeks prior to the needed date to allow adequate time for computer programming and/or manual data compilation.

(2) **Documentation; non-staff requests.** All information released shall be dated and documented with the date of request, person to whom data is released, and purpose of data's use. Non-staff information requests will be completed within a reasonable time.

(3) **Release of data.** All data requests that require the release of individual identifiable student data to anyone outside the Department must receive prior approval from the State Director. Third parties receiving such data are to protect against re-disclosure of the information.

780:10-7-3. Institutional Standards; accreditation; review

(a) **Quality standards.**

(1) Establishment; funding. As appropriate, quality standards shall be established by the State Board for postsecondary and secondary CareerTech institutions, programs, ~~career majors~~, courses and/or services. These standards shall be comprehensive, reflecting state and

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federal mandates as they relate to quality CareerTech education. Funding approval is contingent upon meeting quality standards or making satisfactory progress toward meeting those standards.

- (2) **Standards.** Standards shall include the following:
 - (A) STANDARD I-Leadership and Administration
 - (B) STANDARD II-Instruction and Training
 - (C) STANDARD III-Support Services
 - (D) STANDARD IV-Measurement and Analysis
 - (E) STANDARD V-Personnel
 - (F) STANDARD VI-Operations
 - (G) STANDARD VII-System Impact
- (3) **Revisions.** The standards are revised periodically based upon input from appropriate sources and relevant data regarding factors that influence student learning and the quality of *CareerTech* education. Any such revisions will be taken to the State Board for approval.
- (4) **Dissemination.** The standards will be disseminated to *CareerTech* personnel throughout the state. Evaluation results will be considered in the processes of planning and funding programs.
- (5) **Technical assistance.** The Department staff will provide technical assistance to help CareerTech institutions, programs, courses, ~~career majors~~ and/or services meet the standards established by the State Board and other accrediting agencies.

(b) **Postsecondary accreditation.**

(1) **Approval/accreditation agency.** For the purpose of determining eligibility for federal student aid (FSA) programs administered by the U.S. Department of Education, the Oklahoma State Board of Career and Technology Education is recognized as the authority for the approval of public postsecondary vocational education offered at CareerTech institutions in the state of Oklahoma that are not offered for college credit or under jurisdiction of the Oklahoma State Regents for Higher Education, including the approval of public postsecondary vocational education offered via distance education.

(2) **Adopted procedures.** Schools seeking and maintaining postsecondary approval/accreditation status shall follow the State Board's adopted procedures as prescribed in the publication **Accreditation Guidelines**. This publication shall be made available to interested parties from the Department.

(A) **Self-Study, Onsite Visit, and Monitoring.** Accreditation status is reviewed through monitoring annually. Every five years, a technology center must complete a self-assessment application and examiners must conduct an onsite visit. State agency staff shall visit the institution, as applicable, following the onsite visit review to ensure that the technology center's corrective action plan(s) are being followed. In addition, ODCTE staff will conduct a monitoring visit during year 3 of the accreditation cycle.

(B) **Publication and Reevaluation.** The accreditation status of the education institution must be publicized in an official notification. Technology centers must be reevaluated at least every five years.

(3) **Noncompliance of corrective action plan.** The State Board shall have the authority to assume the administration and supervision of any technology center that after being placed on "Probational Accreditation Status" continues to be in noncompliance of the corrective action plan(s) as approved by the State Board.

780:10-7-3.2. Program standards; accreditation; review

(a) **Quality standards.**

(1) **Establishment; funding.** As appropriate, quality standards shall be established by the State Board for postsecondary and secondary CareerTech programs, ~~career majors~~, courses, and/or services at technology centers related to distance education and competency-based education/direct assessment. These standards shall be comprehensive, reflecting state and federal mandates as they relate to quality CareerTech education. Funding approval is contingent upon meeting quality standards or making satisfactory progress toward meeting those standards.

- (2) **Standards.** Standards shall include the following:
 - (A) STANDARD I Program Integrity
 - (B) STANDARD II Resources and Technology
 - (C) STANDARD III Learning Development, Instruction, and Safety
 - (D) STANDARD IV Skill Attainment, Assessment, and Reporting
 - (E) STANDARD V Student Support and Services
 - (F) STANDARD VI Marketing and Recruitment
 - (G) STANDARD VII Student Engagement and Satisfaction
 - (H) STANDARD VIII Program Effectiveness and Improvement

(3) **Revisions.** The standards are revised periodically based upon input from appropriate sources and relevant data regarding factors that influence student learning and the quality of *CareerTech* education. Any such revisions will be taken to the State Board for approval.

(4) **Dissemination.** The standards will be disseminated to *CareerTech* personnel throughout the state. Evaluation results will be considered in the processes of planning and funding programs.

(b) **Postsecondary accreditation.**

(1) **Approval/accreditation agency.** For the purpose of determining eligibility for federal student aid (FSA) programs administered by the U.S. Department of Education, the Oklahoma State Board of Career and Technology Education is recognized as the authority for the approval of public postsecondary vocational education offered at *CareerTech* institutions in the state of Oklahoma that are not under jurisdiction of the Oklahoma State Regents for Higher Education, including the approval of public postsecondary vocational education offered via distance education.

(2) **Adopted procedures.** Schools seeking and maintaining postsecondary approval/accreditation status shall follow the State Board's adopted procedures as prescribed

in the publication **Accreditation Guidelines**. This publication shall be made available to interested parties from the Department.

(3) **Program Evaluation and Improvement.** Each instructor shall annually review the progress of the program or career major based on the accountability measures developed as required by P. L. 109-270, as amended, which include:

- (A) Student attainment of challenging State established academic and technical skill proficiencies.
- (B) Student attainment of a secondary school diploma or its recognized equivalent, a proficiency credential in conjunction with a secondary school diploma, or a postsecondary degree or credential.
- (C) Placement in, retention in, and completion of postsecondary education or advanced training, placement in military service, or placement or retention in employment.
- (D) Student participation in and completion of career and technology (vocational and technical) education programs or career majors that lead to non-traditional training and employment.

(4) **Monitoring.** Programs, courses or career majors not meeting quality standards will be monitored on an annual basis. If a technology center, skills center or comprehensive school has programs, ~~career majors~~, courses and/or services not meeting evaluation standards, an annual status report addressing completed and/or pending corrective actions will be submitted to the appropriate agency personnel for review. Appropriate agency personnel will notify the school in writing whether the status report was approved or disapproved.

(c) **Secondary evaluation.** Substandard secondary *CareerTech* education programs or career majors shall be formally evaluated, utilizing quality standards, as adopted by the State Board.

(d) **Review of substandard programs or career majors.**

(1) **Probationary status.** A *CareerTech* program or career major may be placed on a probationary status if:

- (A) The program or career major fails to meet standards and the deficiencies are documented in writing as a result of a visit or a team evaluation, and/or
- (B) The program or career major does not meet the specifications as outlined in the **Rules for Career and Technology Education**.

(2) **Written notification.** Written notification of probationary status that identifies the deficiencies and outlines recommended steps for improvement shall be given to the school administration.

(3) **Reevaluation.** A program or a career major on probationary status shall be reevaluated within one year.

- (A) **Removal of probation.** If the documented deficiencies have been corrected upon reevaluation, the probationary status shall be removed.
- (B) **Reevaluation failure.** If the program in a comprehensive school has failed to make improvement on documented deficiencies upon reevaluation, a report shall be made in writing to the appropriate

agency staff and the program may be recommended for closure or reduction in funding for the following school year. If the career major in a technology center has failed to make improvement on documented deficiencies upon reevaluation, a report shall be made in writing to the appropriate agency personnel.

(i) **Written notification; appeal.** The appropriate agency personnel will notify, in writing, the superintendent of the comprehensive school in which the program, instructional position or career major is located that the Department is recommending closure or reduction in funding for the program or career major for the following school year. An appeal process will be included for those superintendents who can show evidence of projected program or career major improvement. The appropriate agency personnel will notify, in writing, the superintendent of the technology center in which the career major is located that the Department is recommending a reduction in funding for the instructional position for the following school year. An appeal process will be included for those superintendents who can show evidence of projected program or career major improvement.

(ii) **Recommended program and/or career major closures.** The appropriate agency personnel will make a presentation of recommended program closures, if any, in comprehensive schools for State Board approval at the designated board meeting. The appropriate agency personnel will make a presentation of recommended career major closures, if any, in technology centers for State Board approval at the designated board meeting.

(e) **Evaluation of recipients receiving federal funds.** Programs or career majors of eligible recipients receiving federal funds under P. L. 109-270, as amended, shall be evaluated annually. Such contracts and agreements shall be in accordance with state and federal laws.

[OAR Docket #17-514; filed 6-23-17]

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

[OAR Docket #17-515]

RULEMAKING ACTION:
PERMANENT final adoption

- RULES:**
- Subchapter 3. Secondary, Full-Time and Short-Term Adult CareerTech Programs
780:20-3-2 [AMENDED]
780:20-3-4 [AMENDED]
780:20-3-5 [AMENDED]
 - Subchapter 5. Programs, Services, and Activities Funded Through P.L. 105-332 Carl D. Perkins Vocational and Technical Education Act of 1998, as Amended by P.L. 109-270
780:20-5-4 [NEW]

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AUTHORITY:

Oklahoma State Board of Career and Technology Education; 70 O.S. 2011, § 14-103, § 14-104, § 14-112, as amended

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

January 26, 2017

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APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 13, 2017

FINAL ADOPTION:

June 13, 2017

EFFECTIVE:

September 11, 2017

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The rule amendment clarifies the approval of comprehensive school programs that operate on block schedules and trimesters. It also deletes an outdated section on mixing levels of courses within the same class period and correction to grammatical errors. Proposed rule amendment reflects the name change to family and consumer sciences content and program. Additionally, this proposed rule amendment reflects the change to teacher certification requirements for certain Science, Technology, Engineering and Math areas and would allow the option for STEM students to participate in the Business Professionals of America student organization if it fits within their occupational program. Also, this proposed rule amendment clarifies language for roles that were changed in the reorganization of the agency.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 3. SECONDARY, FULL-TIME AND SHORT-TERM ADULT CAREERTECH PROGRAMS

780:20-3-2. Programs: admissions, operations, enrollment, and length

(a) **Nondiscrimination; admission guidelines.** Students shall be provided access to CareerTech programs and facilities without regard to race, color, national origin, sex, or disability.

(1) **Agricultural Education.** Agricultural Education programs are designed for junior high and high school grades eight through twelve and shall be provided by comprehensive school districts. Technology center school districts shall be prohibited from operating Agricultural Education programs or FFA chapters in any location. Each student enrolled in an agricultural education program shall participate in a supervised agricultural experience project.

For each agricultural education program which is funded by the Oklahoma Department of Career and Technology Education, the local school district shall provide transportation services, for the agricultural education program and FFA program related duties and activities. (FFA is an integral part of the agricultural education program.)

(2) **Business, Marketing and Information Technology Education.** Business, Marketing and Information Technology Education programs are designed to prepare junior high and high school students (grades 7 through 12) and adults for pathways to careers in business, marketing and information technology.

(3) **Family and Consumer Sciences Education.**

(A) **Comprehensive Family and Consumer Sciences Education in comprehensive schools.** Family and Consumer Sciences programs are designed for ~~junior high and high school~~ students (grades 6 through 12) to experience hands-on experiential and problem based learning to explore opportunities for careers, post-secondary transitions and pathways in family and consumer sciences related areas.

(B) **Occupational Family and Consumer Sciences Occupational Education.** Occupational Family and Consumer Sciences programs are designed to prepare for high school students in (grades 11 and 12) and/or adults for careers to train or retrain in a specific family and consumer sciences related occupation/occupations.

(4) **Health Careers Education.**

(A) **CareerTech health careers.** Health Careers Education programs are designed to prepare junior high students, high school students and adults for employment in a health career of their choice.

(B) **Requirements for applicants.** Applicants for admission to Health Careers Education programs must meet requirements as set by the individual program, state statutes, and any other requirements of the appropriate licensing or accrediting agency.

(5) **Science Technology Engineering and Mathematics (STEM).** Science Technology Engineering and mathematics programs are designed to prepare students grades 6-12 for hands-on and problem based curriculum that allows students to explore opportunities in Science, Technology, Engineering and Mathematics and prepares students for post-secondary transition and pathways for careers in STEM.

(6) **Trade and Industrial Education/TechConnect Plus.** Trade and Industrial Education programs in comprehensive schools are designed for students in grades 10 through 12. TechConnect Plus programs are designed for 11th and 12th grade students when access to advanced career and technology programs are not available or special needs are identified. Schools must apply with the appropriate division for approval of a TechConnect Plus program. Trade and Industrial Education programs in technology centers are designed for students in grades 11 and 12 and/or adults. In technology center programs, tenth-grade students, or over-age students in a grade lower

than the eleventh, may be enrolled upon approval of the sending school.

(b) **Program operations.**

(1) **Recommendation for program approval.** The appropriate CareerTech program administrator shall recommend approval of a program when criteria for the approval of new programs are met and funds are available.

(2) **Program composition.** Programs shall offer hands-on experience or supervised occupational experiences in the laboratory or clinical setting as well as classroom instruction to provide opportunities for students to achieve career objectives.

(3) **Course titles.** CareerTech course offerings must be in agreement with the course titles listed in the current **Standards for Accreditation of Oklahoma Schools**, published by the State Department of Education. These same course titles (or abbreviated titles) should be the class titles entered on the student's transcript.

(4) **Units of credit.** The units of credit shall be determined by the number of periods the student is in class plus on-the-job training, clinical training, or internship served. (Refer to the **Standards for Accreditation of Oklahoma Schools**.)

(5) **Full-time programs.** A full-time program in a comprehensive school shall consist of five CareerTech instruction class periods and one planning period for a six-period day, and six CareerTech instruction class periods and one planning period for a seven-period day. Exceptions to this rule shall include the following:

(A) **Two planning periods.** Teachers who supervise students' agricultural experience programs shall have a minimum of two periods to plan, supervise, and coordinate the activities of student learners (see 780:20-3-1(e) and 780:20-3-2(b)(7)(A)). For schools on non-traditional schedules, teachers shall have the equivalent of a minimum of 90 minutes per day for planning and supervision of students. It is recommended that the last hour of the school day be utilized as one of the planning periods. Schools offering Agricultural Education courses the final period of the day must provide a written explanation to the program administrator.

(B) **Teaching of related courses.** Full-time program teachers of Marketing Education, Career Transitions Education, and TechConnect Plus may be allowed to teach one related course, subject to the approval of the appropriate ODCTE state program administrator.

(C) **Trade and Industrial Education/TechConnect Plus.** Two three-hour block courses shall constitute a full-time program in Trade and Industrial Education in a Technology Center. Three two-hour block courses or six one-hour block courses or any combination thereof shall constitute a full-time program in a TechConnect Plus program in a seven period day at a comprehensive school.

(D) **Marketing Education.** Full-time Marketing Education teachers may be allowed to teach one

related course (excluding internship, cooperative learning, or job out courses and if the school is on a standard six- or seven-period teaching day), subject to the approval of the Business, Marketing and Information Technology Education state program administrator.

(E) **Health Careers Education.** Teachers of Health Careers may be allowed to teach one or two related courses with at least one conference period (if the school is on a standard six or seven-period teaching day), subject to the approval of the Health Careers Education program administrator.

(F) **Science Technology Engineering and Mathematics.** Teachers of Science Technology Engineering and Mathematics may be allowed to teach one related course, subject to approval of the appropriate cluster administrator. Science and Math courses listed in the STEM Career Major can be counted as a STEM course, not a related course, with the approval of the cluster administrator.

(6) **Adult Training and Development.** Adult Training and Development (short-term adult) programs in comprehensive schools may be organized under the supervision of the CareerTech teacher and must be occupationally specific. These programs are organized on request or as the need indicates. They may vary in length.

(7) **Program operations by occupational division.**

(A) **Agricultural Education.**

(i) **Secondary programs.** The agricultural education instructor is a full-time, 12-month employee and shall teach only approved agricultural education courses. Agricultural education instructor shall have no other extra curricular duties or responsibilities other than those required through the FFA student organization and normal school supervisory duties. Coaching, administration, or other similar full-time duties will not be approved. In the case of a non-funded agriculture education program, the program must follow state policy and guidelines to remain in good standing and be able to utilize the CareerTech student organization, FFA.

(ii) **Summer program.** The agricultural education instructor shall formulate a summer program of work and a calendar of activities, which are to be submitted to the local education agency at the completion of the school year.

(iii) **Activities.** Summer activities shall include supervision of students' activities; educational field days and tours; in-service and professional development activities; and, working with adults, agricultural organizations, and industries.

(iv) **Summer leave.** Agricultural Education teachers are entitled to two weeks of summer leave. In lieu of these two weeks of vacation, three weeks each year may be allowed for professional improvement. Summer leave should be coordinated with the local administration. If there is a

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question in regard to summer leave, the program administrator should be contacted for approval.

(v) **Full-time adult programs.** Full-time adult Agricultural Business Management programs vary in length and are designated for and intended to meet the needs of adults engaged in agriculture and agricultural business operations.

(B) Business, Marketing and Information Technology Education.

(i) **Full-time programs in comprehensive schools.** A full-time program in a comprehensive school shall consist of five instructional class periods (five credits) and one planning period for a six-period day or six instructional class periods (six credits) and one planning period for a seven-period day that is offered to students in grades 7 through 12. Block schedules, including trimesters, will be approved if they provide one full unit/credit per course and offer a full schedule of approved courses with one planning period. Instructors shall teach only approved business, marketing and information technology education courses that are aligned with an approved occupational outcome. Nine week and semester rotation courses are not approved for Business and Information Technology Education programs, but are approved for select Marketing Education courses. Business, Marketing and Information Technology Education instructors shall have no other extracurricular duties or responsibilities other than those required through the BPA or DECA student organizations and normal school supervisory duties. Non-funded Business, Marketing and Information Technology Education programs must follow state policies and guidelines and maintain an active BPA or DECA student organization chapter in order to remain in good standing.

(ii) **Full-time programs in technology centers.** A full-time program in a technology center shall consist of two three-hour block periods of instruction for students in grades 10 through 12 and adults and should have an occupational outcome that includes a work-based learning component. Any exceptions must be approved in writing by the ~~of Business, Marketing and Information Technology Education~~ state program administrator.

~~(iii) **Course levels.** Comprehensive school Business, Marketing and Information Technology Education programs shall not mix levels of courses in the same period without written permission from the State Department of Education. This written permission does not ensure programs are meeting Oklahoma Department of Career and Technology Education standards.~~

~~(iv) **Technology/equipment.** Business, Marketing and Information Technology Education~~

programs shall provide technology that is appropriate for the defined occupational objectives and is reflective of a modern business environment. A written plan integrating curriculum, training materials, and technology shall be maintained to guide program development and maintain relevance to the marketplace.

~~(v) **Part-time comprehensive school programs.** Comprehensive school Business, Marketing and Information Technology Education programs that are less than full-time will be funded as a half-time program and will be approved only through the permission of the state program administrator. A part-time program shall include a minimum of three approved business, marketing or information technology education courses with one planning period.~~

(C) Comprehensive Family and Consumer Sciences Education in comprehensive schools.

(i) **Full-time programs.** A full-time program shall consist of at least ~~two~~ three levels of family and consumer sciences classes with one ~~or more~~ conference period in the daily schedule, and the instructor shall teach only approved family and consumer sciences courses. Block schedules, including trimesters, will be approved if they provide one full unit/credit per course and offer a full schedule of approved courses with one planning period. Family and consumer sciences instructors shall have no other extra curricular duties or responsibilities other than those required through the FCCLA student organization and normal school supervisory duties. Each single teacher program shall offer at least two complete programs of study in a three-year period. A multi-teacher district shall offer one more program or study than the number of teachers per building. Coaching, administration, or other similar full-time duties will not be approved.

(ii) **Part-time programs.** Programs that are less than full-time will be funded as a half-time program and will be approved only through permission of the program administrator. A part-time program shall include a minimum of two family and consumer sciences classes and a conference period for a six period day and three family and consumer sciences classes and a conference period for a seven or eight period day.

(iii) **Course coordination.** Comprehensive school Family and Consumer Sciences Education programs shall not mix levels of courses in the same class period without written permission from the State Department of Education. This written permission does not ensure programs are meeting Oklahoma Department of Career and Technology Education standards.

(iv) **Unfunded programs.** In the case of a non-funded family and consumer sciences program, the

program must follow state policy and guidelines to remain in good standing.

(D) **Occupational Family and Consumer Sciences Occupational Education.**

(i) **Full-time occupational programs in comprehensive schools.** A full-time occupational family and consumer sciences related occupational education program in the comprehensive school will include two or more classes, two to three periods in length for 11th- and 12th-grade students.

(ii) **Full-time occupational programs in technology centers.** A full-time occupational family and consumer sciences related occupational education program in a technology center will include two classes, three periods in length for 11th- and 12th-grade students and adults.

(iii) **Length; order.** Two years of occupational training may be offered. No student shall be enrolled in Occupational Training II until Occupational Training I has been successfully completed.

(E) **Health Careers Education.**

(i) **Comprehensive Schools.** Programs in 7th, 8th, and 9th grade or high schools vary in length and may be offered in one, two or three blocks of time. Secondary programs in technology centers may be one or two academic years in length and vary in hours per day.

(ii) **Technology Centers.** Programs vary in length and in hours per day according to accrediting bodies and career major requirements.

(F) **Science, Technology, Engineering and Mathematics.**

(i) **Biomedical Science and Medicine.** The following courses are required to be taught: Principles of Biomedical Sciences (PBS), Human Body Systems (HBS), Medical Interventions (MI), Biomedical Innovations (BI), in addition to the appropriate science and math courses. Technology centers and high schools are required to administer each biomedical end of course test if applicable, preferably by a proctor and/or testing liaison.

(ii) **Biotechnology.** The following courses are required to be taught: Survey of Biotechnology, Biotechnology I, Biotechnology II, Advanced Biotechnology I, Advanced Biotechnology II and Biotechnology Capstone in addition to the appropriate math and science courses. Other biotechnology courses and career majors may be approved by STEM division of ODCTE.

(iii) **Computer Science.** The following courses are suggested to be taught in order for an ODCTE computer science career major Computer Science and Software Engineering, Computer Science Applications, Capstone Course: Computational Problem Solving, in addition to the appropriate math and science courses.

(iv) **Gateway to Technology.** This program is designed for grades 6-8 primarily and 5th grade

with state program administrator written approval. The following classes are required to be taught in order for an ODCTE Gateway to Technology: Design & Modeling, Automation & Robotics and at least one other GTT course approved by the state program administrator.

(v) **Pre-Engineering.** A minimum of three pre-engineering courses required. Foundation courses required are Introduction to Engineering Design (IED) and Principles of Engineering (POE). In addition to at least one specialty course preferably Engineering Design and Development (EDD)/capstone course. Appropriate math and science courses must be offered. Technology Centers and high schools are required to administer each pre-engineering end of course test if applicable, preferably by a proctor and/or testing liaison.

(vi) **Technology Engineering Middle School (grades 6-8):** This program is designed for grades 6-8 primarily and 5th grade with state program administrator written approval.

(vii) **Technology Engineering High School (grades 9-12):** The technology engineering courses are designed for 9-12 grades.

(viii) **Tech Connect High School (grades 9-10):** The appropriate approved courses need to be taught from one of the following career pathways: Tech Connect Agriculture, Food and Natural Resources; Tech Connect Architecture & Construction; Tech Connect Arts; A/V Technology and Communications; Tech Connect Information Technology; Tech Connect Law, Public Safety and Security; Tech Connect Manufacturing; Tech Connect Transportation, Distribution and Logistics; Tech Connect Science, Technology, Engineering and Mathematics; Tech Connect Diversified Programs.

(ix) **Trade and Industrial Education.** All secondary trade and industrial education students in Technology Centers shall be enrolled for three consecutive periods daily, five days a week. Secondary TechConnect Plus students in comprehensive high schools may be enrolled for one period daily, five days a week. Adult trade and industrial education students may enroll for one-half day (three periods) or a full day (six periods). The Program Administrator of Trade and Industrial Education must approve any exceptions in writing.

(x) **Integrated Academics.** Academics taught in the technology center shall be delivered in the context of the program in which each student is enrolled. If academic instruction is offered for credit through the sending school, it shall be structured so as to meet current legislation and State Department of Education guidelines. Students must meet, within the structure of the academic class, the attendance requirements of their comprehensive schools in order to receive

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academic credit. Further, the legislated limit of 10 days of absence from the academic class for school-related activities applies.

(c) **Enrollment for full-time programs.**

(1) **Guidelines compliance.** Program enrollments shall comply with the established guidelines of the appropriate occupational division. Exceptions must have written approval by the appropriate program administrator prior to the second week of class. Consideration shall be given to the availability of work stations, clinical experiences and individual student needs.

(2) **Enrollments specific to occupational divisions and programs.**

(A) **Agricultural Education.**

(i) **Student enrollment limits.** If a department has adequate space, equipment, and laboratory sites, a maximum of 25 students may be enrolled in each agricultural education class with the exception of lab classes, such as Horticulture and Ag Mechanics, and they shall be limited to 15 per class. Exceptions to these numbers must have written approval by the appropriate program administrator.

(ii) **Maximum class enrollment.** The maximum enrollment in each agricultural mechanics and horticulture class shall be 15 students per class period.

(iii) **Course prerequisite.** Introduction to Agricultural Science is the prerequisite for all other agricultural education courses with the exception of eighth-grade Agricultural Orientation.

(iv) **Employment in Agribusiness.** The Agricultural Education course, Employment in Agribusiness, is considered a Cooperative Program in which students can earn scholastic credit if the course meets all requirements listed under section (780:20-3-1 section e). It must be taught and supervised by the agricultural education instructor. Note: The work-site experience must be directly related to the curriculum offered in the program.

(B) **Business, Marketing and Information Technology Education.**

(i) **Programs in comprehensive schools.** Business, Marketing and Information Technology Education courses may enroll a maximum of 25 students at a ratio of one work station per student. A maximum of 25 students per teacher-coordinator shall be enrolled in a capstone course or Marketing Education cooperative learning course. Only one section of cooperative learning will be allowed per program. Students enrolling in cooperative learning in a Marketing Education program must have completed a minimum of 120 hours of approved marketing education coursework.

(ii) **Programs in technology centers.** Business, Marketing and Information Technology Education courses may enroll a maximum of 25 students at a ratio of one work station per student.

(iii) **Part-time program enrollment.** The maximum number of cooperative students in a half-time program in a comprehensive school is 25 per marketing teacher-coordinator. Only one section of cooperative learning will be allowed per program. Students enrolling in cooperative learning in a Marketing Education program must have completed a minimum of 120 hours of approved marketing education coursework.

(C) **Family and Consumer Sciences Education.**

(i) **Comprehensive Family and Consumer Sciences programs in comprehensive schools.** If a department has adequate space, equipment and laboratory sites, maximum enrollment for the following courses shall be: ~~(Not all class offerings are listed, but those not listed have enrollment determinatives in common with one of the courses listed.)~~

~~(I) Personal Development, Teen Living, and Life Management 20 Students~~

~~(II) Family and Consumer Sciences I and II 20 Students~~

~~(III) Hospitality—Careers—Orientation, Career Orientation, and Adult and Family Living 25 Students~~

~~(IV) Non-laboratory 60—hour courses—2530 Students students~~

~~(V) Laboratory 60—hour courses—2424 students~~

(ii) **Occupational Family and Consumer Sciences Occupational Education.** A minimum of 10 and a maximum of 20 students shall be enrolled in each section of occupational family and consumer sciences ~~related occupational~~ education.

(D) **Health Careers Education.**

(i) **Comprehensive Schools.** A minimum of ten and a maximum of eighteen students shall be enrolled in each course/section of a comprehensive school health careers education program.

(ii) **Technology Centers.**

(I) **Full time high school health careers programs.** A minimum of ten and 8a maximum of eighteen students per instructor shall be enrolled in a Health Careers Education program. Those programs utilizing student-centered learning as the primary method of instruction shall have a maximum of fifteen students per instructor. Program enrollment may also be limited by national and/or state accrediting bodies, by equipment, classroom and/or laboratory facilities and by clinical site availability.

(II) **Full-time adult-only health careers programs.** A minimum of eight and a maximum of twelve students per instructor shall be enrolled in a full-time adult-only Health Careers Education program. Program enrollment may also be limited by national and/or state accrediting bodies, by equipment, classroom

and/or laboratory facilities and by clinical site availability.

(E) Science, Technology, Engineering and Mathematics.

(i) **Student Enrollment Limits.** The maximum enrollment for each period of a STEM program except TechConnect shall be 24 students. The maximum enrollment for each period of TechConnect shall be 20 students. Consideration should be given to the size of the facility. The minimum recommended floor space per student is 60 square feet.

(ii) **Full-time program.** In a six period day, instructor shall teach five approved CareerTech STEM courses and/or one approved related course. In a seven period day, instructor shall teach six approved CareerTech STEM courses and/or one approved related course. In an eight period day, instructor shall teach seven approved CareerTech STEM courses and/or one approved related course.

(F) Trade and Industrial Education and TechConnect Plus.

(i) **Maximum enrollment.** The maximum enrollment for each Trade and Industrial Education, TechConnect Plus program section shall be 20 students, with the exceptions of cosmetology, which may have a maximum of 22 students, and career transitions programs, which may have 50 students per career transitions teacher.

(ii) **Alternate program enrollment.** The Trade and Industrial Education Division shall establish a reduced maximum enrollment for any program not meeting adequate size or layout of teaching facilities, number of training stations, appropriate quality and quantity of tools, and equipment and supplies. Individual student needs, student safety and supervision shall also be considered when determining maximum student enrollment.

(iii) **Inclusion of on-the-job students.** Students involved in on-the-job training shall be included in the maximum enrollment for the program unless each school has an on-the-job training coordinator.

(d) **Length of programs.** CareerTech programs shall be 10 or 12 calendar months as approved by the appropriate program administrator. Exceptions must be approved by the Department.

780:20-3-4. Instructors

(a) **Certification on file.** All CareerTech secondary teachers shall have (on file in the local education agency) an appropriate teaching certificate issued by the Certification Section of the State Department of Education.

(b) **Administrative responsibility.** It shall be the responsibility of school administration to assure that a CareerTech teacher applicant meets CareerTech certification requirements

before placing the applicant under contract. Certification requirements are found in the **Teacher Certification Guide for School Staff Assignments** on the Oklahoma State Department of Education website.

(1) **Occupational division approval.** All CareerTech teachers must have the CareerTech certification application approved by the program administrator in the appropriate occupational division.

(2) **Occupational division renewal of certification.** All CareerTech teachers must complete the specific occupational division's requirements for CareerTech certification renewal and be approved by the appropriate program administrator.

(c) Health Careers Education.

(1) **Faculty requirements.** Faculty shall hold current credentials as a licensed, certified and/or registered health care professional and must meet the requirements of the local education agency, Health Careers Education Division, and the respective accrediting agency.

(A) **Technology Centers: High School Health Careers Programs.** Faculty holding a baccalaureate degree will be required to have additional coursework specific to Career and Technology teacher education. These requirements will be posted on the Health Careers Education website. Faculty shall have a degree plan on file with the Health Careers Education division and provide documentation in the form of transcripts demonstrating yearly progress toward obtaining required coursework.

(B) **Technology Centers: Adult Only Health Careers Programs.** Faculty shall hold a minimum of an Associates' degree or be on a degree plan making yearly progress toward completion. State and national accreditation standards may indicate additional faculty requirements towards advanced degrees. Faculty hired before 2010 will be exempt from this rule.

(2) **On-file applications.** Faculty shall have an application on file in the Health Careers Education office, including a Statement of Qualifications form, all current transcripts and, a copy of professional credential or credential verification, and, if appropriate, current teaching certificate or application for teaching certificate.

(3) **Clinical experience.** Faculty must have a minimum of two years' work experience in a clinical setting within the last five years prior to their first teaching experience. The Health Careers Education Program Manager must approve any variations.

(d) Science Technology Engineering and Mathematics (STEM). Faculty requirements.

(1) **Biomedical Sciences.** Required Certifications: Biology, Chemistry, or Physics

(2) **Biotechnology.** Required Certifications: Biology, Chemistry, or Physics

(3) **Computer Science.** Required Certifications: Computer Science, Advanced Mathematics, Intermediate Mathematics, Physics, or Business Education (with AP Computer Science teaching experience.) This includes Gateway Computer Science courses.

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- (4) **Gateway to Technology.** Required Certifications: Appropriate math and/or science meeting State Department of Education's grade level requirements and Technology Engineering ~~or Trade and Industrial Education~~. Teachers teaching at the middle or high school level must hold the appropriate certification to instruct the specific grades being taught. Check State Department of Education current requirements.
- (5) **Pre-Engineering.** Required Certifications: Chemistry, Physics, Advanced Mathematics, or Trade & Industrial.
- (6) **Technology Engineering Middle School.** Appropriate math and/or science meeting State Department of Education's grade level requirements, and Technology Engineering ~~or Trade and Industrial Education~~. Teachers teaching at the middle or high school level must hold the appropriate certification to instruct the specific grades being taught. Check State Department of Education current requirements.
- (7) **Technology Engineering High School.** Required Certifications: Appropriate math and/or science meeting State Department of Education's grade level requirements, Technology Engineering, or Trade and Industrial.
- (8) **Tech Connect.** Required Certifications: Trade & Industrial with demonstration of competencies through appropriate mechanism or Technology Engineering with demonstration of competencies through appropriate mechanism.
- (9) Teachers teaching math and/or science academic courses must meet the requirements of the Oklahoma State Department of Education for that specific academic course/area.
- (e) **Professional development.** New instructors shall participate in preservice professional development activities as required by the appropriate divisions. All secondary and full-time adult *CareerTech* instructors and staff shall participate in professional inservice as required by the appropriate divisions, including summer conference and mid-year activities.

780:20-3-5. Career and Technology Student Organizations

- (a) **Student organizations as an integral part of the CareerTech program.** The Oklahoma Department of Career and Technology Education is the responsible entity for governance and administration of the career and technology student organizations and therefore has the authority to develop and enforce policy of the student organizations consistent with CareerTech program design and operation. Each secondary CareerTech program shall have an active and appropriate student organization as an integral part of its program.
- (b) **Membership in appropriate organization.** Each student who participates in student organization activities shall be a member of the student organization designed for the occupational program in which the student is enrolled.
- (c) **Organizations.** Career and technology student organizations shall include:

- (1) DECA (Business, Marketing and Information Technology Education)
- (2) BPA (Business, Marketing and Information Technology Education and STEM), Business Professionals of America.
- (3) FFA (Agricultural Education)
- (4) FCCLA (Family and Consumer Sciences Education), Family, Career and Community Leaders of America
- (5) HOSA (Health Careers Education and STEM)
- (6) TSA (STEM), Technology Students Association
- (7) SkillsUSA (Trade and Industrial Education and STEM)
- (d) **Accountability; loss of program funding.**
- (1) The school and the career and technology student organization chapter will be held accountable for the actions of the student organization members and the advisor participating in any career and technology student organization activity. Failure to comply with the official rules of such activities may, after an opportunity to present reasons why said action should not occur, result in the loss of the state funding for that CareerTech program.
- (2) The school and the FFA chapter will be held accountable for the actions of the FFA members and the FFA advisor participating in any FFA activity. Any Agricultural Education program that has a student/FFA member who is the owner of an animal testing positive for illegal or improper drugs or additives, has altered the appearance of the animal(s) surgically (other than normal and customary practice), and/or violates the eligibility rules for ownership of animals shall, after hearing, and after consideration by the State Board, and upon determination that there has been a violation of this policy, lose state funding for that program.
- (e) **FFA Membership Eligibility.** Any student in Grades 8-12 must be regularly enrolled in a year long course of study in Agricultural Education at school in order to be eligible to participate in any FFA activity. For the purpose of this section; at school is defined as physically present and supervised in a classroom by a certified agricultural education instructor. Exceptions are granted to students who attend a school with block schedule and who, therefore, may have completed a year-long course of study in Agricultural Education in one semester. Students in the seventh grade are not eligible for the FFA membership in Oklahoma. Annual local, state, and national FFA dues must also be paid in order to be eligible to participate in any FFA activity.

SUBCHAPTER 5. PROGRAMS, SERVICES, AND ACTIVITIES FUNDED THROUGH P.L. 105-332 CARL D. PERKINS VOCATIONAL AND TECHNICAL EDUCATION ACT OF 1998, AS AMENDED BY P.L. 109-270

780:20-5-4. High Schools That Work

Supervision and technical assistance for High Schools That Work
The Department will coordinate the High Schools That Work initiative to help schools embed college- and

career-readiness academic standards into instruction and produce graduates who can succeed in postsecondary studies and careers in high-demand, high-skill, high-wage fields. The Department will coordinate with the Southern Regional Educational Board and other entities to organize professional development sessions on topics such as numeracy, literacy and using data for continuous school improvement.

[OAR Docket #17-515; filed 6-23-17]

**TITLE 780. OKLAHOMA DEPARTMENT OF CAREER AND TECHNOLOGY EDUCATION
CHAPTER 35. LIFELONG LEARNING ADULT BASIC EDUCATION**

[OAR Docket #17-516]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

780:35-1-1. General Provisions [AMENDED]

780:35-1-2. Adult basic education [AMENDED]

780:35-1-3. High School Equivalency (HSE) testing program [AMENDED]

AUTHORITY:

Oklahoma State Board of Career and Technology Education; 70 O.S. 2011, § 14-103, § 14-104, § 14-112, as amended.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

January 26, 2017

COMMENT PERIOD:

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ADOPTION:

March 23, 2017

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March 28, 2017

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 13, 2017

FINAL ADOPTION:

June 13, 2017

EFFECTIVE:

September 11, 2017

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The proposed rule amendment changes the title and name from Lifelong Learning to Adult Basic Education, updates definitions and outlines policies and procedure regarding adult basic education. Also, the proposed rule outlines policies and procedures regarding high school equivalency programs.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

780:35-1-1. General Provisions

(a) **Purpose.** The rules of this subchapter have been adopted for the purpose of establishing standards, guidelines, allocation of funds, development of projects and applications, and the implementation of Adult Education and Literacy, ~~Activities, Workplace Literacy, English Literacy, Corrections Education and other Education of Institutionalized Individuals, and Integrated English Literacy and Civics Education.~~ These projects provide educational programs to educationally disadvantaged adults and community needs. These activities are designed to 1) assist adults to become literate and obtain the knowledge and skills necessary for employment and economic self-sufficiency, 2) assist adults who are parents or family members to obtain the education and skills that are necessary to becoming full partners in the educational development of their children, and lead to sustainable improvements in the economic opportunities for their family 3) assist adults in attaining a secondary school diploma and in the transition to postsecondary education and training, including through career pathways, and 4) assist immigrants and other individuals who are English language learners in improving their reading, writing, speaking, and comprehension skills in English, mathematics skills, and acquiring an understanding of the American system of Government, individual freedom, and the responsibilities of citizenship.

(b) **Definitions.** The following words and terms, when used in this Subchapter, shall have the following meaning unless the context clearly indicates otherwise:

(1) **"Act"** means the Adult Education and Family Literacy Act (AEFLA), Title II of the ~~Workforce Investment Act of 1998 (P.L. 105-330).~~ Workforce Innovation and Opportunity Act (P.L. 113-118).

(2) **"Adult"** means ~~an individual who has attained 16 years of age or who is beyond the age of compulsory school attendance under State law who is not enrolled in secondary school; who lacks sufficient mastery of basic educational skills to enable him/her to function effectively in society or who does not have a secondary school diploma or its recognized equivalent and who has not achieved an equivalent level of education, and whose lack of mastery of basic skills results in an inability to speak, read, or write the English language.~~

(3) **"Adult education"** means ~~services or instruction below the college level for educationally disadvantaged adults.~~ academic instruction and education services below the postsecondary level that increase an individual's ability to a) read, write and speak in English and perform mathematics or other activities necessary for the attainment of a secondary school diploma, b) transition to postsecondary education and training, and c) obtain employment.

(4) **"Adult education program"** means a local education agency, postsecondary institution, community-based organization, ~~or faith-based organization,~~ corrections education agency or faith-based organization, a volunteer literacy organization, a public or private nonprofit agency, a library, a public housing authority, a nonprofit institution, a consortium or coalition of agencies, institutions,

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libraries, or authorities describe previously, or partnership between an employer and entities described previously who are responsible for locally administering the Adult Education and Family Literacy Act grant.

(5) **"Community-based organization" (CBO)** means a private nonprofit organization which is representative of a community or significant segments of a community and which provides education, vocational education or rehabilitation, job training, or internship services and programs and includes neighborhood groups and organizations, community action agencies, community development corporations, union related organizations, employer related organizations, tribal governments, and organizations serving Native Alaskans and Indians. The term private industry council means the private industry council established under section 102 of the Job Training Partnership Act.

(6) **"Cooperative"** means that the board of education of two or more school districts may enter into cooperative agreements and maintain joint programs including but not limited to, courses of instruction for handicapped children, courses of instruction in music and other subjects, practical instruction for trades and vocations, practical instruction in driver training courses, and health programs including visual care by persons legally licensed for such purpose, without favoritism as to either profession.

(7) **"Disadvantaged Adult"** means an adult who demonstrates basic skills equivalent to or below that of students at the fifth grade level.

(4) **"Eligible Individual"** means an individual who 1) has attained 16 years of age, 2) who is not currently enrolled or required to be enrolled in secondary school under state law, and 3) who is basic skills deficient, does not have a secondary school diploma or its recognized equivalent and has not achieved an equivalent level of instruction, or is an English language learner.

(85) **"High School Equivalency" (HSE)** means a high school equivalency credential (GED, HiSet, TASC). The Oklahoma Department of Career and Technology Education is the appointed entity in the State of Oklahoma, responsible for oversight and regulation of the High School Equivalency (HSE) program for high school equivalency examinations for adult populations. Effective July 1, 2015 the HISET, GED AND TASC, High School Equivalency Examinations are authorized by the Oklahoma Department of Career and Technology Education to provide high school equivalency examinations that meet state requirements.

(9) **"Local educational agency" (LEA)** means a public board of education or other public authority legally constituted within elementary or secondary schools in a city, county, township, school district, or other political subdivision of a state, or such combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary or secondary schools, except that, if there is a separate board of other legally constituted local authority having administrative

control and direction of adult education in public schools therein, such term means such other board or authority.

(106) **"State educational agency" (SEA)** means the Oklahoma Department of Career and Technology Education.

780:35-1-2. Adult basic education

(a) Programs, services and activities funded in accordance with uses specified in sections 203 and 231 of ~~the~~ this Act are designed to expand or improve the quality of adult education programs, including priority programs for eligible individuals. Educationally disadvantaged adults (including first those adults with less than a 5th grade achievement level, and second, those adults with a 6th–8th grade achievement level), adults with limited English speaking ability, adults with disabilities, institutionalized adults and High School Equivalency preparation.

(b) Adult education programs governed by the Act shall make every effort to provide free classes to students. Adult education programs may charge necessary and reasonable fees for consumable materials and work-based classes. Adult education programs that wish to implement fees must develop a fee policy that has been approved by the adult learning center's local governing board. The fee policy must be reasonable and may not restrict access to services.

(c) The Act permits local adult education programs to generate income. The purpose of income is not to make a profit, but rather to expand services. Income and donations received must be reinvested in the adult education program. Any income must be accounted for in records and reported to the state Lifelong Learning Adult Basic Education office for National Reporting System Financial Reports.

(d) Adult education programs governed by the Act must follow the state adult education Assessment Policy per federal guidelines.

(e) Adult education programs governed by the Act must follow the state adult education Student Goal Setting Policy per federal guidelines.

(f) For each year covered by the plan, the fiscal effort per student from nonfederal sources available for expenditure by the state for adult education, during the second preceding fiscal year must not be less than the fiscal effort per student from nonfederal sources during the third preceding fiscal year in order to meet the maintenance of effort requirement.

(g) Teachers of adult education and literacy activities located in the adult learning centers funded by the state under the Act, shall have a valid Oklahoma Teacher's Certificate or a minimum of a Master's degree. Directors of adult education located in the adult learning centers shall have a valid Oklahoma Teacher's Certificate or a graduate degree a minimum of a Master's degree.

(h) For fiscal control, the obligation basis of accounting is used; expenditures will be supposed by copies of paid claims and invoices and will be audited following accepted auditing procedures.

(i) Federal funds for adult education programs operating under a grant extension will be allocated according to ~~local program data, program performance, the funding formula~~

~~described in and participation in state and national initiatives Oklahoma's AEFLA State Plan. Seventy percent of federal funds will be allocated according to the number of students with a pre assessment and 12 hours of instruction as reported in National Reporting System (NRS) data. Twenty percent of federal funds will be allocated according to whether federal and state indicators of performance were met. Ten percent of funds will be allocated for participation in state and national initiatives. Allocations for the current fiscal year will be based on National Reporting System data from the second preceding fiscal year.~~

~~(j) State funds for adult education programs operating under a grant extension will be allocated according to program data, the funding formula described in Oklahoma's AEFLA State Plan. Fifty percent of state funds will be divided evenly among all programs to establish a funding base. The remaining fifty percent of state funds will be allocated according to the number of students enrolled. Allocations for the current fiscal year will be based on National Reporting System data from the second preceding fiscal year.~~

(k) The SEA and the adult education programs participating in the plan shall enter into cooperative arrangements, when feasible and appropriate, with such entities as other state agencies, community based organizations, community action agencies, career technology schools, churches, businesses, etc. in order to carry out the general purpose of the Act.

(l) The adult education programs will expand 95% of the funding for adult education activities and 5% will be used for administrative costs, however if the administrative cost limits would be insufficient for adequate planning and administration of the program, the state agency may negotiate with the local grant recipient in order to determine an adequate level of funds to be used for noninstructional purposes. Negotiated administrative cost limits are indicated in the Adult Education and Literacy State Plan/State Plan Amendments.

(m) The SEA will provide direct and equitable access to and will review grant proposal applications during an open grant competition. The adult education program will demonstrate that the thirteen considerations outlined in Section 231 of the Act are being met in order to be considered for a grant award. The adult education program must assure that the services are coordinated with and are not duplicative services under other Federal, State and local programs. The comments of the adult education program and responses thereto shall be attached to the application when it is forwarded to the state.

(n) Federal funds for new grantees shall be allocated on the basis of an application, budget, and proposed number of students to be served. State funds will be matched on the ratio specified by the ~~Adult Education Act~~Act's regulations in existence for the current fiscal program year.

(o) The SEA will evaluate grant recipients based on the federal requirements for program evaluation.

(p) Adult education programs will follow all requirements set forth in the SEA Adult Education State Plan and State Plan Amendments.

(q) Adult education programs will meet the state performance measures of pre-/post-assessing 60% of their students and increasing the average number of student contact hours each fiscal year.

(r) Adult education programs will use an SEA-approved management information system to document student enrollment, goals, attendance, educational gains, and other information as required by the National Reporting System (NRS). Programs will update data monthly.

780:35-1-3. High School Equivalency (HSE) testing program

~~(a) The Lifelong Learning~~Adult Basic Education Division of the Oklahoma Department of Career and Technology Education has responsibility for directing the HSE Testing Program in Oklahoma and for issuing high school diplomas to those who successfully complete the HSE Test.

(b) An applicant shall be 18 years of age or older, except beginning August 1, 1995, persons having attained the age of 16, but who are not yet 18, must be permitted to take the HSE Tests provided the applicant meets the residency requirements and submits along with the application to take the HSE Tests, a notarized joint written agreement between the school administrator of the school district in which the applicant resides, and the parent, guardian, or custodian, stating that it has been determined that such action is in the best interest of the child and community.

~~(c) An applicant shall be a resident of the State of Oklahoma.~~

~~(d) The HSE Tests shall be administered by one of the many local HSE Testing Centers in Oklahoma, approved by the HSE Testing Service, Washington, D.C.~~

~~(e) To become eligible to take the HSE Tests, an application must be made to the Lifelong Learning~~Adult Basic Education Division of the Oklahoma Department of Career and Technology Education online or through an ~~approved local~~ HSE Testing ~~Center~~Company. A fee will be charged by the ~~local testing center~~company when the application is made. ~~at the time the tests are taken.~~

~~(f) The Oklahoma Department of Career and Technology Education will contract with an independent scoring service approved by the HSE Testing Service for the scoring of HSE Tests. The local HSE Testing Centers shall send the test answer sheets to the contracted scoring service for scoring.~~

~~(g) An applicant shall make the minimum score required for passing the HSE Tests, as established by the HSE Testing Service~~company.

~~(h) Only scores from the 2002 HSE Tests will count toward earning a HSE Diploma from January 1, 2002, forward.~~

[OAR Docket #17-516; filed 6-23-17]

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

[OAR Docket #17-588]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions

785:45-1-2. Definitions [AMENDED]

Subchapter 7. Groundwater Quality Standards [AMENDED]

785:45-7-1. Scope and applicability; purpose [AMENDED]

785:45-7-2. ~~Criteria for groundwater protection and corrective actions~~ Groundwater Quality Antidegradation Policy [AMENDED]

785:45-7-3. Groundwater classifications, beneficial uses and vulnerability levels [AMENDED]

785:45-7-4. Criteria for groundwater quality protection [NEW]

785:45-7-5. Corrective action [NEW]

Appendix I. Criteria for Groundwater Protection [NEW]

AUTHORITY:

Oklahoma Water Resources Board; 82 O.S. § 1085.2; 82 O.S. §§ 1085.31 et seq.; 82 O.S. §§ 1085.51 et seq.; 62 O.S. § 2003

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n/a

GIST/ANALYSIS:

Over the past decade, the development of water reuse has been explored as a means to augment water supplies to meet Oklahoma's current and future water supply demands. The practice of Aquifer Storage and Recovery (ASR) has been put forward as one possible method for meeting future water supply needs. Upon considering groundwater quality and the structure of Oklahoma's current groundwater quality standards it became clear that the current groundwater quality standards wholly restrict an activity such as ASR and a revision of the groundwater quality standards would be necessary in order to allow for ASR and/or other projects.

The proposed revision includes three key components: (1) Antidegradation Policy: Consistent with the existing protection philosophy outlined in the existing groundwater quality standards this revision specifies a Groundwater Quality Antidegradation Policy (785:45-7-2), which will continue to protect existing high quality groundwaters and prohibit degradation of Special Source Groundwaters; (2) Beneficial Uses: The revision maintains two important beneficial uses of *Agriculture* and *Industrial and Municipal Process and Cooling Water* and revises the drinking water beneficial uses (785:45-7-3(b)). As part of this revision the drinking water beneficial uses are separately identified as *Domestic Untreated Water Supply* and *Public Water Supply*; this allows explicit independent protection for users of raw untreated groundwater and public water supplies; (3) Criteria: The revision maintains the existing approach of using narrative criteria to provide broad protection for all groundwaters (785:45-7-4(b)). The revision includes new narrative and numeric criteria, which are applicable to artificial recharge and ASR activities (785:45-7-4(c)). The narrative criteria ensure protection for all beneficial uses

and the numeric human health criteria protect the drinking water beneficial uses.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 1. GENERAL PROVISIONS

785:45-1-2. Definitions

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

"**Abatement**" means reduction of the degree or intensity of pollution.

"**Acute test failure**" means greater than or equal to 50% mortality to appropriate test species at or below the critical effluent dilution after a 48 hour test as provided in OAC 252:690-3-29.

"**Acute toxicity**" means greater than or equal to 50% lethality to appropriate test organisms in a test sample.

"**Alpha particle**" means a positively charged particle emitted by certain radioactive materials. It is the least penetrating of the three common types of radiation (alpha, beta and gamma) and usually is not dangerous to plants, animals or humans.

"**Ambient**" means surrounding, especially of or pertaining to the environment about an entity, but undisturbed and unaffected by it.

"**Aquifer**" means a formation that contains sufficient saturated, permeable material to yield significant quantities of water to wells and springs. This implies an ability to store and transmit water; unconsolidated sands and gravels are typical examples.

"**Aquifer Storage and Recovery Activities (ASR)**" means activities that exclusively include activities for the storage of water in and recovery of water from an aquifer pursuant to a site-specific aquifer storage and recovery plan authorized by 82 O.S. § 1020.2A. Activities not conducted pursuant to a site-specific aquifer storage and recovery plan shall not be considered ASR activities. For purposes of this chapter, ASR activities also shall not include groundwater recharge or augmentation through a natural connection with a farm pond or other impoundment otherwise authorized by law.

"**Artificial Aquifer Recharge**" means activities with the primary purpose of recharging or augmenting an aquifer with no intention of recovering such water for future use. For purposes of this chapter, Artificial Aquifer Recharge activities shall not include activities specifically authorized pursuant to 82 O.S. § 1020.2(G) or stormwater runoff management practices otherwise authorized by law.

"Assimilative capacity" means the amount of pollution a waterbody can receive and still maintain the water quality standards designated for that waterbody.

"Attainable uses" means the best uses achievable for a particular waterbody given water of adequate quality. The process of use attainability analysis can, and in certain cases must, be used to determine attainable uses for a waterbody.

"Background" means the ambient condition upstream or upgradient from a facility, practice or activity which has not been affected by that facility, practice or activity.

"BCF" means bioconcentration factor.

"Beneficial uses" means a classification of the waters of the State, according to their best uses in the interest of the public.

"Benthic macroinvertebrates" means invertebrate animals that are large enough to be seen by the unaided eye, can be retained by a U. S. Standard No. 30 sieve, and live at least part of their life cycles within or upon available substrate in a body of water or water transport system.

"Best Available Technology" means the best proven technology, treatment techniques or other economically viable means which are commercially available.

"Best management practices" means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the state or United States. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

"Beta particle" means a negatively charged elementary particle emitted by radioactive decay that may cause skin burns. It is easily stopped by a thin sheet of metal.

"Bioconcentration factor" means the relative measure of the ability of a contaminant to be stored in tissues and thus to accumulate through the food chain and is shown as the following formula: $BCF = \text{Tissue Concentration} / \text{Water Concentration}$.

"BMPs" means best management practices.

"Board" means Oklahoma Water Resources Board.

"BOD" means biochemical oxygen demand.

"Carcinogenic" means cancer producing.

"Chronic test failure" means the statistically significant difference (at the 95% confidence level) between survival, reproduction or growth of the test organism at or below the chronic critical dilution after completion of a 7 day test as provided in OAC 252:690-3-29, or other test as approved by the permitting authority and the EPA Regional Administrator, and a control.

"Chronic toxicity" means a statistically significant difference (at the 95% confidence level) between longer-term survival and/or reproduction or growth of the appropriate test organisms in a test sample and a control. Teratogenicity and mutagenicity are considered to be effects of chronic toxicity.

"Coliform group organisms" means all of the aerobic and facultative anaerobic gram-negative, non-spore-forming rod shaped bacteria that ferment lactose broth with gas formation within 48 hours at 35°C.

"Color" means true color as well as apparent color. True color is the color of the water from which turbidity has been removed. Apparent color includes not only the color due to substances in solution (true color), but also that color due to suspended matter.

"Conservative element" means a substance which persists in the environment, having characteristics which are resistant to ordinary biological or chemical degradation or volatilization.

"Conservation plan" means, but is not limited to, a written plan which lists activities, management practices and maintenance or operating procedures designed to promote natural resource conservation and is intended for the prevention and reduction of pollution of waters of the state.

"Critical dilution" means, for chronic whole effluent toxicity testing, an effluent dilution expressed as a percentage representative of the dilution afforded a wastewater discharge according to the appropriate Q*-dependent chronic mixing zone equation.

"Critical temperature" means the higher of the seven-day maximum temperature likely to occur with a 50% probability each year, or 29.4°C (85°F).

"Criterion" means a number or narrative statement assigned to protect a designated beneficial use.

"CWAC" means Cool Water Aquatic Community.

"Degradation" means any condition caused by the activities of humans which result in the prolonged impairment of any constituent of the aquatic environment.

"Designated beneficial uses" means those uses specified for each waterbody or segment whether or not they are being attained.

"Dissolved oxygen" means the amount of oxygen dissolved in water at any given time, depending upon the water temperature, the partial pressure of oxygen in the atmosphere in contact with the water, the concentration of dissolved organic substances in the water, and the physical aeration of the water.

"DO" means dissolved oxygen.

"DRASTIC" means that standardized system developed by the United States Environmental Protection Agency for evaluating groundwater vulnerability to pollution, based upon consideration of depth to water (D), net recharge (R), aquifer media (A), soil media (S), topography (T), impact of the vadose zone media (I), and hydraulic conductivity (C) of the aquifer.

"EPA" means the United States Environmental Protection Agency.

"Ephemeral stream" means an entire stream which flows only during or immediately after a rainfall event, and contains no refuge pools capable of sustaining a viable community of aquatic organisms.

"Epilimnion" means the uppermost homothermal region of a stratified lake.

"Eutrophication" means the process whereby the condition of a waterbody changes from one of low biologic productivity and clear water to one of high productivity and water made turbid by the accelerated growth of algae.

"Existing beneficial uses" means those uses listed in Title 40 CFR §131.3 actually attained by a waterbody on or

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after November 28, 1975. These uses may include public water supplies, fish and wildlife propagation, recreational uses, agriculture, industrial water supplies, navigation, and aesthetics.

"Existing point source discharge(s)" means, for purposes of 785:45-5-25, point source discharges other than stormwater which were/are in existence when the ORW, HQW, SWS, or SWS-R designation was/is assigned to the water(s) which receive(s) the discharge. The load from a point source discharge which is subject to the no increase limitation shall be based on the permitted mass loadings and concentrations, as appropriate, in the discharge permit effective when the limitation was assigned. Publicly owned treatment works may use design flow, mass loadings or concentration as appropriate if those flows, loadings or concentrations were approved as a portion of Oklahoma's Water Quality Management Plan prior to the application of the ORW, HQW, SWS, or SWS-R limitation.

"Fecal coliform" means a group of organisms common to the intestinal tracts of humans and of animals. The presence of fecal coliform bacteria in water is an indicator of pollution and of potentially dangerous bacterial contamination.

"Fresh groundwater" means groundwater with naturally-occurring concentrations of total dissolved solids less than 10,000 mg/L, or with levels of total dissolved solids of 10,000 or more mg/L caused by human activities.

"Geometric mean" means the nth root of the product of the samples.

"Groundwater" means waters of the state under the surface of the earth regardless of the geologic structure in which it is standing or moving outside the cut bank of any definite stream. [82: 1020.1(A)]

"Groundwater basin" means a distinct underground body of water overlain by contiguous land and having substantially the same geological and hydrological characteristics and yield capabilities". [82: 1020.1(C)]

"HLAC" means Habitat Limited Aquatic Community.

"HQW" means High Quality Water.

"HUC" means hydrologic unit code utilized by the United States Geologic Survey and other federal and state agencies as a way of identifying all drainage basins in the United States in a nested arrangement from largest to smallest, consisting of a multi-digit code which identifies each of the levels of classification within two-digit fields.

"Intolerant climax fish community" means habitat and water quality adequate to support game fishes or other sensitive species introduced or native to the biotic province or ecological region, which require specific or narrow ranges of high quality environmental conditions.

"Lake" means:

- (A) An impoundment of waters of the state over 50 acre-feet in volume which is either:
 - (i) owned or operated by federal, state, county, or local government or
 - (ii) appears in Oklahoma's Clean Lakes Inventory.
- (B) Surface impoundments which are used as a treatment works for the purpose of treating stabilizing or holding wastes are excluded from this definition.

"LC50" means lethal concentration and is the concentration of a toxicant in an external medium that is lethal to fifty percent of the test animals for a specified period of exposure.

"Long-term average flow" means an arithmetic average stream flow over a representative period of record.

"MDL" means the Method Detection Limit and is defined as the minimum concentration of an analyte that can be measured and reported with 99% confidence that the analyte concentration is greater than zero (0). MDL is dependent upon the analyte of concern.

"Mixing zone" means when a liquid of a different quality than the receiving water is discharged into the receiving water, a mixing zone is formed. Concentration of the liquid within the mixing zone decreases until it is completely mixed with receiving water. A regulatory mixing zone is described in 785:45-5-26.

"Narrative criteria" means statements or other qualitative expressions of chemical, physical or biological parameters that are assigned to protect a beneficial use.

"Natural source" means source of contamination which is not human induced.

"NLW Impairment Study" means a scientific process of surveying the chemical, physical and biological characteristics of a nutrient threatened reservoir to determine whether the reservoir's beneficial uses are being impaired by human-induced eutrophication.

"Non-conservative element" means a substance which undergoes significant short-term degradation or change in the environment other than by dilution.

"Nonpoint source" means a source of pollution without a well defined point of origin.

"Normal stream flow conditions" means flow corresponding to low gradient areas in the hydrograph.

"NTU" means Nephelometric Turbidity Unit, which is the unit of measure using the method based upon a comparison of the intensity of light scattered by the sample under defined conditions with the intensity of light scattered by a standard reference suspension (formazin). The higher the intensity of scattered light, the higher the turbidity.

"Numerical criteria" means concentrations or other quantitative measures of chemical, physical or biological parameters that are assigned to protect a beneficial use.

"Numerical standard" means the most stringent of the numerical criteria assigned to the beneficial uses for a given stream.

"Nutrient impaired reservoir" means a reservoir with a beneficial use or uses determined by an NLW Impairment Study to be impaired by human-induced eutrophication.

"Nutrient-limited watershed" means a watershed of a waterbody with a designated beneficial use which is adversely affected by excess nutrients as determined by Carlson's Trophic State Index (using chlorophyll-a) of 62 or greater, or is otherwise listed as "NLW" in Appendix A of this Chapter.

"Nutrients" means elements or compounds essential as raw materials for an organism's growth and development; these include carbon, oxygen, nitrogen and phosphorus.

"ORW" means Outstanding Resource Water.

"OWRB" means Oklahoma Water Resources Board.

"PCBs" means polychlorinated biphenyls.

"Picocurie" means that quantity of radioactive material producing 2.22 nuclear transformations per minute.

"Point source" means any discernable, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, well, discrete fissure, container, rolling stock or concentrated animal feeding operation from which pollutants are or may be discharged. This term does not include return flows from irrigation agriculture.

"Pollutant" means any material, substance or property which may cause pollution.

"Pollution" means contamination or other alteration of the physical, chemical or biological properties of any natural waters of the State, or such discharge of any liquid, gaseous or solid substance into any waters of the State as will or is likely to create a nuisance or render such waters harmful, or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life". [82: §1084.2(1)]

"Polychlorinated biphenyls" means a group of organic compounds (206 possible) which are constructed of two phenyl rings and more than one chlorine atom.

"PQL" means Practical Quantitation Limit and is defined as 5 times the MDL. The PQL represents a practical and routinely achievable detection limit with high confidence.

"Put and take fishery" means the introduction of a fish species into a body of water for the express purpose of sport fish harvest where existing conditions preclude a naturally reproducing population.

"Q*" means dilution capacity.

"Salinity" means the concentration of salt in water.

"Sample standard" means the arithmetic mean of historical data from October 1976 to September 1983 except as otherwise provided in Appendix F of this Chapter, plus two standard deviations of the mean.

"Seasonal base flow" means the sustained or fair-weather runoff, which includes but is not limited to groundwater runoff and delayed subsurface runoff.

"Seasonal seven-day, two-year low flow" means the 7-day low flow of a stream likely to occur with a 50% probability for a season with the applicable dates in Table 1 of Appendix G of OAC 785:45.

"Seasonal 7Q2" means the seasonal seven-day, two-year low flow.

"Sensitive representative species" means *Ceriodaphnia dubia*, *Daphnia magna*, *Daphnia pulex*, *Pimphales promelas* (Fathead minnow), *Lepomis macrochirus* (Bluegill sunfish), or other sensitive organisms indigenous to a particular waterbody.

"SWS" means Sensitive Public and Private Water Supply.

"SWS-R" means waterbodies classified as sensitive public and private water supplies that may be augmented with reclaimed water for the purpose of indirect potable reuse.

"Seven-day, two-year low flow" means the 7-day low flow of a stream likely to occur with a 50% probability each year.

"7Q2" means the seven-day, two-year low flow.

"Standard deviation" means a statistical measure of the dispersion around the arithmetic mean of the data.

"Standard Methods" means the publication "Standard Methods for the Examination of Water and Wastewater", published jointly by the American Public Health Association, American Water Works Association, and Water Environment Federation.

"Standards", when capitalized, means this Chapter, which constitutes the Oklahoma Water Quality Standards described in 82 O.S. §1085.30. Whenever this term is not capitalized or is singular, it means the most stringent of the criteria assigned to protect the beneficial uses designated for a specified water of the State.

"Storm water" means storm water runoff, snow melt runoff, and surface runoff and drainage.

"Subwatershed" means a smaller component of the larger watershed.

"Synergistic effect" means the presence of cooperative pollutant action such that the total effect is greater than the sum of the effects of each pollutant taken individually.

"Thermal pollution" means degradation of water quality by the introduction of heated effluent and is primarily a result of the discharge of the cooling waters from industrial processes, particularly from electrical power generation.

"Thermal stratification" means horizontal layers of different densities produced in a lake caused by temperature.

"Variance" means a temporary (not to exceed three years) exclusion of a specific numerical criterion for a specific discharge to a specific waterbody.

"Warm Water Aquatic Community" means a sub-category of the beneficial use category "Fish and Wildlife Propagation" where the water quality and habitat are adequate to support intolerant climax fish communities and includes an environment suitable for the full range of warm water benthos.

"Wastes" means industrial waste and all other liquid, gaseous or solid substances which may pollute or tend to pollute any waters of the state". [82 O. S. §1084.2(2)]

"Waterbody" means any specified segment or body of waters of the state, including but not limited to an entire stream or lake or a portion thereof.

"Water quality" means physical, chemical, and biological characteristics of water which determine diversity, stability, and productivity of the climax biotic community or affect human health.

"Waters of the state" means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through, or border upon this State or any portion thereof [82:1084.2(3)].

"Watershed" means the drainage area of a waterbody including all direct or indirect tributaries.

"WWAC" means Warm Water Aquatic Community.

"Yearly mean standard" means the arithmetic mean of historical data from October 1976 to September 1983 except as otherwise provided in Appendix F of this Chapter, plus one standard deviation of the mean. The moving yearly mean standard is an average of the last five years of available data.

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"Zone of passage" means a three dimensional zone expressed as a volume in the receiving stream through which mobile aquatic organisms may traverse the stream past a discharge without being affected by it. A regulatory zone of passage is described in 785:45-5-26.

SUBCHAPTER 7. GROUNDWATER QUALITY STANDARDS

785:45-7-1. Scope and Applicability; Purpose

- (a) The provisions of this Subchapter apply only to fresh groundwater.
- (b) The purposes of the rules in this Subchapter are to protect beneficial uses and classifications of groundwater, to assure that degradation of the existing quality of groundwater does not occur, and to provide minimum standards for remediation when groundwater becomes polluted by humans.
- (c) OWRB's Implementation provisions for groundwater quality standards are located in 785:46-13.

785:45-7-2. ~~Criteria for groundwater protection and corrective actions~~Groundwater Quality Antidegradation Policy

- (a) Criteria for protection of groundwater quality. The groundwaters of the state of Oklahoma are an important and valuable resource that shall be maintained and protected.
 - (1) The groundwaters of the state shall be maintained to prevent alteration of their chemical properties by harmful substances not naturally found in groundwater.
 - (2) Protective measures adequate to preserve and protect background quality of the groundwater and existing and designated groundwater basin classifications shall be maintained at all times. Protective measures shall also be sufficient to minimize the impact of pollutants on groundwater quality. The concentration of any synthetic substance or any substance not naturally occurring in that location shall not exceed the PQL in an unpolluted groundwater sample using laboratory technology. If the concentration found in the test sample exceeds the PQL, or if other substances in the groundwater are found in concentrations greater than those found in background conditions, that groundwater shall be deemed to be polluted and corrective action may be required.
 - (3) Measures to prevent noncompliance with this Section caused by any person shall be the responsibility of each state environmental agency within their jurisdictional areas of environmental responsibility. Such measures shall be prescribed in the Water Quality Standards Implementation Plan of each such agency. When regulating activities that have the potential to contaminate groundwater from the surface, state environmental agencies shall consider the vulnerability level of an affected hydrogeologic basin (for example, more stringent measures such as siting limitations, lagoon liners, or additional monitoring wells may be required to protect

groundwater in hydrogeologic basins with High or Very High vulnerability levels).

- (b) Criteria for corrective action. Beneficial uses shall be maintained and protected and human degradation of groundwater quality that would cause or contribute to the nonattainment of beneficial uses shall not be allowed.

(1) Groundwater that has been polluted as a result of human activities shall be restored to a quality that will support the beneficial uses designated in OAC 785:45-7-3 for that groundwater, or as otherwise specified in a site specific remediation plan approved by an agency of competent jurisdiction.

(2) Measures to remedy, control or abate groundwater pollution caused by any person shall be the responsibility of each state environmental agency within its jurisdictional areas of environmental responsibility. Such measures shall be taken as prescribed in the agency's Water Quality Standards Implementation Plan.

- (c) Whenever existing groundwater quality exceeds the level necessary for beneficial uses to be maintained and protected, the existing groundwater quality shall be maintained and protected, unless it is demonstrated to the State that any lowering of groundwater quality:

(1) After an analysis of alternatives, is necessary to accommodate important economic and social development and is in the public interest; and

(2) Protective measures sufficient to protect beneficial uses shall be maintained at all times.

- (d) In certain groundwaters, whenever existing groundwater quality exceeds the level necessary for beneficial uses to be maintained and protected, the existing groundwater quality shall be maintained and protected.

(1) Special Source Groundwaters

(A) Special source groundwaters are defined as groundwaters where exceptional water quality exists, where there is an irreplaceable source of water, where it is necessary to maintain an outstanding resource, or where the quality of the groundwater may be important for maintaining a uniquely designated characteristic of certain surface waters, as defined in i-iv below:

(i) All groundwater likely to influence the quality of waters designated as a "Scenic River" in Appendix A of this Chapter and their watersheds; and

(ii) All groundwater likely to influence the quality of waters located within the boundaries of the areas described in Appendix B of this Chapter; and

(iii) All groundwater likely to influence the quality of waters designated as "HQW" in Appendix A of this Chapter; and

(iv) All groundwater likely to influence the quality of waters located within the boundaries of a State approved source water protection area for public water supply.

(B) Groundwaters designated as special source groundwaters are prohibited from receiving any

discrete discharge(s), surface water from constructed infiltration basins, or surface application of waste, unless the activity maintains or improves existing water quality.

(C) Discharges proximate and/or adjacent to special source groundwaters shall take into consideration the requirement to maintain or improve existing water quality in special source groundwaters and shall ensure that any activity provides for the maintenance or improvement of water quality in special source groundwaters

785:45-7-3. Groundwater classifications, beneficial uses and vulnerability levels

(a) **Classifications.** Classification of all groundwater shall be designated as follows:

(1) ~~(Class I): [RESERVED] (Special Source Groundwater):~~ Special source groundwaters are defined as groundwaters where exceptional water quality exists, where there is an irreplaceable source of water, where it is necessary to maintain an outstanding resource or where the groundwater is ecologically important. Special source groundwaters are considered to be very vulnerable to contamination. This classification shall include:

~~(A) All groundwater located underneath the watersheds of waterbodies designated "Scenic River" in Appendix A of this Chapter;~~

~~(B) Special source groundwater located underneath lands located within the boundaries of the areas described in Appendix B of this Chapter; and~~

~~(C) All groundwater located underneath lands located within the boundaries of a State approved well head or source water protection area for public water supply.~~

(2) ~~Class II (General Use Groundwater)(Class II):~~ These are groundwaters which have good quality due to natural conditions capable of being used as a drinking water supply with no treatment or with conventional treatment methods, which have the potential to be used for other beneficial uses and which and generally have a mean concentration of Total Dissolved Solids of less than 3,000 milligrams per liter.

(3) ~~Class III (Limited Use Groundwater)(Class III):~~ These are groundwaters which have poor quality due to natural conditions and which could require extensive treatment for use as a source of drinking water, and which generally have a mean concentration of Total Dissolved Solids of greater than or equal to 3000 milligrams per liter but less than 5000 milligrams per liter.

(4) ~~Class IV (Highly Mineralized Treatable Groundwater)(Class IV):~~ These are groundwaters which have very poor quality due to natural conditions and which would require extensive treatment for use as a source of drinking water, and which generally have a mean concentration of Total Dissolved Solids of greater than or equal to 5000 milligrams per liter but less than 10,000 milligrams per liter.

(b) **Beneficial uses.** This subsection lists the various beneficial uses of groundwater and designates certain beneficial uses for certain classifications of groundwater.

(1) **List of beneficial uses for groundwater.**

(A) ~~Public and Private Water Supply.~~ The beneficial use designation of Public and Private Water Supply refers to those groundwaters capable of delivering suitable quantities of fresh groundwater for municipal or domestic consumption whether or not treatment is required.

(B) ~~Domestic Untreated Water Supply.~~ The beneficial use designation of Domestic Untreated Water Supply refers to those groundwaters capable of delivering suitable quantities of untreated groundwater for domestic consumption.

(BC) ~~Agriculture.~~ The beneficial use designation of Agriculture refers to that groundwater which is or could be used for irrigation or livestock watering.

(CD) ~~Industrial and Municipal Process and Cooling Water.~~ The beneficial use designation of Industrial and Municipal Process and Cooling Water refers to that groundwater that is or could be used for a municipal or industrial process or cooling function.

(2) **Beneficial use designations.**

(A) The beneficial uses for General Use Groundwater (Class II), Class I and Class II groundwater not identified in Appendix H of this Chapter, shall be Domestic Untreated Water Supply, Public and Private Water Supply, Agriculture, and Industrial and Municipal Process and Cooling Water.

(B) The beneficial uses for Limited Use Groundwater (Class III) and Highly Mineralized Treatable Groundwater (Class IV), Class III and Class IV groundwater, not identified in Appendix H of this Chapter, shall be Agriculture and Industrial and Municipal Process and Cooling Water.

(C) The beneficial uses for any groundwater identified in Appendix H of this Chapter shall be as designated in that appendix.

(D) The beneficial use for groundwater which is used for domestic water supply purposes on or after July 1, 2000, has a mean concentration of Total Dissolved Solids of less than 3000/5000 milligrams per liter, and has not been determined by any state environmental agency to be not suitable for human consumption, shall be Public Water Supply and or Domestic Untreated Water Supply Public and Private Water Supply.

(E) A beneficial use designation for groundwater may be amended or removed only after a demonstration to the satisfaction of the Board that meets one of the following tests:

(i) The designated use does not exist due to a condition that was not caused by humans, and treatment using Best Available Technology will not achieve the designated use, or

(ii) The designated use does not exist due to a condition that is attributable to irreversible impacts

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caused by humans, and the remedy would cause substantial and widespread economic and social impact.

(F) Groundwater which has had a beneficial use designation amended or removed pursuant to (E) of this paragraph shall be identified in Appendix H of this Chapter.

(c) **Vulnerability level.** Groundwater in certain hydrogeologic basins is further classified according to its vulnerability to contamination as determined by DRASTIC. Such vulnerability levels of hydrogeologic basins shall be identified as Very Low, Low, Moderate, High, and Very High as prescribed in Table 1 of Appendix D of this Chapter. The vulnerability level may vary within each hydrogeologic basin, depending on site-specific hydrogeologic factors.

(d) **Nutrient-vulnerable groundwater.** Certain specified groundwaters shall be further subject to designation in Table 2 of Appendix D of this Chapter as nutrient-vulnerable groundwater.

785:45-7-4. Criteria for groundwater quality protection

(a) Groundwaters of the state support many different beneficial uses. The criteria below do not require improvement over naturally occurring background concentrations. When naturally occurring background concentrations exceed the criterion for a given parameter, the naturally occurring background concentration may be utilized as a criterion, if suitable. If a given parameter has more than one criterion associated with it, the most stringent criteria shall apply to ensure beneficial use protection.

(b) The following criteria apply to all groundwaters for the protection of beneficial uses except those groundwaters specifically referenced in 785:45-7-4(c).

(1) The groundwaters of the state shall be maintained to prevent alteration of their chemical properties by harmful substances not naturally found in groundwater.

(2) Protective measures adequate to preserve and protect background quality of the groundwater and existing and designated groundwater basin classifications shall be maintained at all times.

(3) Protective measures shall also be sufficient to minimize the impact of pollutants on groundwater quality.

(4) The concentration of any synthetic substance or any substance not naturally occurring in that location shall not exceed the PQL in an unpolluted groundwater sample using laboratory technology. If the concentration found in the test sample exceeds the PQL, or if other substances in the groundwater are found in concentrations greater than those found in background conditions, that groundwater shall be deemed to be polluted and corrective action may be required.

(c) For artificial aquifer recharge and or aquifer storage and recovery activities, the criteria below and presented in Tables 1 and 2 of Appendix I shall apply to ensure the protection of beneficial uses, as specified. Artificial recharge and or aquifer storage and recovery activities shall not cause or contribute to

a condition of pollution or nuisance or result in nonattainment of any applicable groundwater quality standard.

(1) **Chemical Constituents.** Groundwaters shall not contain chemical constituents in concentrations that adversely affect any beneficial use. At a minimum, groundwaters with the designated beneficial uses of public water supply and domestic untreated water supply shall not contain concentrations of chemical constituents in excess of the maximum contaminant levels specified in the following provisions:

(A) Organic Contaminants in 40 CFR 141.61(a)

(B) Synthetic Organic Contaminants in 40 CFR 141.61(c)

(C) Inorganic Contaminants in 40 CFR 141.62(b)

(D) Disinfection Byproducts in 40 CFR 141.64

(E) Disinfectants in 40 CFR 141.65(a)

(2) **Toxicity.** Groundwaters shall be maintained free of toxic substances in concentrations that produce detrimental physiological responses in human, plant, animal, or aquatic life associated with any beneficial use(s). This criterion applies regardless of whether the toxicity is caused by a single substance or the interactive effect of multiple substances or the mobilization and or transformation of a substance due to changes in physiochemical properties within the aquifer. At a minimum, groundwaters with the designated beneficial uses of public water supply and domestic untreated water supply shall not exceed limits specified in Table 1 of Appendix I of this chapter.

(3) **Secondary Contaminants.** At a minimum, groundwaters with the designated beneficial uses of public water supply and domestic untreated water supply shall not exceed the criteria limits presented in Table 2 of Appendix I of this chapter and consistent with 40 CFR 143.3.

(4) **Microorganisms.** Groundwaters with the designated beneficial uses of public water supply and domestic untreated water supply microorganisms shall not exceed the limits specified in 40 CFR 141.63 and 40 CFR 141.70-73.

(5) **Taste and Odor.** Groundwaters shall be free from taste and odor producing substances, in concentrations that cause nuisance or adversely affect any beneficial use.

(6) **Radioactivity.** At a minimum, groundwaters with the designated beneficial uses of public water supply and domestic untreated water supply shall not contain concentrations of radionuclides in excess of limits specified in 40 CFR 141.66.

(7) **Geochemical and Physical Composition.** The geochemical and physical composition of groundwaters shall not be altered such that mobilization of any introduced or in-situ contaminants, natural or non-natural, occurs and impairs any beneficial use.

(8) **Minerals.** Increased mineralization, in comparison to existing water quality, from elements such as, but not limited to, calcium, magnesium, sodium and their associated anions shall not impair any beneficial use.

(d) Measures to prevent noncompliance with this Section caused by any person, or activity, shall be the responsibility

of each state environmental agency within their jurisdictional areas of environmental responsibility. Such measures shall be prescribed in the Water Quality Standards Implementation Plan of each such agency. When regulating activities that have the potential to contaminate groundwater from the surface, the vulnerability level of an affected hydrogeologic basin (for example, more stringent measures such as siting limitations, lagoon liners, or additional monitoring wells may be required to protect groundwater in hydrogeologic basins with High or Very High vulnerability levels) shall be considered. When regulating groundwater quality activities that have the potential to cause or contribute to impairment of a surface water beneficial use., provisions to prevent the impairment of any surface water beneficial use shall be included.

785:45-7-5. Corrective action

(a) Groundwater that has been polluted as a result of human activities shall be restored to a quality that will support the beneficial uses designated in OAC 785:45-7-3 for that groundwater, or as otherwise specified in a site-specific remediation plan approved by an agency of competent jurisdiction.

(b) Measures to remedy, control or abate groundwater pollution caused by any person shall be the responsibility of each state environmental agency within its jurisdictional areas. Such measures shall be prescribed in the Water Quality Standards Implementation Plan of each such agency. When regulating activities that have the potential to contaminate groundwater from the surface, state environmental agencies shall consider the vulnerability level of an affected hydrogeologic basin (for example, more stringent measures such as siting limitations, lagoon liners, or additional monitoring wells may be required to protect groundwater in hydrogeologic basins with High or Very High vulnerability levels).

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APPENDIX I. CRITERIA FOR GROUNDWATER PROTECTION [NEW]

Table 1. Numerical criteria to protect the Public Water Supply and Domestic Untreated Water Supply beneficial uses.

Parameter	CAS #	Criteria (ug/L, unless otherwise noted)
Nickel	7440020	140
Acrolein	107028	3.5
Acrylonitrile	107131	0.65
Aldrin	309002	0.021
Chloroform	67663	70
4,4'-DDD	72548	1.5
4,4'-DDT	50293	1
Dichlorobromomethane	75274	5.6
Dieldrin	60571	0.022
Perchlorate	7601-90-3	4.9
Phenol	108952	4,200
Bis(2-ethylhexyl)phthalate (BEHP)	117817	25
Butylbenzyl phthalate	85687	1,400
Diethyl Phthalate	84662	5,600
Dimethyl Phthalate	131113	70,000
Di-n-Butyl Phthalate	84742	700

Table 2. Secondary drinking water contaminants and associated criteria as listed in 40 CFR 143.3.

Parameter	Criteria
Aluminum	0.05 mg/L
Color	15 color units
Corrosivity	Non-corrosive
Copper	1.0 mg/L
Fluoride	2.0 mg/L
Foaming Agents	0.5 mg/L
Iron	0.3 mg/L
Manganese	0.05 mg/L
Odor	3 TON (threshold odor number)
pH	6.5 – 8.5
Silver	0.1 mg/L
Chloride	250 mg/L
Sulfate	250 mg/L
Total Dissolved Solids (TDS)	500 mg/L
Zinc	5.0 mg/L

[OAR Docket #17-588; filed 7-6-17]

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

[OAR Docket #17-589]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 7. Water and Sewer Program (Bond Proceed Loans and Emergency Grants) Requirements and Procedures

785:50-7-7. Disbursement of funds [AMENDED]

Subchapter 8. Rural Economic Action Plan (REAP) Grant Program Requirements and Procedures

785:50-8-6. Disbursement of funds [AMENDED]

Subchapter 9. Clean Water State Revolving Fund Regulations

Part 3. General Program Requirements

785:50-9-23. Clean Water SRF Project Priority System [AMENDED]

785:50-9-33. Application for financial assistance [AMENDED]

AUTHORITY:

Oklahoma Water Resources Board; 82 O.S. § 1085.2; 82 O.S. §§ 1085.31 et seq.; 82 O.S. §§ 1085.51 et seq.; 62 O.S. § 2003

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September 11, 2017

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

Section 785:50-7-7 is proposed to be amended to add language regarding what bond requirements are needed in order to receive Emergency and Rural Economic Action Plan Grants (REAP). The intended effect of this amendment is to help clarify the requirements needed from grant recipients in order to get the grant funds.

Section 785:50-8-8 is proposed to be amended to clarify the date the projects must be completed for a REAP grant. The intended effect of this amendment is to clarify the grant fund distribution process.

Section 785:50-9-23 is proposed to be amended to remove language regarding the L1 application document. The intended effect is to remove unnecessary requirements in the loan application process.

Section 785:50-9-33 is proposed to remove existing language of the rules to reflect the correct process of loan closing and construction. The intended effect is to create more cohesive sections and make the language easily understood for potential applicants.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

**SUBCHAPTER 7. WATER AND SEWER
PROGRAM (BOND PROCEED LOANS AND
EMERGENCY GRANTS) REQUIREMENTS AND
PROCEDURES**

785:50-7-7. Disbursement of funds

(a) Conditions for disbursement.

(1) After an application for financial assistance under the program authorized by Sections 1085.31 through 1085.49 of Title 82 of the Oklahoma Statutes has been approved by the Board, the following conditions and requirements shall be met prior to the release and disbursement of any assistance funds:

(A) Unless otherwise provided and approved by the Board, applicant must submit to the Board all plans, specifications and engineering reports for the project for staff approval all of which shall be complete and in sufficient detail as would be required for submission of the project to a contractor for bidding or contracting the project.

(B) Applicant and Board, and all other necessary parties, shall have executed all necessary and incidental instruments and documents for loan closing, including but not limited to all mortgages, notes, financing statements and pledges of project security and revenues where appropriate.

(C) If not previously provided, applicant shall provide Board with a written and verified statement setting forth:

- (i) the amount of funds necessary for release and disbursement at closing which funds are needed for initial commencement of the project;
- (ii) and, information reflecting the reasonable availability of and/or a commitment from all other revenue or funding sources needed to finance and complete the project.

(2) At the time of and upon compliance with the requirements in (1) of this subsection, the Board may release, advance and disburse financial assistance funds to the applicant for the approved project.

(b) Disbursement of assistance funds.

(1) Unless otherwise provided and approved by the Board, the total amount of financial assistance funds authorized for loan or grant under the program authorized by Sections 1085.31 through 1085.49 of Title 82 of the Oklahoma Statutes to the applicant shall not be released and disbursed to applicant in a total lump sum but instead shall be disbursed to applicant in partial amounts at agreed upon intervals and stages of construction, all as provided within the financial assistance agreement.

(2) In conjunction with the rule, the Board may require applicant to submit to the Board prior to any release or disbursement of funds such invoices, receipts, contracts, verifications, evidence of expenditure or encumbrance, construction status and progress reports or other information as the Board may require.

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- (3) Unless otherwise provided and approved by the Board, the Board shall not approve the release nor disbursement of more than ninety-five percent (95%) of the total loan funds authorized for loan until such time as the project has been completed, inspected by the project engineer and the Board, and accepted by the applicant. Furthermore, unless otherwise provided and approved by the Board, the Board shall not release nor disburse more than ninety-five percent (95%) of the total loan funds authorized for engineering services until the project engineer has prepared and submitted three sets of as built project plans (if different from original plans) to the applicant and one set to the Board.
- (c) **Disbursement of grant funds.**
- (1) Notwithstanding and in addition to the provisions set out in (a) of this Section, the following specific provisions shall apply in all instances of the disbursement of grant (financial assistance) funds under the Water and Sewer Financial Assistance Program.
- (2) Upon approval of a grant application, the Board shall furnish to the applicant a letter notice of grant approval and Board commitment. The notice and commitment shall advise the applicant that the grant application has been formally and officially approved by the Board and that the grant funds approved shall be made available to the applicant by the Board for such purposes and upon such other terms and conditions as the Board may require.
- (3) Within ninety (90) days following the date of the letter notice of approval, the applicant shall file with the Board an acceptable bid for completion of the proposed project. Where determined necessary and appropriate, the Board or its staff may permit additional time to file such a bid; provided, notwithstanding any approval of additional time, if such a bid is not filed within one (1) year following the date of Board approval of the application, then the Board's approval shall expire and no funds shall be released; provided, however, if an acceptable bid for completion has not been filed due to circumstances that lay outside the applicant's control, the applicant may request, and the Board may approve or deny, a one-time extension of time not to exceed six months to file an acceptable bid. Provided further, in the event of such expiration the applicant may file a new application which shall be subject to due consideration on its own merit.
- (4) For purposes of final disbursement of funds to the applicant, the grant amount initially approved may be lowered by the Board based on actual project costs.
- (5) As the Board may determine and direct, grant funds may be disbursed to the applicant in installments or in lump sum, and may be disbursed prior to, during or upon completion of the project, all as deemed appropriate under the project circumstances presented. However, prior to the disbursement of any grant funds to the applicant, the applicant must:
- (A) Submit to the Board such evidence as the Board may require to establish that the emergency continues to exist; and
- (B) Establish, in such manner as is acceptable to the Board or its staff, a special and separate federally insured fund or account (within applicant's accounting system) in and through which the grant proceeds shall be administered and accounted for by the applicant.
- (6) In all instances, the Board reserves the right to impose additional reasonable and necessary conditions or requirements for the disbursement of grant funds, all as may be deemed appropriate by the Board under the circumstances of the project for which grant assistance is made available.
- (d) **Disbursement of contract funding.**
- (1) Upon approval of an application for contract funding under the Water and Sewer Financial Assistance Program, the Board shall furnish to the applicant a letter containing notice of application approval and a draft contract.
- (2) The contract shall contain, among others, the following provisions:
- (A) A description of the project;
- (B) The requirement that the applicant comply with applicable competitive bidding provisions in the acquisition of materials and services used for the project;
- (C) The requirement that all projects less than \$50,000.00 shall have a maintenance bond, letter of credit, or the equivalent equal to the project cost for a period of one year after construction has been completed.
- (~~D~~) The requirement that proper invoices ~~be~~ submitted monthly to the Board as funds are expended;
- (~~E~~) The requirement that all books and records of applicant containing information pertaining to the project be available for inspection and audit.
- (3) The funding contemplated by approval of the application and execution of the contract shall be paid to applicant upon submittal and acceptance of invoices for the work performed.

SUBCHAPTER 8. RURAL ECONOMIC ACTION PLAN (REAP) GRANT PROGRAM REQUIREMENTS AND PROCEDURES

785:50-8-6. Disbursement of funds

(a) **Action following Board approval and prior to disbursement of funding.**

- (1) **Notification of approval.** Upon approval of a REAP grant application, the Board shall furnish to the applicant a written notice of grant approval. The notice shall advise the applicant that the grant application has been formally and officially approved by the Board and that the grant funds approved shall be made available to the applicant by the Board for such purposes and upon such other terms and conditions as the Board may require.

(2) **Bid filing.** Within ninety (90) days following the date of the written notice of approval, the applicant shall file with the Board an acceptable bid for completion of the proposed project. Where determined necessary and appropriate, the Board or its staff may permit additional time to file such a bid; provided, notwithstanding any approval of additional time, if such a bid is not filed within one (1) year following the date of Board approval of the application, then the Board's approval shall expire and no funds shall be released provided however, if an acceptable bid for completion has not been filed due to circumstances that lay outside the applicant's control, the applicant may request, and the Board may approve or deny, a one-time extension of time not to exceed six months to file an acceptable bid. Provided further, in the event of such expiration the applicant may file a new application which shall be subject to due consideration on its own merits.

(3) **Additional conditions prior to disbursement of grant funds.**

(A) Applicant shall establish, in such manner as is acceptable to the Board or its staff, a special and separate federally insured account in and through which the grant proceeds shall be administered and accounted for by the applicant.

(B) Unless otherwise provided and approved by the Board, applicant shall submit to the Board all plans, specifications and engineering reports, for the project for staff approval, all of which shall be complete and in sufficient detail as would be required for submission of the project to a contractor for bidding or contracting the project. If not previously provided, applicant shall provide Board with a written and verified statement setting forth:

- (i) the amount of funds necessary for release and disbursement at closing which funds are needed for initial commencement of the project, and
- (ii) information reflecting the reasonable availability of and/or a commitment from all other revenue or funding sources needed to finance and complete the project.

(C) Applicant and Board, and all other necessary parties, shall have executed all necessary and incidental instruments and documents, including but not limited to a grant agreement.

(4) **Board action on request for increase in approved amount.** If prior to disbursement of the grant monies to the applicant, the project bids exceed the engineer's estimates or it otherwise develops that the REAP grant amount approved by the Board, when combined with any other sources of funding, will be insufficient to complete the approved project, then the applicant may file a written request:

- (A) to amend the scope of the approved project in a manner consistent with (a)(5) of this Section; or
- (B) decline funding and withdraw its application for the current fiscal year and request that the Board reconsider the application with an increased REAP

grant amount during the following fiscal year. The request for an increased REAP grant amount shall be treated as a new application on its own merits; provided, the original application shall not be counted for purposes of the previous grant assistance portion of the priority point determination.

(5) **Board action on request for change in scope of approved project.** If prior to disbursement of the grant monies to the applicant, it develops that the applicant wishes to change the scope of the project from that approved by the Board, then the applicant may file a written request for approval of such a change. If the Board staff determines that the change is reasonably and in all material aspects within the scope of the project description approved by the Board, then the staff shall be authorized to approve such requested change. If the Board staff determines that the change is not in all material respects within the scope of the project description approved by the Board, then such a request shall be presented to the Board for action. Provided, however, the Board shall not approve a change in scope of project if the change, if considered as part of the original application, would have resulted in a lower priority point determination on the application.

(b) **Disbursement of funding to applicant; action following disbursement.**

(1) **Disbursement contingent on completion of conditions; reduction from approved amount.** At the time and upon compliance by the applicant with the applicable requirements in (a) of this Section, the Board may disburse the approved amount of REAP grant funds to the applicant for the approved project.

(2) **Disbursement in whole or part; timing.** As the Board may direct, grant funds may be disbursed to the applicant in installments or in lump sum, and may be disbursed prior to, during or upon completion of the project, all as deemed appropriate by the Board under the project circumstances presented.

(3) **Post-disbursement requests for increases in funding amount.** If after disbursement of the grant monies to the applicant it develops that the applicant needs more money for the project than the REAP grant amount disbursed by the Board, then any request for additional REAP grant money shall follow the rules in this Subchapter governing, and shall be treated as, a new application on its own merits.

(4) **Post-disbursement requests for changes in scope of approved project.** If after disbursement of the grant monies to the applicant it develops that the applicant wishes to change the scope of the project from that approved by the board, then the applicant may file a written request for approval of such a change. If the applicant successfully demonstrates reasonably unforeseeable or extraordinary circumstances that in the Board's judgment and sound discretion represent a better utilization of REAP grant funds by the applicant to serve the public interest and welfare, then the Board shall approve the change in project scope. If the applicant does not make such a demonstration, then the Board shall deny the request and

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the applicant shall either proceed with the project as approved or abandon the project and return the grant monies to the Board within thirty days after the date of the Board's action.

(5) **Post-disbursement action regarding unexpended funding.** If following completion of the project it develops that the applicant needed less money for the project than disbursed by the Board, the applicant shall return the unexpended amount to the Board.

(6) **Additional requirements.** The Board may impose additional reasonable and necessary conditions or requirements for the disbursement to the applicant or expenditure by the applicant of REAP grant funds, all as may be deemed appropriate by the Board.

(c) **Completion of Project after receipt of Bid Tabulation.**

(1) All projects under \$500,000 must be completed within 180 days of receipt of the bid tabulation or the date of completion on the notice to proceed, whichever is later, unless the delay is caused by circumstances outside the control of the grant recipient shown by written documentation thereof. If these provisions are not met, the funds will be deobligated and the grant will expire.

(2) All projects over \$500,000 must be completed within 365 days of the receipt of the bid tabulation, or the completion date on the notice to proceed, whichever is later, unless the delay is caused by circumstances outside the control of the grant recipient shown by written documentation thereof. If these provisions are not met, the funds will be deobligated and the grant will expire.

(3) In the case where the documented circumstances are beyond the control of the grant recipient, an extension will be allowed based on the circumstances surrounding the project, but never beyond one (1) year of the Notice to Proceed date of completion.

SUBCHAPTER 9. CLEAN WATER STATE REVOLVING FUND REGULATIONS

PART 3. GENERAL PROGRAM REQUIREMENTS

785:50-9-23. Clean Water SRF Project Priority System

(a) **Preparation.** The Board shall prepare and maintain a current Clean Water SRF Project Priority Listing of potential eligible projects in the order of priority.

(b) **Projects included.**

(1) **Fundable portion.** The fundable portion includes projects scheduled for financial assistance during the current fiscal year, and which are within the limits of currently available funds.

(2) **Planning portion.** The planning portion includes that portion of the priority list containing all of those projects outside the fundable portion of the list, and which are anticipated to receive financial assistance in future fiscal years. The planning portion may also include contingency projects which are scheduled for assistance during

the current fiscal year, but for which adequate funds are not available to provide financial assistance. Contingency projects may receive assistance due to bypass provisions or due to additional funds becoming available.

(c) **Public participation.** Before the beginning of each fiscal year, the Board shall ensure that adequate public participation has taken place. A public meeting will be held to discuss the Clean Water SRF Project Priority List and any revisions that were made to the Clean Water SRF Project Priority System. The notice of public meeting shall precede the public meeting by 30 days and shall be published in a statewide publication. At this time, the Board shall circulate information about the Project Priority List including a description of each proposed project. Attendees of the public meeting will be allowed to express their views concerning the list and system.

(d) **Clean Water SRF Project Priority List.** A Clean Water SRF Project Priority List shall become effective and supersede all previous lists upon the beginning of the fiscal year for which it is designated. A Clean Water SRF Project Priority List, as updated during the funding year, shall remain effective until such time as it is superseded by a new list.

(e) **CWSRF Integrated Priority Rating System.** The Board will utilize an integrated priority ranking system to evaluate and rank proposed projects, including treatment works, Brownfield activities, and stormwater activities, based on the relative impact of the project in achieving the water quality objectives of the Clean Water Act. This system consists of criteria integrating public health protection and Oklahoma's Water Quality Standards beneficial use maintenance and protection goals and Anti-degradation policy, including project type, water quality restoration, water quality protection, programmatic priorities, and readiness to proceed.

(1) **Project Type Factor.** The Project Type Factor provides a maximum of seventy (70) points for proposed water quality projects based on the following:

(A) Treatment works or water quality projects designed to effectively eliminate or reduce a documented source of human health threat and/or discharge permit limit violation within a watershed of a waterbody being utilized as a public water supply shall receive seventy (70) points.

(B) Treatment works or water quality projects designed to effectively eliminate or reduce a documented source of human health threat and/or discharge permit limit violation shall receive sixty (60) points.

(C) Treatment works or water quality projects designed to sustain compliance with or provide a degree of treatment beyond permit limits; increase capacity, reliability, or efficiency; reclaim/reuse wastewater; reduce a documented water quality threat, or otherwise maintain beneficial uses shall receive thirty (30) points.

(D) All other eligible treatment works or pollution control projects shall receive twenty (20) points.

(2) **Water Quality Restoration Factor.** The Water Quality Restoration Factor provides a maximum of twenty (20) points for proposed projects located on waterbodies

which are not meeting the beneficial uses assigned to them in Oklahoma's Water Quality Standards and which are listed on Oklahoma's 303(d) list as threatened or impaired. The water quality restoration factor will be subject to change whenever the 303(d) List is revised. Water quality projects meeting the following criteria shall receive additional priority points:

(A) A project located in a watershed listed as a "NPS Priority Watershed" in Oklahoma's Nonpoint Source Management Program shall receive an additional ten (10) points.

(B) A project listed on Oklahoma's 303(d) list of threatened or impaired stream segments shall receive an additional five (5) points.

(C) A project that implements the recommendations of a conservation plan, site-specific water quality remediation plan, TMDL, storm water management program, water audit or modified 208 water quality management plan, which has been approved by an agency of competent jurisdiction, in a sub-watershed where discharge or runoff from nonpoint sources are identified as causing, or significantly contributing to water quality degradation shall receive an additional five (5) points.

(3) **Water Quality Protection Factor.** The Water Quality Protection Factor provides a maximum of ten (10) priority points to proposed water quality projects that provide maintenance of beneficial uses and protection for water bodies afforded special protection under OWQS. Projects shall receive ten (10) points for satisfying the following criteria:

(A) A water quality project located within the watershed of a stream segment or in a groundwater basin underlying a watershed of a stream segment (known as "Special Source" groundwater):

(i) listed in OWQS Appendix A. as an Outstanding Resources Water, High Quality Water, Sensitive Water Supply, Scenic River, Culturally Significant Water or Nutrient Limited Watershed;

(ii) listed in OWQS Appendix B.--"Areas with Waters of Recreational and/or Ecological Significance"; or

(iii) located in a delineated "source water protection area"; or

(B) A water quality project located in an area overlying a groundwater classified in OWQS with a vulnerability level of Very High, High, Moderate, or Nutrient Vulnerable.

(4) **Programmatic Priority Factor.** The Programmatic Priority Factor provides a maximum of one hundred (100) priority bonus points to projects that address specific programmatic priorities set forth by the Environmental Protection Agency or Board and detailed in the Annual Intended Use Plan.

(5) **Readiness to Proceed Factor.** The Readiness to Proceed Factor provides a maximum of four hundred (400) points depending on the relative "readiness to proceed" with a loan commitment among proposed projects.

(A) A project requesting to be considered for funding within the five-year planning period shall receive one hundred (100) points.

(B) In addition to a request for funding, a project for which preliminary planning documents have been submitted shall receive two hundred (200) points. Preliminary planning documents include a preliminary engineering report and a preliminary environmental information document, and must be submitted to the Board and to the Department or the Conservation Commission as appropriate.

(C) In addition to a request for funding and preliminary planning documents, a project for which a completed loan application has been submitted shall receive three hundred (300) points.

(D) In addition to a request for funding, preliminary planning documents, and a completed loan application, a project for which the appropriate technical plans and specifications necessary to implement the project have been approved by the Department or the Conservation Commission, as appropriate, shall receive four hundred (400) points.

(f) **Management of the Project Priority List.**

(1) **Tie breaking procedure.** A tie breaking procedure shall be utilized when two or more projects have equal points under the Project Priority System and are in competition for funds. Projects will be ranked according to existing population. According to the most recent 208 Water Quality Management Plan, i.e., the project with the greatest existing population will receive the higher ranking.

(2) **Project bypass.** A project on the fundable portion of the list may be bypassed if it is determined that the project will not be ready to proceed during the funding year. This determination will be made on projects that are unable to meet the schedule established on the priority list. The applicant whose project is affected shall be given written notices that the project is to be bypassed. Projects that have been bypassed may be reinstated on the funded portion of the list if sufficient funds are available, and the project completes the necessary tasks to proceed. Funds which become available due to the utilization of these bypass procedures will be treated in the same manner as additional allotments.

(3) **Project Priority List update.** The priority list is continually reviewed and changes (i.e., loan award dates, estimated construction assistance amounts, project bypass, addition of new projects, etc.) may occur as necessary.

(4) **Additional allotments.** After defining the fundable portion of the Clean Water SRF Project Priority List, the Board may determine that it is necessary or desirable to obligate additional funds that are available and the list may be extended to include the next highest ranked project or projects on the planning portion of the list. Any sum made available to a state by reallocation or deobligation shall be treated in the same manner as the most recent allotment.

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(5) **Project removal.** The Board may remove a project from the Clean Water SRF Project Priority List when the project has been funded, the project is found to be ineligible, it is indicated that the applicant does not intend to continue in the Clean Water State Revolving Loan Program, or the Board has determined that the applicant does not have financial, legal, or managerial capability to construct the project.

(6) **Amount of financial assistance.** The amount of financial assistance shall be the sum of the total eligible costs related to construction. The amount is contingent upon the availability of funds for this purpose. During each funding year, loans totaling twenty-five (25) percent of the funds available from the capitalization grant and state match for that year shall be provided to those eligible small municipalities with a population of 10,000 or less. However, if the state has not met the federal requirement of making binding commitments in an amount equal to one hundred and twenty (120) percent of each quarterly grant payment within one year of receipt of each quarterly payment, other eligible applicants may apply for a loan or an increase to an existing loan to utilize the small community set aside, if such actions will permit the state to comply with the federal binding commitment requirement.

(7) **Addition of new projects to the Clean Water SRF Project Priority List.**

(A) **General.** Prior to the placement of any new projects on the Clean Water SRF Project Priority List, the applicant must submit a request for such placement to the Board. ~~If the applicant is not a previous borrower then an L1 also needs to be submitted prior to being placed on the project priority list.~~ The Programmatic Application must specify that the applicant intends to apply for financial assistance from the Clean Water SRF. The Board will evaluate the Programmatic Application. If it is indicated that a viable project could result which would be in conformance with Clean Water SRF requirements, the potential project will be added to the Clean Water SRF Priority List.

(B) **Brownfield Activities.** Requests received for Brownfield activity projects must satisfy the following requirements before they will be placed on the Clean Water SRF fundable portion of the project priority list:

- (i) Submit a certification from the Department that the project is a Brownfield project;
- (ii) Submit a certification from the Department that urban runoff from the project site potentially impacts water quality; and
- (iii) Submit project documents which determine the water quality benefits of the proposed project.

(C) **Nonpoint source and Watershed Management activities.** Requests received for nonpoint source and watershed management projects must satisfy the requirements of 82 O.S. §1085.58(G), as

amended, before they will be placed on the Clean Water SRF fundable portion of the project priority list.

(8) **Categories of need.** All projects receiving financial assistance must fit into at least one of the categories of need listed in 785:50-9-21(a).

(A) A project may include all eligible categories of need.

(B) If a point source project consists of more than one category including a nonpoint source project, its project ranking calculation will be based on that category which will result in the greatest priority points.

(9) **Change of scope.** A change of scope, such as the addition of new construction items, will not be eligible after loan closing unless:

(A) The change of scope is necessary to result in an operable treatment works due to an oversight and not to replace faulty construction or equipment already funded, or

(B) The change of scope is necessary due to changes in Federal or State requirements

785:50-9-33. Application for financial assistance

(a) **Application filing.** An application shall be filed with the Board. The information required on all applications for financial assistance must meet the requirements of the Board presented to the applicant at the preapplication conference and must be on the project priority list and included on the current year Intended Use Plan. A copy of the adopted generating program necessary to meet local debt service requirement will be submitted with the application.

(b) **Action on application.**

(1) After a preliminary recommendation for approval of a pre-application is made as provided in 785:50-9-28 and an application is filed as provided in (a) of this Section, the Board shall conduct an in-depth review and evaluation of the application and wastewater project to determine whether it complies with applicable state and federal laws. Board staff may request additional information from the applicant and have further conferences as deemed necessary and beneficial to complete the application review.

(2) In the review and consideration for financial assistance under the Clean Water SRF Program, the Board shall give consideration to the following general and non-exclusive criteria for application approval:

(A) **Compliance with laws.** The application and proposed project must be found to be in compliance with all applicable and relevant federal, state and local laws and regulations, and applicant must possess all necessary and incidental legal rights and privileges necessary to project commencement and operation.

(B) **Eligibility.** The applicant and proposed project must be determined to be eligible for the assistance sought.

(C) **Economic feasibility.** The Board shall consider the overall apparent economic viability and feasibility of the project as a whole including proposed revenues from the project and the adequacy and

reliability of estimated revenues necessary for loan repayment when indicated.

(D) **Availability of funds.** The Board shall take into consideration the current and anticipated availability of assistance funds needed to provide the financial assistance requested.

(E) **Planning Design Documents.** The applicant shall submit ~~planning documents, final plans and specifications and the permit to construct~~

(3) The Board may deny an application for a loan from the Clean Water SRF program for any of the following reasons:

(A) The applicant or the entity which stands to receive the benefit of the financial assistance is not an eligible entity.

(B) The applicant does not have a demonstrated history of sound management.

(C) The applicant's financial condition is not sound enough to assure the Board that the loan would be satisfactorily repaid (including but not limited to circumstances such as inability to meet debt service, inability to meet any applicable rate covenant or additional indebtedness requirements, a substantial increase in operation and maintenance costs due to the proposed project, substantial revenue collection problems, substantial negative financial trends, a default or record of late payment(s) on previous indebtedness, etc.)

(D) The economic conditions pertinent for the applicant show negative trends (including but not limited to conditions such as substantial declines in sales tax revenues, population, per capita income, building permits, or water and/or sewer connections; a substantial increase in unemployment; or detrimental changes in the bases of ten largest customers or ten largest taxpayers).

(E) Any other reason based upon applicable law or the Board's judgment and discretion.

(4) Once the Board staff deems its review complete, the matter will be placed on the Board's agenda for consideration. The Board may approve the application, reject the application, or request additional information. The Board shall notify the applicant as to any such action taken.

(c) **Continuing review after approval of application.** If the application and loan receives final approval, the Board and applicant will coordinate the setting of the date, time and place for the closing of the loan. In the period between the date the application and loan were approved and the date of loan closing, the Board shall continue to review loan documents and shall consult with the applicant's representatives as deemed necessary.

[OAR Docket #17-589; filed 7-6-17]

**TITLE 800. DEPARTMENT OF WILDLIFE CONSERVATION
CHAPTER 10. SPORT FISHING RULES**

[OAR Docket #17-459]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. Harvest and Possession Limits

800:10-1-3. Additional definitions [AMENDED]

800:10-1-4. Size limits on fish [AMENDED]

Subchapter 3. Methods of Taking

800:10-3-5. Use of bow and arrow, grabhooks, gigs, spears, and spearguns, snagging, noodling and netting [AMENDED]

Subchapter 5. Area Restrictions and Special Fees

800:10-5-3. Designated trout areas [AMENDED]

800:10-5-6. Lakes, reservoirs, rivers and streams [AMENDED]

AUTHORITY:

Title 29 O.S., Section 3-103, 5-401, 6-302; Article XXVI, Section 1 and 3 of the Constitution of Oklahoma; Department of Wildlife Conservation Commission.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

November 1, 2016

COMMENT PERIOD:

December 1, 2016 through January 12, 2017

PUBLIC HEARING:

January 5, 2017 and January 10, 2017

ADOPTION:

February 6, 2017

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

February 9, 2017

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 13, 2017

FINAL ADOPTION:

June 13, 2017

EFFECTIVE:

September 11, 2017

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The purpose of the proposed rule amendments is to manage for trophy largemouth bass on Bull Lake and minimize hooking mortality of striped bass in the Lower Illinois River, to add regulations and definitions for the new Oklahoma Land Access Program (OLAP), and to help protect the valuable and unique paddlefish resource from illegal commercialization, exploitation, and overharvest by providing more efficient law enforcement efforts.

CONTACT PERSON:

Barry Bolton, Chief of Fisheries Division, Oklahoma Department of Wildlife Conservation, 2145 N.E. 36th Street, Oklahoma City, OK 73111. Phone: 405/521-3721 or Rhonda Hurst, APA Liaison, phone: 405/522-6279.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 1. HARVEST AND POSSESSION LIMITS

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800:10-1-3. Additional definitions

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

"Department fishing areas" means lakes American Horse, Burtschi, Chambers, Dahlgren, Doc Hollis, Elmer, Etling, Fugate, Hall, Jap Beaver, Nanih Waiya, Ozzie Cobb, Raymond Gary, Schooler, Vanderwork, Vincent, Watonga, the Blue River Public Fishing and Hunting Area and the Lower Illinois River Public Fishing and Hunting Area - Simp and Helen Watts Management Unit.

"No culling" means fish caught and placed on a stringer or otherwise held in possession (live well, basket, ice chest, etc.) cannot be released.

"Total length" means measured from the tip of the snout to the end of the tail, with the fish laid flat on the rule with mouth closed and tail lobes pressed together.

"Close To Home" fishing waters means bodies of water designated as such under a cooperative fisheries management agreement between ODWC and participating cities and/or municipalities. "Close to Home" fishing waters shall be designated in the Oklahoma Department of Wildlife Conservation Oklahoma Fishing Guide which is published annually.

"OLAP" means walk-in fishing areas and stream access means bodies of water designated as such under a lease agreement through the Oklahoma Land Access program between the Department and the cooperator.

"Stream access areas" means stream access points and/or stream corridors enrolled in the OLAP.

"Stream access point" means a delineated area enrolled in the OLAP that provides access to a stream.

"Stream corridor" means a length of a stream enrolled in the OLAP. These areas may include one or both banks, and the boundaries are delineated by signage and/or the OLAP map directory.

800:10-1-4. Size limits on fish

There are no length and/or size limit restrictions on any game or nongame fish, except as follows:

(1) All largemouth and smallmouth bass less than fourteen (14) inches in total length must be returned to the water unharmed immediately after being taken from public waters unless regulated by specific municipal ordinance or specified in regulations listed below: Lakes and Reservoirs with no length limit on largemouth and smallmouth bass - Lake Murray, all waters in the Wichita National Wildlife Refuge.

(2) All largemouth and smallmouth bass between thirteen (13) and sixteen (16) inches in total length must be returned unharmed immediately after being taken from lakes Chimney Rock (W.R. Holway), Arbuckle, Okmulgee and Tenkiller Lake (downstream from Horseshoe Bend boat ramp).

(3) All crappie (*Pomoxis* sp.) less than 10 inches in total length must be returned to the water unharmed immediately after being taken from Lakes Arbuckle, Tenkiller, Hudson, Texoma, Ft. Gibson, including all tributaries

and upstream to Markham Ferry Dam and Grand Lake, including all tributaries to state line.

(4) All walleye, sauger, and saugeye (sauger x walleye hybrid) less than 14 inches in total length must be returned to the water unharmed immediately after being taken statewide, except at Great Salt Plains Reservoir and tailwater where the size limit does not apply, the Arkansas River from Keystone Dam downstream to the Oklahoma state line including all major tributaries upstream to impoundment and R.S. Kerr, Webbers Falls, W.D. Mayo reservoirs as legally defined in Title 800 where all walleye, sauger and saugeye less than 16 inches must be returned to the water unharmed immediately, and at Atoka Bluestem, Bluestem, Carl Blackwell, Healdton, Ponca City, Shell, Sooner, and Thunderbird Reservoirs and the respective tailwaters where all walleye, sauger, and saugeye less than 18 inches total length must be returned to the water unharmed immediately.

(5) All largemouth and smallmouth bass between sixteen (16) and twenty-two (22) inches in total length must be returned to the water immediately after being taken from McGee Creek Lake, Dripping Springs Lake and Crowder Lake (Washita County).

(6) All rainbow trout less than twenty (20) inches in total length must be returned to the water immediately after being taken from the lower Mountain Fork River trout stream below Broken Bow dam from the first Highway Bridge below the Spillway downstream to the second Highway Bridge below the Spillway, including the Evening Hole stream channel, and from the State Park Dam downstream to the mouth of Rough Branch Creek and in the lower Illinois River trout stream from the USGS stream gauge downstream to the gravel pit county road. All brown trout less than twenty (20) inches in total length must be returned to the water immediately after being taken from the lower Mountain Fork River from Broken Bow Dam downstream to the U. S. Highway 70 bridge, and from the lower Illinois River trout stream from Tenkiller Dam downstream to the U. S. Highway 64 bridge.

(7) All blue catfish and channel catfish less than twelve (12) inches in total length must be returned to the water unharmed immediately after being taken from Texoma Lake.

(8) All smallmouth bass less than fourteen (14) inches in total length must be returned to the water unharmed immediately after being taken from all rivers and streams including the Illinois River upstream from the Horseshoe Bend boat ramp, and from the Glover River from the confluence with the Little River upstream to the 'Forks of the Glover River'. Possession of smallmouth bass less than fourteen (14) inches in total length on all streams and rivers is prohibited.

(9) All black bass (largemouth, spotted and smallmouth) less than fourteen (14) inches in total length must be returned unharmed immediately after being taken from the Blue River Public Fishing Area.

(10) All striped bass less than twenty (20) inches must be returned unharmed immediately after being taken from Sooner Reservoir.

(11) On Bull Lake (City of Vinita) - Bag limit of six (6) largemouth bass per day, of which only one (1) largemouth bass may be greater than sixteen (16) inches in total length.

SUBCHAPTER 3. METHODS OF TAKING

800:10-3-5. Use of bow and arrow, grabhooks, gigs, spears, and spearguns, snagging, noodling and netting

(a) **Bow and arrow.** The use of bow and arrows in bowfishing shall be lawful for taking nongame fish only in all waters of the state throughout the year, except:

(1) Illinois River and its tributaries shall be closed at all times to such fishing except, those portions above the Horseshoe Bend boat ramp on Tenkiller Reservoir which is open from December 1 through March 31 annually. Tenkiller Reservoir below Horseshoe Bend boat ramp is open to bowfishing.

(2) Reservoir tailwaters, other than Eufaula, Keystone, Wister, Fort Gibson, Thunderbird, Hudson (Markham Ferry), and Heyburn shall be closed to fishing with bow and arrows throughout the year. This does not alter provisions of 29 O.S., Section 7-101, which designates a safety zone of the first 150 feet immediately below the dam on all reservoirs except Tenkiller, Canton, Salt Plains, and Fort Supply.

(3) All waters defined as "Designated Trout Areas" during open season for taking trout are closed.

(4) All waters within the boundaries of the Wichita Mountains Wildlife Refuge are closed.

(5) Only that section of the Caney River from Hulah Dam downstream approximately 1,200 feet to the re-regulation dam is closed. Fishing with a bow and arrow is lawful in the Caney River below the re-regulation dam.

(6) The following portions of Grand River:

(A) The main river channel of Grand River below the turbine outlets of Grand River Dam downstream to the State Park Bridge is closed throughout the year.

(B) The Grand River occurring below the spillway outlets of Grand River Dam downstream to the highline crossing (approximately $\frac{1}{2}$ mile) is closed throughout the year with the next $\frac{1}{2}$ mile downstream from the highline crossing closed during periods when the spillway gates are open and discharging water and for seven (7) days following closure of the spillway gates.

(7) The Little River tributary of Thunderbird Reservoir above Franklin Road in Cleveland County is closed.

(8) "Close To Home" fishing waters and Lakes Pickens, Carl Albert and Taft and all ponds and lakes in the Ouachita National Forest are closed.

(9) The taking of paddlefish by bow and arrow is prohibited on the Red River from Denison Dam downstream to the stateline year round.

(10) Bowfishing may be used at Lakes Hefner, Overholser (including tailwaters and downstream to NW 10th St. bridge) and Draper throughout the year during daylight hours only.

(11) The Salt Fork of the Arkansas River from the spillway of Great Salt Plains Reservoir downstream to the State Highway 38 Bridge is closed.

(12) Bowfishing for tiger muskie at Lake Carl Etling is prohibited.

(b) **Grabhooks.** Taking fish by use of a grabhook is prohibited in all state waters.

(c) **Gigs, spears and spearguns.** The use of gigs, spears and spearguns containing not more than three (3) points with no more than two (2) barbs on each point shall be lawful for taking nongame fish only, except white bass may be taken by use of a gig. These methods are lawful in all:

(1) Rivers and streams from December 1 through March 31, except:

(A) The taking of paddlefish by use of gig, spear or speargun is prohibited from May 16 through March 14 of the following year, statewide.

(B) The Poteau and Fourche Maline Rivers and all their tributaries within LeFlore County are closed throughout the year.

(C) All waters designated as "Designated Trout Areas" during the open season for taking trout are closed.

(D) The Canadian River from Eufaula Dam downstream for a distance of one (1) mile to be so designated by buoy or other appropriate marker is closed throughout the year.

(E) The Caney River from Hulah Dam downstream to the confluence of the old and new river channels is closed.

(F) The following portions of Grand River:

(i) The main river channel of the Grand River below the turbine outlets of Grand River Dam downstream to State Park Bridge is closed throughout the year.

(ii) The Grand River occurring below the spillway outlets of Grand River Dam downstream for a distance of one (1) mile is closed throughout the year.

(G) Rivers and streams in Delaware and Mayes counties are open to the use of gigs throughout the year, unless specifically closed in other sections of this chapter.

(H) The Little River tributary of Thunderbird Reservoir above Franklin Road in Cleveland County is closed.

(2) Lakes and reservoirs throughout the year, except:

(A) Waters within the boundaries of the Wichita Mountains Wildlife Refuge other than that portion of Lake Elmer Thomas are closed.

(B) Tenkiller Reservoir, below the Horseshoe Bend boat ramp, is closed throughout the year except by speargunning when used with a self-contained underwater breathing apparatus which is closed from June

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- 15 through July 15 annually to the taking of flathead catfish only.
- (C) All Department Fishing Areas, all "Close To Home" fishing waters and Lakes Carl Albert, Sooner, Lone Chimney and Taft and all ponds and lakes in the Ouachita National Forest are closed. Konawa is closed to gigging.
- (D) Lakes Hefner, Overholser (including tailwaters and downstream to NW 10th St. bridge) and Draper are closed.
- (3) Reservoir tailwaters other than Hudson (Markham Ferry) shall be closed to fishing with gigs, spears and spearguns throughout the year. This does not alter provisions of 29 O.S., Section 7-101, which designates a safety zone of the first 150 feet immediately below the dam on all reservoirs except Tenkiller, Canton, Salt Plains, and Fort Supply.
- (d) **Snagging.** Snagging for nongame fish only shall be lawful in all waters of the State throughout the year, except:
- (1) Reservoir tailwaters other than Fort Gibson which is open 24 hours a day shall be closed to fishing by snagging throughout the year. This does not alter provisions of 29 O.S., Section 7-101, which designates a safety zone of the first 150 feet immediately below the dam on all reservoirs except Tenkiller, Canton, Salt Plains, and Fort Supply.
- (2) Wister tailwater is closed to snagging from below the dam down to the power-line at the confluence of the old and new river channels.
- (3) The following rivers, lakes, and streams:
- (A) The Illinois River and its tributaries above the Horseshoe Bend boat ramp on Tenkiller Reservoir and below the dam shall be closed at all times to such fishing.
- (B) All waters designated as "Designated Trout Areas" during the open season for taking trout are closed.
- (C) All waters within the boundaries of the Wichita Mountains Wildlife Refuge are closed.
- (D) The Canadian River from Eufaula Dam tailwater downstream for a distance of one (1) mile to be so designated by buoy or other appropriate marker is closed throughout the year.
- (E) The Caney River from the Hulah Dam downstream to the confluence of the old and new river channels is closed.
- (F) The following portions of the Grand River:
- (i) The main river channel of Grand River below the turbine outlets of Grand River Dam downstream to the State Park Bridge is closed throughout the year.
- (ii) That portion of the Grand River occurring below the spillway outlets of Grand River Dam downstream to the highline crossing (a distance of approximately $\frac{1}{2}$ mile) is closed throughout the year with the next $\frac{1}{2}$ mile downstream from the highline crossing closed during periods when the spillway gates are closed.
- (iii) That portion of the Grand River occurring from the Markham Ferry Dam (Lake Hudson Dam) downstream to the Highway 412 bridge from 10 p.m. to 6 a.m. year-round.
- (G) The Arkansas River from the tailwaters below Keystone Dam downstream to the Interstate 44 (Skelly Drive) Bridge at Tulsa shall be closed at all times to such fishing.
- (H) The Little River tributary of Thunderbird Reservoir above Franklin Road in Cleveland County is closed.
- (I) All Department Fishing Areas, all "Close To Home" fishing waters and Lakes Pickens, Carl Albert, Sooner and Konawa and all ponds and lakes in the Ouachita National Forest are closed.
- (J) Lakes Hefner, Overholser (including tailwaters and downstream to NW 10th St. bridge) and Draper are closed.
- (4) When snagging for paddlefish the hook must have the barbs removed or completely closed. Only one (1) rod and reel is permitted per angler when snagging.
- (5) All snagging shall be closed from 10:00 p.m. to 6:00 a.m. in the areas east of I-35 and north of I-40 except the Miami City Park from the south boat ramp to the 125 Highway bridge which shall remain open.
- (e) **Noodling.** Possession of hooks, gaffs, spears, poles with hooks attached and/or ropes with hooks attached while in the act of noodling, shall be proof of violation of the "hands only" noodling law. Noodling shall be lawful for nongame fish and blue, channel, and flathead catfish; only during daylight hours throughout the year.
- (1) Rivers and streams of the state, except:
- (A) The Illinois River and its tributaries above Horseshoe Bend boat ramp on Tenkiller Reservoir and below the dam shall be closed at all times to such fishing.
- (B) All waters designated as "Designated Trout Areas" during the open season for taking trout are closed.
- (C) Kiamichi River from Hugo Dam downstream to the first railroad bridge is closed.
- (D) The following portions of the Grand River:
- (i) The main river channel of Grand River below the turbine outlets of Grand River Dam downstream to the State Park Bridge is closed throughout the year.
- (ii) The Grand River occurring below the spillway outlets of Grand River Dam downstream to the highline crossing is closed throughout the year except the day of and two (2) days following closure of the spillway gates when noodling will be legal.
- (E) The Little River tributary of Thunderbird Reservoir above Franklin Road in Cleveland County is closed.
- (F) Wister tailwaters is closed to noodling from below the dam down to the power-line at the confluence of the old and new river channels.
- (2) Corps of Engineers and Bureau of Reclamation Reservoirs, Grand and Hudson Lakes.

(3) All waters within the boundaries of the Wichita Mountains Wildlife Refuge are closed.

(4) All Department Fishing Areas, all "Close To Home" fishing waters (except noodling is allowed in the North Canadian River from the NW 10th St. bridge downstream to the MacArthur St. bridge in Oklahoma City) and Lakes Pickens, Carl Albert, Taft, and Lone Chimney, Ponca and Carl Blackwell and all ponds and lakes in the Ouachita National Forest are closed.

(5) Lakes Hefner, Overholser (including tailwaters and downstream to NW 10th St. bridge) and Draper are closed.

(f) **Netting (noncommercial).** Netting (noncommercial) is closed statewide.

(g) **Collecting Bait for personal use.** Cast netting, trawl netting, dip netting, minnow traps and seining non-game fish commonly used for bait for personal use is lawful in all waters of this state unless specifically closed under 800:10-5-2, 800:10-5-3 and/or 800:10-5-6. Cast nets and dip nets shall have a mesh size no greater than three-eighths (3/8) inch square mesh. Seines shall not exceed twenty (20) feet in length, and the mesh shall be no larger than one-half (1/2) inch square unless seining for minnows then the mesh shall not exceed one-fourth (1/4) inch. Minnow traps shall have a mesh size no greater than one-half (1/2) inch, shall not be longer than three (3) feet, shall not exceed eighteen (18) inches in diameter on round traps or eighteen (18) inches on a side on square or rectangular traps. The trap entrance (throat) cannot exceed two (2) inches across the opening. No person shall fish with more than 3 minnow traps. All minnow traps must have the owner's name and address attached and the traps must be attended once every 24 hours. All game fish and non-game fish not commonly used for bait must be released immediately. Minnow traps cannot be made with glass.

SUBCHAPTER 5. AREA RESTRICTIONS AND SPECIAL FEES

800:10-5-3. Designated trout areas

(a) **Designated trout areas and seasons.** The following are the designated trout areas and trout seasons at each area:

(1) The Illinois River and its tributaries from the Tenkiller Ferry Reservoir Dam downstream to the Highway 64 Bridge near Gore, trout season is year-round.

(2) Blue River, within boundaries of the Blue River Public Fishing & Hunting Area (includes Landrum Wilderness Area and Plaster Wildlife Management Unit), trout season is from November 1 through March 31 of the following year; season is annual.

(3) Lake Watonga located within the boundaries of Roman Nose State Park, trout season is from the November 1 through March 31 of the following year; season is annual.

(4) The lower Mountain Fork River and tributaries from Broken Bow Dam downstream to U.S. Highway 70 bridge, excluding that portion from the mouth of Rough Branch Creek downstream to the Re-regulation dam. Trout season is year-round.

(5) Medicine Creek from Gondola Lake dam downstream to the State Highway 49 bridge, where trout season is from November 1 through March 15 of the following year; season is annual.

(6) Lake Carl Etling located within the boundaries of Black Mesa State Park, trout season is from November 1 through April 30 of the following year; season is annual,

(7) The Fourche Maline River from Carlton Lake Dam downstream to the Robbers Cave State Park boundary a distance of approximately one and one-quarter (1 1/4) miles, trout season is from November 1 through March 15 of the following year; season is annual.

(8) Perry CCC Lake trout season is from November 1 through March 31 of the following year; season is annual.

(b) **General; area restrictions.** The following rules apply to designated trout areas and to specified locations within certain designated trout areas:

(1) It shall be unlawful to take or attempt to take fish from these areas during trout seasons except with rod and reel or pole and line, except collecting shad with cast nets is legal from the south boundary of the MarVal trout camp downstream to the Highway 64 bridge; only one (1) rod and reel or pole and line per person is allowed.

(2) Once a trout is reduced to possession by being placed on a stringer or in the creel of any type, said trout must count toward day's limit and cannot be released.

(3) Glass beverage containers are prohibited at designated trout areas except in designated camping and parking areas.

(4) The following areas are restricted to fishing tackle made by fly-tying or artificial lures made of wood, metal, glass, feathers, hair, synthetic fibers or hard plastic and barbless hooks only with the exception of the lower Illinois trout stream when fishing for species other than Rainbow Trout and Brown Trout with hooks 3/0 or larger. The use of any substance in combination with restricted fishing tackle is prohibited:

(A) The lower Mountain Fork River trout stream below Broken Bow dam from the first Highway Bridge below the Spillway to the second Highway Bridge below the Spillway including the Evening Hole stream channel, and from the State Park Dam downstream to the mouth of Rough Branch Creek.

(B) Fishing in the lower Illinois River trout stream below Tenkiller dam from the USGS stream gauge downstream to the gravel pit county road is restricted to artificial flies and lures only and barbless hooks only, ~~except that single barbed hooks, size 3/0 or larger, may be used only when fishing with natural bait.~~ barbed hooks, size 3/0 or larger, may be used in combination with natural or artificial bait, including soft plastics, for species other than Rainbow and Brown Trout.

(C) Fishing in the Blue River from its entry onto the Plaster Wildlife Management Unit/Landrum Wilderness Area downstream approximately 1/2 mile to a marker cable is restricted to artificial flies and

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lures only and barbless hooks only during the period November 1 to March 1, annually.

- (5) All trout retained in possession must be kept separate from other anglers' fish on a stringer or in a creel that is clearly marked with that anglers name and license number.

800:10-5-6. Lakes, reservoirs, rivers and streams

(a) **Lake Carl Albert.** The following special rules govern public use on Lake Carl Albert:

- (1) Outboard motors used shall not exceed ten (10) h.p.
- (2) Maximum speed limit for boats shall be six (6) m.p.h.
- (3) Waterfowl hunting shall be permitted in season; all other hunting shall be prohibited on the area.
- (4) Swimming shall be prohibited on the area.
- (5) Waterskiing and trotlines, throwlines, netting, noodling, yo-yo's and jug fishing are prohibited.
- (6) Camping shall be limited to three (3) days.

(b) **Pickens Lake.** The following special rules govern public use on Pickens Lake in Fountainhead State Park:

- (1) Fishing shall be permitted throughout the year.
- (2) All fishing shall be pole and line or rod and reel only (2 poles per person).
- (3) Fishing shall be restricted to only Oklahoma residents in the following categories:
 - (A) All persons 65 years of age or older.
 - (B) All persons having disability of 60% or more.
 - (C) Legally blind persons.
 - (D) Any person who has not yet attained the age of 16 years.
 - (E) Any persons accompanying persons in categories above.

(c) **Sooner Reservoir.** The following special rules govern public fishing at Sooner River:

- (1) Fishing by juglines, trotlines, limblines, throwlines, snagging, spearfishing, gigging, grabhooks and scuba diving is prohibited.
- (2) Fishing by boats, wading or all flotation devices is prohibited within the buoy-marked area of the intake channel, discharge channel and spillway embankment.
- (3) Fishing from the dam, the fenced area below the dam and the north bank of the intake channel is prohibited.
- (4) The use of Tilapia as bait and/or the stocking of Tilapia is prohibited.

(d) **Lake Lone Chimney.** The following special rules govern public use at Lake Lone Chimney:

- (1) No overnight camping is permitted until recreational facilities are developed.
- (2) Boats and motors are permitted. All boats and motors must comply with existing state boat regulations and boat operators must obey Oklahoma State Boat Laws. All boats must be operated at no-wake speed of six (6) miles per hour or less and may not be left on the water or the lake area longer than the limit on camping.
- (3) Water skiing and swimming are prohibited.
- (4) Disposal of trash, refuse and debris is prohibited, except in designated trash containers. This includes organic and inorganic material.

(5) Commercial concessions and private development on Tri-County Authority property are prohibited. Soliciting, advertising or promoting any commercial or private activity is prohibited.

(6) Dogs must be kept on a leash at all times, except when used to hunt during legal waterfowl hunting season.

(7) It shall be unlawful to drive, occupy, or park any motor driven vehicle including automobiles, trucks, mini-bikes, motorcycles, three-wheelers, etc., except on maintained roads, designated parking areas and designated camping areas. It shall be unlawful to operate any vehicle in a reckless manner or operate any vehicle in a manner to create a public nuisance or to destroy or damage public property. Operators must be licensed drivers.

(8) Cutting or defacing of trees and vegetation shall be prohibited. Removal of vegetation, soil, rocks, water or minerals is prohibited except under written permission by the Tri-County Authority Board of Directors.

(9) Disorderly conduct, vandalism, theft and damage to Tri-County Authority property is prohibited.

(10) The lake shall be closed from 10:00 p.m. to 5:00 a.m., except for fishing and hunting activities.

(11) No person may fish with more than two (2) poles or rods.

(12) Trotlines, throwlines, limblines, juglines, nets, seines, yo-yo's, spearguns and the taking of fish by noodling and taking of bait minnows by any method are prohibited.

(13) All hunting or discharging of firearms, except for legal waterfowl hunting, is prohibited.

(e) **Taft Lake.** The following special rules govern public use at Taft Lake:

(1) Camping is permitted, but limited to three (3) days. Camping is permitted only in designated camping areas.

(2) Boats and motors are permitted. All boats and motors must comply with existing state boat regulations and boat operators must obey Oklahoma State Boat Laws. All boats must be operated at no-wake speed (six '6' miles per hour or less) and may not be left on the water or the lake area longer than the limit on camping.

(3) Water skiing and swimming are prohibited.

(4) Disposal of trash, refuse and debris is prohibited, except in designated trash containers. This includes organic and inorganic materials.

(5) Commercial concessions and private development on State property are prohibited. Soliciting, advertising or promoting any commercial or private activity is prohibited. The use of these areas for any commercial operation in any way is prohibited.

(6) Dogs must be kept on a leash at all times.

(7) Boat houses, ramps, docks and other facilities may not be constructed.

(8) It shall be unlawful to drive, occupy, or park any motor driven vehicle including automobiles, trucks, mini-bikes, motorcycles, etc., except on maintained roads (unless designated as "no parking zones"), designated parking areas, and designated camping areas. It shall be unlawful to operate any vehicle in a manner to create a

public nuisance or to park in a "no parking zone". Operators must be licensed drivers.

(9) Cutting or defacing of trees and vegetation shall be prohibited. Removal of vegetation, soil, rocks, water or minerals is prohibited.

(10) Vandalism, theft, and damage to State Property is prohibited.

(11) No person shall use threatening, abusive, or indecent language, participate in a disorderly assemblage, nor publicly appear nude or intoxicated.

(12) After 10:00 p.m. and until 5:00 a.m., all areas will be restricted to fishing and fishing related activities only.

(13) Fishing is permitted under regular fishing rules and regulations of the Department and State Statutes.

(14) No person may fish with more than two (2) poles or rods.

(15) Trotlines, throwlines, limblines, juglines, nets, seines, yo-yo's, spearguns, and the taking of fish by noodling or bow fishing and taking of bait minnows by any method is prohibited.

(16) Firearms, bows and trapping shall not be allowed on the area.

(f) **Kid's Fish Out Pond (Fountainhead State Park).** Fishing shall be restricted to persons in the following categories:

(1) All persons 64 years of age or older.

(2) Any person who has not yet attained the age of 16 years.

(3) All persons having 60% or more disability, or legally blind, or physically impaired and one companion accompanying same.

(g) **Adair Recreation Area Lake.** Fishing is restricted to rod and reel fishing only and only one rod and reel per person.

(h) **Lake Hefner, Lake Overholser (including tailwaters downstream to NW 10th St. bridge), Lake Draper and the Oklahoma River (NW 10th St to NE 10th St).** Fishing is restricted to no more than three (3) rods or poles per person, with no more than three (3) hooks per line. No other fishing methods are allowed.

(i) **"Close To Home" fishing waters.** Fishing is restricted to no more than three (3) rods or poles per person, with no more than three (3) hooks per line. No other fishing methods are allowed.

(j) **Lakes and reservoirs.** Use of and/or placement into lakes and reservoirs of the waters of this state any container, including but not limited to drums, cans, tubs, boxes or barrels which attract, entice, or lure fish into an open cavity within the container is prohibited.

(k) **Lake Texoma.** The special Lake Texoma annual fishing license shall be eleven dollars (\$11.00). License shall be issued in accordance with Sections 4-201 and 4-202, Title 29 of the Oklahoma Statutes.

(l) **Rivers and streams.** The take, possession or transport of more than twenty-five (25) nongame bait fish, excluding shad; is prohibited from all rivers and streams.

(m) **Scenic Rivers.** The use or possession of cast nets is prohibited on all Oklahoma Scenic Rivers including the Barren Fork River in its entirety to the Arkansas state line.

(n) **OLAP walk-in fishing area.** The following special rules govern public use at OLAP walk-in fishing areas.

(1) Fishing is restricted to no more than three (3) rods or poles per person, with no more than three (3) hooks per line. No other fishing methods are allowed. Cast netting is prohibited.

(2) It shall be unlawful to drive, occupy, or park any motor driven vehicle including automobiles, trucks, mini-bikes, motorcycles, three-wheelers, etc., except on designated parking areas.

(3) Disposal of trash, refuse and debris is prohibited, and all trash must be packed out.

(4) Swimming, camping, fires, and alcohol are prohibited in walk-in fishing areas.

(5) Access is allowed on annual walk-in fishing areas year-round, and access on seasonal walk-in fishing areas is allowed beginning on the day following the end of spring turkey season and ending on the day preceding the beginning of dove season.

(6) Motorboats are prohibited unless authorized for the specific OLAP fishing area in the OLAP map directory and on signs posted at the OLAP walk-in area. Kayaks, canoes, fishing tubes, and vessels not powered by an in-board or outboard engine are permitted but must be carried to water edge unless stated otherwise for the specific OLAP fishing area in the OLAP map directory and/or on signs posted at the OLAP walk-in area.

(7) Fishing at OLAP walk-in fishing areas is catch and release only.

(8) Access is restricted to fishing areas and access corridors as specified in the OLAP map directory and/or on signs posted at the OLAP walk-in area. Unauthorized access to restricted areas of the property may be considered trespassing.

(o) **OLAP stream access.** The following special rules govern public use at OLAP stream access areas.

(1) OLAP stream access points provide a publicly accessible site to launch and retrieve boats for hunting, fishing and recreational activities. Activities unrelated to launching and retrieving boats or accessing a stream are prohibited.

(2) Persons must remain within the designated stream corridor or access area when accessing OLAP stream access areas for hunting, fishing, and recreational activities. Any access outside of the stream corridor or access area is trespassing. Stream corridors will be delineated in the OLAP map directory and/or on signs posted at the OLAP stream access area.

(3) Seasons, regulations, creel limits, and equipment restrictions are consistent with the existing regulations of the stream within which the OLAP stream access area occurs.

[OAR Docket #17-459; filed 6-19-17]

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TITLE 800. DEPARTMENT OF WILDLIFE CONSERVATION CHAPTER 20. RESTRICTION ON AQUATIC SPECIES INTRODUCTION

[OAR Docket #17-460]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 2. ~~Fish Introductions of Fish and Aquatic Organisms in Waters of the State~~ [AMENDED]

800:20-2-3. Introduction of fish and aquatic organisms [NEW]

AUTHORITY:

Title 29 O.S., Section 3-103, 5-401, 6-302; Article XXVI, Section 1 and 3 of the Constitution of Oklahoma; Department of Wildlife Conservation Commission.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

November 1, 2016

COMMENT PERIOD:

December 1, 2016 through January 12, 2017

PUBLIC HEARING:

January 5, 2017 and January 10, 2017

ADOPTION:

February 6, 2017

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

February 9, 2017

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 13, 2017

FINAL ADOPTION:

June 13, 2017

EFFECTIVE:

September 11, 2017

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The purpose of the proposed rule amendment is to restrict the stocking of non-native fish and aquatic organisms into any of the public streams, public lakes or public ponds.

CONTACT PERSON:

Barry Bolton, Chief of Fisheries Division, Oklahoma Department of Wildlife Conservation, 2145 N.E. 36th Street, Oklahoma City, OK 73111. Phone: 405/521-3721 or Rhonda Hurst, APA Liaison, phone: 405/522-6279.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 2. FISH INTRODUCTIONS OF FISH AND AQUATIC ORGANISMS IN WATERS OF THE STATE

800:20-2-3. Introductions of fish and aquatic organisms

No person shall release, deposit, place or permit to be released, fish, crayfish, mussels, other aquatic organisms, or non-native plant species in any of the public streams, public lakes or public ponds whose stocking is controlled by and so

designated by the Wildlife Conservation Commission without the consent of the Wildlife Conservation Director.

[OAR Docket #17-460; filed 6-19-17]

TITLE 800. DEPARTMENT OF WILDLIFE CONSERVATION CHAPTER 25. WILDLIFE RULES

[OAR Docket #17-461]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 3. Hunting on Corps of Engineers Lands

800:25-3-2. Areas open to archery equipment and shotguns with pellets only [AMENDED]

800:25-3-3. Areas open to archery equipment only [AMENDED]

800:25-3-5. Areas open to archery equipment and all legal firearms other than centerfire rifles and handguns [AMENDED]

Subchapter 7. General Hunting Seasons

Part 1. General Provisions

800:25-7-3. General provisions [AMENDED]

Part 7. Falconry

800:25-7-31. Taking provisions [AMENDED]

Part 12. Antelope

800:25-7-47. General provisions for antelope - archery [AMENDED]

Part 14. Elk

800:25-7-56. General provisions for elk [AMENDED]

Part 19. Seasons on Areas Owned or Managed by the Oklahoma Department of Wildlife Conservation and the U.S. Fish and Wildlife Service

800:25-7-86.1. Camp Gruber Maneuver Training Center ~~(CGTC)~~ (CGMTC) [AMENDED]

800:25-7-97. Fobb Bottom WMA [AMENDED]

800:25-7-108. Hickory Creek WMA [AMENDED]

800:25-7-120. Love Valley WMA [AMENDED]

Part 25. Oklahoma Land Access Program [NEW]

800:25-7-180. General provisions for OLAP walk-in areas [NEW]

800:25-7-181. OLAP walk-in hunting areas, seasons, and equipment restrictions [NEW]

800:25-7-182. OLAP wildlife-viewing areas, seasons, and equipment restrictions [NEW]

Subchapter 9. Controlled Hunts

Part 3. Antelope

800:25-9-12. General Antelope Regulation [AMENDED]

Subchapter 37. Nuisance Wildlife Control Program

Part 3. Wildlife and Feral Hog Nuisance and Depredation Rules

800:25-37-12. General Provisions [AMENDED]

800:25-37-13. Exemptions [AMENDED]

800:5-37-14. Specific Provisions [AMENDED]

800:25-37-16. Feral swine night shooting exemptions [NEW]

Subchapter 40. Oklahoma Land Access Program [NEW]

800:25-40-1. Purpose [NEW]

800:25-40-2. Definitions [NEW]

800:25-40-3. Qualifications and enrollment procedures [NEW]

800:25-40-4. Lease agreement [NEW]

800:25-40-5. Compensation [NEW]

800:25-40-6. Landowner responsibilities [NEW]

800:25-40-7. Department responsibilities [NEW]

800:25-40-8. OLAP sportsperson responsibilities [NEW]

800:25-40-9. Right to deny access [NEW]

AUTHORITY:

Title 29 O.S., Section 3-103, 4-136, 5-401; Article XXVI, Section 1 and 3 of the Constitution of Oklahoma; Department of Wildlife Conservation Commission.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

November 1, 2016

COMMENT PERIOD:

December 1, 2016 through January 12, 2017

PUBLIC HEARING:

January 5, 2017 and January 10, 2017

ADOPTION:

February 6, 2017

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

February 9, 2017

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 13, 2017

FINAL ADOPTION:

June 13, 2017

EFFECTIVE:

September 11, 2017

SUPERSEDED EMERGENCY ACTIONS:

Superseded rules:

- Subchapter 37. Nuisance Wildlife Control Program
- Part 3. Wildlife and Feral Hog Nuisance and Depredation Rules
- 800:25-37-12. General Provisions [AMENDED]
- 800:25-37-13. Exemptions [AMENDED]
- 800:25-37-14. Specific Provisions [AMENDED]
- 800:25-37-16. Feral Swine Night Shooting Exemptions [NEW]

Gubernatorial approval:

October 24, 2016

Register publication:

34 Ok Reg 123

Docket number:

16-780

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The purpose of the proposed rule amendments are to adjust regulations on several Corps of Engineers properties around Lake Texoma for safety, clarification of acres and to offer more hunting opportunity. Allow deer hunters, after notifying a game warden, to use a leashed tracking dog to recover downed deer. Restrict peregrine falcon take by non-residents to no more than 50% of the number allowed by the U.S. Fish and Wildlife Service. Establish dates for open access to Hunt Areas #4 and #6, adjust season dates for spring turkey, and gate closing times on Camp Gruber Training Center. Close squirrel, common snipe, and woodcock during the first nine days of deer gun season on Fobb Bottom WMA. Close predator/furbearer calling during the first nine days of deer gun season and open deer archery season same as statewide season dates on Hickory Creek and Love Valley WMA's. Add rules, regulations, and definitions for new Oklahoma Land Access Program (OLAP) including exemption from written permission for hunting antelope and elk on actively enrolled OLAP properties. Add rules to allow landowners and their designee to shoot feral hogs at night on their property.

CONTACT PERSON:

Alan Peoples, Chief of Wildlife Division, Oklahoma Department of Wildlife Conservation, 2145 N.E. 36th Street, Oklahoma City, OK 73111. Phone: 405/521-2739 or Rhonda Hurst, APA Liaison, phone: 405/522-6279.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 3. HUNTING ON CORPS OF ENGINEERS LANDS

800:25-3-2. Areas open to archery equipment and shotguns with pellets only

The following Corps of Engineers areas are open to archery equipment and shotguns with pellets only:

- (1) Canton Lake: A 80-acre unit above Highway 58A in the Sandy Cove Area.
- (2) Keystone Lake:
 - (A) A 460-acre unit including land north and south of the Cowskin North Recreation Area.
 - (B) A 200-acre unit on the west side of the north end of the Highway 64 bridge.
 - (C) A 530-acre unit north of the New Mannford Ramp area.
 - (D) A 480-acre unit east of the Cimarron Park area.
 - (E) A 100-acre unit north and south of the Pawnee Cove Access Point.
 - (F) A 200-acre unit in the Old Mannford Ramp area.
 - (G) A 280-acre unit on the south side of the road ending at Washington Irving North.
 - (H) A 120-acre unit west and south of the Sinnett Cemetery and south of the old Keystone road.
 - (I) A 200-acre unit south of Highway 51 on Bakers Branch.
 - (J) A 135-acre area on the west side of Walnut Creek (old Walnut Creek #3).
- (3) Hugo Lake: Except, archery only during all deer seasons.
 - (A) A 2,373-acre unit in the Kiamichi Park Area.
 - (B) A 418-acre unit in the Salt Creek Area.
 - (C) A 478-acre unit in the Wilson Point Area.
 - (D) A 481-acre unit in the Virgil Point Area.
 - (E) A 280-acre unit in the Sawyer Bluff Area.
 - (F) A 60-acre unit in the Rattan Landing Area.
 - (G) A 500-acre unit in the embankment area above Hugo Dam.
- (4) Tenkiller Ferry Lake: A 110-acre unit north of the asphalt road and east of Highway 10A.
- (5) Copan Lake: Except, archery equipment only during all deer seasons.
 - (A) A 650-acre unit below the dam.
 - (B) A 100-acre unit east and southeast of Copan Point Park.
 - (C) Three islands north of Washington Cove Park.
- (6) Fort Gibson Lake:
 - (A) A 300-acre unit on the north side of North Bay.
 - (B) A 800-acre unit on the south side of the Chouteau Creek, starting at Highway 69 and running east and south to Highway 33.
 - (C) A 320-acre unit across the lake from the Chouteau Bend Recreation Area.
 - (D) A 480-acre unit on the west side of Mallard Bay.
 - (E) A 103 -acre unit in Section 13 of the Blue Bill Point housing addition.
 - (F) A 160-acre unit west of the town of Murphy.
 - (G) A 650-acre unit on Pryor Creek beginning on the east side of Highway 69 in Sections 29, 30 & 31.
 - (H) A 190-acre unit in the south $\frac{1}{2}$ of Section 12, north of the Blue Bill Recreation Area.
 - (I) A 120-acre unit west of the town of Hulbert.
- (7) Sardis:

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- (A) A 950-acre unit in the Potato Hills Area.
(B) A 100-acre unit in the Sardis Cove Area.
- (8) Webbers Falls Lock and Dam 16:
(A) A 37-acre unit on the peninsula north of the lock and dam.
(B) A 150-acre unit in the Hopewell Park Area.
(C) A 150-acre unit in the Brewer's Bend Area only open for hunting 1 December through 28 February.
(D) A 50-acre unit south of the Spaniard Creek Area.
(E) A 60-acre unit off Lock View access road and south of the project office.
- (9) Lake Texoma:
(A) A 380-acre unit below Denison Dam.
(B) A ~~60-acre~~ 160-acre unit in the Willow Springs Area.
(C) ~~A 100-acre unit on the north side of Alberta Creek.~~ A 100-acre unit in the Buncombe Creek West Area
(D) A 110-acre unit on the Limestone Creek Area.
(E) A 250-acre unit on the Treasure Island, North Island Group.
(F) ~~A 500-acre unit southwest of McLaughlin Creek.~~ A 512-acre unit in the McLaughlin Creek Southwest Area.
(G) A 1,100-acre unit in the Washita Point Area.
(~~H~~) ~~A 1,200-acre unit north of Newberry Creek.~~
(~~H~~) A 300-acre unit south of the Butcher Pen Area.
(~~J~~) A 800-acre unit on either side of Highway 70 on the east side of the lake.
(~~K~~) ~~A 1,000-acre unit in the Lakeside area.~~ A 650-acre unit in the Lakeside West and South Area.
(~~L~~) ~~A 800-acre unit west of Platter.~~ A 420-acre unit in the Lebanon Area.
(~~M~~) A 226-acre unit on the west side of Wilson Creek.
(~~M~~) A 130-acre unit in the Caney Creek Area.
(~~N~~) A 170-acre unit in the Oakview North Area.
- (10) Kaw Lake:
(A) A 280-acre unit in the Traders Bend Area.
(B) A 320-acre unit in the Sarge Creek Cove Area.
(C) A 220-acre unit in the Burbank Landing Area.
(D) A 110-acre unit between Sandy Park Swim Beach and Osage Cove.
(E) A 100-acre unit in the Bear Creek Cove, open for hunting only from 15 September through 15 February.
(F) A 186-acre unit south of Camp McFadden and north of a housing addition.
- (11) Eufaula Lake:
(A) Open for archery equipment 1 October through 28 February and open for shotguns with pellets from 1 November through 28 February.
(i) A 165 -acre unit in the Highway 31 Landing Area.
(ii) A 128 -acre unit in Holiday Cove Recreation Area.
(iii) A 200-acre unit in Hickory Point Recreation Area.
(iv) A 90 -acre unit in the Gentry Creek Recreation Area.
(B) Open for hunting for all species that can be legally taken during legal open seasons by archery equipment and shotguns with pellets.
(i) A 275-acre unit known as Duchess Creek Island.
(ii) A 47-acre unit in Juniper Park.
(iii) A 99-acre unit in the Coal Creek area.
(iv) A 69-acre unit southwest of the city of Crowder.
(v) A 116-acre unit east of the city of Crowder.
(vi) A 95-acre unit in the Rock Creek Heights area.
(vii) A 63-acre unit around Highway 9 Marina.
(viii) A 411-acre unit in the area of Highway 9A.
(ix) A 247-acre unit known as Bunny Creek.
(x) A 251-acre unit in Sandy Bass Bay.
(xi) A 32-acre unit in Dam Site area.
(xii) A 95-acre unit below Eufaula Dam, north of the river.
(xiii) A 443-acre unit in the Longtown Creek area known as Round Tree Landing.
(C) Open for hunting for all species that can be legally taken during legal open seasons by archery equipment and shotguns with pellets, except for the 2nd Friday through Monday in December: A 395-acre unit in the Brooken Cove Recreational Area.
- (12) Chouteau Lock and Dam 17: All lands beginning from the MK&T Railroad below Chouteau Lock and Dam 17 and continuing upstream to Newt Graham Lock and Dam 18, except that Pecan Park is open to hunting with archery equipment only and the Chouteau Lock and Dam 17 has a 600 yard "No Hunting" buffer area around both the lock and dam, and that Coal Creek Access Point and Afton Landing Park are closed to all hunting.
- (13) Hulah Lake:
(A) A 200-acre unit in the Turkey Creek Point Area.
(B) A 60-acre unit below Hulah Dam.
(C) A 375-acre unit in the Caney Bend Area.
- (14) Wister Lake: A 400-acre unit east of the uncontrolled spillway and Glendale Dike.
- (15) Oologah Lake:
(A) A 80-acre unit on the east side of Blue Creek Park.
(B) A 180 acre-unit on the south side of Spencer Creek Park.
(C) A 120-acre unit east of Double Creek Park.
- (16) Waurika Lake: All lands presently designated as open to public hunting, except fall turkey hunting is archery only. Spring turkey hunting is prohibited.
- (17) Newt Graham Lock and Dam 18: All lands beginning from Newt Graham Lock and Dam 18 and continuing upstream to Interstate 44, except that the Newt Graham Lock and Dam 18 has a 600 yard 'No Hunting' buffer area

around it, and that Bluegill Access Point, Highway 33 Access Point and Bluff Landing Public Use Area are closed to all hunting.

800:25-3-3. Areas open to archery equipment only

The following Corps of Engineers areas are open to archery equipment only:

- (1) Birch Lake: A 450-acre unit in the Birch cove, Outlet Park and Twin cove areas.
- (2) Kaw Lake:
 - (A) A 400-acre unit in the Washunga Bay Area.
 - (B) A 600-acre unit in the McFadden Cove Area and below the dam embankment access road.
 - (C) A 236-acre unit in the Osage Cove Area open from 1 December to 31 December.
 - (D) A 60-acre unit south of Kaw City and west of Pioneer Park.
- (3) Fort Gibson:
 - (A) A 515-acre unit on the south side of Mallard Bay.
 - (B) A 360-acre unit on the north side of the mouth of North Bay.
 - (C) A 50-acre unit south of Jackson Bay Area.
 - (D) A 150-acre area on the northeast end of Ranger Creek.
 - (E) A 488-acre unit on the south side of Whitehorn Cove Concession.
 - (F) A 100-acre unit in the Snug Harbor area.
 - (G) A 320-acre unit on the south side of North Bay.
 - (H) A 320-acre unit on the north side of Long Bay.
 - (I) A 70-acre area on the upper end of Pryor Creek adjacent to the east side of Highway 69.
 - (J) A 36-acre area in Section 6, T16N, R20E.
 - (K) A 77-acre area on the north shore of Ranger Creek.
 - (L) A 166-acre area west of Taylor Ferry South Park in Sections 20 & 21, T17N, R19E.
- (4) Copan Lake:
 - (A) A 50-acre unit north of Copan Point Park.
 - (B) A 50-acre unit north of the Post Oak area.
 - (C) A 5-acre unit west of Post Oak Park between the old and new Highway 10.
 - (D) A 340-acre unit north of the Washington Cove Park.
- (5) Heyburn Lake: A 120-acre unit on the south side of the Dam Site Area and west of the outlet channel.
- (6) Skiatook Lake:
 - (A) A 138-acre unit in the Osage Park Area.
 - (B) A 150-acre unit area below Skiatook Dam.
 - (C) A 120-acre unit in Hominy Landing.
- (7) Hulah Lake: A 40-acre unit south of the Hulah State Park office.
- (8) Pine Creek Lake:
 - (A) A 200-acre unit north of Highway 3 and south of the old highway.
 - (B) A 120-acre unit west of Little River Park.
- (9) Fort Supply: A 183-acre unit in the south portion of Fort Supply Park.

(10) Arcadia Conservation Education Area: (Open by ODWC sanctioned controlled hunt through the City of Edmond Game and Fish Commission only.)

- (A) A 500-acre unit $\frac{1}{2}$ mile North of Memorial Road on Midwest Boulevard
- (B) 230-acre unit at Douglas and 150th street.
- (11) Keystone Lake: A 570-acre area south of the town of Prue (old Walnut Creek #1).
- (12) Lake Texoma:
 - (A) A 610-acre unit in the Burns Run Area
 - (B) ~~A 125-acre unit south of Alberta Creek~~ A 550-acre unit in the Alberta Creek Area.
 - (C) A 60-acre unit in the Colbert Boat Club Area.
 - (D) A 40-acre unit in the Oak Hills Area.
 - (E) A 100-acre unit in the Willafa Woods Area.
 - (F) A 50-acre unit in the Buncombe Creek South Area.
- (13) Hugo Lake:
 - (A) A 13 acre unit located across from Wilson Point in Section 18, east of Highway 147.
 - (B) A 40 acre unit located north of County Road E2040 in Section 6 and east of Highway 147.

800:25-3-5. Areas open to archery equipment and all legal firearms other than centerfire rifles and handguns

The following Corps of Engineers areas are open to archery equipment and all legal firearms other than centerfire rifles and handguns:

- (1) Tenkiller Lake:
 - (A) A 320-acre unit between Tenkiller State Park and Cato Creek Landing public use area.
 - (B) A 300-acre unit southeast of Etta Bend.
 - (C) A 1,090-acre unit known as the Tenkiller Basin Wildlife Management Area, located south of the dam embankment, spillway and project office, the area is open for hunting of all species which may legally be taken during the open seasons by archery equipment, shotguns (utilizing federally approved nontoxic shot only), and rimfire firearms, except that the area is closed to all hunting from 1 October through 15 November and deer hunting is by archery equipment only.
 - (D) A 240-acre unit south and southwest of Carters Landing Park.
- (2) Robert S. Kerr Lock and Dam 15:
 - (A) A 90-acre unit in Little SanBois Creek Public Use Area.
 - (B) A 160-acre unit on the eastern portion of Cowlington Point Public Use Area.
 - (C) A 145-acre unit south of the Cowlington Point Public Use Area.
 - (D) A 200-acre unit on the eastern portion of Short Mountain Cove Public Use Area.
 - (E) A 135-acre unit in the Applegate Cove Area.
- (3) Lake Texoma:
 - (A) A 800-acre unit in the Platter Flats Area.
 - (B) A 330-acre unit in the Streetman East Area.

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- (C) A 400-acre unit in the Newberry Creek South Area.
- (D) A 220-acre unit in the Enos East Area.
- (E) A 115-acre unit in the Island View East Area.
- (F) A 350-acre unit in the Buncombe Creek East Area.

SUBCHAPTER 7. GENERAL HUNTING SEASONS

PART 1. GENERAL PROVISIONS

800:25-7-3. General provisions

- (a) Any person hunting any wildlife in open areas during the youth deer gun, bear muzzleloader, deer muzzleloader, deer gun, holiday antlerless deer gun (in open zones), elk gun (in open counties) or September antelope gun (in open areas) seasons with a shotgun and rifled slug, or any rifle or handgun larger than a .22 caliber long rifle, must possess a valid bear, deer, elk, or antelope license, unless otherwise exempt. Any person hunting feral hogs in open areas during the deer gun, deer primitive, elk, bear or antelope season with a shotgun and rifled slug, or any rifle or handgun larger than a .22 caliber rim-fire, must possess a filled or unfilled deer, elk, bear or antelope license appropriate for that season unless otherwise exempt.
- (b) No person while in the field may possess or attempt to harvest any wildlife, except waterfowl and crane, with shotgun utilizing shot larger than conventional BB.
- (c) Any person participating in primitive firearms season, deer gun seasons, elk season, antelope season and bear gun season must conspicuously wear both a head covering and an outer garment above the waistline, both totaling 500 square inches or more of clothing, both consisting of daylight fluorescent orange color totaling not less than 400 square inches [Title 29 O.S., Section 5-205, Part A]. All other hunters, except those hunting waterfowl, crow or crane, or while hunting furbearing animals at night must wear either a head covering or upper garment of fluorescent orange clothing during the deer primitive firearms season, deer gun seasons, elk season, antelope season and bear primitive firearms season, or bear gun season in areas where these season are open.
- (d) For purposes of pheasant, turkey, deer, elk, bear and antelope regulations, 'final destination' shall be the hunter's residence or place of consumption.
- (e) No person may possess any game bird, animal or other wildlife, or portions thereof that have been taken by another person unless such game bird, animal or other wildlife, contain information giving the taker's name, address, license number, date taken and the number and kind of game bird, animal or wildlife. In addition, information on deer, elk, antelope, bear and turkey must include where game was checked or electronic check station confirmation number as proof that the animal has been checked. The person's name and address receiving said wildlife must also appear on the written information.

- (f) No person shall concentrate, drive, molest, hunt, take, capture or kill; or attempt to take any wildlife by the aid of any fire or smoke whether man-made or natural.
- (g) No person may hunt, chase, capture, shoot at, wound or kill any moose or Rocky Mountain bighorn sheep, except as otherwise provided by statute or Commission rule.
- (h) Private landowner regulations regarding any items covered by these rules may be more restrictive, but not less restrictive than these rules.
- (i) Dogs may be used in taking all game species in these rules except bear, deer, elk, antelope and turkey. Exceptions to this rule would be the use of a leashed dog to track downed game after notification to the game warden of location and having no means of take on person while tracking.
- (j) Except as otherwise provided for by law or Commission rule, nothing shall prohibit the year round pursuit of game, which may be lawfully hunted with the use of hunting dogs, for dog training or sport only. However unless otherwise provided, no person in pursuit of game with hunting dogs outside of the regular harvest season shall have in their possession the means to harvest such game.
- (k) The pursuit of feral hogs with a shotgun on private property is not restricted by shot size.

PART 7. FALCONRY

800:25-7-31. Taking provisions

- (a) **Eyas:** Young birds not yet capable of flight (eyases) may only be taken from the wild during the period April 15 through July 31 by a General or Master Falconer. No more than two eyases may be taken by the same licensee during the taking period. At least two birds must be left in any nest form which one or more birds is removed, except in the case of birds of the genus Buteo where a minimum of one bird must be left in the nest. Removal of eggs from nests is prohibited.
- (b) **Passage:** First-year (passage) birds, still in immature plumage, may be taken only from August 1 through May 31.
- (c) Raptors that are lost to the wild may be retrapped at any time. Raptors lost for more than 30 days shall be considered as lost and reported as such to the Department.
- (d) **Legal raptors:** Raptors that may be taken from the wild in Oklahoma are the same as those listed in CFR 50.
- (e) Golden eagles may be taken with permission of the Oklahoma Department of Wildlife Conservation as allowed by pertinent state and federal statutes and regulations.
- (f) The Director of the Department of Wildlife may authorize resident general and master falconers to take passage gyrfalcons.
- (g) The take of any state or federally listed threatened species will require prior approval from the Oklahoma Department of Wildlife Conservation.
- (h) The first bird acquired by an apprentice falconer must be one in which they actively participated in capturing from the wild. This bird may only be a Red-tailed Hawk or an American Kestrel. An apprentice can acquire a bird through transfer no sooner than six months following the capture date of their first

bird. An apprentice falconer may only possess a Red-tailed Hawk, American Kestrel or a Harris' Hawk.

(i) Non-resident falconers shall be allowed to take no more than fifty percent (50%) of the number of peregrine falcons annually allotted to Oklahoma by the U.S. Fish and Wildlife Service.

PART 12. ANTELOPE

800:25-7-47. General provisions for antelope - archery

Hunters must carry written permission on their person while hunting. Landowners, operators, and immediate family thereof are exempt from written permission. Persons with a current valid hunting license and antelope license are exempt from this provision only while hunting on actively enrolled OLAP walk-in hunting areas.

PART 14. ELK

800:25-7-56. General provisions for elk

Elk hunts will be held in years when warranted by the Oklahoma Wildlife Conservation Commission. Hunts will be listed in Oklahoma Hunting Guide in years when appropriate. Elk license and written permission from the landowner or where appropriate the lessee (tenant) must be carried on the person while hunting elk. Persons with current valid hunting license and elk license are exempt from this provision only while hunting on actively enrolled OLAP walk-in areas.

PART 19. SEASONS ON AREAS OWNED OR MANAGED BY THE OKLAHOMA DEPARTMENT OF WILDLIFE CONSERVATION AND THE U.S. FISH AND WILDLIFE SERVICE

800:25-7-86.1. Camp Gruber Maneuver Training Center ~~(CGTC)~~ (CGMTC)

The following area regulations and hunting and trapping seasons apply to designated open areas on CGTC.

- (1) All hunter(s)/trapper(s), regardless of age or military status, entering CGTC must possess the following:
 - (A) A hunting/trapping license or proof of exemption appropriate for the season being hunted/trapped as stated in the Oklahoma Hunting Regulation Guide booklet, published by ODWC.
 - (B) A valid Unexploded Ordinance (UXO) permit from CGTC.
 - (C) Hunter Education certification as required and outlined in the current Oklahoma Hunting Regulation Guide booklet.
- (2) All other recreational users (anglers, horseback riders, etc.) entering CGTC for any reason are required to have in their possession a valid UXO permit.
- (3) The following designated hunting seasons will apply to all hunting areas (#1, #2, #3, #5) on CGTC.

- (A) The three-day youth deer gun season in October.
- (B) The nine-day primitive firearms (muzzleloader) deer season, beginning the fourth Saturday in October and continuing for nine consecutive days.
- (C) The sixteen-day deer gun season, beginning the Saturday before Thanksgiving and continuing for sixteen consecutive days.
- (D) December 11 through Martin Luther King Day of each year, for all open hunting/trapping seasons listed for CGTC in the Oklahoma Hunting Regulation Guide booklet.
- (E) ~~April 15~~ The 3rd Saturday in April through May 6 for spring turkey hunting.

(4) No later than 8:00 A.M. the day before the start of each designated hunting season, the gates west of Highway 10 (gates 5, ~~6~~, 43, 44, 45, 46, 48 and 49), Hill Top gate (gate 12), Black Hollow gate (gate 16), Wild Horse Road gate (gate 17), Pumpkin Center Road gate (gate 23), and south Highway 10 gate (gate 38) will be opened and they will close starting at 10:00 P.M. and the last gate to be closed, Hilltop Road (Gate 12), will be closed at midnight on the last day of each designated hunting season.

(5) Hunter/trapper use and access to hunting areas will also be allowed outside the designated hunting seasons whenever specific hunting areas are available and the use and access can be granted without impairment to the military mission.

(6) ~~Hunting areas west of Highway 10 (#4, #6) will remain open year round for all open hunting/trapping seasons listed for CGTC in the Oklahoma Hunting Regulation Guide booklet, unless required for military training and coordinated with ODWC a minimum of 30 days in advance be open for public use during the listed dates and designated hunting seasons.~~

- (A) October 1 through Martin Luther King Day, for all open hunting/trapping seasons listed for CGTC in the Oklahoma Hunting Regulation Guide.
- (B) The two-day Youth Spring Turkey season, the Saturday and Sunday prior to the opening day of the statewide Spring Turkey season.
- (C) The entire Spring Turkey season, April 6 through May 6.

(7) Camping on CGTC will be allowed only in Hunter's Camp 2 and only during the designated hunting seasons.

- (A) ~~Controlled public access routes to the camping area will be through Hill Top Road (gate 12), and Wild Horse Road (gate 17). These gates will be open by 8:00 A.M. the day before the start of the designated hunting seasons and will close at midnight on the last day of each designated hunting season.~~
- (B) Open fire(s) will be allowed in the designated camping area only. CGTC may restrict the use of fire(s) in the camping area during dry conditions or if the CGTC is under a county or state burn ban.
- (C) Quiet shall be maintained in the camping area between the hours of 11 P.M. and 7 A.M. and all dogs

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or other pets must be kept on a leash or otherwise confined while in the camping area.

(D) Fishing will be allowed in the ponds at Hunter's Camp 2 during the designated hunting seasons with a fishing license or proof of exemption as stated in the Oklahoma Fishing Regulation Guide booklet, published by ODWC.

(8) All motorized vehicles must stay on the maintained road network. No all-terrain vehicles (ATVs) are allowed on the CGTC, except for those individuals who possess an ODWC Non-ambulatory permit. Permit holders operating an ATV are required to wear a reflective vest, DOT approved motorcycle helmet, eye protection (meets or exceeds ASNI 287.1 standards), long sleeve shirt, pants, over the ankle footwear, and full fingered gloves or mittens. Speeds on all ATV's will not exceed 25 MPH. Additionally, all motor vehicle and non-ambulatory vehicle permit holders must abide by all rules and regulations applicable to the permit as listed in the Oklahoma Hunting Guide Regulation booklet. Only those hunting areas and/or roads that are determined suitable and specifically designated for such will be open, intended users will inquire with Range Operations in building 740 for a map of designated areas/roads.

(9) Quail: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.

(10) Pheasant: Closed season.

(11) Prairie chicken: Closed season.

(12) Turkey-Fall:

(A) Archery: Same as statewide season dates, either-sex.

(B) Gun: Closed season.

(13) Turkey-Spring: Same as statewide season dates, 1 tom limit.

(14) Squirrel: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.

(15) Rabbit: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.

(16) Crow: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.

(17) Dove: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.

(18) Rail and gallinule: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.

(19) Common snipe: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.

(20) Woodcock: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.

(21) Deer-archery: Same as statewide season dates.

(22) Deer-primitive firearms: Same as statewide season dates.

(23) Deer-gun: Same as statewide dates, except closed to antlerless deer hunting.

(24) Trapping: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.

(25) Pursuit with hounds: Same as statewide dates, except closed from the opening day of deer archery season through deer gun season and spring turkey season.

(26) Predator/furbearer calling: Same as statewide dates, except closed from the opening day of deer archery season through deer gun season and spring turkey season.

(27) Waterfowl: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.

800:25-7-97. Fobb Bottom WMA

The following hunting and trapping season apply to the Fobb Bottom WMA:

(1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season.

(2) Pheasant: Closed season.

(3) Prairie chicken: Closed season.

(4) Turkey-Fall:

(A) Archery: Same as statewide season dates, either sex.

(B) Gun: Closed season.

(5) Turkey-Spring: Same as statewide season dates, 1 tom limit.

(6) Squirrel: Same as statewide season dates, except closed during the first nine days of deer gun season.

(7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season.

(8) Crow: Same as statewide season dates.

(9) Dove: Same as statewide season dates.

(10) Rail and gallinule: Same as statewide season dates.

(11) Common snipe: Same as statewide season dates, except closed during the first nine days of deer gun season.

(12) Woodcock: Same as statewide season dates, except closed during the first nine days of deer gun season.

(13) Deer-archery: Same as statewide season dates.

(14) Deer-primitive firearms: Same as statewide season dates, except closed to antlerless hunting after the first day.

(15) Deer-gun: Same as statewide season dates, except closed to antlerless hunting after the first day.

(16) Trapping: Open to water sets, live box traps, and enclosed trigger traps only.

(17) Pursuit with hounds: Same as statewide season dates, except closed during first nine days of deer gun season.

(18) Predator/furbearer calling: Same as statewide season dates except closed during first nine days of deer gun season.

(19) Waterfowl: Same as statewide season dates.

800:25-7-108. Hickory Creek WMA

The following hunting and trapping seasons apply to the Hickory Creek WMA:

- (1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
 - (A) Archery: Same as statewide season dates, either-sex.
 - (B) Gun: Same as statewide season dates, 1 tom.
- (5) Turkey - Spring: Same as statewide season dates, 1 tom limit.
- (6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.
- (7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season.
- (12) Woodcock: Same as statewide season dates, except closed during first nine days of deer gun season.
- (13) Deer - archery: Same as statewide season dates, ~~except closed during first nine days of deer gun season.~~
- (14) Deer - primitive firearms: Same as statewide season dates.
- (15) Deer - gun: Same as statewide season dates.
- (16) Trapping: Open to water sets, live box traps, and enclosed trigger traps only.
- (17) Pursuit with hounds: Same as statewide season dates, except closed during first nine days of deer gun season.
- (18) Predator/furbearer calling: Same as statewide season dates, except closed during the first nine days of deer gun season.
- (19) Waterfowl: Same as statewide season dates.

800:25-7-120. Love Valley WMA

The following hunting and trapping seasons apply to Love Valley WMA:

- (1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
 - (A) Archery: Same as statewide season dates, either-sex.
 - (B) Gun: Same as statewide season dates, 1 tom.
- (5) Turkey - Spring: Same as statewide season dates, 1 tom limit.
- (6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.
- (7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates.

- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season.
- (12) Woodcock: Same as statewide season dates, except closed during first nine days of deer gun season.
- (13) Deer - archery: Same as statewide season dates, ~~except closed during first nine days of deer gun season.~~
- (14) Deer - primitive firearms: Same as statewide season dates.
- (15) Deer - gun: Same as statewide season dates.
- (16) Trapping: Open to water sets, live box traps, and enclosed trigger traps only.
- (17) Pursuit with hounds: Same as statewide season dates, except closed during the first nine days of deer gun season.
- (18) Predator/furbearer calling: Same as statewide season dates, except closed during the first nine days of deer gun season.
- (19) Waterfowl: Same as statewide season dates.

PART 25. OKLAHOMA LAND ACCESS PROGRAM

800:25-7-180. General provisions for OLAP walk-in areas

- (a) Hunting seasons and bag limits are consistent with the applicable statewide legislation unless stated otherwise in the OLAP map directory and/or on posted signs at the walk-in area.
- (b) OLAP walk-in areas are considered Department managed lands and subject to the provision therein unless stated otherwise.
- (c) Access is allowed from two hours before official sunrise to 60 minutes after official sunset unless stated otherwise in the OLAP map directory and/or on posted signs at the walk-in area.
- (d) Vehicular access onto OLAP walk-in areas is prohibited.
- (e) No overnight camping or fires are permitted on OLAP walk-in areas.
- (f) Dogs are allowed on OLAP walk-in areas for the pursuit of game only, with the exception of service dogs. Dogs shall not harass livestock, persons, or property on OLAP walk-in areas.
- (g) Horses are prohibited on OLAP walk-in areas.
- (h) Permanent type blinds and stands are prohibited, and hunters are limited to one temporary blind or stand per person.
- (i) Persons accessing OLAP walk-in areas must possess a valid hunting license, fishing license, or conservation passport.
- (j) It is unlawful for any person to refuse to leave an OLAP walk-in area when requested by the cooperator, a Department representative, or a law enforcement officer.
- (k) Any unlawful removal of OLAP signs, kiosks, maps, or other postings is prohibited.
- (l) Any Title 29 or Title 800 rule violation incurred by persons on OLAP walk-in areas may incur any applicable fines.

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800:25-7-181. OLAP walk-in hunting areas, seasons, and equipment restrictions

(a) Access is allowed for hunting activities only. All other activities are prohibited on OLAP walk-in hunting areas unless stated otherwise in the OLAP map directory and/or on posted signs at the walk-on area.

(b) The following defines types of OLAP Walk-in Hunting Areas.

(1) Access allowed from September 1 - February 15. Regulations and methods of take consistent with statewide regulations.

(2) Access allowed from September 1 - February 15. Archery/Shotgun with pellets only

(3) Access allowed from September 1 - 30.

(4) Access allowed for Spring Turkey:

(A) Access in southeast region consistent with southeast region spring turkey season dates.

(B) Access statewide excludes the southeast region consistent with statewide spring turkey season dates.

(5) Controlled Hunt Area: Access granted by permit drawn through the controlled hunt program.

800:25-7-182. OLAP wildlife-viewing areas, seasons, and equipment restrictions

(a) Hunting is prohibited on OLAP wildlife-viewing areas. Fishing may be allowed if the property is concurrently enrolled as a walk-in fishing area.

(b) No more than 25% of the total acres leased in the OLAP may be designed as wildlife-viewing area.

SUBCHAPTER 9. CONTROLLED HUNTS

PART 3. ANTELOPE

800:25-9-12. General antelope regulation

(a) General regulations for antelope shall be the same as those established for deer gun season.

(b) Any antelope or any portion of any antelope transferred to another person must have the hunter's name, address, hunting license number and date harvested attached to the animal. The person's name and address receiving said wildlife must also appear on the written information.

(c) Private landowner regulations regarding any items covered by these rules may be more restrictive, but not less restrictive than these rules.

(d) The following provisions apply to the tagging and checking of antelope.

(1) Persons taking an antelope shall immediately attach their name and license number to the carcass.

(2) Persons taking an antelope must directly take the antelope to the check station in Cimarron or Texas County where it will be tagged with a carcass tag that shall remain with the carcass through processing, transportation and storage.

(3) Evidence of sex (head) must not be removed until the carcass has been checked.

(e) The yearly statewide bag limit for antelope is two (2) antelope, which may include no more than one (1) buck. Antelope taken on controlled hunts are not bonus antelope and count towards the statewide bag limit.

(f) A buck antelope is any antelope, regardless of sex, with a black cheek patch.

(g) All antelope hunters are required to have written permission on property that they are hunting and must carry this permission on their person while hunting. However, landowners, operators (agriculture lessee) and their spouse or child, lessee, or immediate family hunting on their own property are exempt. Persons with a current valid hunting license and antelope license are exempt from this provision only while hunting on actively enrolled OLAP walk-in hunting areas.

(h) Hunter fluorescent orange clothing requirements are the same as those required for deer gun season.

SUBCHAPTER 37. NUISANCE WILDLIFE CONTROL PROGRAM

PART 3. WILDLIFE AND FERAL HOG NUISANCE AND DEPREDATION RULES

800:25-37-12. General Provisions

In addition to the statutory provisions of Title 29 OS 4-135, the following general provisions shall apply to the issuance of a Nuisance and Depredation Permit:

(1) The Department of Wildlife Conservation (Department) shall create a complaint/permit form, which must be completed and signed by the landowner/lessee and an authorizing Department employee before a permit can be issued.

(2) If the complaint form is approved, the Department shall issue a nuisance/depredation permit. A copy of the permit must be kept on the person of the permittee and all individuals authorized in writing to help the permittee while conducting nuisance wildlife ~~or feral swine~~ control. The permit will detail:

(A) date of complaint received and effective dates of control activities;

(B) location;

(C) method of control;

(D) landowner/lessee information and signature;

(E) name and address of designated agent(s);

(F) the signature of authorizing Oklahoma Department of Wildlife Conservation employee.

(3) Each permit holder shall:

(A) be in possession of a valid Hunting License or proof of exemption, and a valid Fishing & Hunting Legacy permit or proof of exemption and/or a valid Trapping License or proof of exemption. Landowners and/or lessees controlling nuisance wildlife on land owned or leased by them shall be exempt from the Hunting License, Trapping License and the Fishing & Hunting Legacy permit.

(B) be at least 16 years of age for wildlife ~~or feral swine~~ control at night with firearms.

(C) any person who's hunting or trapping license privileges are revoked and is not legally able to purchase a hunting or trapping license, shall not be allowed to possess, or operate under the authority of a depredation permit.

(4) Big game (deer, antelope, elk) complaints must comply with the provisions of 800:25, Subchapter 30.

800:25-37-13. Exemptions

(a) Employees of the Oklahoma Department of Wildlife Conservation and the Oklahoma Department of Agriculture Wildlife Services Division are exempt.

(b) Employees of any city, town or county government shall be exempt from purchasing or possessing the annual Hunting License and Fishing & Hunting Legacy permit while they are on duty.

(c) Certified Nuisance Wildlife Control Operators acting on a documented wildlife complaint in accordance with 800:25, Subchapter 37, Part 1.

~~(d) Permittees controlling feral swine only shall be exempt from possessing the hunting license and Fishing and Hunting Legacy permit.~~

800:25-37-14. Specific Provisions

The following provisions shall be in effect to establish the legal methods that may be used to control nuisance/depredating wildlife ~~or feral swine~~ under such a permit.

(1) permittees are authorized to trap, shoot or euthanize nuisance wildlife in accordance with the stipulations on the permit.

(2) The sale, trade, barter, gifting or retention of beavers and coyotes or parts thereof, including live coyotes, taken under authority of a Depredation Permit is allowed. A copy of the depredation complaint form including the permittee's name and signature must accompany the coyote, beaver or parts thereof. The provisions of Title 29 O.S. 7-503A apply to live coyotes.

(3) permittees must follow all state and federal laws that apply except as otherwise provided in this section.

(4) All wildlife ~~and or feral swine~~ taken under a Nuisance and Depredation Permit shall be disposed of in a proper manner to prevent harm to the public. Carcasses shall be disposed of in accordance with O.S. Title 21, Section 1223.

(5) Traps and other similar devices set shall be checked at least once every 24 hours.

(6) All traps, snares and similar devices shall have the permit holder's name attached (except landowners).

(7) Signs must be conspicuously posted to inform the public that traps are in use. Signs must have minimum dimensions of 5" by 8" and the wording "TRAPS" must be included and be conspicuous on the signs and printed in letters at least 2" tall (except landowners).

(8) The following are legal methods which may be allowed under a Nuisance and Depredation Permit:

(A) box or live traps;

(B) smooth-jawed single spring or double spring offset jawed leg-hold steel traps with a jaw spread of no more than eight inches;

(C) snares which have a locking device that prevents the loop from having a circumference less than 10 inches;

(D) body gripping style traps; size 330 may be used for water sets only; and

(E) shooting where permitted by law or by city ordinance.

(9) All trapping devices must be placed in a manner that will:

(A) minimize the risk of non-target species;

(B) minimize the risk to public and pets; and

(C) be out of the view of the general public.

(10) Shooting with firearms shall be subject to all state, county and municipal restrictions and ordinances.

(11) Night shooting may be allowed under a Depredation Permit only under the following conditions:

(A) Permittee must notify the game warden(s) in the county where activity will occur twenty-four (24) hours prior to such activity;

(B) night shooting beavers shall be with shotguns with buckshot or smaller only; and

~~(C) there are no firearm restrictions for night shooting feral swine; and~~

~~(D)~~ must be conducted in a safe manner to prevent injury to people, livestock and damage to personal property.

800:25-37-16. Feral swine night shooting exemptions

The following rules detail exemptions to shoot feral swine at night under provisions of T29 4-135:

(1) Night Shooting exemptions will only be issued to the deed-holding landowner or a written designee. Only one exemption will be issued per property. The landowner or their written designee may obtain an immediate exemption to night shoot by contacting their game warden in the county in which their property is located. A game warden in an adjoining county may also be contacted to immediately issue the exemption. If the landowner or their written designee does not speak to the game warden by telephone, the landowner or their written designee may leave a voice mail message, send a text message or email to the game warden which will serve as sufficient means for an immediate exemption to shoot feral swine at night. The Wildlife Department may also create an electronic exemption issuance and notification system.

(2) If the initial contact is through the game warden, then the game warden will be responsible for following up with the requesting party to issue a night shooting exemption.

(3) Exemptions shall be valid for one year. Exemptions shall contain the landowner's name, the name of the written designee (if landowner designates someone in place of himself or herself) claiming the exemption, the person's

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address, and contact information, plus either a legal description or a listing of the landowner's acreage and location relative to the nearest roadways (e.g.: $\frac{1}{2}$ mile west of the intersection of Hwy 177 and Tooley Rd; on the north side of the roadway; 280 acres). Persons shooting feral swine on a night exemption may not shoot from, to, on or across any public roadway. Anyone under age 18 is recommended to be immediately accompanied by an adult.

(4) Exemptions may be revoked for violations within the last three years of Title 800:25-37-16; Title 29 Section 5-411; Title 29 Section 5-203.1; or municipal law violations (night shooting in a prohibited area).

(5) During the period outside of the 16-day regular firearms deer season - and in areas where firearms deer season(s) is/are not in effect - the landowner or their written designee can allow anyone to night shoot on the landowner's property by providing written or electronic (text/email) permission. At least one person in the group must have a copy of the landowner's or written designee's exemption (written or electronic copy). Any person night shooting during this time period is encouraged to provide some type of advance notification to the local game warden, but advanced notification is not required.

(6) During the 16-day regular firearms deer season - only the landowner or their written designee can night shoot on the property listed on their exemption, and he or she is required to provide some type of advanced notification to the local game warden. The advanced notification can be by text message, voice mail message, email, or through an electronic notification system. Family members (parents, children, grandchildren, sons-in-laws and daughters-in-laws) can assist an exemption holder. At least one person in the group must have a copy of the exemption while night shooting.

(7) Night vision equipment, including image-enhancement technology and thermal imaging technology will be allowed, as will infra-red or what are commonly called 'night scopes'. The use of a hand-held or other powerful light (firearms mounted) shall be allowed and for the purposes of night shooting feral swine, vehicle headlights and vehicle mounted headlights will be allowed. Motor-driven land conveyances to pursue or follow feral swine will be allowed.

(8) There are no firearm restrictions for night shooting feral swine.

(9) Persons controlling only feral swine shall be exempt from possessing the hunting license and Fishing and Hunting Legacy permit.

for a lease that allows public walk-in access for hunting, fishing, and/or wildlife viewing. This rule also establishes some of the basic responsibilities of the landowner, the Department, and the OLAP sportsperson.

800:25-40-2. Definitions

The following words and terms, when used in this Subchapter, shall have the meaning as specified in §29-2-101, in addition to the following, unless the context clearly indicates otherwise:

"Lease activity" means recreation limited to hunting, fishing, and/or wildlife viewing. The plural, 'lease activities' may refer to any combination of the aforementioned activities.

"Lease agreement" means the contract signed by the private landowner and the Department in which the private landowner agrees to allow public walk-in access for hunting, fishing, and/or wildlife viewing.

"OLAP" means and refers to the Oklahoma Land Access Program.

"OLAP walk-in area" means all lands described in the lease agreement to which the private landowner agrees to allow public walk-in access for hunting, fishing, and/or wildlife viewing.

"OLAP sportsperson" means any person accessing an OLAP walk-in area.

"Private landowner" means any individual, agent, trust, partnership, corporation, authorized lessee, association, tribe, or other entity that possesses the legal authority to grant a walk-in access lease.

"Cooperator" means a private landowner that is engaged in an active OLAP walk-in area lease with the Department.

"Stream access areas" means stream access points and/or stream corridors enrolled in the OLAP.

"Stream access point" means a delineated area enrolled in the OLAP that provides access to a stream.

"Stream corridor" means a length of a stream enrolled in the OLAP. These areas may include one or both banks, and the boundaries are delineated by signage and/or the OLAP map directory.

800:25-40-3. Qualifications and enrollment procedures

The following are some of the basic qualifications and procedures for application and enrollment in the Oklahoma Land Access Program:

(1) A qualifying private landowner shall be the owner of record or lessee with both authority and operational control over the lands proposed for OLAP enrollment for the term of the contract.

(2) A qualifying OLAP walk-in area must be accessible from a public road.

(3) A private landowner interested in enrolling in the OLAP must fill out, sign, and submit an enrollment application to the Department representative. Department representatives may assist with completion of enrollment

SUBCHAPTER 40. OKLAHOMA LAND ACCESS PROGRAM

800:25-40-1. Purpose

The purpose of this Subchapter is to establish guidelines and procedures to help administer a walk-in access program in the state of Oklahoma and to compensate private landowners

application forms. Enrollment application forms are available at applicable Department offices and on the Department website.

(4) Applicants must provide:

(A) A legal description of the proposed OLAP walk-in area.

(B) Evidence of property ownership, or a copy of the lease agreement if the applicant is an authorized lessee.

(5) All OLAP lease agreements shall provide a public purpose. Department personnel shall evaluate potential OLAP walk-in areas to determine if the property is suitable for providing public hunting, fishing, and/or wildlife viewing.

800:25-40-4. Lease agreement

Each qualifying private landowner enrolled in OLAP shall enter into a lease agreement in a form provided by the Department with terms and conditions acceptable to the Department pertaining to the OLAP walk-in area.

800:25-40-5. Compensation

The following are some guidelines to help determine payment rates to Cooperators participating in the Oklahoma Land Access Program:

(1) The amount of compensation paid to the Cooperator enrolled in the OLAP shall include consideration of the following variables:

(A) The acreage enrolled as an OLAP walk-in area.

(B) The type(s) of lease activities allowed on the OLAP walk-in area.

(C) The season duration for applicable lease activities.

(2) Additional compensation may be awarded based upon:

(A) Concurrent enrollment by multiple private landowners with adjoining OLAP walk-in areas.

(B) Proximity to major metropolitan areas.

(C) Enrollment of OLAP walk-in area for additional consecutive years.

(D) Enrollment of CRP, EQUIP, WRP, and other conservation easement programs for the remaining duration of the easement program contract.

(E) Concurrent enrollment in other Department programs.

(3) Variables determining compensation are specified in the OLAP walk-in area evaluation document. Walk-in areas are quantitatively scored based on the aforementioned variables to ensure standardized compensation. A copy of the document is given to the Cooperator for their review and records.

800:25-40-6. Landowner responsibilities

The following are some of the basic responsibilities of the Cooperators enrolled in the Oklahoma Land Access Program:

(1) Cooperators must provide public walk-in access for lease activities as provided in the lease agreement. Restriction of public use by the cooperator on an OLAP walk-in area without cause may void the lease agreement.

(2) Cooperators may not separately lease hunting, fishing, or other rights on OLAP walk-in areas that may interfere with the lease activity. Violation of this section may result in cancellation of the lease agreement between the cooperator and the Department.

(3) Cooperators shall allow law enforcement to access the OLAP walk-in area to enforce wildlife regulations.

800:25-40-7. Department responsibilities

The following are some of the basic responsibilities of the Department to Cooperators and OLAP sportspersons in regards to the Oklahoma Land Access Program:

(1) The Department shall evaluate habitat and lease activity opportunities using standardized methods as specified in the OLAP walk-in area evaluation document.

(2) The Department shall provide:

(A) OLAP lease agreement forms.

(B) Signs indicating the type and duration of lease activities on the OLAP walk-in area.

(C) Law enforcement on the OLAP walk-in area.

(D) Current and accurate maps in digital format for OLAP walk-in areas detailing the type and duration of lease activities. Hard copy maps are provided but cannot be guaranteed to be current or accurate due to enrollment of OLAP walk-in areas throughout the year.

(E) Clear signs denoting any changes in access or lease activities at current and former OLAP walk-in areas that may not be reflected in the hard copy map atlas.

800:25-40-8. OLAP sportsperson responsibilities

The following are some of the basic responsibilities of the OLAP sportspersons accessing OLAP properties enrolled in the Oklahoma Land Access Program:

(1) OLAP sportspersons may not access an OLAP walk-in area if it is temporarily closed for agricultural or ranching activities.

(2) OLAP sportspersons are responsible for obtaining current maps in digital or hard copy format to ensure lawful entrance onto an OLAP walk-in area and awareness of the boundaries of the OLAP walk-in area.

800:25-40-9. Right to deny access

The following are some guidelines to help control access to OLAP walk-in areas enrolled in the Oklahoma Land Access Program:

(1) The Department and the Cooperator reserve the right to deny a person access to the OLAP walk-in area described in the lease agreement for causes related to, but not limited to, property damage, wildlife violations, intoxication, trespassing, violations of terms provided in the lease agreement, interference with ranching/farming

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activities, harassment of livestock, damaging fences or gates, and entering the OLAP walk-in area with any motorized vehicle.

(2) The Department and the Cooperator reserve the right to deny persons access to the OLAP walk-in area for hunting if migrating Whooping Cranes are present. Access will resume upon the confirmed absence of the Whooping Cranes.

(3) The Cooperator with reasonable notice to the Department, reserves the right to temporarily deny persons access to the OLAP walk-in area when use of the walk-in area might adversely affect agricultural or ranching activities. Access will resume once the activity concludes on the OLAP walk-in area. The duration of the denial of access for work reasons must be consistent with reasonable completion times for agricultural and ranching activities.

[OAR Docket #17-461; filed 6-19-17]

TITLE 800. DEPARTMENT OF WILDLIFE CONSERVATION CHAPTER 30. DEPARTMENT OF WILDLIFE LANDS MANAGEMENT

[OAR Docket #17-462]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. Use of Department Managed Lands

800:30-1-8. Language, disorderly assemblage, noise or other disruptive acts [AMENDED]

800:30-1-14. Firearms [AMENDED]

800:30-1-16. Shooting ranges [AMENDED]

AUTHORITY:

Title 29 O.S., Section 3-103, 5-201 A (5), 5-401; Article XXVI, Section 1 and 3 of the Constitution of Oklahoma; Department of Wildlife Conservation Commission.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

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SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

These rule amendments would prohibit intoxicating beverage and low-point beer on shooting range parking areas. Allow suppressors on Department managed lands and at shooting ranges owned or managed by the Department of Wildlife.

CONTACT PERSON:

Alan Peoples, Chief of Wildlife Division, Oklahoma Department of Wildlife Conservation, 2145 N.E. 36th Street, Oklahoma City, OK 73111. Phone: 405/521-2739 or Rhonda Hurst, APA Liaison, phone: 405/522-6279.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 1. USE OF DEPARTMENT MANAGED LANDS

800:30-1-8. Language, disorderly assemblage, noise or other disruptive acts

(a) No person shall use threatening, abusive or indecent language, participate in a disorderly assemblage, nor publicly appear nude or intoxicated on any lands owned or managed by the Oklahoma Department of Wildlife Conservation.

(b) No person shall possess, consume or use any intoxicating beverage or low-point beer, as defined in Title 37, except in camping and parking areas, not including shooting range parking areas, on any lands or waterways subject to the control of the Oklahoma Department of Wildlife Conservation except U.S. Forest Service regulations shall apply to the Black Kettle, Ouachita, Rita Blanca and Tiak Wildlife Management Areas.

(c) Any act or conduct by any person which interferes with, impedes or disrupts the use of Department managed lands or impairs the safety of another person is prohibited. Individuals who are boisterous, rowdy, disorderly or otherwise disturb the peace on Department managed lands or waters may be requested to leave.

(d) The operation or use of any audio or other noise producing device including, but not limited to radios, televisions, or musical instruments and motorized equipment, including vessels or vehicles, in such a manner as to reasonably annoy or endanger persons at any time or exceed state or local laws governing noise levels from motorized equipment is prohibited.

(e) No person shall possess, consume, use or manufacture any controlled or dangerous substance, as defined in Title 63, on any land or waterways subject to the control of the Oklahoma Department of Wildlife Conservation.

(f) No person shall use or possess any explosive devices, including fireworks or firecrackers on Department managed lands.

800:30-1-14. Firearms

(a) Unless otherwise specified, all public land areas open for hunting may be hunted by all methods specified in the annual season regulations as legal for the species sought in the county being hunted.

(b) The possession of fully automatic firearms ~~and/or suppressors~~ are prohibited on any Department managed lands, except for Department personnel and law enforcement officers

in the performance of their duties, and as otherwise provided for military training authorization.

(c) **Corps of Engineers restrictions.** The possession of loaded firearms, ammunition, loaded projectile firing devices, bows and arrows, crossbows, explosives or explosive devices of any kind including fireworks is prohibited on all U.S. Army Corps of Engineers project lands except as permitted for hunting purposes during authorized hunting seasons or being used at an authorized shooting range.

800:30-1-16. Shooting ranges

(a) On all Department owned or managed lands, the discharge of firearms for purposes other than while hunting is restricted to the specific target or shooting ranges provided for public use.

- (1) Shooting ranges are open year-round, unless specified otherwise in the Oklahoma Hunting Guide or signs at the range.
- (2) Shooting hours are official sunrise to official sunset, daily.
- (3) Any person using the shooting range under the age of 16 must be immediately supervised by an adult (18 years old or older).
- (4) All firearms shooting single projectiles or any pellets larger than conventional BB (.180" dia.) must be shot at approved berms and target areas only. Air-borne clay targets may be shot using pellets no larger than conventional BB (.180" dia.).
- (5) All rifle, pistol, shotgun, and muzzleloader targets will consist of paper or clay targets only.
- (6) All paper targets must be removed before leaving the shooting area.
- (7) Centerfire rifles and pistols .50 caliber and larger are prohibited.
- (8) Fully automatic firearms ~~and suppressors~~ are prohibited.
- (9) Fireworks, explosive devices, exploding targets, tracer and incendiary rounds are prohibited.
- (10) Eye and ear protection shall be worn while shooting.
- (11) Shooters, and accompanying adult, must possess a valid Oklahoma hunting license, or combination hunting/fishing license unless exempt.

(b) Exemptions to (a) of this Section may only be granted by the Director of the Oklahoma Department of Wildlife Conservation upon prior submission of a written application setting forth the location, date, nature and purpose of such activity.

[OAR Docket #17-462; filed 6-19-17]

**TITLE 810. OKLAHOMA WORKERS' COMPENSATION COMMISSION
CHAPTER 1. GENERAL INFORMATION**

[OAR Docket #17-616]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
810:1-1-2 [AMENDED]
810:1-1-3 [AMENDED]
810:1-1-8 [NEW]

AUTHORITY:
Workers' Compensation Commission; 85A O.S. §§ 1 et seq.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

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APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 13, 2017

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June 13, 2017

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SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

Incorporated standards:

IAIABC Electronic Data Interchange Implementation Guide, Release 3.0, and Oklahoma WCC Electronic Data Interchange (EDI) Implementation Guide.

Incorporating rules:

810:1-1-8

Availability:

8:00 a.m. to 5:00 p.m., Monday through Friday at the Oklahoma Workers Compensation Commission offices 1915 N. Stiles Avenue, Oklahoma City, OK 73105, 405-522-3222 and 440 South Houston, Tulsa, OK 74127, 918-295-3732. The incorporated standards are also available online at www.okwccedi.info.

GIST/ANALYSIS:

The rule amendments add definitions and establish procedures necessary to implement an Electronic Data Interchange (EDI) system. The proposed rule sets forth electronic reporting requirements and incorporates EDI implementation guides.

CONTACT PERSON:

Lindsey Christopher, Commission Counsel, OWCC, 212 Kerr State Office Building, 440 S. Houston, Tulsa, Oklahoma 74127, 918-295-3731, lindsey.christopher@wcc.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

810:1-1-2. Definitions

In addition to the terms defined in 85A O.S. § 2, the following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

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"Administrative Law Judge" means an Administrative Law Judge of the Commission to whom the Commission has delegated by order or otherwise, the authority to conduct a hearing.

"AWCA" means the Administrative Workers' Compensation Act, 85A O.S. § 1, et seq.

"Certificate of noncoverage" or "CNC" means a certificate which may be issued by the Oklahoma Workers' Compensation Commission after proper application and reasonable investigation to a sole proprietor or the partners of a partnership who do not elect to be covered by the AWCA.

"Claimant" means a person who claims benefits for an alleged work injury, occupational disease or illness, or death, pursuant to the provisions of the AWCA.

"Claim administrator" means the trading partner sending electronic transactions to the Commission, which can be an insurer filing directly with the Commission on its own behalf, or a servicing company/third party administrator filing on behalf of the insurer.

"Claim Information" means data submitted via First Report of Injury (FROI) or Subsequent Report of Injury (SROI).

"Commission" means the Oklahoma Workers' Compensation Commission, a designee, or an Administrative Law Judge to whom the Commission has delegated responsibility as authorized by 85A O.S. § 21(D).

"Electronic Data Interchange" means the transmission of claim information through electronic means, in a format established by the Commission.

"EDI" means electronic data interchange.

"Executive Director" means the Executive Director of the Commission.

"FROI" means first report of injury.

"Insurer" means the entity responsible for making electronic filings as prescribed by law and these rules. This term includes self-insurers.

"Self-insurer" means any duly qualified individual employer or group self-insurance association authorized by the Commission to self-fund its workers' compensation obligations.

"SROI" means subsequent report of injury.

"Trading Partner" means an entity that has registered with the Commission to exchange data through Electronic Data Interchange.

"Workers' Compensation Commission fee schedule" means a state mandated schedule of maximum allowable reimbursement levels for health care providers, including hospitals, ambulatory surgical centers, and inpatient rehabilitation facilities, rendering reasonable and necessary health care services and supplies to an injured employee for a compensable injury pursuant to the Oklahoma workers' compensation laws.

"Written" means that which is expressed in writing, and includes electronic records.

810:1-1-3. General description of the Oklahoma Workers' Compensation Commission

(a) **History.** The Oklahoma Workers' Compensation Commission was created pursuant to legislation enacted in 2013 and is responsible for administration of the Administrative

Workers' Compensation Act, 85A O.S. § 1, et seq., except as otherwise provided by law.

(b) **Composition.** The Commission is comprised of three members who are appointed by the Governor and confirmed by the Senate for staggered terms. The initial appointments are for two (2), four (4) and six (6) years respectively, as determined by the Governor. Subsequent terms are for six (6) years. One of the initial appointments must be from a list of three (3) nominees selected by the Speaker of the Oklahoma House of Representatives. The Chair of the Commission is appointed by the Governor from among the Commission members. The Chair organizes, directs and develops administrative work, employs administrative staff within budgetary limitations, and performs other duties authorized by law or prescribed by the Commission. The Commission appoints an administrator who is the administrative officer of the Commission and manages the activities of its employees and performs other duties prescribed by the Chair or Commission. The title of the administrative officer shall be Executive Director. The Commission may appoint as many Administrative Law Judges and other personnel as necessary within budgetary limitations to effectuate the AWCA.

(c) **Duties.** It is the Commission's responsibility to apply the law as set out in the AWCA. The Commission has adjudicative, administrative and regulatory functions. Those functions include providing fair and timely procedures for the resolution of workers' compensation disputes; monitoring claims and benefit payments to injured workers, processing settlements and requests for changes in physicians; ensuring that employers maintain required insurance coverage; issuing certificates of noncoverage to eligible applicants; processing and approving applications of employers to act as self-insurers; processing and approving applications related to independent physicians, mediators and case managers; developing and maintaining a workers' compensation fee schedule; providing legal information and assistance to interested persons who have questions concerning the Oklahoma workers' compensation law; and participating in programs to explain the law and functions of the Commission to the general public.

(d) **Main offices of Commission.** The main offices of the Commission are located at: Denver Davison Building, 1915 North Stiles Avenue, Oklahoma City, Oklahoma 73105.

810:1-1-8. Electronic data interchange

(a) **Mandatory compliance.** Mandatory compliance with all provisions of Commission rules pertaining to electronic data interchange shall commence January 1, 2018. Beginning January 1, 2018, claim administrators shall submit all claim information via EDI, according to electronic record layouts adopted by the International Association of Industrial Accident Board and Commissions (IAIABC) in its Release 3 standards, until such time as the Commission may adopt a subsequent release of the IAIABC standards. Any subsequent version of the IAIABC standards is deemed adopted upon approval by the Commission. Claim administrators shall adhere to the IAIABC standards most recently adopted by the Commission. Paper forms postmarked before the mandatory implementation date of January 1, 2018 will be accepted and filed.

(b) Trading partner profile. Each claim administrator shall submit to the Commission's EDI vendor a completed EDI trading partner profile at least two (2) business days before submitting claim information via EDI. A claim administrator shall have a trading partner profile on file with the Commission before EDI submissions from that claim administrator will be accepted. The claim administrator shall report changes to its profile information at least two (2) business days prior to sending transactions containing revised profile-related information to the Commission. Failure to report changes to the trading partner profile information may result in the rejection of an entire transmission or individual transaction(s) containing profile information different from information reported on profile documents mostly recently submitted to the Commission.

(c) Implementation guides incorporated by reference. Claim administrators shall file all claim information according to the IAIABC EDI Implementation Guide for claims, the Oklahoma Workers' Compensation Commission EDI Implementation Guide, which includes, but is not limited to, the Event Table, Element Requirements and Edit Matrix as referenced, and as otherwise specified in these rules. The IAIABC EDI Implementation Guide for claims and the Oklahoma Workers' Compensation Commission EDI Implementation Guide are herein incorporated by reference. The Commission's EDI Implementation Guide can be found at www.okwccedi.info.

(d) Paper forms. On or after January 1, 2018 paper copies of the following forms will not be accepted and will only be satisfied by filing FROI and SROI as specified in the Oklahoma Workers' Compensation Commission EDI Implementation Guide:

- (1) CC-Form-2 Employer's First Notice of Injury;
- (2) CC-Form-2A Employer's Intent to Controvert Claim;
- (3) CC-Form-2A Extension Employer's Application and Authorization for Extension of Time to File CC-Form-2A; and
- (4) CC-Form-4 Report of Compensation Paid/Suspension of Payments.

(e) Social security number. All EDI reports submitted to the Commission shall include the last five (5) digits of the claimant's social security number, in addition to other information that may be required. If no social security number can be obtained, the report shall include the worker's USCIS (green card) number, employment visa number, or passport number.

(f) Catastrophic event. Claim administrators, who directly or through a third party vendor, experience a catastrophic event resulting in the insurer's failure to meet timely filing requirements, shall submit a written or electronic request to the Commission for approval to submit required electronic form equivalents in an alternative filing timeline. The request shall be sent to the Commission within fifteen (15) days after the catastrophic event. The request shall contain a detailed explanation of the nature of the event, date of occurrence, and measures being taken to resume electronic submission. The claim administrator shall also provide an estimated date by which electronic submission of affected EDI filings will be resumed. Approval

to submit in an alternative filing timeline shall be granted by the Commission if a catastrophic event prevents electronic submission. If approved, the electronic form equivalents that were due to be filed during the time the claim administrator was unable to file due to a catastrophic event, shall be sent with Late Reason Code "LB" (Late notification/payment due to Natural Disaster) or "LC" (Late notification/payment due to an act of Terrorism).

[OAR Docket #17-616; filed 7-11-17]

**TITLE 810. OKLAHOMA WORKERS' COMPENSATION COMMISSION
CHAPTER 10. PRACTICE AND PROCEDURE**

[OAR Docket #17-617]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions

810:10-1-3 [AMENDED]

810:10-1-4 [AMENDED]

810:10-1-5 [AMENDED]

810:10-1-7 [AMENDED]

810:10-1-8 [AMENDED]

810:10-1-9 [AMENDED]

810:10-1-10 [AMENDED]

Subchapter 3. Informal Dispute Resolution Processes

810:10-3-3 [AMENDED]

810:10-3-5 [AMENDED]

Subchapter 5. Hearings Conducted by Administrative Law Judges and Commissioners

Part 1. Commencement of Claims and Review of Qualified Employer Benefit Determinations

810:10-5-5 [REVOKED]

Part 5. Prehearing Proceedings

810:10-5-31 [AMENDED]

Part 7. Initial and Subsequent Proceedings

810:10-5-46 [AMENDED]

810:10-5-49 [AMENDED]

810:10-5-50 [AMENDED]

Part 13. Dismissals

810:10-5-85 [AMENDED]

Part 15. Settlements

810:10-5-95 [AMENDED]

Part 17. Fees

810:10-5-105 [AMENDED]

AUTHORITY:

Workers' Compensation Commission; 85A O.S. §§ 1 et seq.

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Permanent Final Adoptions

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The rule amendments incorporate new procedures for workers' compensation proceedings coming before the Commission for disposition pursuant to the Administrative Workers' Compensation Act. The amendments implement an Electronic Data Interchange system pursuant to 85A O.S. §101; revoke rules and procedures pertaining to the Oklahoma Employee Injury Benefit Act; establish additional procedures related to social security numbers, attorney leave requests, the retention and retrieval of trial exhibits, payment of dismissal fees, joint petition settlements and Certificates of Noncoverage; clarify policies and procedures related to evidentiary requirements for permanent impairment, mediation conference reports, deposition scheduling and payment, and subpoenas issued in compliance investigations.

CONTACT PERSON:

Lindsey Christopher, Commission Counsel, OWCC, 212 Kerr State Office Building, 440 S. Houston, Tulsa, Oklahoma 74127, 918-295-3731, lindsey.christopher@wcc.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 1. GENERAL PROVISIONS

810:10-1-3. Definitions

In addition to the terms defined in 85A O.S. § 2, the following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Acceptable Electronic Signature Technology" means technology that is capable of creating a signature that is unique to the person using it, is capable of verification, is under the sole control of the person using it, and is linked to the data in such a manner that if the data is changed, the electronic signature is invalidated.

"Administrative Law Judge" means an Administrative Law Judge of the Commission to whom the Commission has delegated by order or otherwise, the authority to conduct a hearing.

"Attorney" means an attorney licensed to practice law in Oklahoma and a member in good standing of the Oklahoma Bar Association, or an out-of-state attorney.

"AWCA" means the Administrative Workers' Compensation Act, 85A O.S. §§1, et seq.

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

"Certified workplace medical plan" means an organization that is certified by the Oklahoma State Department of Health to provide management of quality treatment to injured employees for injuries and diseases compensable pursuant to the workers' compensation laws of the State of Oklahoma.

"Claim administrator" means the trading partner sending electronic transactions to the Commission, which can be an insurer filing directly with the Commission on its own behalf, or a servicing company/third party administrator filing on behalf of the insurer.

"Claim for compensation" means a Commission prescribed form filed by or on behalf of an injured worker or the worker's dependents to initiate a claim for benefits pursuant to the AWCA for an alleged work injury, occupational disease or illness, or death.

"Claim Information" means data submitted via First Report of Injury (FROI) or Subsequent Report of Injury (SROI).

"Claimant" means a person who claims benefits for an alleged work injury, occupational disease or illness, or death, pursuant to the provisions of the AWCA.

"Commission" means the Oklahoma Workers' Compensation Commission, a designee, or an Administrative Law Judge to whom the Commission has delegated responsibility as authorized by 85A O.S. § 21(D).

"Commission Chair" means the Chair of the Oklahoma Workers' Compensation Commission.

"Continuance" means postponing a hearing from the time or date set, and rescheduling it on a later time or date.

"Controverted claim" means there has been a contested hearing before the Commission over whether there has been a compensable injury or whether the employee is entitled to temporary total disability, temporary partial disability, permanent partial disability, permanent total disability, or death compensation.

"Discovery" means the process by which a party may, before the hearing, obtain evidence relating to the disputed issue or issues from the other parties and witnesses.

"Document" means any written matter filed in a cause, including any attached appendices.

"Electronic Data Interchange" means the transmission of claim information through electronic means, in a format established by the Commission.

"EDI" means electronic data interchange.

"Electronic Signature" means an electronic symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

"Executive Director" means the Executive Director of the Commission.

"FROI" means first report of injury.

"Good cause" means, in the context of a request for continuance or failure of a party to comply with the Rules of this Chapter, circumstances beyond the party's control or that the party could not reasonably foresee. In the context of a claim, defense, or order, it means a reasonable legal basis.

"Insurance carrier" means any stock company, mutual company, or reciprocal or interinsurance exchange authorized to write or carry on the business of workers' compensation insurance in this state, and includes an individual own risk employer or group self-insurance association duly authorized by the Commission to self fund its workers' compensation obligations.

"Insurer" means the entity responsible for making electronic filings as prescribed by law and these rules. This term includes self-insurers.

"Joint Petition Settlement" means a settlement between the employer/insurance carrier and the employee, of all or some issues and matters in a claim for compensation.

"Legal holiday" means only those days declared legal holidays pursuant to 25 O.S. § 82.1 or by proclamation of the Governor of Oklahoma.

"Mediation" means the process of resolving disputes with the assistance of a mediator, outside of a formal administrative hearing.

"Out-of-state attorney" means a person who is not admitted to practice law in the State of Oklahoma, but who is admitted in another state or territory of the United States, the District of Columbia, or a foreign country.

"Pro se" means without an attorney.

"Proceeding" means any action, case, hearing, or other matter pending before the Commission.

"Representative" means a person designated in writing by an injured employee, person claiming a death benefit, employer, insurance carrier or health or rehabilitation provider, to assist or represent them before the Commission in a matter arising under the AWCA.

"Sanction" means a penalty or other punitive action or remedy imposed by the Commission on an insurance carrier, representative, employee, employer, or health care provider for an act or omission in violation of the AWCA or a rule, judgment, order, or decision of the Commission.

"Self-insurer" means any duly qualified individual employer or group self-insurance association authorized by the Commission to self fund its workers' compensation obligations.

"SROI" means subsequent report of injury.

"Subpoena" means a Commission issued writ commanding a person to attend as a witness to testify or to produce documents, including books, papers and tangible things, at a deposition or at a hearing.

"Trading Partner" means an entity that has registered with the Commission to exchange data through Electronic Data Interchange.

"Workers' compensation fee schedule" means a state mandated schedule of maximum allowable reimbursement levels for health care providers, including hospitals, ambulatory surgical centers, and inpatient rehabilitation facilities, rendering reasonable and necessary health care services and supplies to an injured employee for a compensable injury pursuant to the Oklahoma workers' compensation laws.

"Written" means that which is expressed in writing, and includes electronic records.

810:10-1-4. Reporting injuries or deaths

(a) Employer's first report of injury (formerly CC-Form 2).

(1) Within ten (10) days after the date of receipt of notice or of knowledge of death or injury that which results in more than three days' absence from work for the injured employee, the employer the loss of time beyond the shift or which requires medical attention away from the work site the claim administrator shall send a report thereof to the Commission as provided in 85A O.S. § 63, on a form prescribed by the Commission that includes, in addition to other required information, the worker's full name and date of birth, and the last four digits of the worker's

Social Security number. The report shall be known as the Employer's First Notice of Injury. The employer also shall send the report to the employer's insurance carrier, if any, within the ten day period file a FROI with the Commission via EDI.

(2) The report shall contain the information required by 85A O.S. § 63 and any additional information prescribed by the Commission.

(3) Failure or refusal of an insurer to comply with the reporting requirements of this Section may subject the insurer to sanctions prescribed in 85A O.S. § 63.

(b) Employer's First or Subsequent Report of Injury (formerly, CC-Form 2A and CC-Form 2A Extension).

(1) Each insurer is required by 85A O.S. § 86 to file a report of controversion, if intending to controvert, within fifteen (15) days of notice or knowledge of injury. Insurer, if intending to controvert, shall do so by the claim administrator making the appropriate FROI and/or SROI filings as provided in the Oklahoma Workers' Compensation Commission EDI Implementation Guide.

(2) A FROI UI (Under Investigation) or SROI UI (Under Investigation) is submitted to request an extension to investigate compensability of the claim. The request must be submitted within the fifteen (15) days after notice of the injury, or by such later date as fixed by the Commission, in its discretion. The extension shall be deemed granted upon request, and extends the filing deadline for a standard time period of thirty (30) days from the original due date of the FROI or SROI for a total of forty-five (45) days from the date of the employer's notice or knowledge of injury/death. The Commission reserves the right to alter the extension period and may audit extension requests.

(3) Within fifteen (15) days of notice or knowledge of injury the claim administrator, if not controverting, shall report first payment of benefits on either a FROI or SROI in accordance with the Oklahoma Workers' Compensation Commission EDI Implementation Guide.

(c) Employer's Subsequent Report of Injury, Report of Compensation Paid (formerly CC-Form-4).

(1) Within fifteen (15) days of the initial payment of a benefit, change in benefit amount, change in benefit type, reinstatement of a benefit or suspension of a benefit, the employer shall file a SROI reporting such initial payment, change, suspension or reinstatement and the reason therefore.

(2) Within thirty (30) days of making the final payment of compensation, including payments made for medical treatment, the employer shall file a SROI FN (Final) reporting such final payment.

(3) The claim administrator shall file a sub-annual report (SROI SA) every 6 months for every indemnity or medical only claim where indemnity and/or medical benefits were paid during the reporting year. For ongoing claims, reports are due six months from the date of injury and every six months following. If the claim is closed prior to the initial six months from when the SROI SA (Sub-Annual) is due, a SROI FN (Final) shall be filed.

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(bd) **Additional reporting requirements.** Reports or additional reports with respect to the death, injury and of the condition of the employee shall be sent by the employer to the Commission at such time and in such manner as the Commission may prescribe.

(ee) **Evidentiary effect of reports.** Any report provided pursuant to this Section shall not be evidence of any fact stated in the report in any proceeding with respect to the injury or death for which the report is made.

(d) **Sanctions.** ~~Failure or refusal of an employer to comply with the reporting requirements of this Section may subject the employer to sanctions prescribed in 85A O.S. § 63.~~

810:10-1-5. Commencing temporary total disability compensation and medical benefits

(a) Upon receipt of notice or of knowledge that an employee has been injured, the employer has an obligation under the AWCA to provide that employee with reasonable and necessary medical treatment for the injury, and to pay temporary total disability compensation if the employee is unable to perform the employee's job, or any alternative work offered by the employer, for more than three (3) calendar days. No order from the Commission directing the employer to provide these benefits is required.

(b) The first installment of temporary total disability compensation is due on the fifteenth day after the employer has notice of the injury. By that date, all temporary total disability compensation then accrued shall be paid to the employee, and weekly installment payments shall be made thereafter, unless the employer controverts the employee's right to compensation ~~as provided in 85A O.S. § 86 by timely filing a Commission or requests an extension to determine compensability as prescribed CC Form 2A Employer's Intent to Controvert Claim form with the Commission. To be timely, the employer must file the CC Form 2A within fifteen (15) days after notice of the injury, or by such later date as fixed by the Commission, in its discretion, upon the employer's filing of a CC Form 2A Extension Employer's Application and Authorization for Extension of Time to File CC Form 2A form with the Commission. The request must be postmarked within the fifteen day period after the employer has notice of the injury. The employer shall send a copy of the CC Form 2A to the employee and so certify on the form when filed in 85A O.S. § 86 and 810:10-1-4(b).~~ The employee may request a hearing before an Administrative Law Judge of the Commission no sooner than ten (10) days after filing a claim for compensation with the Commission as provided in 810:10-5-2.

810:10-1-7. Forms and other documents generally

(a) All forms, pleadings, proposed orders, correspondence or other documents submitted to the Commission shall:

- (1) be typewritten or printed legibly on 8 ½" by 11" paper, unless electronically filed;
- (2) refer to the Commission file number if assigned;

(3) bear the typed or printed name, mailing address, telephone number, and signature, of the person who prepared the document, including the firm name if applicable; and

(4) include the attorney's Oklahoma Bar Association number, if the document is submitted by an attorney licensed to practice law in Oklahoma.

(b) The signature of an attorney or party constitutes the following:

(1) a certification that the claim, request for benefits, request for additional benefits, controversion of benefits, request for a hearing, pleading, form, motion, or other paper has been read;

(2) that to the best of his or her knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and

(3) that it is not brought for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(c) If a claim, request for benefits, request for additional benefits, request for hearing, pleading, motion, or other paper:

(1) is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant; or

(2) is signed in violation of the AWCA, the Commission, including Administrative Law Judges, on motion or on their own initiative, shall impose an appropriate sanction as prescribed in 85A O.S. § 83.

(d) An electronic signature using acceptable electronic signature technology may be used to sign a document or a form and shall have the same force and effect as a hand written signature.

(e) All documents filed with the Commission shall be served on all parties and shall have a certificate of service setting forth the manner of such service. A copy of all correspondence addressed to the Commission with respect to a pending matter shall be sent to all parties at the time it is sent to the Commission and shall list the parties to whom copies were sent.

(f) All forms filed with the Commission, except forms submitted via EDI, shall be file-stamped by the Clerk of the Commission on the date of receipt.

(g) All FROI and SROI filings properly submitted through EDI according to the standards specified in 810:1-1-8 shall be deemed to comply with the requirements of this section.

810:10-1-8. Display and use of an individual's Social Security number

Unless otherwise ordered or as otherwise provided by law, every filer may limit the employee's or the employee's dependent's Social Security number to only the last ~~four~~ five (5) digits of that number in all pleadings, papers, exhibits or other documents, or Commission forms prescribed by the Commission. The responsibility for following this provision rests solely with counsel, the parties, or any other filer. The Clerk of the Commission or other Commission personnel shall not have any duty to review documents for compliance with this

provision. If a filer includes the Social Security number in any document filed with the Commission, the document becomes a public record as filed. Nothing in this Section shall impact the confidentiality of any records the Legislature has determined are confidential.

810:10-1-9. Who may appear before Commission

(a) Attorneys licensed to practice law in Oklahoma and members in good standing of the Oklahoma Bar Association may appear on behalf of parties to litigation before the Commission and in Joint Petition Settlement proceedings before the Commission. Legal interns licensed by the Oklahoma Supreme Court may appear on behalf of a party only on matters properly within the scope of their license. Out-of-state attorneys who have complied with the requirements of Chapter 1, Appendix 1, Article II, Section 5 of Title 5 of the Oklahoma Statutes may appear on behalf of a party with leave of the Commission. The attorney shall file an entry of appearance with the Commission as provided in 810:10-1-10.

(b) Persons other than licensed attorneys, including adjusters, may file standard, administrative reporting forms such as the ~~Employer's First Notice of Injury~~ FROI per 810:10-1-4(a) and notice of compliance with payment and reporting obligations related to Multiple Injury Trust Fund assessments (85A O.S., § 31) and Self-insurance Guaranty Fund assessments (85A O.S., § 98), which are required by law and/or Commission rules, are not considered legal pleadings, and the submission of which in no way is intended as an act of legal representation. Persons other than licensed attorneys may not assume an advocate's role or introduce evidence or examine witnesses in proceedings before the Commission or an Administrative Law Judge.

(c) An individual may appear pro se or by an attorney. A corporation, limited liability company, insurance carrier, individual own risk employer, and group self-insurance association, may appear only by its attorney.

810:10-1-10. Contact information for service of notice; entry of appearance; leave to withdraw

(a) Contact information for service of notice.

(1) Each party, upon instituting or responding to any proceedings before the Commission, shall file with the Commission the party's address, or the name and address of any agent upon whom notices shall be served to such party or agent at the last address so filed with the Commission. A party, including a claimant acting pro se, shall promptly communicate any change of address to the Commission's Docket Office.

(2) An attorney of record, as defined in Subsection (d) of this Section, shall give notice of a change of address by providing the Commission's Docket Office with a copy of the letterhead containing the new address and a list containing the Oklahoma Bar Association number of each attorney member of the firm who regularly appears before the Commission.

(3) Notice and service of documents may be made as prescribed in 12 O.S. § 2005(B). It is the responsibility

of parties to an action before the Commission to provide a current mailing address, and email address if available, to Commission staff. Notices and documents sent to the last known address or email address on file with the Commission, are presumed delivered in a timely manner, and presumed received.

(b) Entry of appearance.

(1) An entry of appearance shall be filed by any attorney or law firm representing any party in any proceeding before the Commission. No attorney or law firm will be recognized in any case before the Commission unless the attorney or law firm duly entered their written appearance. When an entry of appearance has been duly filed by a law firm, any attorney member of that firm may appear and be recognized by the Commission. All entries of appearance when filed shall be accompanied by a written authorization signed by the client and attorney identifying the attorney or law firm as the client's representative, as defined in 810:10-1-3, to provide services in the workers' compensation matter, including the presentation of evidence as provided in 85A O.S. § 71(C)(1)(a).

(2) An appearance on behalf of the employer/insurance carrier shall be filed no later than ten (10) days after the employer/insurance carrier's receipt of a file-stamped copy of a claimant's claim for compensation filed pursuant to 810:10-5-2. The entry of appearance for the employer/insurance carrier shall identify whether or not the employer is an active member of a certified workplace medical plan in which the claimant is potentially enrolled, and if so, the name of the plan.

(c) Leave to withdraw.

(1) Once an entry of appearance has been filed, Leave to Withdraw can only be had upon written order of the Commission following appropriate notice to the client and the opposing side. Substitution of Counsel may be had by filing with the Commission and serving on the opposing party a notification of the substitution, signed by the attorney of record, the substituted attorney and the client. Notification of the substitution when filed shall be accompanied by a written authorization signed by the client and substituted attorney identifying the attorney as the client's representative to provide services in the workers' compensation matter, including the presentation of evidence as provided in 85A O.S. § 71(C)(1)(a).

(2) Except when an attorney's representation has been terminated at the client's initiative, no attorney shall be allowed to withdraw as an attorney for a party when that attorney has signed the pleadings necessary to perfect an appeal to the Commission en banc. This prohibition shall apply until the appeal has been fully submitted to the Commission en banc for consideration. This prohibition shall not apply if another attorney has entered an appearance for the appealing party before the filing of the application to withdraw.

(d) Attorney of record.

(1) The attorney of record for the claimant in a case shall be the attorney signing the first claim for compensation filed in the case for the claimant as provided in

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810:10-5-2. Any other attorney who files an entry of appearance on behalf of any party in the case or who is identified as a substitute attorney pursuant to a notice of substitution of attorney shall also be considered an attorney of record. The Commission shall send notices to all attorneys of record until a substitution of attorney has been filed or an Application for Leave to Withdraw has been filed and granted by the Commission. Various attorneys may appear before the Commission in a matter, but notice shall be sent only to those attorneys who are an "attorney of record" as defined in this Subsection.

(2) Attorneys of record who change law firms shall notify the Commission of the status of the representation of their clients, and shall immediately seek Leave to Withdraw, when appropriate.

(e) **Attorney leave requests.** Attorneys must make leave requests at least seven (7) weeks in advance. Requests for leave that exceed a total of two (2) consecutive weeks must be approved by the Chief Administrative Law Judge and Presiding Court of Existing Claims Judge. Leave requests may be submitted via the online request form on the Commission's website at www.ok.gov/wcc or submitted directly to the Commission's docket office.

SUBCHAPTER 3. INFORMAL DISPUTE RESOLUTION PROCESSES

810:10-3-3. Counselor program

(a) The Commission shall maintain a workers' compensation counselor program to assist injured employees, employers and persons claiming death benefits under the AWCA. The program shall be administered by the Counselor Division of the Commission.

(b) A Division counselor shall:

- (1) meet with or otherwise provide information to injured employees;
- (2) investigate complaints;
- (3) communicate with employers, insurance carriers, individual own risk employers, group self-insurance associations, and health care providers on behalf of injured employees;
- (4) provide informational seminars and workshops on workers' compensation for medical providers, insurance adjusters, and employee and employer groups; and
- (5) develop informational materials for employees, employers and medical providers.

(c) Notice of the availability of the services of the counselor program and of the availability of mediation and other forms of alternative dispute resolution to assist injured workers shall be mailed to the injured worker within ten (10) days of the filing of the ~~Employer's First Notice of Injury~~ FROI as provided in 810:10-1-4(a). Information about the counselor program and the availability of alternative dispute resolution also shall be made part of the Commission's training materials for self-insurers and claims representatives handling Oklahoma workers' compensation claims.

810:10-3-5. Preliminary conferences

(a) At the Commission's discretion the first prehearing conference shall be directed to the preliminary conference docket of a Benefit Review Officer of the Commission. Pursuant to 85A O.S. § 70, the Benefit Review Officer shall:

- (1) assist unrepresented claimants to enable those persons to protect their rights in the workers' compensation system;
- (2) narrow and define the disputed issues;
- (3) facilitate informal dispute resolution and provide an opportunity for a binding settlement of some or all of the issues;
- (4) prepare at the conclusion of the preliminary conference stipulations of all contested and uncontested issues which shall be signed by representatives of the parties and the Benefit Review Officer; and
- (5) draft a written summary report of the conference within five (5) days after the preliminary conference is closed to be filed in the case.

(b) All unresolved contested issues shall be set by the Commission on the assigned Administrative Law Judge's docket upon the filing of a CC-Form-9 or CC-Form-13.

(c) Benefit Review Officers are authorized to advise unrepresented claimants and to approve Joint Petition Settlements which may result from a preliminary conference; provided, the same Benefit Review Officer who conferred with the claimant may not also approve the Joint Petition Settlement.

(d) A Mediation Conference as provided in this Section may be conducted by agreement of the parties to a workers' compensation dispute or pursuant to a referral order by the assigned Administrative Law Judge following the filing of a request for hearing and assent of the parties to mediate as provided in 85A O.S. § 110. All workers' compensation issues may be mediated except for disputes related to medical care under a certified workplace medical plan or claims against the Multiple Injury Trust Fund.

(e) A Mediation Conference set and conducted as provided in this Section shall be voluntary, informal, nonbinding and strictly confidential. The mediator is authorized to compel attendance at the conference, but is not authorized to compel settlement. Attendance by the parties, and/or a representative of each party having full authority to settle all issues, is required. Failure to attend a Mediation Conference pursuant to this Section without good cause is subject to sanctions for contempt as provided in 85A O.S. § 73(B).

(f) The Mediation Conference may be held in the county where the accident occurred, if the accident occurred in Oklahoma, unless otherwise agreed to by the parties, or as otherwise directed by the Commission. Mediation Conferences involving a nonresident claimant or an accident occurring outside Oklahoma shall be held at the main offices of the Commission in Oklahoma City, Oklahoma, unless otherwise agreed to by the parties, or as otherwise directed by the Commission.

(g) A Mediation Conference may be concluded by any party at any time, by the mediator if in the mediator's discretion it is necessary or an impasse exists, or upon an agreement or settlement being reached by the parties. Whether or not an agreement or settlement is reached, upon conclusion of the

conference, the mediator shall complete the Commission prescribed Report of Mediation Conference form and send a copy to the Commission Counselor Division and to each party. The original Report of Mediation shall be filed in the Commission case file, and if there is none, then shall be retained by the Counselor Division.

(h) Except as otherwise provided in Subsections (d) through (g) of this Section, a Mediation Conference conducted by a Commission Benefit Review Officer shall be conducted according to the policies and procedures applicable to mediation conferences of workers' compensation matters by private mediators as provided in 810:10-3-4, 810:10-3-7 through 810:10-3-11.

SUBCHAPTER 5. HEARINGS CONDUCTED BY ADMINISTRATIVE LAW JUDGES AND COMMISSIONERS

PART 1. COMMENCEMENT OF CLAIMS AND REVIEW OF QUALIFIED EMPLOYER BENEFIT DETERMINATIONS

810:10-5-5. Review of adverse benefit determination by qualified employers [REVOKED]

~~(a) Except as otherwise provided by law, a claimant aggrieved by all or part of an adverse benefit determination upheld by a qualified employer's appeals committee pursuant to 85A O.S. § 211, may appeal the determination to the Commission en banc by filing an original and four (4) copies of a Commission prescribed CC Form 211 Request for Review of Adverse Benefit Determination with the Commission within one (1) year after the claimant's receipt of notice that the determination, or part thereof, was upheld. The CC Form 211 shall:~~

- ~~(1) include a copy of the adverse benefit determination being appealed to the Commission en banc; and~~
- ~~(2) clearly and concisely address each issue in the adverse benefit determination that the claimant wants reviewed, and state the relief sought. General allegations of error do not suffice. Allegations of error concerning matters not included in a timely filed CC Form 211 shall be deemed waived.~~

~~(b) The Commission shall assign a file number to the CC Form 211 upon receipt, and, within ten (10) days thereafter, shall mail or send an electronic copy thereof to the qualified employer.~~

~~(c) Proceedings related to oral argument before the Commission en banc and submission by the parties of written arguments as an aid to the Commission en banc shall be governed by 810:10-5-66(e) (f). The qualified employer's written argument shall be accompanied by an appendix that includes a copy of the employer's benefit plan and the entire administrative record established by the internal process of the qualified employer's plan.~~

~~(d) Discovery related to a claim for review under this section shall be governed by Rule 810:10-5-31(e) (d).~~

PART 5. PREHEARING PROCEEDINGS

810:10-5-31. Discovery

(a) **Generally.** Discovery in administrative proceedings before the Commission is governed by this Section.

(b) **Authority of the Administrative Law Judge.** Any party may commence with discovery methods such as depositions, issuance of subpoenas and requests for production, prior to or after invoking the jurisdiction of the Administrative Law Judge. Discovery disputes may be resolved by filing a CC-Form-13 requesting a prehearing conference. The Administrative Law Judge, upon the judge's own motion or on the motion of either party, may permit or perform such discovery or other appropriate action as the judge decides is appropriate in the circumstances, taking into account the needs of the parties to the proceeding and other affected persons and the desirability of making the proceeding fair, expeditious, and cost-effective. If discovery is permitted or performed, the Administrative Law Judge may order a party to the proceeding to comply with the judge's discovery-related orders, issue subpoenas for the attendance of a witness and for the production of records and other evidence at a discovery proceeding, including a deposition, and take action against a noncomplying party as appropriate and consistent with 85A O.S. § 73(B) and 85A O.S. § 83(B).

(c) **Protective orders.** The Commission may issue a protective order to prevent the disclosure of privileged information, confidential information, trade secrets, and other information protected from disclosure to the extent a court could if the controversy were the subject of a civil action in this state, including any orders with respect to subpoenas and attendance of a witness as may be appropriate for the protection of persons, including an order quashing a subpoena, excusing attendance of witnesses, or limiting documents to be produced.

(d) **Subpoenas; costs; fees; service.**

(1) When a witness is required to appear or to produce documentary evidence, a subpoena shall be issued by an attorney authorized to practice law in Oklahoma or under the seal of the Clerk of the Commission. The party requesting the subpoena under the seal of the Commission shall fill it in before issuance. The subpoena may be served by certified mail with return receipt requested or it may be hand delivered. The party requesting the subpoena shall bear the cost of serving it. Except as otherwise provided by law or this Title for physician testimony, fees of a nonparty witness who is subpoenaed to appear before the Commission shall be the same as those allowed to witnesses appearing before the district courts of this state. Party witnesses are not entitled to witness fees.

(2) The party who takes the deposition of a witness or of a party shall bear all expenses thereof, including the cost of transcription, except as otherwise provided in 85A O.S., § 112(J) and 810:10-5-49.

(e) **Completion of discovery by the employer or insurance carrier in contested claims.** Pursuant to 85A O.S. § 111, if the compensability of a claim is contested, the employer or

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insurance carrier shall complete and secure a medical evaluation of the claimant within sixty (60) days of the filing of a claim for compensation pursuant to 810:10-5-2.

(f) **Filing Discovery.** No depositions, interrogatories, interrogatory answers, requests for production of documents and things, requests for admissions, or responses thereto, shall be filed with the Commission, except as ordered by the assigned Administrative Law Judge.

PART 7. INITIAL AND SUBSEQUENT PROCEEDINGS

810:10-5-46. Evaluation of permanent impairment

(a) **Generally.** Except for scheduled losses subject to 85A O.S. § 46(A) and as otherwise provided in this Section, member injuries enumerated in 85A O.S. § 46, evaluations of permanent impairment for injuries occurring on or after February 1, 2014, shall be evaluated as a percentage of whole body impairment, not to exceed 350 weeks, 85A O.S. § 46(C), and must be based solely on criteria established by the current edition of the American Medical Association's Guides to the Evaluation of Permanent Impairment as a proportionate loss of use of the body as a whole, using the conversion tables of the guides. Deviations from the Guides are permitted only when specifically provided for in the Guides, or pursuant to an alternative method of evaluation approved pursuant to 85A O.S. § 60 that deviates from or is used in place of or in combination with the Guides. Such deviations must be medically reasonable and necessary, as shown by clear and convincing evidence.

(b) **Change of condition.** Evaluations of permanent impairment which are prepared in support of a Motion of Change of Condition occurring on or after February 1, 2014 shall be performed using the appropriate edition of the AMA Guides, including any approved alternative method of evaluation developed as provided in 85A O.S. § 60 that deviates from or is used in place of or in combination with the Guides, in effect on the date of injury.

(c) **Hearing impairment.** The current edition of the American Medical Association's Guides to the Evaluation of Permanent Impairment, or any alternative method approved pursuant to 85A O.S. § 60 that deviates from or is used in place of or in combination with the Guides, in effect on the date of injury, shall be used to evaluate permanent impairment caused by hearing loss where the last exposure occurred on or after February 1, 2014. Objective findings necessary to prove permanent disability in occupational hearing loss cases may be established by medically recognized and accepted clinical diagnostic methodologies, including, but not limited to audiological tests that measure air and bone conduction thresholds and speech discrimination ability. Differences in baseline hearing levels shall be confirmed by subsequent testing given within four (4) weeks of the initial baseline hearing level test.

(d) **Eye impairment.**

(1) The criteria for measuring and calculating the percentage of eye impairment for an injury occurring on or after February 1, 2014 shall be pursuant to this Subsection.

A physician may deviate from the method of evaluation provided for in this Subsection or may use some other recognized method of evaluation, if the deviation or the method of evaluation is fully explained.

(2) Physicians should consult the American Medical Association's Guides to the Evaluation of Permanent Impairment regarding the equipment necessary to test eye function and for methods of evaluating vision loss. Evaluation of visual impairment may be based upon visual acuity for distance and near, visual fields and ocular motility with absence of diplopia.

(3) Use of corrective lenses may be considered in evaluating the extent of vision loss, 85A O.S. § 46(E).

810:10-5-49. Rules of evidence

(a) **Generally.** The Commission and Administrative Law Judges and are not bound by technical or statutory rules of evidence or procedure, 85A O.S. § 72(A).

(b) **Presentation of evidence.** At the hearing, an opportunity shall be afforded all parties to present evidence and argument with respect to matters and issues involved, although the argument may be restricted to a presentation in written form, to cross-examine witnesses who testify, and to submit rebuttal evidence. During a hearing, irrelevant, immaterial, or unduly repetitious evidence shall be excluded.

(c) **Taking official notice.** The Administrative Law Judge may take official notice of the law of Oklahoma and other jurisdictions, facts that are judicially cognizable, and generally recognized facts within the Commission's specialized knowledge; provided all parties shall be notified either before or during the hearing of the material so noticed, and they shall be afforded an opportunity to contest the facts so noticed.

(d) **Documents.**

(1) A photographic copy of a document which is on file as part of the official records of the Commission will be received without further authentication.

(2) A photographic copy of a public record certified by the official custodian thereof will be received without further authentication. A written statement by such custodian of records that no record or entry of described character is found in his records shall be received as proof of absence of such record.

(3) A photographic copy of a document may be substituted for the original at the time the original is offered in evidence.

(4) A document may not be incorporated in the record by reference except by permission of the Commission or Administrative Law Judge. Any document so received must be precisely identified.

(5) The Commission or Administrative Law Judge may require that additional copies of exhibits be furnished for use by other parties of record.

(6) When evidence is offered which is contained in a book or document containing material not offered, the person offering the same shall extract or clearly identify the portion offered.

(7) The Commission or Administrative Law Judge may permit a party of record to offer a document as part of the

record within a designated time after conclusion of the hearing.

(e) **Witnesses.** All witnesses who appear to testify during a hearing shall first be subject to oath or affirmation and any testimony submitted by deposition shall show on the face thereof that the witness was so qualified.

(f) **Prepared testimony.** Except as otherwise provided in Subsection (g) and (h) of this Section, written testimony of a witness in the form of a notarized affidavit may be received in lieu of direct examination.

(g) **Expert medical testimony.**

- (1) Expert medical testimony may be offered by:
 - (A) a written medical report of the physician;
 - (B) deposition; or
 - (C) oral examination before the Commission or Administrative Law Judge.

(2) Medical opinions addressing compensability and permanent disability must be stated within a reasonable degree of medical certainty. Medical opinions concerning the existence or extent of permanent disability must be supported by competent medical testimony of a physician described in 85A O.S. § 45(C)(1) and shall be supported by objective findings as described in 85A O.S. § 2(31). The medical testimony must include the employee's percentage of permanent partial disability and whether or not the disability is job-related and caused by the accidental injury or occupational disease or illness.

(3) The fact that the medical report constitutes hearsay shall not be grounds for its exclusion; ~~provided, objection.~~

(4) Objection to and request for cross-examination of a Commission appointed independent medical examiner is governed by 85A O.S. § 112(J). The claimant is responsible for scheduling the deposition regardless of which party asserted the objection. The respondent shall choose the court reporter.

(5) Objection to and request for cross-examination of a physician, other than a Commission appointed independent medical examiner, must be made in writing to all parties within ten (10) days after receipt of the physician's report. The party requesting the deposition testimony is responsible for the physician's reasonable charges for such testimony, preparation time and deposition expenses. Arrangements for the deposition shall be made by the offering party.

(h) **Vocational rehabilitation and case management evidence.**

- (1) Testimony of a vocational rehabilitation expert or medical case manager may be offered by:
 - (A) a written report of the vocational rehabilitation expert or medical case manager, as appropriate;
 - (B) deposition; or
 - (C) oral examination before the Commission or Administrative Law Judge.

(2) The fact that the report constitutes hearsay shall not be grounds for its exclusion.

(3) Objection to and request for cross-examination of a Commission appointed vocational rehabilitation evaluator or Commission appointed medical case manager shall be

made in writing to the Commission and all parties within ten (10) days after receipt of the evaluator's or manager's report. The claimant is responsible for scheduling the deposition regardless of which party asserted the objection. The respondent shall choose the court reporter. All costs associated with the deposition shall be borne by the respondent regardless of which party asserted the objection.

(i) **Exhibits.** All exhibits shall be identified by the case style and Commission assigned file number before being submitted.

(j) **Retention and retrieval of exhibits.** For purposes of this part, an exhibit is a document or other evidence that is introduced at a hearing and is marked, offered, and accepted into the record by a judge as an exhibit. Exhibits do not become a permanent part of the Commission file; however, the judge's lists of exhibits must be retained in the Commission file. Exhibits must be retained by the Commission or the office for 60 days after a final decision is served and filed in the case. During this 60-day period, exhibits may be retrieved by the submitting party upon request to the Commission. If no party has retrieved the exhibits after 60 days, the exhibits will be destroyed.

810:10-5-50. Setting of matters

(a) **General.** All contested hearings to decide the rights of interested persons under the AWCA shall be set before an Administrative Law Judge, except as otherwise provided by law or this Title.

(b) **Exceptions.** The Commission en banc shall hear appeals of decisions from Administrative Law Judges, 85A O.S. § 78; ~~and review adverse benefit determinations made pursuant to 85A O.S. § 211 of the Oklahoma Injured Employee Benefit Act, 85A O.S. § 200.~~

(c) **Show cause hearings.** When a Commission Division contests a permit or license holder's compliance with state workers' compensation laws or Commission rules, the Division may cause notice to be issued to the permit or license holder to appear before an Administrative Law Judge or an administrative hearing officer designated by the Commission to show why the holder's permit or license should be renewed or should not be cancelled or revoked. The notice shall contain a date certain for the hearing. Failure to appear at the hearing may result in the nonrenewal, cancellation or revocation of the permit or license. Appearances at the hearing are governed by 810:10-1-9. The permit or license holder is to bring all reports and payments for delinquent assessments or other documentation pertinent to the hearing to the show cause hearing. Evidence and witnesses may be presented at the hearing.

PART 13. DISMISSALS

810:10-5-85. Dismissals

(a) **Generally.** Except as otherwise required by law, unless good cause is shown, dismissal of a complaint shall be without prejudice.

(b) **Untimely prosecution or failure to prosecute claim.**

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(1) The Commission, on motion and after notice and hearing, may dismiss a claim for compensation with prejudice if no bona fide request for hearing with respect to the claim has been made within six (6) months of the filing of claim. The Commission may set such claims on a disposition docket.

(2) The Commission shall dismiss a claim for additional compensation without prejudice to refile of the claim within the limitation period specified in 85A O.S. § 69(B), if no bona fide request for hearing with respect to the claim has been filed within six (6) months after the filing of the claim for additional compensation. A claim for additional compensation is described in 85A O.S. § 69(B)(C)(D).

(c) **Request of party filing claim for compensation.** Voluntary dismissal of a claim for compensation pursuant to a request of the worker is authorized in 85A O.S. § 108. This law gives the injured worker, upon order of the Commission and payment of the \$140.00 final award fee provided for in 85A O.S. § 118, the right to dismiss the worker's claim for compensation at any time before final submission of the case to the Commission for decision. The worker's application for dismissal shall be made on a Commission prescribed CC-Form-100 upon payment of the \$140.00 final award fee or execution of a payment plan approved by the Commission's business office. The dismissal shall be without prejudice, unless the Commission's order on the CC-Form-100 clearly identifies the dismissal as with prejudice. Prior to entering an order for dismissal with prejudice, the Commission may require notice and an evidentiary hearing.

PART 15. SETTLEMENTS

810:10-5-95. Joint petition settlements.

(a) Under 85A O.S. § 87 and 85A O.S. § 115, upon and after the filing of a claim for compensation, or, in the absence of a claim for compensation, the filing of the ~~Employer's First Notice of Injury~~ FROI per 810:10-1-4(a) in a claim involving a pro se employee, the parties may engage in a compromise and release of any and all liability which is claimed to exist under the AWCA on account of the injury or occupational disease or illness, subject to approval by the Commission, an Administrative Law Judge, or a Benefit Review Officer.

(b) The parties in interest to a claim for compensation may settle upon and determine any and all issues and matters by agreement, subject to the terms and conditions of this Section.

(c) Any agreement submitted to the Commission, Administrative Law Judge or Benefit Review Officer of the Commission's Counselor Division, for approval shall be set forth in a Commission prescribed CC-Joint Petition Settlement. Nothing in this rule shall preclude the Multiple Injury Trust Fund from compromising a claim as authorized by 85A O.S. § 32(F).

(d) No CC-Joint Petition Settlement agreement shall be binding on the parties in interest unless it is approved by the Commission pursuant to 85A O.S. § 22, Administrative Law Judge of the Commission pursuant to 85A O.S. § 115, or a

Commission Benefit Review Officer pursuant to 85A O.S. § 70. The CC-Joint Petition Settlement, including any attached appendix as provided in 85A O.S. § 115(B), identifying the outstanding issues that are subject to the Commission's continuing jurisdiction and possible reopen, shall be approved unless it is determined that:

(1) The agreement is unfair, unconscionable, or improper as a matter of law; or

(2) The agreement is the result of an intentional misrepresentation of a material fact; or

(3) The agreement, if for permanent disability, is not supported by competent medical evidence as required by 85A O.S. § 2(33).

(e) As used in this Section, "parties in interest" means the respondent (employer and the employer's insurance carrier if insured), and an employee. An employee who is not represented by legal counsel may effect a CC-Joint Petition Settlement upon the employer's filing of the ~~Employer's First Notice of Injury~~ FROI as provided in 810:10-1-4(a), or the employee's filing of a claim for compensation (CC-Form-3 or CC-Form-3B), regarding the injury or occupational disease or illness which is the subject of the CC-Joint Petition Settlement.

(f) In no instance shall the total attorney's fee amount provided for in a CC-Joint Petition Settlement exceed the maximum attorney fee allowed by law.

(g) No CC-Joint Petition Settlement shall be made upon written interrogatory or deposition except in cases where the claimant is currently engaged in the military service of the United States, is outside of the state, is a nonresident of Oklahoma, or in cases of extreme circumstances.

(h) A stenographic record of the terms and conditions of an approved joint petition settlement and the understanding of the claimant concerning the effect of the settlement must be made by a Commission court reporter and transcribed at the expense of the employer or insurance carrier. The transcript shall be prepared and provided to the parties within ninety (90) days. Medical reports and other exhibits submitted in support of a CC-Joint Petition Settlement shall not be transcribed. The original exhibits or duplicate copies thereof shall be affixed to the original transcript and placed in the Commission file.

(i) A file-stamped copy of an approved CC-Joint Petition Settlement shall be mailed by the Commission to all unrepresented parties and attorneys of record.

(j) A CC-Joint Petition Settlement that fully and finally resolves all issues in a claim for compensation between the employee and the employer, shall not be deemed an adjudication of the rights between the medical or rehabilitation provider and the employer for reasonable and necessary medical and rehabilitation expenses incurred by the employee due to the injury before the file-stamped date of the approved CC-Joint Petition Settlement.

(k) Within seven (7) days of the date a medical provider provides initial treatment for a work-related accident, the medical provider shall provide notice in writing to the Commission, if and only if, a CC-Form-3 or CC-Form-3B has been filed with the Commission, and in all cases shall provide notice in writing to the patient's employer, and if known, the employer's insurance carrier. If the medical provider fails to provide the

required notification, the medical provider forfeits any rights to future notification, including those circumstances where a case is fully and finally settled by a CC-Joint Petition Settlement, unless the medical provider is actually known to the employer or insurance carrier or is listed by the employee.

(1) If the issue of medical treatment is fully and finally settled by a CC-Joint Petition Settlement, the employee shall provide to the employer or insurance carrier a list of all medical providers known to the employee. The Commission prescribed Form ~~CC-JPS~~CC-Joint Petition Settlement shall be used for that purpose. Within ten (10) days from the file-stamped date of the CC-Joint Petition Settlement, the employer or insurance carrier shall send notice of the CC-Joint Petition Settlement to all medical providers listed by the employee and to all medical providers known to the employer or insurance carrier. The employee is liable for payment of any medical services rendered after the CC-Joint Petition Settlement is filed. The employee also is responsible for informing any future medical providers that the case or issue of medical treatment was fully and finally disposed of by a CC-Joint Petition Settlement and that the employee, rather than the employer or insurance carrier, is the party financially responsible for such services.

PART 17. FEES

810:10-5-105. Fees

Fees payable to the Commission include:

- (1) A fee of One Thousand Dollars (\$1,000.00), payable by each carrier writing worker's compensation insurance in this state, upon securing a license to transact business in this state [85A O.S. § 29(A)];
- (2) A fee of One Thousand Dollars (\$1,000.00), payable by each self-insurer at the time it is approved to self-insure its obligations under the AWCA [85A O.S. § 29(B)];
- (3) An annual fee of One Thousand Dollars (\$1,000.00), payable by third-party administrators [85A O.S. § 29(C)];
- (4) A fee of One Hundred Seventy-five Dollars (\$175.00), payable by a party appealing an order or award of an Administrative Law Judge to the Commission en banc [85A O.S. § 78(B)];
- (5) A fee of One Hundred Dollars (\$100.00), for compiling and transmitting a record for appeal of a Commission order to the Oklahoma Supreme Court, payable by the appealing party [85A O.S. § 78(D)];
- (6) A fee of One Hundred Forty Dollars (\$140.00), payable by the party against whom an award becomes final (i.e. the employer or insurance carrier if there is an award of compensation, or the worker if there is a denial or dismissal of a claim for compensation) [85A O.S. § 118(A)]. Ten Dollars (\$10.00) of the fee is payable by the Commission to the credit of the Attorney General's Workers' Compensation Fraud Unit Revolving Fund;
- (7) A fee of One Hundred Thirty Dollars (\$130.00), payable by the worker if the reopen request is to reopen on a change of condition for the worse, or payable by the

employer or insurance carrier if the reopen request is to reopen on a change of condition for the better [85A O.S. § 118(B)];

- (8) A fee of One Dollar (\$1.00) per page, payable as a copy charge [85A O.S. § 119(A)];
- (9) A fee of One Dollar (\$1.00) per search request for prior claims records, not to exceed One Dollar (\$1.00) per claims record of a particular worker [85A O.S. § 120(B)];
- (10) A fee of Forty-five Dollars (\$45.00), plus postage, if any, for a Commission handbook [85A O.S. § 20(B)]; and
- (11) A fee of Fifty Dollars (\$50.00), payable by an applicant requesting a Certificate of Noncoverage or a renewal thereof [85A O.S., § 36(D)(2)]; and
- (12) Such other fees as may be allowed by law or this Title.

[OAR Docket #17-617; filed 7-11-17]

**TITLE 810. OKLAHOMA WORKERS' COMPENSATION COMMISSION
CHAPTER 15. MEDICAL SERVICES**

[OAR Docket #17-618]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 3. Workers' Compensation Fee Schedule
810:15-3-3 [AMENDED]
- Subchapter 9. Independent Medical Examiners
810:15-9-1 [AMENDED]
- 810:15-9-4 [AMENDED]
- Subchapter 13. Change of Treating Physician
810:15-13-1 [AMENDED]
- Subchapter 15. Medical Dispute Resolution
810:15-15-2 [AMENDED]
- 810:15-15-3 [AMENDED]

AUTHORITY:

Workers' Compensation Commission; 85A O.S. §§ 1 et seq.

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n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The rule amendments modify procedures and standards governing medical matters over which the Commission has responsibility under the Administrative Workers Compensation Act, 85A O.S. §§ 1 et seq. The amendments to the 2012 Workers' Compensation Fee Schedule prescribe a billing modifier for Advanced Practice Registered Nurses; amend procedures

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pertaining to the qualifications and appointment of Independent Medical Examiners; require certified workplace medical plans to provide the Commission with current website addresses where dispute resolution forms and providers may be accessed by the general public; and correct citations and internal references.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 3. WORKERS' COMPENSATION FEE SCHEDULE

810:15-3-3. Allowable reimbursement for advanced practice registered nurses

A certified advanced practice registered nurse (APRN) shall be allowed eighty-five percent (85%) of the fee schedule allowance for Evaluation and Management services and other services performed within the advanced practice registered nurse's license and certification, subject to the conditions and procedures set forth in General Ground Rule 13 of the 2012 fee schedule. When billing for services provided by an APRN, use the modifier (-NP).

SUBCHAPTER 9. INDEPENDENT MEDICAL EXAMINERS

810:15-9-1. Qualifications

(a) The Commission shall maintain a list of private physicians to serve as independent medical examiners. The list shall be placed on the Commission's website at <http://www.wcc.ok.gov>.

(b) To be eligible for appointment by the Commission to the list of qualified independent medical examiners, and for retention on the list, the physician must:

- (1) have a valid, unrestricted professional license as a physician which is not probationary;
- (2) have at least three (3) years' experience and competency in the physician's specific field of expertise and in the treatment of work-related injuries;
- (3) be knowledgeable of workers' compensation principles and the workers' compensation system in Oklahoma, as demonstrated by prior experience and attend Commission ~~sponsored~~ approved educational programming at least once every two (2) years, including programming in the Official Disability Guidelines if a treating physician and/or in the American Medical Association's "Guides to the Evaluation of Permanent Impairment" if a rating physician;

(4) have in force and effect health care provider professional liability insurance from a domestic, foreign or alien insurer authorized to transact insurance in Oklahoma. The per claim and aggregate limits of the insurance must be at least One Million Dollars (\$1,000,000.00);

(5) have no felony conviction under federal or state law within seven (7) years before the date of the physician's application to serve as a qualified independent medical examiner; and

(6) have a valid Oklahoma State Bureau of Narcotics and Dangerous Drugs Control (BNDD) registration and federal Drug Enforcement Agency (DEA) registration, as authorized by law for the physician's professional license.

(c) Physicians who are serving unexpired terms as qualified independent medical examiners for the Oklahoma Workers' Compensation Court on February 1, 2014 shall serve as qualified independent medical examiners for the Commission until their respective terms expire, unless voluntarily terminated by the physician or revoked by the Commission, and may reapply for successive qualification periods. The two year period in which to meet the educational requirement in 810:15-9-1(b)(3) commences with the independent medical examiner's first appointment or renewal after February 1, 2014.

810:15-9-4. Requests for assignment

(a) Appointment of an independent medical examiner from the Commission's list of independent medical examiners is governed by this Section. Appointments shall take into account the specialty, availability and location of the examiner. The independent medical examiner selected shall be certified by a recognized specialty board in the area or areas appropriate to the condition under review.

(b) Requests for the appointment of an independent medical examiner may be set for a prehearing conference, at the discretion of the Commission.

(c) An independent medical examiner may be appointed on any issue before the Commission, including to determine if further medical treatment is needed following a full duty release on all body parts by the treating physician. If surgery is recommended by a treating physician, upon written request of the employer made on a CC-Form-13 filed within twenty (20) days of receipt of the treating physician's report, an independent medical examiner who is qualified to perform the type of surgery recommended shall be appointed to determine the reasonableness and necessity of the surgery. The twenty-day request deadline may be waived by agreement of the parties or for good cause shown.

(d) The parties shall send the employee's medical records to the independent medical examiner by regular mail within ten (10) calendar days of receipt of the Commission order assigning the examiner. If necessary, the independent medical examiner may contact persons in whose possession the records or information is located solely for the purpose of obtaining such records or information.

(e) An independent medical examiner's opinion is binding unless there is clear and convincing evidence to the contrary. Deviations by the Commission from the independent medical examiner's opinion must be explained.

SUBCHAPTER 13. CHANGE OF TREATING PHYSICIAN

810:15-13-1. Scope

(a) This Subchapter applies to requests to the Commission for a change of treating physician made by a claimant who is not subject to a certified workplace medical plan. These requests are authorized in 85A O.S. § 56(B).

(b) Requests for a change of treating physician sought by an injured employee of an employer that previously contracted with a certified workplace medical plan are not subject to this Subchapter. Such requests must be made by utilizing the plan's dispute resolution process on file with the State Department of Health.

(c) Each certified workplace medical plan shall notify the Executive Director in writing of the plan's appropriate internet website address where its dispute resolution form(s) and current list of providers may be accessed electronically by the general public. A plan shall notify the Executive Director in writing upon a change of the website address where the required information may be accessed.

SUBCHAPTER 15. MEDICAL DISPUTE RESOLUTION

810:15-15-2. Payment of charges

(a) As provided in 85A O.S., §50(H), payment for medical care required by the AWCA is due within forty-five (45) days of receipt by the employer or insurance carrier of a complete and accurate invoice. The late payment of medical charges, absent good cause, may subject the employer or insurance carrier to a Commission ordered penalty of up to twenty-five percent (25%) of any amount due under the Oklahoma workers' compensation fee schedule that remains unpaid. The Commission also may assess a civil penalty of up to Five Thousand Dollars (\$5,000.00) per occurrence if the Commission finds a pattern of an employer or insurance carrier willfully and knowingly delaying payments for medical care. Any such fines and penalties assessed under the AWCA, upon collection, shall be deposited to the Workers' Compensation Fund created in 85A O.S., § 28.

(b) Medical care provided as recommended by the ODG is presumed reasonable, and also is presumed to be health care reasonably required. In order for the insurance carrier to deny payment for medical services that are recommended by the ODG, the denial must be supported by clear and convincing medical evidence. A medical provider whose services exceed, are not recommended, or are not addressed by the ODG, must support the deviation from the ODG by clear and convincing medical evidence, in writing to the insurance carrier, as a condition of payment for services rendered. Resolution of medical fee disputes involving deviation from the ODG are governed by 810:15-15-4.

810:15-15-3. Medical dispute resolution of fee disputes

(a) **Applicability.** This Section applies to a request to the Commission for a medical fee dispute resolution (MFDR) pertaining to an injury sustained by an injured employee on and after February 1, 2014. Medical fee dispute resolution requests involving an injury occurring before February 1, 2014 shall be resolved in accordance with the statutes and rules applicable to the Oklahoma Workers' Compensation Court of Existing Claims.

(b) **Provider Request for MFDR.** Requests by a health care provider for MFDR shall be filed and processed in the form and manner prescribed in this Section.

(1) **MFDR Form 19.** A provider may initiate proceedings to address a medical fee dispute by filing a Commission prescribed MFDR Form 19 with the Commission. A copy of the form may be obtained from the Commission at its main offices, or from the Commission's website.

(2) **Request for hearing.** A provider may request a hearing for determination of the issues raised on the MFDR Form 19 by filing a request for hearing before an administrative law judge of the Commission as provided in ~~810:2-5-16~~810:10-5-16. The provider shall send a copy of the request for hearing, together with a copy of the MFDR Form 19 and the records and supporting documentation required in Paragraph (4) of this Subsection, to the insurance carrier. The insurance carrier shall file a response to the MFDR Form 19 as provided in Paragraph (5) of this Subsection.

(3) **Contents of MFDR Form 19.** The health care provider's MFDR Form 19 shall include the following information, and such other information as may be required on the form, and shall be signed by the provider under penalty of perjury:

- (A) the name, address, and contact information of the provider;
- (B) the name of the injured employee;
- (C) the date of injury;
- (D) the date(s) of the service(s) in dispute;
- (E) the place of service;
- (F) the treatment or service code(s) in dispute;
- (G) the amount billed by the health care provider for the treatment(s) or service(s) in dispute;
- (H) the amount paid by the workers' compensation insurance carrier for the treatment(s) or service(s) in dispute;
- (I) the disputed amount for each treatment or service in dispute;
- (J) a statement of whether or not there is a final decision regarding compensability, extent of injury, liability and/or medical necessity for the health care related to the dispute; and
- (K) a position statement of the disputed issue(s) which includes:
 - (i) the provider's reasoning for why the disputed fees should be paid,
 - (ii) a discussion of how the AWCA, Commission rules, and/or the Oklahoma workers'

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compensation fee schedule impacts the disputed fee issues, including reference to the specific general instruction, ground rule or other provision of the Oklahoma workers' compensation fee schedule serving as the basis for the requested reimbursement, and

(iii) a discussion of how the submitted documentation supports the provider's position for each disputed fee issue.

(4) **Supplemental records and documentation.** The following records and documentation applicable to a provider's MFDR Form 19 shall be sent by the provider to the insurance carrier as provided in Paragraph (2) of this Subsection, but shall not be attached to the MFDR Form 19 when the form is filed with the Commission:

(A) a paper copy of all medical bills related to the dispute, as originally submitted to the insurance carrier;

(B) a paper copy of each explanation of benefits (EOB) related to the dispute as originally submitted to the health care provider;

(C) a copy of all applicable medical records related to the dates of service in the dispute; and

(D) any other documentation that the provider deems applicable to the medical fee dispute.

(5) **Respondent response.**

(A) The insurance carrier shall respond to the MFDR Form 19 by filing a Commission prescribed MFDR Form 10M within thirty (30) days of the file-stamped date of the CC-Form-9 Request for Hearing filed by the provider. The response shall provide any missing information not provided by the health care provider and known to the respondent. The MFDR Form 10M shall include the following information, and such other information as may be required on the form, and shall be signed by the respondent under penalty of perjury:

(i) the name, address, and contact information of the respondent; and

(ii) a position statement of the disputed issue(s) which includes:

(I) the respondent's reasoning for why the disputed fees should not be paid,

(II) a discussion of how the AWCA, Commission rules, and/or the Oklahoma workers' compensation fee schedule impacts the disputed fee issues, including reference to the specific general instruction, ground rule or other provision of the Oklahoma workers' compensation fee schedule serving as the basis for the respondent's position, and

(III) a discussion of how the submitted documentation supports the respondent's position for each disputed fee issue.

(B) The respondent shall send the MFDR Form 10M, together with the following records and documentation applicable to the respondent's MFDR Form

10M, to the provider. The records and documentation shall not be attached to the MFDR Form 10M when the form is filed with the Commission:

(i) a paper copy of all initial and appeal EOBs related to the dispute, as originally submitted to the health care provider, related to the health care in dispute not submitted by the health care provider, or a statement certifying that the respondent did not receive the health care provider's disputed billing before the MFDR Form 19 dispute request;

(ii) a paper copy of all medical bills related to the dispute, if different from that originally submitted to the insurance carrier for reimbursement; and

(iii) a copy of any pertinent medical records or other documents relevant to the fee dispute not already provided by the health care provider.

(6) **Determination of allowable amounts.**

(A) **Audits.** Audits of medical bills to determine the amount allowable under the appropriate Oklahoma workers' compensation fee schedule may be offered by each party. Audits prepared by billing review services, medical bill audit services or in-house auditors may be submitted as evidence reflecting the methodology of the application of the fee schedule. The fee schedule sets maximum amounts allowable but does not prohibit a party from asserting a lesser amount should be paid.

(B) **Referral to the Health Services Division.**

(i) The Commission, at its discretion, may refer medical fee disputes which involve conflicting interpretations of the Oklahoma workers' compensation fee schedule and a reduction by the insurance carrier of the provider's bill for health care services determined to be medically necessary and appropriate for the injured employee's compensable injury, to the Commission's Health Services Division for a recommendation regarding the maximum reimbursement amount allowed under the fee schedule for the services rendered.

(ii) Medical fee disputes involving the denial by an insurance carrier of a bill for services based on denial of compensability of the injured employee's injury or occupational disease, length of treatment, necessity of treatment, unauthorized physician or other ground, shall not be referred to the Division.

(7) **Hearing dockets.** MFDR Form 19 hearings shall be scheduled initially on an administrative docket to determine the payment status of the disputed medical fee charges. If the charges are not paid before the administrative hearing or the parties are unable to resolve the dispute at the administrative hearing, the dispute shall be set on the assigned administrative law judge's hearing docket.

(8) **Appearances.** Appearances at the administrative docket and before the administrative law judge or Commission are governed by 810:10-1-9.

(9) **Mediation.** Nothing in this Subchapter is intended to preclude resolution of medical fee disputes by mediation or agreement of the parties, as appropriate.

[OAR Docket #17-618; filed 7-11-17]

**TITLE 810. OKLAHOMA WORKERS' COMPENSATION COMMISSION
CHAPTER 25. WORKERS' COMPENSATION INSURANCE AND SELF INSURANCE**

[OAR Docket #17-619]

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- Subchapter 1. General Provisions
 - 810:25-1-1 [AMENDED]
 - 810:25-1-2 [AMENDED]
 - 810:25-1-3 [AMENDED]
- Subchapter 5. Documentation of Exempt Status [NEW]
 - 810:25-5-1 [NEW]
 - 810:25-5-2 [NEW]
 - 810:25-5-3 [NEW]
- Subchapter 7. Enforcement of Workers' Compensation Insurance Requirements
 - 810:25-7-1 [AMENDED]
- Subchapter 9. Individual Own Risk Employer Permit
 - 810:25-9-13 [AMENDED]
 - 810:25-9-15 [AMENDED]
- Subchapter 13. Third-Party Administrator Permit for Workers' Compensation Purposes
 - 810:25-13-4 [AMENDED]

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SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

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APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 13, 2017

FINAL ADOPTION:

June 13, 2017

EFFECTIVE:

September 11, 2017

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The rule amendments add procedures related to certificates of noncoverage, subpoenas issued in compliance investigations, reporting requirements for individual own risk employers and remove the triennial audit requirement for third-party administrators.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:

SUBCHAPTER 1. GENERAL PROVISIONS

810:25-1-1. Purpose

This Chapter establishes procedures and standards for proof of coverage (85A O.S., § 42); issuance of certificates of noncoverage; regulation of individual own risk employers, group self-insurance associations and third-party administrators for workers' compensation purposes (85A O.S., §§ 22, 29, 38, 102 and 103); and enforcement of workers' compensation insurance requirements (85A O.S., § 40), as authorized in the Administrative Workers' Compensation Act, 85A O.S., §§ 1, et seq.

810:25-1-2. Definitions

In addition to the terms defined in 85A O.S., § 2, the following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"**Administrator**" means the person designated by the supervisory board of members of a group self-insurance association to oversee the financial affairs of the association, accept service of process on behalf of the association, act for and bind the association and members in all transactions either relating to or arising out of the operation of the association.

"**Advisory loss costs**" means the National Council on Compensation Insurance's projections of future claims costs and loss adjustment expenses by classification code.

"**Aggregate excess insurance**" means an insurance product that limits a group self-insurance association's annual aggregate liability to an agreed upon amount.

"**Association**" or "**Group Self-Insurance Association**" means a duly qualified group self-insurance association authorized by the Commission to self fund its workers' compensation obligations.

"**AWCA**" means the Administrative Workers' Compensation Act, 85A O.S., §§ 1, et seq.

"**Board**" or "**Members' Supervisory Board**" means the supervisory board of members of an association.

"**Cancellation short rate penalty**" means a penalty imposed on the member for cancelling its policy before the expiration date of the policy.

"**Certificate of noncoverage**" or "**CNC**" means a certificate which may be issued by the Oklahoma Workers' Compensation Commission after proper application and reasonable investigation to a sole proprietor or the partners of a partnership who do not elect to be covered by the AWCA.

"**Certified audit**" means a financial audit performed by a certified public accountant, accompanied by the auditor's opinion regarding the audit.

Permanent Final Adoptions

"Claims reserves" means workers' compensation claim losses expected to be paid in the future, but does not include IBNR.

"Commission" means the Oklahoma Workers' Compensation Commission, a designee, or an administrative law judge to whom the Commission has delegated responsibility as authorized by 85A O.S., § 21(D).

"Common interest" means employers engaged in the same industry or members of an Oklahoma trade association that has been in business for at least five (5) years.

"Expense constant" means a flat charge included in a workers' compensation policy to cover the costs of issuing and servicing the policy.

"Experience modifier" means a modification to premium based on the claims history of the policyholder.

"IBNR" means incurred but not reported reserves. It includes a reserve for claims that have been incurred, but not yet reported to the individual own risk employer or group self-insurance association, as applicable, and reserves for adverse loss development on known claims.

"Incurred loss" means the total of the paid indemnity and medical losses plus claims reserves, reported by accident year.

"Insurance Department" means the Insurance Department of the State of Oklahoma.

"Joint and several liability" means mutual and individual responsibility of members for the liabilities of the association.

"Loss portfolio transfer" means the transfer of the liabilities of the association to an insurance carrier for an agreed upon premium.

"Member" means an individual member of an association.

"NCCI" means the National Council on Compensation Insurance, a national source for information on workers' compensation insurance, tools and services, and the provider of advisory ratemaking and statistical services in Oklahoma.

"Partnership" means a type of unincorporated business organization in which two or more individuals own the business and are equally liable for its debts.

"Pro forma financial statement" means a hypothetical financial statement showing revenues and expenses that may be recognized in the upcoming fiscal year.

"Proof of coverage" means the statutory filings of workers' compensation policy information to the NCCI.

"Scopes Manual" is a catalog of four-digit workers' compensation codes based on the nature of business and estimated risk to its workers.

"Self insured retention" means the individual own risk employer's or group self-insurance association's retained amount of risk under a specific excess insurance policy, before the liability is transferred to an insurance carrier.

"Sole proprietor" means an individual (or married couple) who is sole owner of a business that is neither a partnership nor an incorporated or limited liability company.

"Solvency" means a member whose assets are greater than its liabilities and who is capable of meeting its financial obligations to the association.

"Specific excess insurance" means an insurance product that limits the liability of an individual own risk employer or group self-insurance association specific occurrence liability to an agreed upon amount.

"Standard premium" means experience modified workers' compensation premium that has not been discounted.

"Statutory limits" means an insurance carrier's amount of liability under a specific excess insurance policy, capped at the maximum amount allowed by statute.

"TPA" or "Third-Party Administrator" means any person defined in 36 O.S., § 1442 of the Third-Party Administrator Act as an "administrator".

"Unearned premium" means the share of the members' premiums applicable to the unexpired portion of the policy terms.

810:25-1-3. Proceedings related to permit actions

The Commission may deny an application, refuse to issue or renew, or revoke a Certificate of Noncoverage (Subchapter 5 of this Chapter), or a permit for Individual Own Risk Employer (Subchapter 9 of this Chapter), Group Self-Insurance Association (Subchapter 11 of this Chapter) or Third-Party Administrator (Subchapter 13 of this Chapter) as provided in this Chapter. Proceedings related to such Commission actions shall be governed by 810:10-5-50 on show cause hearings and the contested hearings rules set forth in Subchapter 5 of Chapter 10 of this Title.

SUBCHAPTER 5. DOCUMENTATION OF EXEMPT STATUS

810:25-5-1. Certificate of noncoverage requirements

(a) To request a CNC as authorized by 85A O.S., §36, an individual doing business as a sole proprietor or the partner of a partnership who does not elect to be covered by the AWCA and be deemed an employee thereunder, shall:

(1) Submit a signed and completed Application for Certificate of Noncoverage on a form prescribed by the Commission, to the following address: Oklahoma Workers' Compensation Commission, Attention: INSURANCE DIVISION, 1915 North Stiles Avenue, Oklahoma City, Oklahoma 73105. The application shall be notarized and signed by the applicant under penalty of perjury. Illegible, incomplete or unsigned applications will not be considered and shall be returned. A copy of the application form may be obtained from the Commission at the address set forth in this Paragraph, or from the Commission's website;

(2) Pay to the Commission a nonrefundable application fee of Fifty Dollars (\$50.00) with the Application for Certificate of Noncoverage. The fee may be charged and shall be collected from each individual who applies for a CNC;

(3) Provide such substantiating documentation in support of the application as may be required by the Commission; and

(4) Verify that the applicant will notify the Commission in writing upon any change affecting the applicant's qualifications as provided in this Subsection.

(b) The application shall be reviewed by the Commission's Insurance Division. If the application is determined to be sufficient, the Division will issue a Certificate of Noncoverage for a period of two years. If the application is determined to be deficient, the Division will notify the applicant thereof, stating the reasons for the deficiency. If the deficiency cannot be resolved within the stated time from the Division, the application will be denied.

810:25-5-2. Revocation of certificate of noncoverage

The Commission may revoke a CNC for cause, including, but not limited to, material misrepresentation on the CNC application, or refusal or substantial failure of the CNC holder to notify the Commission of any change affecting the holder's qualifications as provided in 810:25-5-1.

810:25-5-3. Renewal process

The criteria for renewal of a certificate of noncoverage shall be the same as that for a new applicant.

SUBCHAPTER 7. ENFORCEMENT OF WORKERS' COMPENSATION INSURANCE REQUIREMENTS

810:25-7-1. Proof of insurance

(a) Whenever the Commission has reason to believe that an employer is required to secure the payment of compensation under the AWCA and has failed to do so, the Commission may make reasonable inquiry of the employer, issue subpoenas and demand proof of current workers' compensation insurance coverage compliant with 85A O.S., § 38 or documentation substantiating the employer's exemption from coverage requirements. Subpoenas issued under this Section shall be governed by 810:10-5-31.

(b) As authorized in 85A O.S., § 40, if no proof of insurance or exemption is provided; or the documentation offered does not substantiate a claimed exemption or is not current, valid proof of insurance in accordance with 85A O.S., § 38; or the employer fails to respond in a timely manner, the Commission shall serve on the employer a proposed judgment declaring the employer to be in violation of the workers' compensation insurance coverage requirements mandated by law and assess a monetary fine against the employer in an amount not to exceed One Thousand Dollars (\$1,000.00) per day of violation.

SUBCHAPTER 9. INDIVIDUAL OWN RISK EMPLOYER PERMIT

810:25-9-13. Notification of changed status

An individual own risk employer must notify the Commission in advance of any change in its financial condition, such

as a bankruptcy filing, potential bankruptcy, or negative net income for a fiscal year, or any change in ownership during the interim period between applications, such as a net financial loss, which may impact the employer's financial ability to pay its compensation. Failure to notify the Commission in a timely manner may result in revocation of the own risk permit. If there is a change in majority ownership of an individual own risk employer, the own risk privilege granted to the employer shall be at the discretion of the Commission and the new entity shall be required to qualify under this Subchapter.

810:25-9-15. Assessments

An individual own risk employer must pay all applicable Multiple Injury Trust Fund assessments (85A O.S., § 31) and all Self Insurance Guaranty Fund assessments (85A O.S., § 98), when due and timely report payment thereof to the Commission as prescribed by law. Failure to do so is grounds for revocation of the individual own risk employer permit, imposition of fines by the Commission, or both revocation and fines. No report to the Commission or Insurance Department shall be required where no payment is due.

SUBCHAPTER 13. THIRD-PARTY ADMINISTRATOR PERMIT FOR WORKERS' COMPENSATION PURPOSES

810:25-13-4. Operating requirements

The TPA must:

- (1) Have adequate personnel on staff to handle the volume and type of work. The TPA may subcontract for services not provided by the TPA, but requested from the self-insurer;
- (2) Be financially solvent, and must report its financial statements on an annual basis to the Commission in an approved form and manner;
- (3) Maintain an adequate Errors and Omissions policy;
- (4) Maintain an adequate Fidelity Bond;
- (5) Establish claims reserves at the most likely outcome. Best case reserving is not allowed.
- ~~(6) Undergo a triennial audit of its claims handling, claims reserving, and internal controls, by independent professionals;~~
- ~~(7) Retain its independence when setting claim reserves. The TPA shall not let the self-insurer influence the amount of the reserve or the closing of a claim;~~
- ~~(8) Maintain an Oklahoma office, if handling a group self-insurance association program; and~~
- ~~(9) Maintain adequate computerized records and paper claims files on each claim. A copy of this information must be made available for the Commission's review at all times upon request.~~

[OAR Docket #17-619; filed 7-11-17]

Executive Orders

As required by 75 O.S., Sections 255 and 256, Executive Orders issued by the Governor of Oklahoma are published in both the *Oklahoma Register* and the *Oklahoma Administrative Code*. Executive Orders are codified in Title 1 of the *Oklahoma Administrative Code*.

Pursuant to 75 O.S., Section 256(B)(3), "Executive Orders of previous gubernatorial administrations shall terminate ninety (90) calendar days following the inauguration of the next Governor unless otherwise terminated or continued during that time by Executive Order."

TITLE 1. EXECUTIVE ORDERS

1:2017-23.

EXECUTIVE ORDER 2017-23

I, Mary Fallin, Governor of the State of Oklahoma, pursuant to the power and authority vested in me by Sections 1 and 2 of Article VI of the Oklahoma Constitution hereby order the formation of the Second Century Corporation Commission Task Force (Task Force).

The Task Force will conduct an organizational analysis of the Oklahoma Corporation Commission.

Specifically, the Task Force's analysis shall, at a minimum, include:

1. An assessment of the stated mission, addressing:
 - a. Accuracy in light of modern day agency functions;
 - b. Appropriateness and necessity of current duties;
 - c. If performance of certain functions are better suited to other agencies.
2. A performance assessment, addressing:
 - a. Current workload levels;
 - b. Time required to process workload and individual cases.
3. A staffing assessment, addressing:
 - a. If the agency is properly staffed to meet its mission;
 - b. If the staffing structure of the agency is efficient and effective;
 - c. If the staff has the autonomy and accountability needed to perform their duties.
4. A funding assessment, addressing:
 - a. Whether the agency is properly funded;
 - b. The current funding mechanisms available;
 - c. Funding gaps within individual programs.
5. A structural assessment, addressing:
 - a. The makeup of the Commission and the impact of the Oklahoma Open Meeting Act requirements;
 - b. Trends related to terms of office;
 - c. The appropriateness of the current number of Commissioners;
 - d. Whether the Commission should be appointed, elected, or a combination thereof.

The Task Force shall consist of the Secretary of Energy and Environment (the Secretary), Attorney General or his

designate, a Corporation Commissioner appointed by the Commission, a Senator appointed by the President Pro Tempore, and a State Representative appointed by the

Speaker of the House of Representatives. The Secretary shall serve as the Chair of the Task Force.

The Task Force shall meet at such times and places as the Chair deems appropriate. Members shall serve without compensation. The Office of the Secretary of Energy and Environment shall provide staff and administrative support for the Task Force at the direction of the Secretary. The Secretary is authorized, at his discretion, to contract with a third party to provide consulting services as necessary to carry out the mission of the Task Force. The Task Force shall approve the scope of their analysis.

The Task Force shall consult and engage with stakeholders, including but not limited to entities regulated by the commission and consumer groups, throughout the development of their analysis. The Task Force or the Secretary of Energy and Environment may hold listening sessions or opportunities to engage with stakeholders and members of the public prior to submitting a final report.

All Executive departments, officers, agencies, and employees of this State shall cooperate with the Task Force in carrying out of their duties and responsibilities, including providing any information, records, and reports as may be requested.

The Task Force shall prepare and submit a final report containing a detailed statement of the findings and recommendations of the analysis to the Governor, all Corporation Commissioners, the Attorney General, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives no later than November 15, 2018.

The Secretary of Energy and Environment is directed to use his authorities found in Titles 27A, 52, and 74 of the Oklahoma Statutes to undertake this analysis. The Task Force shall not include within their analysis specific issues, concerns, recommendations, or other actions dealing with any past, current, or future cases, orders, proceedings, actions, enforcements, or other matters before the Corporation Commission; this shall not limit the Task Force in examining the processes related to management issues or workflow before the Corporation Commission.

Executive Orders

This Executive Order shall be distributed to the Members of the Task Force and the Secretaries of State and Energy and Environment.

IN WITNESS WHEREOF, I have set my hand and caused the Great Seal of the State of Oklahoma to be affixed at Oklahoma City, Oklahoma, this the 7 day of August, 2017.

BY THE GOVERNOR OF THE
STATE OF OKLAHOMA

Mary Fallin

ATTEST:
Dave Lopez
Secretary of State

[OAR Docket #17-672; filed 8-7-17]

1:2017-24.

EXECUTIVE ORDER 2017-24

I, Mary Fallin, Governor of the State of Oklahoma, pursuant to the power vested in me by Section 2 of Article VI of the Oklahoma Constitution, hereby declare the following:

1. Due to tornadoes, straight line winds, flooding, and severe storms beginning August 5, 2017 and continuing, there is hereby declared a disaster emergency that threatens the lives and property of the people of this State and the public's peace, health, and safety in Mayes, Rogers, Tulsa, and Wagoner counties.

This declaration may be amended as conditions warrant.

2. It may be necessary to provide for the rendering of mutual assistance among the State and political subdivisions of

the State with respect to carrying out disaster emergency functions during the continuance of the State emergency pursuant to the provisions of the Oklahoma Emergency Management Act of 2003.

3. State agencies, in responding to this disaster emergency, may make necessary emergency acquisitions to fulfill the purposes of this proclamation without regard to limitations or bidding requirements on such acquisitions.

4. The State Emergency Operations Plan has been activated and resources of all State departments and agencies available to meet this emergency are hereby committed to the reasonable extent necessary to protect lives and to prevent, minimize, and repair injury and damage. These efforts shall be coordinated by the Director of the Department of Emergency Management with comparable functions of the federal government and political subdivisions of the State.

This Executive Order shall terminate at the end of thirty (30) days.

Copies of this Executive Order shall be distributed to the Director of Emergency Management who shall cause the provisions of this order to be implemented by all appropriate agencies of state government.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Oklahoma to be affixed at Oklahoma City, Oklahoma, this 9 day of August, 2017.

BY THE GOVERNOR OF THE
STATE OF OKLAHOMA

Mary Fallin

ATTEST:
Dave Lopez
Secretary of State

[OAR Docket #17-675; filed 8-9-17]
